

Case No. S208611

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

CALIFORNIA CHARTER SCHOOLS
ASSOCIATION

Plaintiff and Respondent,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT,
et al.

Defendants and Appellants.

After a Decision by the Court of Appeal,
Second Appellate District, Division 5
Case No. B242601

Los Angeles Superior Court Case No. BC438336
Honorable Terry A. Green, Presiding Judge, Dept. 14

APPLICATION OF NATIONAL ALLIANCE
FOR PUBLIC CHARTER SCHOOLS FOR
LEAVE TO FILE *AMICUS CURIAE* BRIEF IN
SUPPORT OF PLAINTIFF AND RESPONDENT
CALIFORNIA CHARTER SCHOOLS
ASSOCIATION AND BRIEF OF *AMICUS
CURIAE* IN SUPPORT OF PLAINTIFF AND
RESPONDENT CALIFORNIA CHARTER
SCHOOLS ASSOCIATION

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Pursuant to California Rules of Court, rule 8.520(f), the National Alliance for Public Charter Schools (“NAPCS”) respectfully requests permission to file the attached brief as amicus curiae in support of Plaintiff and Respondent California Charter Schools Association.

NAPCS is the leading national nonprofit organization committed to advancing the public charter school movement. NAPCS endeavors to grow the number of high-quality public charter schools available to all families, especially those who do not have access to high-quality traditional district public schools. NAPCS focuses on key policy priorities like replicating and expanding high-quality public charter schools, lifting arbitrary “caps” on charter growth, and closing the funding gap between public charter school students and other public school students. NAPCS advances the charter school movement by providing assistance to state charter school associations and resource centers, and by developing and advocating for improved public policies. NAPCS serves as the united voice for this diverse, nation-wide movement.

NAPCS has filed briefs as amicus curiae in the Colorado Supreme Court, Louisiana Court of Appeal and the Ohio Court of Appeals. Courts have published the following decisions in appeals in which NAPCS has participated as amicus curiae: *Lobato v. State* (Colo. 2013) 304 P.2d 1132; *Pelican Educational Foundation, Inc. v. Louisiana State Board of Elementary and Secondary Education* (La.App.1 Cir. 2012) 97 So.3d 440.

The focus of this brief is to provide additional background concerning public charter schools and the important role that access to facilities play in driving or limiting charter school growth. This brief raises just two points that NAPCS develops beyond the perspectives presented by the parties in this case. Those points are:

- (i) Proposition 39 and Education Code § 47614 require LAUSD to provide equal access to State-owned public school facilities for students choosing to attend charter schools and district-operated schools. Studies showing that public charter schools outperform non-charter public schools for minority and low income pupils reinforces parents' choices to seek enrollment for their children in public charter schools. Yet despite rapid charter schools growth, lack of access to public school facilities denies many California students and families the opportunity to attend a public charter school. Tens of thousands of would-be California public charter school students are forced to participate in lotteries for a chance to attend a higher-performing charter school, and are placed on "waiting lists" when they do not get in.
- (ii) LAUSD as trustee cannot enact rules (in this case, "norming ratios") concerning State property which conflict with general laws on statewide matters. The owner of public school

property is the State itself. LAUSD is essentially nothing but a trustee for the State, holding legal title to public school campuses and required to devote them to the uses which the State itself directs.

This case has the potential to impact dramatically the continued growth of charter schools in California. Moreover, allowing LAUSD to apply its “norming ratio” – instead of the methodology mandated by State regulations for determining the appropriate, “reasonably equivalent” number of classrooms to offer public charter schools – would allow LAUSD to divert public school facilities away from their primary purpose, which is to provide a place to educate this State’s young people. As the only national non-profit organization committed solely to advancing the public charter school sector, NAPCS is well-suited to assist this court in reaching an appropriate decision. NAPCS respectfully requests leave to file the accompanying amicus curiae brief.

On behalf of NAPCS, we have reviewed the parties’ briefs in this matter, and we are familiar with the underlying facts. No party or counsel for any party has authored any portion of this brief or provided any monetary contribution or funding for its preparation or submission. No person other than the Amicus Curiae provided money toward preparation and submission of the attached brief.

DATED: November 11, 2013

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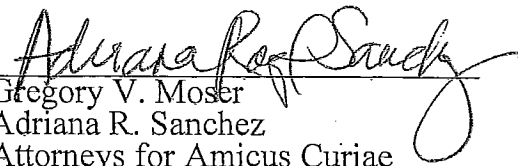
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BRIEF OF AMICUS CURIAE

I.

INTRODUCTION

The National Alliance for Public Charter Schools (“NAPCS”) respectfully urges this Court to reverse the Court of Appeal’s decision and find the trial court committed no error when it issued its order dated June 27, 2012, (“June 27 Order”) which ordered Defendant and Appellant Los Angeles Unified School District (“LAUSD”) to comply with the State Board of Education’s (“SBE”) regulations inventory method, and not to use its own “norming ratios” method to restrict public charter school students’ access to public school facilities.

California law states that, “The intent of the people in [passing Proposition 39] is that public school facilities should be shared fairly among all public school pupils, including those in charter schools.” (Ed. Code § 47614(a).) The statute goes on to state that, “Each school district shall make available, to each charter school operating in the school district, facilities sufficient for the charter school to accommodate all of the charter school's in-district students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending other public schools of the district.” (Ed. Code § 47614(b).) Not only does the law require equal access to facilities, but California law also mandates that chartering authorities such as LAUSD have a statutory obligation *to help*

charter schools grow: “In the event of a drawing, the chartering authority shall make reasonable efforts to accommodate the growth of the charter school and in no event shall take any action to impede the charter school from expanding enrollment to meet pupil demand.” (Ed. Code § 47605(d)(2)(C)(emphasis added).) As the largest public school district in California, LAUSD has a statutory obligation to help charter schools grow and avoid the need for lotteries; but instead, LAUSD’s “norming ratio” methodology systematically *limits* charter schools’ ability to accept all students who wish to enroll.

This brief will provide additional background about public charter schools and will illustrate the pivotal role facilities play in expanding choices for public school students and their families. Specifically, this brief argues that, after the implementation of Proposition 39, there should be significantly fewer children on “waiting lists” vying for a place in a popular public charter school than there currently are. Furthermore, NAPCS points to State law preventing LAUSD from enacting rules about the allocation of State property which conflict with general laws on statewide matters. School districts like LAUSD are merely trustees of the State, holding State property and devoting it to the uses which the State itself directs.

II.

BACKGROUND

A. The Creation of Public Charter Schools

Charter schools are *public schools* created and operated by parents, educators or community groups to fill an educational need not otherwise fulfilled by district-run public schools. Charter schools were created to offer parents and students more options and more freedom to attend public schools of their choosing – for instance, schools that may offer a special curricular focus (e.g., a Science, Technology, Math, Engineering (“STEM”) mission) or schools that use a unique pedagogical approach (e.g., Montessori education). Before charter schools, parents were faced with the narrow choice of enrolling their children in district-run public schools or private schools. In most poverty-ridden areas of the country, parents who were dissatisfied with their local district schools but could not afford private schools had no options but to send their children to local district schools and hope for the best. Public charter schools have begun to change that picture. Today, more than 2 million students nationwide are choosing to enroll in public charter schools – and, as will be detailed shortly, the demand for public charter schools across the country is growing exponentially.

In 1992, the California legislature adopted the Charter Schools Act to provide opportunities for teachers, parents, pupils, and community

members to establish and maintain public schools that operate independently from the existing school district structure – its governance, its centralized budgeting and its centralized hiring and firing. (Ed. Code § 47601.) Public charter schools are intended to be a means of:

- improving student learning;
- increasing learning opportunities, especially for low-achieving students;
- encouraging the use of different and innovative teaching methods;
- creating new professional opportunities for teachers;
- offering parents and students more choices within the public school system; and
- giving schools a way to change from a rule-based to a performance-based accountability system.

(*Wilson v. State Bd. of Education* (1999) 75 Cal.App.4th 1125, 1130-1131.)

And, in 1998, the Legislature added a seventh goal to this list: to “provide vigorous competition within the public school system to stimulate continual improvements in all public schools.” (Ed. Code § 47601, subd. (g), added by Stats. 1998, ch. 34, § 1.)

Charter schools are a vital and growing part of public education nationally. Like traditional district schools, public charter schools in California must be nondiscriminatory, nonsectarian, open to all students and tuition-free. (Ed. Code § 47605(d)(1).) California charter schools are held accountable for student achievement by authorizers, the State, and

parents of the pupils attending their school. When a team of school developers submits its charter petition, it must define its academic goals. (Ed. Code § 47605(b)(5)(A)-(C).) In order to be authorized, the goals must be consistent with sound educational practices. (Ed. Code § 47605(b).) To stay open, public charter schools must meet or exceed their stated goals. (Ed. Code § 47607(c).) Furthermore, public charter schools are required to meet statewide performance standards and conduct certain pupil assessments. (Ed. Code § 47605(c)(1).) The chartering authority can revoke a charter if the charter school fails to meet or pursue the pupil outcomes identified in its charter, engages in faulty accounting or fiscal mismanagement, or violates a material provision in its charter or the law in general. (Ed. Code § 47607(c).) Finally, families make a choice to enroll their children in charter schools. Charter schools are held to high standards of accountability by parents who simply can disenroll their children from a charter school if they are dissatisfied with the school – a threat which proves very menacing, since a charter school’s failure to meet its projected student enrollment minimum can result in revocation of its charter. This multi-faceted and intertwined accountability has led to (and continues to lead to) quality public charter schools demonstrating high levels of student achievement.

Nationally, public charter schools have seen steady growth over the past decade. (See, NAPCS, Dashboard, *A Comprehensive Data Resource*

From the National Alliance for Public Charter Schools (2013) (“NAPCS Dashboard”), <http://dashboard.publiccharters.org/dashboard/schools/page/overview/year/2004> (as of November 6, 2013).¹ There were 2,959 charter schools during the 2003-2004 school year.² Today, less than ten years later, that number has more than doubled.³ In the 2012-13 school year, 5997 public charter schools served 2.3 million students – and the numbers just keep growing.⁴

California is a leader in the charter school movement, with approximately 1,065 charter schools serving more than 470,500 public school students, representing 10.7% of public schools in California for the 2012-2013 school year.⁵ California educates more than 20% of this nation’s public charter school students.⁶ Over the past ten years, the number of public charter schools in this State has more than doubled, from

¹ NAPCS acknowledges that it is citing its own data collection and research; however, NAPCS understands the responsibility in being the only national non-profit organization committed solely to advancing the public charter school sector, and as such, aims to provide credible data and sound, proven methods in its data analysis.

² *Id.* All future internet-sourced citations will be footnoted.

³ *Id.*, <http://dashboard.publiccharters.org/dashboard/schools/page/overview/year/2013> (as of November 6, 2013).

⁴ *Id.*, <http://dashboard.publiccharters.org/dashboard/students/page/overview/year/2013> (as of November 6, 2013.)

⁵ *Id.*, <http://dashboard.publiccharters.org/dashboard/schools/page/overview/state/CA/year/2013> (as of November 4, 2013.) Comparatively, the nation-wide ratio of charter schools to all public schools is 6.3%. (*Id.*, <http://dashboard.publiccharters.org/dashboard/schools/page/overview/year/2013> (as of November 4, 2013).)

⁶ See, *id.*, <http://dashboard.publiccharters.org/dashboard/students/page/overview/year/2013> (as of November 4, 2013).

409 in 2002 – 2003, to 1065 in 2012 – 2013.⁷ On average, 65 new public charter schools were created annually in California this past decade.⁸

B. Charter School Demographics

Nationally, public charter schools educate a higher percentage of students of color and Free and Reduced Lunch (FRL) students than non-charter schools.⁹ In 2011, the national makeup of public charter schools included 29.1% black students, compared to the 15.5% black students in non-charter schools; 27.0% Hispanic students, compared to the 22.9% in non-charter schools, and only 36% white students, compared to the 53.0% white students in non-charter schools.¹⁰

In 2013, Stanford University's Center for Research on Education Outcomes ("CREDO") published a study called the *National Charter School Study: 2013* ("CREDO Study"), which surveyed student performance in public charter schools in 27 states across the country, including California.¹¹ This study showed that more than half of charter students live in poverty (54 percent), a greater share than the U.S. as a

⁷ *Id.*

⁸ *Id.*, Schools, Total Number of Schools, Charter Schools, 2003 – 2013.

⁹ *Id.*, <<http://dashboard.publiccharters.org/dashboard/students/page/overview/year/2011>> (as of November 4, 2013).

¹⁰ *Id.*

¹¹ Over 95% of all charter students are educated in the 27 states that participated in the CREDO study. (CREDO Study, Charter School Demographics, p. 15.)

whole and an increase for charter schools from 2009. (Credo Study, Summary and Implications, p. 82.) Since 2009, the proportion of Hispanic students in charters has begun to approach the proportion of black students. (*Id.*) Compared to their district school counterparts, charter schools enroll a lower percentage of white and Hispanic students and a higher percentage of black students. (*Id.*) According to the CREDO Study, “These shifts reflect growth in the proportion of disadvantaged parents [who are] aware, informed and comfortable exercising their options for school choice.” (*Id.*) Parents across the country are exercising their option to choose charter school educations for their children, and, as further demonstrated below, these choices are showing great rewards.

The majority of California charter schools are located within large urban districts. (CCSA, *Portrait of the Movement: California Growth, Charter School Performance in 2011-2012* (2013) (“CCSA Growth Study”), California Growth, p. 4.)¹² California charter schools serve a large number of students traditionally considered to be low-achieving or otherwise “at-risk,” educating some of the State’s most underserved youth, allowing them to achieve success where the traditional system has failed to

¹² Although CCSA is a party to this action, NAPCS cites to CCSA’s research and studies in this brief with confidence, as CCSA has proven itself to use reliable methods and credible sources in its data collection and analysis. CCSA is the leading charter school authority in California, and its resources and information have been relied upon by policy-makers in this State.

do so.¹³ Because charter schools are designed to have more flexibility in budgeting, staffing, and curriculum development than traditional public schools, they are uniquely situated to provide innovative, high-quality services to students with unique learning needs, such as students with special needs or English-language learners. (CCSA Growth Study, Students Served, p. 8.)

C. Charter School Performance

The ultimate sign of any school's success and the indicator by which all are measured is student academic performance. To date, numerous studies have examined the academic performance of students who attend public charter schools.

Stanford's 2013 CREDO Study showed greater learning gains nationally in both reading and math for elementary charter school students compared to their counterparts in traditional public schools. (Credo Study, *Executive Summary*.) On the whole, 69% of charter schools performed the same or better than their traditional public school counterparts in math. (*Id.*) In reading, 81% of charter schools performed the same or better than their traditional public school counterparts. (*Id.*) The effects of charter public schools on student performance is even more significant for low-income students and students of color who historically have been

¹³ CCSA, Dispelling Myths About Charter Schools, <<http://www.calcharters.org/understanding/faqs/myths.html>> (as of November 3, 2013).

underserved. For example, within the black and Hispanic student groups, students with multiple challenges -- blacks and Hispanics in poverty or Hispanics who were English language learners -- gained a substantial learning advantage in charter schools compared to their counterparts in traditional public schools. (*Id.*, Performance for Different Student Groups, p. 17.) Special education students posted similar gains in reading, but gained a substantial learning advantage in math. (*Id.*) According to the CREDO Study's *Executive Summary*:

Looking back to the demographics of the charter school sector in the 27 states, charter school enrollment has expanded among students in poverty, black students, and Hispanic students. *These are precisely the students that, on average, find better outcomes in charter schools.* These findings lend support to the education and social policies that focus on education as the mechanism to improve life chances for historically underserved students. Charter schools are especially beneficial learning environments for these students...

(*Id.*, at p. 18.)

Similarly, NAPCS has reviewed a number of other high-quality studies of public charter schools published since 2010. (National Alliance of Public Charter Schools, *Public Charter School Success: A Summary of the Current Research on Public Charters' Effectiveness at Improving Student Achievement* (April 2013), Introduction, p. 1.) "The new studies published since 2010 show positive results for students who attend public charter schools compared with traditional charter schools." (*Id.*) For

example, “Three national studies and ten studies from major regions across the country have found positive academic performance for students in public charter schools compared to their district-school peers, suggesting a strong upwards trend among new studies in the effect of public charter schools on student performance.” (*Id.*)

In 2011, the Center for Reinventing Public Education released a report called *The Effect of Charter Schools on Student Achievement: A Meta-Analysis of the Literature*, which aggregated results from the performance studies conducted that used the best data and the most sophisticated research techniques to examine public charter schools. (*Id.*) The report showed public charter schools were overall outperforming comparable traditional public schools, with the strongest positive effects in elementary school reading and middle school math. (*Id.*)

In California, studies have found that charter schools in 2011-2012 were more likely than traditional schools to far exceed their predicted performance based on student background. (CCSA, *Portrait of the Movement: Accountability, Charter School Performance in 2011-2012* (2013) (“CCSA Accountability Study”), Charter School Performance in 2011-2012, p. 5.) For example, when comparing predicted API scores¹⁴

¹⁴ The Academic Performance Index (“API”) was established by a state law passed in 1999 that created a new academic accountability system for K-12 public education in California. The API is a single number, ranging from a low of 200 to a high of 1000, which reflects a school’s, a local education agency’s, or a student group’s performance level, based on the results of

with actual API scores, the CCSA Accountability Study found that charter schools in the LAUSD and in the Oakland Unified School District (“OUSD”) significantly outperformed their traditional school counterparts. This is particularly noteworthy given that charter schools in LAUSD and OUSD educate 19% and 25% of all students in those districts, respectively. (*Id.*) The concentration of students in high-performing charter schools was even more pronounced when looking at several underserved student subgroups. (*Id.*) Low-income students, English learners, black students, and Hispanic students were all highly represented at charter schools that outperformed their predicted API scores. (*Id.*)

In short, public charter schools have proven themselves to be incredibly effective educational institutions both in California and across the country.

D. Charter School Facilities

With this stellar performance comes increased parental demand. However, much of this demand goes unmet. Charter school growth is halted by lack of access to adequate facilities for charter schools both in California and around the country. Survey data from 1,025 charter schools

statewide assessments. Its purpose is to measure the academic performance and improvement of schools. (California Department of Education, Executive Summary Explaining the Academic Performance Index (API) (2013) <<http://www.cde.ca.gov/ta/ac/ap/>> (as of November 11, 2013).)

across twelve states found that public charter schools exhibit similar trends in at least five areas:

- generally smaller facility sizes;
- generally smaller classroom sizes;
- lack of a federally-approved kitchen facility;
- limited access to gymnasiums; and,
- lack of one or more specialized instructional spaces (e.g., libraries, computer labs, or art and music rooms).

(Charter School Facilities Initiative, *Charter School Facilities Initiative: Initial Findings From Twelve States* (November 2013) (“CSFI Findings”), Charter School Facility Size, p. 8.)

Unfortunately, this is not surprising. Charter schools often are compelled to operate in facilities not originally designed as schools. Consequently, charter school classrooms are smaller, and charter school facilities tend not to be equipped with district-school “staples” such as kitchens or cafeterias, gymnasiums, science laboratories, playgrounds, art and music classrooms, or sports facilities, such as baseball diamonds or football fields.

The same twelve-state survey shows on average, public charter schools not operating in district facilities spend between nine and ten percent (9-10%) of their operating funds on facilities – these are funds that otherwise would be spent in the classroom, hiring additional teachers,

purchasing curricular materials, driving student learning. (*Id.*, Charter School Facilities Spending, p. 31.) Additionally, public charter schools are spending millions of dollars on capital projects to construct, purchase, renovate or repair their facilities. (*Id.*) Charter schools that rent facilities from school districts, however, only spend about two percent (2%) of their operating funds on rent. (*Id.*) Charter schools with access to district facilities spend far less on both annual rental payments and costs associated with capital projects, yet, charter schools housed in district facilities are the exception – not the rule – in nearly every state surveyed. (*Id.*, Charter School Facilities Spending, p. 31.)

Prior to the adoption of Proposition 39, California law provided charter schools were entitled only to request access to school district facilities that were vacant or were not otherwise being used by the school district, provided the charter schools assumed responsibility for the maintenance of the facilities. (*Cal. School Boards Assn. v. State Bd. Of Education* (2010) 191 Cal.App.4th 530, at pp. 540 – 541 (“*CSBA v. SBE*”).) Bluntly speaking, charter schools had nothing more than the possibility of seeking access to district leftovers. In passing Proposition 39, California voters recognized that facilities are a vital component of charter school growth, and mandated districts to share public school facilities equitably among all public school students, even if accommodating a charter school’s facilities request causes “some, if not considerable, disruption and

dislocation among the District's students, staff, and programs.” (*Ridgecrest Charter School v. Sierra Sands Unified School Dist.* (2005) 130 Cal.App.4th 986, at p. 1006 (“*Ridgecrest*”).)

Unfortunately, despite the passage of Proposition 39, charter school leaders still spend substantial time and money searching for a facility. It is well-known that many school districts will not make adequate or good-faith facilities offers. (See, for example, *Bullis Charter School v. Los Altos School Dist.* (2011) 200 Cal.App.4th 1022 (“*Bullis*”) (district's assessment of facilities needed by charter school students did not meet reasonable equivalence standard; a school district may not count facilities owned by charter school toward its obligation to offer facilities; and district employed unfair procedure to determine size of charter school's library); *Ridgecrest, supra*, 130 Cal.App.4th 986 (school district abused its discretion when it offered to give charter school the use of classrooms at five different school sites separated by a total of 65 miles); *Sequoia Union High School Dist. v. Aurora Charter High School* (2003) 112 Cal.App.4th 185 (“*Sequoia*”) (charter school obtained a writ of mandate ordering school district to comply with obligation to provide charter school with adequate educational facilities, districts refusal to do so was an abuse of discretion, charter school demonstrated a reasonably projected enrollment of 80 units of average daily classroom attendance, as required by statute for entitlement to district facilities); *New West Charter Middle School v. Los Angeles Unified School*

Dist. (2010) 187 Cal.App.4th 831 (school district did not comply with writ ordering it to provide satisfactory facilities to charter school under Education Code section 47614, school district fined, damages awarded to charter school).)

III.

THERE SHOULD BE SIGNIFICANTLY SMALLER WAITING LISTS AFTER PROPOSITION 39

Charter school “waiting lists” have become a national social phenomenon. NAPCS estimates the number of students on public charter school waiting lists to be 920,000 nationally.¹⁵ In California, there are an estimated 49,705 students on waiting lists.¹⁶ In the LAUSD, the number of students on waiting lists is estimated to be 15,218.¹⁷

In 2010, a documentary film called “Waiting for Superman” exposed the failures of the American public education system and followed five young students, most of whom are underprivileged and/or would-be first generation college students, as they attempted to be accepted into charter schools. The acclaimed film observed that many charter schools are not large enough to accept all of their applicants, and that charter schools

¹⁵ See, NAPCS, Dashboard, <<http://dashboard.publiccharters.org/dashboard/schools/page/overview/year/2004>> (as of November 6, 2013).)

¹⁶ CCSA, *50K Students on Waitlists for CA Charter Schools*, (June 27, 2013) <<http://www.calcharters.org/blog/2013/06/50k-students-on-waitlists-for-ca-charter-schools-973k-nationally.html>> (as of November 11, 2013).)

¹⁷ *Id.*

across the country are seeing hundreds of applicants for small numbers of open seats. To get one of the open seats, the students must participate in a lottery. As the lotteries in “Waiting for Superman” unfold, we see children and parents screaming in joy if the child got into the charter school, otherwise cringing, or in tears, if they did not. The stories are heartbreaking, particularly when one imagines that heartbreak multiplied by the nearly 50,000 students that are being denied access to the school of their choice in California.

A. LAUSD is Statutorily Obligated to Provide Charter Schools with Equal Access to Public School Facilities

In passing Proposition 39, the State’s voters acknowledged that students attending charter schools are public school students, and that public school facilities should be “shared fairly among all public school pupils, including those in charter schools.” (Ed. Code, § 47614(a).) “Proposition 39 had the effect of requiring districts to ‘make facilities available to charter schools operating in the district that will accommodate all the charter schools’ in-district students.” (*Bullis, supra*, 200 Cal.App.4th at pp. 1039 – 1040, quoting *Sequoia, supra*, 112 Cal.App.4th at pp. 189–190.) “As our colleagues in the Fifth District Court of Appeal have aptly explained, ‘These ‘shared fairly,’ ‘reasonably equivalent,’ and ‘contiguous’ provisions seem clearly to require a district, in responding to a Proposition 39 facilities request, to give the same degree of consideration to

the needs of charter school students as it does to the students in district-run schools.’’ (Bullis, *supra*, 200 Cal.App.4th at p. 1040, quoting *Ridgecrest, supra*, 130 Cal.App.4th at p. 999 (emphasis added).) The law is clear: the State’s public charter schools are entitled to the same access to public school facilities as traditional district schools pupils. Yet, the reality is not consistent with this legal proposition.

Instead, public charter schools across the State still are receiving inadequate Proposition 39 offers. (See, e.g., *Bullis, supra*.) As a result of these sub-par facilities offers, charter school growth is stunted. Simply put, many public charter schools cannot accept more students due to lack of space – there is nowhere to put the students who seek to enroll. The end result is a boom in charter applications – particularly from families in urban centers with traditionally low-performing district schools – and no capacity to enroll these students. Long “waitlists” ensue.

B. Waiting Lists to Enroll in California Charter Schools Are Exacerbated by Local Districts’ Continuing Failure to Make Facilities Available as Required by Proposition 39

NAPCS defines a public charter school waiting list as the total number of applications minus the total number of available seats.¹⁸ *The estimated number of students on charter school waiting lists across the*

¹⁸ NAPCS, The Charter Blog, NAPCS Charter School survey, National Waiting List Results (September 5, 2012) (“NAPCS Waiting List Blog”) <<http://www.publiccharters.org/blog/?catid=49&year=2013&month=6>> (as of November 4, 2013).

country was 920,000 for the 2012-2013 school year.¹⁹ This represents a dramatic fifty percent (50%) increase from the 610,000 students on waiting lists just one year earlier in 2011-2012.²⁰

Demand for public charter schools remains strong across the country. The waiting lists for public charter schools continue to grow, despite the fact that hundreds of new public charter schools are opening every year, and existing public charter schools are adding seats through expansion. During the four academic years from 2008-09 through 2011-12, public charter schools added over 300,000 additional seats through the opening of new schools.²¹ Moreover, during the same four academic years period of time, existing public charter schools added over 350,000 additional seats.²² In other words, even though public charter schools added an additional 650,000 seats between 2008-09 and 2011-12, the waiting list grew to 610,000.²³

¹⁹ NAPCS Dashboard, <<http://dashboard.publiccharters.org/dashboard/students/page/overview/year/2013>> (as of November 4, 2013).

²⁰ *Id.*, <<http://dashboard.publiccharters.org/dashboard/students/page/overview/year/2012>> (as of November 4, 2013). Additionally, NAPCS previously estimated 365,000 students on waiting lists for public charter schools in 2008-2009 and 420,000 students on waiting lists in 2009-2010. (NAPCS Waiting List Blog, <<http://www.publiccharters.org/blog/?catid=49&year=2013&month=6>.) The waiting list for charter schools grew 67 percent between 2008-09 and 2011-12 and the waiting list grew 45 percent between 2009-10 and 2011-12. (*Id.*)

²¹ *Id.*

²² *Id.*

²³ *Id.*

NAPCS conducted a national survey of charter schools, and of the schools that responded, nearly sixty-four percent (63.8%) indicated they had a waiting list to enroll students in the months leading up to the 2011-12 school year.²⁴ The data indicate that traditional entry grade levels (i.e., Kindergarten, 6th grade, and 9th grade) had the highest percentage of students on waiting lists to attend charter schools.²⁵

In California, an estimated 49,705 students are on charter school waiting lists.²⁶ The demand for seats at charter schools far exceeds the seats available in several regions, including, most prominently, Los Angeles County.²⁷ Los Angeles County has a larger number of students on charter school waiting lists than any other county in the State, with the number estimated at 18,466 and growing.²⁸ LAUSD, specifically, has a charter school waiting list of 15,218 students, which is nearly 83% of all students on charter school waiting lists in the county, and *more than 30% of all students on charter school waiting lists in the State.*²⁹

²⁴ *Id.*

²⁵ *Id.*

²⁶ CCSA, *50K Students on Waitlists for CA Charter Schools* (June 27, 2013) < <http://www.calcharters.org/blog/2013/06/50k-students-on-waitlists-for-ca-charter-schools-973k-nationally.html> > (as of November 6, 2013.)

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

In the last 20 years, most states across the nation have recognized that there is a critical need to try new and innovative approaches to improving student achievement in our public schools, while holding all public schools accountable for how students learn. Public charter schools deliver this combination of achievement and accountability. Many states look to California as a leader in the charter school movement. As a public school district of this State, LAUSD has a statutory obligation to help charter schools grow and avoid the need for lotteries. (Ed. Code § 47605(d)(2)(C).) LAUSD's "norming ratio" methodology does not help charter schools at all; to the contrary, it limits a charter school's ability to enroll students who seek to attend. NAPCS urges this Court to set the example and send the message: public charter schools play an important and positive role in public education in California; public charter school students are entitled to equal and fair facilities pursuant to law; and, there is no place for parental demand for charter schools to go unmet, producing longer and longer student waiting lists, because districts are withholding available public school facilities in stark violation of California voters' clear intent in passing Proposition 39.

IV.

LAUSD CANNOT ASSERT SUPERIOR RIGHTS OVER THE STATE'S PROPERTY

A. The State Board of Education's Enactments Control Over Attempted Regulation by LAUSD

“The public schools of this [S]tate are a matter of statewide rather than local or municipal concern; their establishment, regulation and operation are governed by the Constitution and the [S]tate Legislature is given comprehensive powers in relation thereto.” (*Hall v. The City of Taft* (1956) 47 Cal.2d 177, 179 (“*Hall*”).) “The *Legislature* shall have power, by general law, to provide for the incorporation and organization of school districts.... [and] the power of the [S]tate Legislature over the public schools is plenary, subject only to constitutional restrictions.” (*Id.*, at p. 180-181 (emphasis in original).) “The public school system is of statewide supervision and concern *and legislative enactments thereon control over attempted regulation by local government units.*” (*Id.*, at p. 181 (emphasis added).) Accordingly, Proposition 39 and the implementation of Proposition 39 described in Cal. Code Regs., tit. 5, §§ 11969 *et seq.* control over LAUSD’ attempted application of its “norming ratios.”

The Legislature has specifically found and declared that “Charter schools are part of the Public School System, as defined in Article IX” (Ed. Code § 47615, subd. (a)(1)) and are “under the jurisdiction of the Public School System and under the exclusive control of the officers of the public

schools” (*id.*, subd. (a)(2)) “for purposes of Section 8 of Article IX...” (Ed. Code § 47612, subd. (b).) The only authority with power to decide how the school property is to be used, managed or controlled *is the State itself*, and in this case, the State and its people have spoken.³⁰

State law mandates that public school facilities should be “shared fairly among all public school pupils, including those in charter schools.” (Ed. Code, § 47614(a).) In order to figure out exactly *how* to allocate the State’s property fairly among district schools and charter schools, the SBE properly adopted regulations implementing Education Code § 47614, including defining the terms “average daily classroom attendance,” “conditions reasonably equivalent,” “in-district students,” “facilities costs,” as well as defining the procedures and establishing timelines for the request for, reimbursement of, and provision of, facilities (“SBE Implementing Regulations”). (*CSBA v. SBE, supra*, 191 Cal.App.4th 530, at pp. 541-542; Ed. Code § 47604(b)(6); Cal. Code Regs., tit. 5, §§ 11969 *et seq.*) The SBE Implementing Regulations expressly dictate how the calculation of

³⁰ California is not the only state with a state-level educational agency which has explicit statutory authority to allocate facilities to charter schools. See, for example, Tennessee Code Annotated § 49-1-614, establishing the “Achievement School District” as an organizational unit of the department of education, established for the purpose of providing oversight for the operation of schools, and is specifically empowered with rights to assign school facilities. (Tenn. Code Ann. § 49-1-614(f).) See also, Louisiana Revised Statutes § 17:1990, establishing the Louisiana Recovery School District, which is similarly specifically empowered with rights to assign public school facilities. (RSD La. R.S. § 17:1990(B)(4)(a).)

facilities from school districts to charter schools is to be performed. (Cal. Code Regs., tit. 5, § 11969.3(b)(1).)

Finally, Education Code section 35160 states that school districts “may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established.” (Ed. Code § 35160.) In other words, school districts are forbidden from acting in a manner inconsistent with state law. In *Hartzell v. Connell* (1984) 35 Cal.3d 899 (“*Hartzell*”), the Supreme Court analyzed this statute and held that a school district’s imposition of fees violated an SBE administrative regulation which forbade a public school pupil from paying any fee or other charge not specifically authorized by law. (*Hartzell, supra.*) The Supreme Court stated that the SBE’s administrative regulation was valid, in that it was consistent with the power delegated to the SBE to adopt regulations to govern secondary schools, and that Education Code section 35610 does not nullify the SBE’s regulation. (*Id.*)

In the case before the Court, LAUSD is attempting to create its own rules in calculating the facilities space it offers to charter schools pursuant to Proposition 39, instead of abiding by the SBE Implementing Regulations. But, LAUSD is preempted from using its “norming ratios” methodology for calculating the number of classrooms to offer to charter

schools because this “norming ratio” method conflicts with general laws on statewide matters (*Id.*, at p. 184) – it conflicts with Proposition 39 and the SBE’s Implementing Regulations. (Cal. Code Regs., tit. 5, § 11969.3(b)(1).) Further, LAUSD’s use of its norming ratio stands in stark contrast to Education Code section 35160 and *Hartzell v. Connell* (1984) 35 Cal.3d 899, which together forbid school districts from acting in a manner inconsistent with the SBE’s regulations.

B. LAUSD is Merely a Trustee of State Property, and Cannot Assert Superior Rights Over the State’s Property

“School districts are agencies of the [S]tate for the local operation of the [S]tate school system.” (*Hall, supra*, 47 Cal.2d 177, at p. 181.) In all cases, the beneficial owner of the fee of public school property is the State itself, and the various public and municipal corporations in whom title rests “are essentially nothing but trustees of the [S]tate, holding the property and devoting it to the uses which the [S]tate itself directs.” (*Id.*, at p. 182.) It is well-settled that “under the constitution and laws of this [S]tate, public school property is held in trust for school purposes by the persons or corporations authorized for the time being to control such property, and that it is in the power of the legislature to provide for a change in the trusteeship of such property in certain contingencies presumably requiring such a change, or, indeed, to change the trustees of that class of property whenever it may choose to do so.” (*Ibid.*) The State, when creating school districts,

“does not cede to them any control of the [S]tate’s property situated within them, nor over any property which the [S]tate has authorized another body or power to control. The municipal government is but an agent of the [S]tate, not an independent body.” (*Id.*, at p. 183 – 184.)

The SBE’s rule making authority in Education Code § 47614 complements its general authority in Education Code § 33031 to adopt rules and regulations not inconsistent with the laws of this State for the government of State schools. The SBE has mandated how facilities shall be made available by a school district to a charter school, and LAUSD may not act inconsistently with those mandates. LAUSD may not claim superior rights over the State’s property – the State has not yielded to LAUSD any control of the State’s property. While LAUSD holds title to its school district property, it is merely a trustee of the State – it is *not* entitled to enact its own internal regulations concerning the State’s property. Rather, LAUSD is obligated to devote its school facilities to the uses which the State itself directs – and in this case, the State has mandated that LAUSD is to give the same degree of consideration to the needs of charter school students as it does to the students in its own district schools. (*Bullis, supra*, 200 Cal.App.4th at p. 1040.) As noted in the trial court’s well-founded ruling, LAUSD’s “norming ratios” method is not consistent with State law or SBE’s Implementing Regulations.

V.

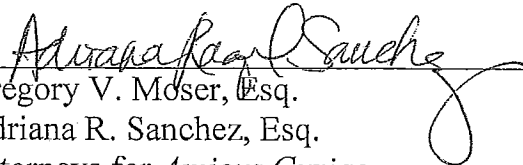
CONCLUSION

For the reasons stated above, NAPCS respectfully requests this Court reverse the Court of Appeal's decision and find that the trial court committed no error when it issued its June 27 Order.

Respectfully submitted,

DATED: November 11, 2013

PROCOPIO, CORY, HARGREAVES
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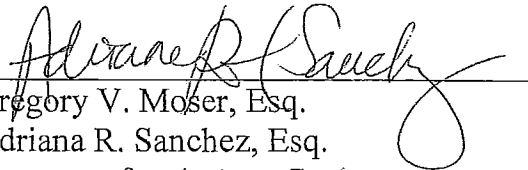

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CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) of the California Rules of Court, the APPLICATION OF NATIONAL ALLIANCE FOR PUBLIC CHARTER SCHOOLS FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND DRAFT BRIEF is produced using 13-point or greater Roman type, including footnotes, and contains **5,817** words, which is less than the total words permitted by the California Rules of Court. Counsel relies on the word count of the computer program used to prepare this brief.

DATED: November 11, 2013

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PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is: 525 B Street, Suite 2200, San Diego, CA 92101.

On the date set forth below I served the foregoing document described as **APPLICATION OF NATIONAL ALLIANCE FOR PUBLIC CHARTER SCHOOLS FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF PLAINTIFF AND RESPONDENT CALIFORNIA CHARTER SCHOOLS ASSOCIATION AND BRIEF OF *AMICUS CURIAE* IN SUPPORT OF PLAINTIFF AND RESPONDENT CALIFORNIA CHARTER SCHOOLS ASSOCIATION** on interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

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Executed on November 11, 2013 at San Diego, California.

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Type or Print Name

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