

NO. 94269-2  
SUPREME COURT  
OF THE STATE OF WASHINGTON

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King County Superior Court, State of Washington  
Cause No. 16-2-18527-4 SEA

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EL CENTRO DE LA RAZA, a Washington nonprofit corporation;  
LEAGUE OF WOMEN VOTERS OF WASHINGTON, a Washington  
nonprofit corporation; WASHINGTON ASSOCIATION OF SCHOOL  
ADMINISTRATORS, a Washington non-profit corporation;  
WASHINGTON EDUCATION ASSOCIATION, a Washington non-  
profit corporation; INTERNATIONAL UNION OF OPERATING  
ENGINEERS 609; AEROSPACE MACHINISTS UNION, IAM & AW  
DL 751; WASHINGTON STATE LABOR COUNCIL, AFL-CIO;  
UNITED FOOD AND COMMERCIAL WORKERS UNION 21;  
WASHINGTON FEDERATION OF STATE EMPLOYEES;  
AMERICAN FEDERATION OF TEACHERS WASHINGTON;  
TEAMSTERS JOINT COUNCIL NO. 28; WAYNE AU, PH.D., on his  
own behalf and on behalf of his minor child; PAT BRAMAN, on her own  
behalf; and DONNA BOYER, on her own behalf and on behalf of her  
minor children,

*Appellants,*

vs.

STATE OF WASHINGTON,

*Respondent.*

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BRIEF OF *AMICI CURIAE* NATIONAL ALLIANCE FOR PUBLIC  
CHARTER SCHOOLS, NATIONAL CENTER FOR SPECIAL  
EDUCATION IN CHARTER SCHOOLS, BLACK ALLIANCE FOR  
EDUCATIONAL OPTIONS, AND LEAGUE OF EDUCATION  
VOTERS

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NOTE: By letter filed January 9, 2018,  
Counsel Susannah C. Carr advised that the  
Black Alliance for Educational Options ceased  
operations as of December 31, 2017.

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Voters

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## I. INTRODUCTION

Since 1991, 43 states and the District of Columbia have enacted charter public school laws as a means for enhancing the public school options available to students and families. Today, only seven states in the United States of America remain without a charter public school law. As in Washington, the introduction of charter public schools in states enacting these laws generated a spirited education policy debate. Like Washington, in those states where charter public school opponents lost the policy debate, they inevitably turned to the courts for relief. From California to New Jersey, charter school opponents have filed lawsuits challenging the constitutionality of charter public school programs with arguments identical to those Appellants make here. In every comparable instance, appellate courts have rejected those challenges. *Amici* request that this Court review and consider the rationale and analyses applied by out-of-state courts that have faced similar arguments and constitutional challenges to charter public school laws.<sup>1</sup> Notably, not one state court has rejected charter public schools based on uniformity or like provisions. Neither should this Court.

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<sup>1</sup> Many states, including Washington, modeled their own constitutions after those of other states. See Linde, *First Things First: Rediscovering the State's Bill of Rights*, 9 U. BALT. L. REV. 379, 381 (1980). Indeed, this “borrowing” from other state charters is evidenced in small part by the fact that numerous states mandate creation of public schools in article IX, §2.

## **II. IDENTITY AND STATEMENT OF INTEREST OF AMICI CURIAE**

The identity and interest of *Amici Curiae* are set forth in the concurrently filed Motion for Leave to File Brief of Amici Curiae, which is hereby incorporated by reference.

## **III. ARGUMENT**

In their opening brief (hereinafter “App. Br.”), Appellants claim that charter public schools under Washington’s Charter Public School Act (CPSA), RCW 28A.710 as amended, do not meet the uniformity requirement of article IX, § 2 of the Washington State Constitution, which states that “[t]he legislature shall provide for a *general and uniform* system of public schools.” WASH. CONST. art. IX, § 2 (emphasis added). Specifically, they claim that charter public schools are not “uniform” in governance or educational opportunities. App. Br. at 19-30. Every state with constitutional requirements similar or identical to those created by the “uniformity” provision in Washington’s Constitution,” and considering the issue, has rejected similar arguments. This Court should do the same.

### **A. Courts Have Upheld Charter Public Schools Despite Challenges Based on Constitutional “Uniformity” Requirements.**

A number of other state courts—Colorado, California, and North Carolina—have concluded unanimously that charter public schools do not violate their state’s constitutional requirement to provide a “uniform”

public school system. The rationale employed by other state courts in cases similar to this one is instructive, and *Amici* urge this Court to consider them persuasive.

**Colorado:** Colorado’s legislature enacted into law Part I of the Charter Schools Act (CSA) in 1993. *Boulder Valley Sch. Dist. RE-2 v. Colorado State Bd. of Edn.*, 217 P.3d 918, 921 (Colo. App. 2009). By September 1997, fifty charter public schools were operating in Colorado, and by 2008, more than 141 charter public schools were in operation.<sup>2</sup> Today, there are 238 charter schools in Colorado, serving approximately 115,000 students.<sup>3</sup>

In 2004, the Colorado state legislature amended the CSA to, among other things, permit an independent state agency other than school districts to authorize charter schools. Opponents of the CSA fought the amendments in court, claiming they violated Colorado’s state constitution. Like the Washington Constitution, Colorado’s constitution contains a uniformity provision requiring legislators to “provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state . . . .” Colo. Const. art. IX, §2. The Colorado Court of

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<sup>2</sup> Colorado Department of Education, *The Charter Schools Act—Where are we?*, <http://www.cde.state.co.us/cdechart/chintro> (last visited September 7, 2017).

<sup>3</sup> Colorado League of Charter Schools, *Charter School Facts*, <http://coloradoleague.org/?page=charterschoolfacts> (last visited September 14, 2017).

Appeals rejected opponents' argument that charter public schools were not "thorough and uniform." The court concluded that the "thorough and uniform" clause does not require "a single uniform system of public schools consisting of school districts . . . governed by locally elected officials." *Id.* at 928 (quotation marks omitted). Nor does it prohibit "schools that are not part of" a district. *Id.* at 927. The court reasoned there was absolutely no language in article IX, §2 prohibiting a subset or parallel system of schools within the public school system, and it noted that opponents "cite[d] no case interpreting the provision in th[e] manner" they proposed. *Id.* at 928. The court held that Colorado "may provide additional educational opportunities open to all students in the state through . . . charter schools, provided that . . . comparable opportunities for creating charter schools exist across the state." *Id.* at 927-28. In further support of its conclusion, the court pointed to numerous examples of state-funded and state-controlled public schools in Colorado that were not under the control and authority of any school district, but still constituted "part of the thorough and uniform system of education" required by the Constitution, including the Colorado School for the Deaf and the Blind. *Id.* at 928.

The constitutional language and issues presented in *Boulder* are strikingly similar to those here in Washington. First, as in Colorado,

nothing in the text of article IX, §2 of the Washington Constitution requires all public schools be part of a district and governed by that district. *See generally* WASH. CONST. art. IX; *See also Moses Lake School Dist. No. 161 v. Big Bend Community College*, 81 Wn.2d 551, 556, 503 P.2d 86 (1972) (stating that a school district is a creature of the legislature and exercises power only in so far as it is granted by the legislature).

Second, just like the opponents in *Boulder*, Appellants in this case can cite no Washington authority for their claim that article IX, §2 prohibits the legislature from creating different types of public schools within the larger public school system. In fact, Appellants admit that nothing in article IX, §2 limits the public school system to only those schools listed therein. App. Br. at 22.

Third, as in Colorado, there exist numerous examples of public schools in Washington that operate under a unique governance structure and are still part of the overall public school system.<sup>4</sup> Not only does Washington provide public schools for blind and deaf students under Ch. 72.40 RCW, it offers a variety of education programs through the “general and uniform” system of public schools in order to maximize opportunities for students and provide targeted programs to meet the educational needs

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<sup>4</sup> In its order dated February 17, 2017, the trial court listed numerous schools that currently operate in Washington State that are not listed in article IX, §2. CP 3752-3753 (Order at 9-10).

of a highly varied population. For example, the “general and uniform system” includes online programs, a parent partnership program, and contract-based learning programs. RCW 28A.150.325. It includes a variety of alternative service provider options that allow for contracted services from public and private providers. RCW 28A.150.305. Students also may choose to receive their basic education delivered through higher education institutions under the Running Start program. RCW 28A.600.300-.405. Notably, in 2013, Washington created tribal-state “compact” schools, which are public schools exempt from many provisions that apply to school districts but subject to the basic education requirements and any provisions included in the state-tribal compact. Ch. 28A.715 RCW. All of these public schools, like those cited in *Boulder* that exist alongside Colorado’s traditional public schools, currently exist alongside common schools in Washington’s public school system.

The Colorado Supreme Court’s opinion in *Boulder* is particularly instructive in this case because the Colorado court focuses on what is “general and uniform” *outside* the context of common schools and *within* the public school system. This distinction is important because as this Court held in *League of Women Voters of Washington v. State*, 184 Wn.2d 393, 355 P.3d 1131 (2015), *as amended on denial of reconsideration* (Nov. 19, 2015), Washington charter public schools are not common

schools; rather they are non-common public schools within a larger public school system. *Id.* at 401-406. Accordingly, the rationale in *Boulder* is instructive, and *Amici* encourage this Court to consider it.

**California:** California’s legislature enacted charter public school legislation in 1992, and they have continually revised and improved the Charter Schools Act (CSA) from 1998 to the latest revision in 2015.<sup>5</sup> Today, there are approximately 1,254 active charter public schools in California—the most of any state in the nation.<sup>6</sup>

In 1999, charter opponents challenged the constitutionality of the California Legislature’s 1998 amendments to the CSA on both governance and educational uniformity grounds in *Wilson v. State Board of Education*, 75 Cal. App. 4<sup>th</sup> 1125, 89 Cal Rptr. 2d 745 (1999). In that case, opponents argued that the California Constitution’s “system of common schools” clause prohibits “a separate system of public charter schools that has administrative and operational independence from the existing school district structure, and whose courses of instruction and textbooks may vary from those of non-charter schools.” *Wilson*, 75 Cal. App. 4th at 1136.

The California Court of Appeals rejected the governance argument,

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<sup>5</sup> Legislative Analysis Office of California, *Overview of Charter Schools in California* at 6, <http://www.lao.ca.gov/handouts/education/2016/Overview-of-Charter-Schools-California-080316.pdf> (last visited September 14, 2017).

<sup>6</sup> California Charter Schools Association, *Growth and Enrollment*, <http://www.ccsa.org/understanding/numbers/> (last visited September 7, 2017).

holding delegation of certain educational functions, such as control over curriculum, textbooks, educational focus, and teaching methods, was different than delegation of the public education system itself. *Id.* at 1135.

The *Wilson* court reasoned that although charter public schools’ “courses of instruction and textbooks may vary,” curriculum and courses of study “are not constitutionally prescribed.” *Id.* Accordingly, charter public schools are nonetheless “part of California’s single, statewide public school system” and “within the system uniformity requirement”<sup>7</sup> because (1) teachers must meet the same requirements as traditional schools, (2) their education programs must be geared to meet the same standards, and (3) student progress will be measured by the same assessments. *Id.* at 1135, 1137, 1138.

Like California charter public schools, Washington charter public schools exist alongside traditional public schools within the larger public school system. Like California’s, Washington’s Constitution does not prescribe curricula and courses of study nor does it require that curricula

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<sup>7</sup> While California’s Constitution does not use the term “uniform,” its courts have long held that the California Constitution nonetheless requires “uniformity” among its public schools, which is evidenced by the court’s recognition of a “uniformity requirement” in *Wilson*. See *Kennedy v. Miller*, 97 Cal. 429, 432, 32 P. 558, 559 (1893) (holding that the use of the word “system” in article IX, section 5 of California’s Constitution requires uniformity of public schools in terms of purpose and entirety of operation); *Serrano v. Priest*, 5 Cal.3d 584, 608-609, 487 P.2d 1241 (1971) (citing *Kennedy* with approval and stating that California’s Constitution requires uniformity of public schools in terms of the prescribed course of study and progression from grade to grade.).

and courses of study be identical in every school in the public school system. Although charter public schools in Washington are exempt from certain statutory requirements placed on traditional public schools to allow charter public schools the “flexibility to innovate in areas such as scheduling, personnel, funding, and educational programs to improve student outcomes and academic achievement,” there is no dispute that, like the act in *Wilson*, provides for a basic education and contains the very same controls that satisfied the uniformity requirement in California.<sup>8</sup> RCW 28A.710.040(3).

Moreover, Washington’s CPSA provides additional controls that satisfy this Court’s own three-part definition of what constitute “general and uniform” public schools in Washington. In *Northshore Sch. Dist. No. 417 v. Kinnear*, 84 Wn.2d 685, 729, 530 P.2d 178, 202 (1974), *overruled on other grounds by Seattle Sch. Dist. No. 1 of King Cty. v. State*, 90 Wn.2d 476, 514, 585 P.2d 71, 93 (1978), this Court held that to satisfy the “general and uniform” requirement, public schools must (1) provide

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<sup>8</sup> See RCW 28A.710.040 (c) (charter schools must employ certificated instructional staff as required in RCW 28A.410.025, except they may hire non-certificated instructional staff of unusual competence and in exceptional cases as specified in RCW 28A.150.203 (7)); RCW 28A.710.040(b) (charter schools must provide a program of basic education, that meets the goals in RCW 28A.150.210, including instruction in the essential academic learning requirements, and participate in the statewide student assessment system as developed under RCW 28A.655.070); RCW 28A.150.210 (g) (charter schools are subject to the performance improvement goals adopted by the state board of education under RCW 28A.305.130).

minimum and reasonably standardized educational opportunities and facilities and opportunities, (2) be free and open, and (3) students must be able to transfer schools without substantial loss of credit. The CPSA satisfies each of these requirements. *See* RCW 28A.150.200-220 (charter public schools are required to provide a minimum instruction program of basic education); RCW 28A.710.020(1)(a) (charter public schools are free and open to all children); RCW 28A.710.060(2) (credits are transferred in the same manner as other public schools). Notably, this three-part *Northshore* test has been cited with approval by at least two out-of-state courts whose constitutions expressly require “uniformity.” *E.g.*, *Thompson v. Angelking*, 96 Idaho 793, 810, 537 P.2d 635 (1975); *Roosevelt Elementary Sch. Dist. No. 66 v. Bishop*, 179 Ariz. 233, 248, 877 P.2d 806 (1994).<sup>9</sup> Under the same rationale applied in *Wilson*, Washington charter public schools as created by the CPSA are part of a “uniform” system of public schools.

**North Carolina:** North Carolina’s legislature passed its charter public school law in 1996. The Charter School Act (CSA) initially

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<sup>9</sup> Charter schools are operating in both of these states. In Idaho, 39 brick-and-mortar charter schools and eight virtual charter schools are currently serving Idaho students. *See* Idaho Department of Education, *Charter Schools*, <https://www.sde.idaho.gov/school-choice/charter/> (last visited September 14, 2017). In Arizona, 556 charter schools are in operation, serving 185,900 students. *See* Arizona charter Schools Association, *About Charter Schools*, <https://azcharters.org/about-charter-schools> (last visited September 14, 2017).

mandated a 100-school cap.<sup>10</sup> The cap was removed in 2011.<sup>11</sup> Today, more than 165 charter public schools operate in North Carolina and serve more than 90,000 students.<sup>12</sup> More than 80% of the state’s charter public schools have waiting lists.<sup>13</sup>

Like other states and Washington, North Carolina’s constitutional language mandates “a general and uniform system of free public schools . . . .” N.C. Const. art IX, §2. While the North Carolina Supreme Court has never reached the question of whether charter public schools are part of the uniform public school system,<sup>14</sup> it has examined the meaning of its uniformity provision in article IX, §2 of its Constitution.

In *City of Greensboro v. Hodgin*, 106 N.C. 182, 11 S.E. 586 (1890), the North Carolina Supreme Court examined the constitutionality of a statute regarding the distribution of public school funds. In its analysis, the North Carolina Supreme Court concluded that the term

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<sup>10</sup> <http://ncpubliccharters.org/about-charter-schools/> (last visited September 14, 2017).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Sugar Creek Charter School, Inc. v. State*, 214 N.C. App. 1, 21, 712 S.E.2d 730, 742 (2011) (stating that because “a charter school might be considered legally to be either (1) a component of the uniform system of public schools, created in addition to those schools required to provide access to a sound basic education and subject to different statutory guidelines and funding options than traditional public schools, or (2) as an optional educational program created outside of and in addition to the uniform system of public schools” it was not necessary to reach the question of whether charter schools are part of a “uniform” public school system).

“uniform” in article IX, §2 referred not to the public schools themselves, but to the entire *system* of schools, and the term “general” simply meant public schools could not be limited to only some localities and not others. *Id.* at 588. The main purpose of the uniformity provision, it stated, was “to extend to all the children within the prescribed ages, wherever they may reside in the state, the same opportunity to obtain the benefits of education in free public schools . . .” *Id.* at 587; *see also Board of Education v. Board of Commissioners of Granville City*, 174 N.C. 469, 93 S.E. 1001, 1002 (1917) (stating that the word uniform “clearly does not relate to schools but rather relates to and qualifies the word “system.”). This early interpretation of the term “uniform” is entirely consistent with the more recent out-of-state court decisions involving the constitutionality of charter public schools. *Boulder*, 217 P.3d at 927-28; *Wilson*, 75 Cal. App. 4<sup>th</sup> at 1136-38. More significantly, however, it is also consistent with this Court’s own statements that clearly show the phrase “general and uniform” describes Washington’s public school “system,” rather than individual schools. *See Sch. District No. 20, Spokane Cty. v. Bryan*, 51 Wash. 498, 502, 99 P. 28 (1909) (“The *system* must be uniform in that every child shall have the same advantages and be subject to the same discipline as every other child.”) (emphasis added); *Northshore*, 84 Wn.2d at 729 (“A general and uniform system . . . is . . . one in which every child

in the state has free access to certain minimum and reasonably standardized educational and instructional facilities and opportunities to at least the 12th grade—a *system* administered with that degree of uniformity which enables a child to transfer from one district to another within the same grade without substantial loss of credit or standing and with access by each student of whatever grade to acquire those skills and training that are reasonably understood to be fundamental and basic to a sound education.”) (emphasis added).

Under each of these interpretations of what is a “general and uniform” public school system, the CPSA as amended survives constitutional scrutiny. This Court should likewise conclude that the CPSA does not violate the constitutional uniformity requirement in article IX, §2 of the Washington Constitution.

**Florida:** The state of Florida enacted charter public school legislation in 1996, and today nearly 654 charter public schools are in operation today, serving almost 283,000 students.<sup>15</sup>

Although the state of Florida has clearly embraced the charter public school movement, Appellants have previously relied heavily on one inapposite Florida case, *Duval Cty. Sch. Bd. v. Bd. of Educ.*, 998 So.2d

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<sup>15</sup> Florida Consortium of Charter Schools, *Why Charter Schools?*, [http://floridacharterschools.org/schools/what\\_is\\_a\\_charter\\_school](http://floridacharterschools.org/schools/what_is_a_charter_school) (last visited September 7, 2017).

641, 642 (Fla. Dist. Ct. App. 2008), to support their claim that a “parallel” or alternative system of free public education violates the Washington’s uniformity requirement. In *Duval*, charter school opponents argued the charter public school law violated a “local control” provision in the Florida constitution: “The school board shall operate, control and supervise all free public schools within the school district . . . .” *Duval*, 998 So. 2d at 643. Because the challenged charter public school law vested operation and control of charter public schools in a statewide commission rather than a local school board, the Court held that the charter public school law conflicted with Florida’s “total control” provision—a separate, and unique, provision in the Florida Constitution that expressly vested total operational control in local school boards. *Id.* at 644.

This Court should disregard *Duval* for three reasons. First, *Duval* does not stand for the proposition argued by Appellants. Contrary to Appellants’ claim, while Florida’s Constitution expressly requires “uniformity,” *Duval* says nothing about whether charter public schools violate its uniformity requirement. Second, it is distinguishable. *Duval* rested entirely on the “total control” provision mandating that local school boards have total, exclusive control. But Washington’s Constitution *has no similar provision* vesting total – or exclusive – control in local school

boards. *See generally*, WASH. CONST. art. IX. This significant distinction was recognized in *Boulder*, where the Colorado Court of Appeals rejected *Duval* as relevant authority on the basis that Colorado’s constitution did not have a similar “total control” provision. *Boulder*, 217 P.3d at 931. Finally, the *Duval* court relies in part on Florida Supreme Court precedent that has been highly criticized.<sup>16</sup>

**B. Out-of-State Courts Have Upheld Charter Public Schools Despite Challenges Based on Constitutional “Local Control” Requirements.**

Even in states without “uniformity” requirements, opponents have challenged charter public school laws on the basis of implied or express local control requirements. Although there is no express “local control” provision in Washington’s Constitution, these out-of-state opinions are nonetheless instructive because Appellants argue that local control is necessary to satisfy the “general and uniform” requirement in Washington. App. Br. at 26-27.

**Michigan:** Michigan enacted its own version of charter public schools in 1993, calling them “Public School Academies” (PSAs). As of

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<sup>16</sup> The court relied upon analysis from *Bush v. Holmes*, 919 So.2d 392 (Fla. 2006). *Bush* is not applicable here because the issue in that case was students’ use of public funds, via vouchers, to attend private schools. 919 So.2d at 398. Moreover, *Bush* has been roundly criticized. *See generally* Clark Neily, *The Florida Supreme Court vs. School Choice: A “Uniformly” Horrid Decision*, 10 TEXAS REVIEW OF LAW AND POLITICS, vol. 2 (2006); Dycus, Jamie S., *Lost Opportunity: Bush v. Holmes and the Application of State Constitutional Uniformity Clauses to School Voucher Programs*, Student Scholarship Papers (2006).

2017, there are 301 PSAs in Michigan, serving over 146,000 students.<sup>17</sup> While Michigan’s Constitution does not contain an express uniformity provision, the Michigan Supreme Court has concluded that to “maintain and support a system” of public schools requires “state control” for purposes of funding. *Council of Org’s. & Others for Educ. About Parochiaid, Inc. v. Governor*, 455 Mich. 557, 572-573, 566 N.W.2d 208 (1997).

In 1994, opponents brought a lawsuit to enjoin the distribution of public funds to PSAs by challenging the constitutionality of the PSA statute. They argued that charter schools could not constitute “public schools” because (1) they are not under the ultimate and immediate, or exclusive, control of the state and 2) a charter school’s board of directors is not publicly elected or appointed by a public body. *Id.* at 571. In *Council of Org’s.*, the Michigan Supreme Court rejected opponents’ arguments and upheld PSAs. It held that the Michigan Constitution did not expressly mandate “total control” by the state, and there was sufficient public control to make charter public schools part of the public school system because the “public maintains control of the schools through the

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<sup>17</sup> Michigan Association of Public School Academies, *Michigan Charter Facts*, <http://www.charterschools.org/why> (last visited September 7, 2017).

board of the authorizing bodies,” whose members are publicly elected or appointed by public entities. *Id.* at 575-576 (emphasis added).

This same rationale applies here in response to Appellants’ argument that because charter public schools are governed by charter school boards rather than locally elected school boards, they violate Washington’s uniformity provision to the extent it requires local control. The Court should consider two points: First, as in Michigan, nothing in article IX, §2 of the Washington Constitution requires “total control” by the state or by local school boards. Second, as in Michigan, it is indisputable that charter schools under the CPSA are ultimately accountable to elected officials and, thus, subject to public control. For example, under the CPSA, it is a public entity accountable to the voters—either the Washington State Charter School Commission or a school district that has sought and secured authorizer status—approves an individual charter public school’s board members as part of the school’s application.<sup>18</sup> RCW 28A.710.010 (3); 28A.710.130(2)(g). And charter public schools are subject to oversight by other elected officials, including the superintendent of public instruction and members of the state board of education. RCW 28A.710.040(5). In addition, charter public schools are

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<sup>18</sup> The eleven-member commission is comprised of an elected official and direct appointees of elected officials, including the Governor and House and Senate leaders. RCW 28A.710.070.

subject to public oversight because they must comply with the Open Meetings Act and Public Records Act, and they are subject to annual audits as determined by the state auditor. RCW 28A.710.040(2)(e), (h). Accordingly, like Michigan's highest court in *Council of Org's*, this Court should conclude that there is sufficient public control to satisfy Washington's constitutional "uniformity" requirements.

**New Jersey:** New Jersey enacted the Charter School Program Act in 1995.<sup>19</sup> In 2017, there are 88 charter public schools operating in New Jersey, serving more than 45,000 children.<sup>20</sup>

In 1995, charter opponents challenged the constitutionality of the charter public school law on the basis of uniformity of governance. Opponents argued the state's charter law "improperly delegates legislative authority to a private body, namely, a board of trustees neither elected by voters nor appointed by an elected official." *In re Grant of the Charter Sch. Application of Englewood on the Palisades Charter Sch.*, 320 N.J. Super. 174, 231, 727 A.2d 15 (App. Div. 1999), *aff'd as modified*, 164 N.J. 316, 753 A.2d 687 (2000).

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<sup>19</sup> New Jersey Charter Schools Association, *New Jersey Charter School Program Act*, <http://njcharters.org/understand-charter-schools/new-jersey-charter-school-program-act> (last visited September 7, 2017).

<sup>20</sup> New Jersey Charter Schools Association, <http://njcharters.org> (last visited September 7, 2017).

The New Jersey court disagreed, holding that “charter schools are not private . . .; they are subject to control by the Commissioner and must meet the Act’s standards in order to maintain their charters.” *Id.* at 231. In reaching its decision, the New Jersey court discussed and considered the Michigan Supreme Court opinion in *Council of Org’s* with approval and embraced its rationale. *Id.* at 231-32. *Amici* encourage this Court to do the same.

In sum, like the constitutions in 43 other states, Washington’s constitution does not bar innovation commensurate with changing times and understandings. “Uniformity” in Washington—just like similar constitutional provisions in states where courts have considered and upheld constitutional challenges to their charter public school laws—does not require every public school to operate in rigid lock step. It does not compel all classrooms to look the same. And it does not compel identical curricula.

Rather, a “general and uniform system” merely requires “certain minimum and reasonably standardized educational and instructional facilities and opportunities.” *Federal Way Sch. Dist. No. 210 v. State*, 167 Wn.2d 514, 524, 219 P.3d 941 (2009) (quotation omitted). Furthermore, while Washington’s charter public schools enjoy certain flexibility in the educational process—indeed it is one of the many stated reasons for

enacting them—Washington’s charter public schools are subject to many of the same requirements as traditional public schools, including (1) providing the “basic education” established by statute, (2) employing certified teachers, (3) administering statewide proficiency exams, (4) satisfying performance goals adopted by the state board of education, and (5) complying with federal and state civil rights and discipline laws. RCW 28A.710.040. In addition, charter public schools in Washington are subject to sufficient public control and are accountable to the public.

By the CPSA’s own terms as amended, and in light of the rationale employed by courts across the nation faced with identical constitutional challenges, it is clear that charter public schools established by CPSA are sufficiently controlled by, and accountable to, the public and meet the same minimum and reasonably standardized criteria as other public schools within the system to satisfy constitutional “uniformity.” This Court should embrace similar reasoning and find that charter public schools under the CPSA comport with the “general and uniform” provision of the Washington Constitution.

#### **IV. CONCLUSION**

For these reasons raised by *Amici*, and others raised by other *amici*, Intervenors, and the State of Washington, the revised Charter Public

Schools Act is constitutional, and this Court must reject Appellants' constitutional challenges.

DATED this 2<sup>nd</sup> day of October, 2017.

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## DECLARATION OF SERVICE

I, Ellen R. Evans, declare under penalty of perjury that I am over the age of 18 and competent to testify and that the parties listed below were served in the manner listed below:

On October 2, 2017, I caused a copy of (1) Brief of *Amici Curiae* National Alliance for Public Charter Schools, National Center for Special Education in Charter Schools, Black Alliance for Educational Options, and League of Education Voters and (2) this Declaration of Service to be served via email on:

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