

No. 94269-2

SUPREME COURT OF THE STATE OF WASHINGTON

EL CENTRO DE LA RAZA, et al.,

Appellants,

v.

STATE OF WASHINGTON,

Respondent.

**BRIEF OF *AMICI CURIAE* WA HE LUT INDIAN SCHOOL AND BLACK
EDUCATION STRATEGY ROUNDTABLE**

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I. IDENTITY AND INTEREST OF *AMICI CURIAE*

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

II. INTRODUCTION

Following this Court's decision in *League of Women Voters of Washington v. State*, 184 Wn.2d 393, 355 P.3d 1131 (2015), the State Legislature enacted the Charter Schools Act ("CSA"). Ch. 241, Laws of 2016. Heeding this Court's holding that, due to the way charter schools were funded under previous legislation, charter schools may not operate as a subset of "common schools;" the CSA made clear that charter schools in their current form are (1) "[o]perated separately from the common school system as an alternative to traditional common schools," and (2) funded solely from the "Washington opportunity pathways account." RCW 28A.710.020(1)(b); RCW 28A.710.270.

The CSA is not only constitutional; it is necessary to provide adequate education to the State's most vulnerable students.

III. STATEMENT OF CASE

Amici Curiae adopt the statement of the case in Intervenor-Respondents' Brief and Brief of Respondent State of Washington. *See* Intervenor-Respondents' Brief at 3-14, *El Centro De La Raza, et al., v. State of Washington*, Wash. Supr. Ct. No. 94269-2 (Aug. 18, 2017); Brief of Respondent State of Washington at 2-15, *El Centro De La Raza, et al., v. State of Washington*, Wash. Supr. Ct. No. 94269-2 (Aug. 18, 2017).

IV. ARGUMENT

A. CHARTER PUBLIC SCHOOLS DO NOT FALL OUTSIDE OF WASHINGTON STATE’S PUBLIC SCHOOL SYSTEM OR VIOLATE THE “GENERAL AND UNIFORM” REQUIREMENT.

This case involves the interpretation of Article IX, section 2 of the Washington Constitution, which provides:

The legislature shall provide for a general and uniform system of public schools. The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established. But the entire revenue derived from the common school fund and the state tax for common schools shall be exclusively applied to the support of the common schools.

Appellants do not argue that schools not explicitly listed in the Constitution (*i.e.* common schools, high schools, normal schools, and technical schools) are *per se* unconstitutional.¹ Instead, Appellants argue that common schools are superior to all other forms of education, and that the CSA threatens the preeminence of common schools by “establish[ing] an alternative system of non-common schools that replaces a common school education.” Appellants Br., at 21 (emphasis in original). According to Appellants, this is prohibited because the CSA’s articulated difference between charter public schools and common

¹ Numerous state courts have held that “a constitutional mandate for the existence of schools of a certain character is not exclusive and does not preclude the Legislature from establishing schools of another character.” L.K. Beale, *Charter Schools, Common Schools, and the Washington State Constitution*, 72 WASH. L. REV. 535, 555 (2017) (citing authority). Scholars agree on this point. *See, e.g.*, Tara Raam, *Charter School Jurisprudence and the Democratic Ideal*, 50 COLUM. J.L. & SOC. PROBS. 1, 18 (2016) (“Washington’s founders did not intend to limit the state’s public school system to the school forms/types enumerated in the constitution.”); Asti Gallina, *The Washington State Constitution and Charter Schools: A General and Uniform Prohibition?*, 92 WASH. L. REV. 370, 415 (“The ‘general and uniform’ mandate requires that each class of school be governed by a general and uniform system of laws. It does not, however, require that the schools within the public school be uniform to one another.”).

schools violates the Constitution’s “uniformity” requirement. *Id.* at 30 (citing Wash. Const. art. IX, §2). Appellants are mistaken for at least two reasons.

First, Appellants assume a premise that is not prescribed by the CSA. The CSA explicitly designates charter public schools “as an alternative”—not a replacement—“to traditional common schools.” RCW 28A.710.020(1)(b). Certainly, one can imagine a set of circumstances under which the CSA does exactly what it says it does: authorize funding for charter public schools in addition to, but not in replacement of, common schools. This is all that is required to uphold the trial court’s decision. *See City of Redmond v. Moore*, 151 Wn.2d 664, 668-69, 91 P.3d 875, 878 (2004) (“[A]successful facial challenge is one where no set of circumstances exists in which the statute, as currently written, can be constitutionally applied.”)²; *State v. Howell*, 85 Wash. 294, 297, 147 P. 1159, 1161 (1915) (“[C]ourts should not declare a law repugnant to the Constitution without a strong conviction divested of all reasonable doubt.”). As Appellants themselves recognize, the CSA provides for the “establishment of 40 charter schools run by private organizations over the next five years.” Appellants’ Br., at 13 (citing RCW 28A.710.150(1); RCW 28A.710.160(5); CP 338). The alleged replacement of Washington State’s entire common school system with only 40 charter schools cannot be squared.³

² For the first time, on reply, Appellants attempt to mischaracterize their challenge as something other than facial challenge, in an effort to relieve themselves from the more stringent burden applicable to facial challenges. *See* Appellants’ Reply Brief, at 5.

³ Appellants *attempt* to square this argument by retorting, “[t]he Act begins with 40 charter schools, but where does it stop?” Appellants Reply Br., at 9. It stops at 40; over a 5-year period. *See* RCW 28A.710.150(1) (“A maximum of forty charter public schools may be established under this chapter over the five-year period commencing with April 3, 2016.”).

Second, nowhere in the Constitution or this Court’s precedence is “[t]he primacy of ‘common schools’” declared. Appellants’ Br., at 20. While common schools are indeed “‘important’” and “‘distinct,’” their *primacy* is a policy matter left for the Legislature to determine. *Id.* (quoting *Sch. Dist. No. 20, Spokane Cty. v. Bryan*, 51 Wash. 498, 502, 99 P. 28, 29 (1909)). Thus, even if Appellants are correct that the CSA creates a public-school program that somehow replaces common schools—it does not—Appellants point to no legal theory that prohibits the Legislature from making such a decision.⁴ Appellants Br., at 21. The Constitution only mandates that the Legislature provide common schools for all students. Const. art. IX, § 2. As long as common schools are available for all students, the CSA passes constitutional scrutiny. Appellants provided no evidence below that the CSW will interdict this constraint.

Similarly, Appellants’ statement that “[c]harter schools cannot be equated with existing supplemental and specialized programs”—even if true⁵—is of no consequence. *Id.* at 23. Appellants advance no theory as to why the Legislature cannot act as its predecessors, by implementing innovative public school programs that address the unique and diverse needs of today’s students.

⁴ Notably, on reply Appellants’ only cited authority for the notion that “the framers drafted Article IX, Section 2 to ensure that common schools alone . . . provide the uniform general education” is their own Opening Brief. Appellants Reply Br., at 6.

⁵ As discussed below, this statement totally ignores public school programs that operate alongside common schools, such as schools operated by tribal governments and instrumentalities under compacts with the Washington State.

B. WASHINGTON STATE’S SOCIOECONOMICALLY DEPRESSED STUDENTS REQUIRE CHARTER PUBLIC SCHOOLS.

1. Tribal Charter Public Schools

a. Background

Traditional systems of Native American education did not allow students to fail. Family, clans, and responsible mentors worked with tribal youth until the information or task was successfully learned.⁶ Culturally rich lessons were an integrated part of daily life and ceremonies, not a separate or isolated activity.⁷

In the late seventeenth century, traditional, culture-based education was replaced by schools run by European missionaries, who had orders to “school[] Indians to promote civilization.”⁸ At the time, Native American culture and tradition was viewed by these educators as “savagery”⁹ and Western education was considered a means “to reclaim and reduce those savages from their barbarous kinds of life and from their brutish manners to humanity, piety, and honesty.”¹⁰ As described by professor Devens:

Schooling became the primary means of enticing young Native Americans to reject tradition and seek conversion. To missionaries, the abandonment of native ways for Western ones was a creative rather than destructive process that made new Christian citizens out of savages.¹¹

⁶ WILLIAM G. DEMMERT, JR., *Improving Academic Performance Among Native American Students* 8 (2001).

⁷ *Id.*

⁸ Carol Devens, “*If We Get the Girls, We Get the Race*”: *Missionary Education of Native American Girls*, 3 J. WORLD HIST. 219, 221 (1992) (quotation omitted).

⁹ LORRAINE HALE, *NATIVE AMERICAN EDUCATION: A REFERENCE HANDBOOK* 7 (2002).

¹⁰ H.C. PORTER, *THE INCONSISTENT SAVAGE* 354 (1979).

¹¹ Devens, *supra* note 8, at 222-23.

This policy of Native American education would endure for centuries in the newly formed United States¹² and would be codified into federal law. In 1819 the U.S. government formally assumed total responsibility for the education of Indian children. 25 U.S.C. § 271. Under federal control, Indian children were forcibly removed from their homes and taken to boarding schools, where their tribal clothing was stripped, their hair was cut, their traditional languages were washed out of their mouths—literally, they were prohibited from visiting their relatives, and were harshly abused for engaging in customary religious practices.¹³ This policy persisted until the passage of the Indian Self-Determination and Education Assistance Act of 1975, 25 U.S.C. §§ 5301-5423, which provided a funding mechanism for tribes to operate their own reservation school systems and the Indian Child Welfare Act of 1978, which was enacted to prevent Native children from being removed from their tribes and families. 25 U.S.C. §§ 1901-1963.

Generations of Native Americans were negatively affected by these education policies—the effects of which are still felt today.¹⁴ As noted by Kevin Gover, former Assistant Secretary of the Bureau of Indian Affairs:

[T]he legacy of these misdeeds haunts us. The trauma of shame, fear and anger has passed from one generation to the next, and

¹² Russell Lawrence Barsh, *Progressive-Era Bureaucrats and the Unity of Twentieth-Century Indian Policy*, 15 AM. INDIAN Q. 1, 10 (1991); U.S. DEP'T OF EDUCATION, INDIAN NATIONS AT RISK: AN EDUCATIONAL STRATEGY FOR ACTION xi (1991) [hereinafter "Nations at Risk"].

¹³ Jorge Noriega, *American Indian Education in the United States: Indoctrination for Subordination to Colonialism* 380-81, in *THE STATE OF NATIVE AMERICA* (M. Annette Jaimes, ed., 1992).

¹⁴ *Id.* at 371, 382; Staff of Spec. Comm. on Investigations of the Sen. Select Comm. on Indian Affairs, 101st Cong., Final Report and Legislative Recommendations 9 (Comm. Print 1989).

manifests itself in the rampant alcoholism, drug abuse, and domestic violence that plague Indian Country.¹⁵

It should thus come as no surprise that many of Washington State’s “tribal communities and Native parents have a distrust of state and national educational systems.”¹⁶

But things have very recently begun to change. In the 1980s, the federal Indian policy of tribal self-determination finally allowed tribes to restructure their governmental institutions to reflect *tribal* culture, perceptions and interests, and to develop programs best suited to address local Native American needs, conditions, and values.¹⁷ So far it has worked. Indeed, this hands-off federal policy—dubbed tribal “self-determination”—has turned out to be the *only* U.S. policy to foster Native American socioeconomic success.¹⁸

This holds true in tribal education systems as well. All of the literature to address this topic has concluded that Native American student success *requires* culturally relevant curriculum; Native language programs; equitable distribution of qualified (preferably Native) teaching staff; culturally appropriate standards of assessment; active efforts to engage parents, families, and communities; resources

¹⁵ BARBARA PERRY, SILENT VICTIMS: HATE CRIMES AGAINST NATIVE AMERICANS 33 (2008) (quotation omitted); *see also generally* Ann M. Haag, *The Indian Boarding School Era and Its Continuing Impact on Tribal Families and the Provision of Government Services*, 43 TULSA L. REV. 149 (2013).

¹⁶ WASHINGTON STATE OFFICE OF NATIVE EDUCATION, ANNUAL REPORT TO THE LEGISLATURE 11 (2013), *available at* <http://www.k12.wa.us/LegisGov/2013documents/OfficeOfNativeEd2013.pdf>; *see also* SUSAN C. FAIRCLOTH & JOHN W. TIPPECONNIC, III, THE DROPOUT/GRADUATION CRISIS AMONG AMERICAN INDIAN AND ALASKA NATIVE STUDENTS 31 (2010) (“Unfortunately, the education of Native students has historically been conducted without their input, thus nurturing a sense of distrust and detachment from the educational system . . .”).

¹⁷ Stephen Cornell & Joseph P. Kalt, *Two Approaches to the Development of Native Nations: One Works, the Other Doesn't*, in REBUILDING NATIVE NATIONS 3, 21 (Miriam Jorgensen ed., 2007).

¹⁸ Joseph P. Kalt & Joseph William Singer, *Myths And Realities of Tribal Sovereignty: The Law And Economics of Indian Self-Rule* 43 (Harvard Kennedy School Working Paper No. 04-016, 2004).

to meet the academic and cultural needs of the community; positive political relationships between tribal, state, and federal governments; and, of course, adequate funding.¹⁹

This presents a dilemma for tribal governments and Native American parents, who send over 92 percent of their K-12 students to state-run common schools²⁰—schools that do not provide these known means to succeed, instead these schools “emphasize a one size fits all, Eurocentric paradigm which ignores the diversity of worldviews and ways of knowing” that Native American students need to prosper.²¹ As a result Native American students in state-run common

¹⁹ Nations at Risk, *supra* note 12, at 7-9, 20; FAIRCLOTH & TIPPECONNIC, *supra* note 16, at 29-31; MICHAEL PAVEL, ET AL., FROM WHERE THE SUN RISES: ADDRESSING THE EDUCATIONAL ACHIEVEMENT OF NATIVE AMERICANS IN WASHINGTON STATE 30-40, 86, 113-114, 138 (2008); NATIONAL CAUCUS OF NATIVE AMERICAN STATE LEGISLATORS, STRIVING TO ACHIEVE: HELPING NATIVE AMERICAN STUDENTS SUCCEED 16, 23, 25, 28 (2008); *see also generally* Bryan M.J. Brayboy & Angelina E. Castagno, *Self-Determination Through Self-Education: Culturally Responsive Schooling for Indigenous Students in the United States*, 20 TEACHING EDUCATION 31 (2008); Rhonda B. Jeffries & Lyndon C. Singer, *Successfully Educating Urban American Indian Students: An Alternative School Format*, 42 J. AMERICAN INDIAN EDUCATION 40 (2003).

²⁰ EXECUTIVE OFFICE OF THE PRESIDENT, 2014 NATIVE YOUTH REPORT 14 (2014), *available at* <http://files.eric.ed.gov/fulltext/ED565658.pdf>.

²¹ PAVEL, *supra* note 19, at 14. On the need for Native American students to approach history differently, a 2008 report to the Washington State Legislature bears repeating:

Too often, young indigenous people hear in regard to their histories: Colonization happened hundreds of years ago—get over it, but the truth is that colonization and its effects are a shared history, and those glories and atrocities are written into the present. We accept them as fact and we move forward. No, we are not victims of some stronger oppressor. We are survivors, many of whom bear scars: physical scars, emotional scars, intergenerational scars and scars on our landscapes that tell a very different story than the stories our grandparents told us. The children need time to make these connections. They need time to imagine and connect the dots for themselves.

Id. at 90. Although in 2015 the Legislature passed RCW 28a.320.107(1)(a), which has since required school districts to incorporate the unique heritage and experience of their closest federally recognized tribe into classroom curricula, in part to address the needs of Native students, there is still a long way to go. Rebecca Clarren, *How America Is Failing Native American Students*, THE NATION, Jul. 24, 2017, *available at* <https://www.thenation.com/article/left-behind/>.

schools consistently rank lowest in graduation rates, highest in dropout rates, and perform two to three grade levels below their peers.²²

The converse, though, is also true. When tribal governments and communities define their own educational success and develop curriculum specific to their community's priorities, Native American students succeed.

Consider the following examples:

- The Quileute Tribal School, a Washington State-Tribal Education Compact School, offers students a culturally-relevant curriculum and had a 4.55 percent dropout rate for high school students, which is significantly lower than the Washington State dropout rate of 13 percent and 25.5 percent for American Indian students.²³
- Walatowa High Charter School, a Jemez Pueblo culture-based, early-college, state-chartered, school located on Pueblo land boasts a graduation rate is 89.4—dramatically higher than the state wide average.²⁴
- The Seminole Tribe of Florida's Ahfachkee Indian School, which provides a culturally-focused education to over 200 students, has one of the lowest Indian-student dropout rates in the nation.²⁵
- The Native American Community Academy, a tuition-free public charter school in Albuquerque, New Mexico, has a teaching philosophy that is grounded in both Native American tradition and a rigorous, modern approach to college-preparatory education. It boasts a 67 percent

²² WASHINGTON STATE OFFICE OF NATIVE EDUCATION, REPORT TO THE LEGISLATURE 10-12 (2012), *available at* <http://www.k12.wa.us/LegisGov/2012documents/NativeEdAnnualReport.pdf>; STATE-TRIBAL EDUCATION COMPACT BETWEEN THE WASHINGTON STATE SUPERINTENDENT OF PUBLIC INSTRUCTION AND THE SUQUAMISH TRIBE 2 (2014); NATIONAL CAUCUS OF NATIVE AMERICAN STATE LEGISLATORS, STRIVING TO ACHIEVE: HELPING NATIVE AMERICAN STUDENTS SUCCEED 5 (2008). This results in a bleak future socioeconomic outlook for these students, to say the least. FAIRCLOTH & TIPPECONNIC, *supra* note 16, at 21-22.

²³ UNITED STATE BUREAU OF INDIAN EDUCATION, DIVISION OF PERFORMANCE AND ACCOUNTABILITY, ANNUAL REPORT: QUILEUTE TRIBAL SCHOOL SY 2012-2013, 1 (Mar. 24, 2014), *available at* <https://www.bie.edu/cs/groups/xbie/documents/text/idc1-026273.pdf>; WASHINGTON STATE SUPERINTENDENT OF PUBLIC INSTRUCTION, GRADUATION AND DROPOUT STATISTICS ANNUAL REPORT 2012-13, 7 (2013), *available at* <http://www.k12.wa.us/LegisGov/2014documents/GraduationAndDropoutStatisticsAnnualReport.pdf>.

²⁴ AMY BOWERS, TRIBAL EDUCATION DEPARTMENTS NATIONAL ASSEMBLY: TRIBAL EDUCATION DEPARTMENTS REPORT 41-47 (2010).

²⁵ *Id.* at 55-60.

graduation rate which is well above the 46 percent graduation rate among Native students in Albuquerque Public Schools.²⁶

Hoping to create a similar success story for Native American youth in the south Puget Sound, *Amici* Wa He Lut Indian School, a subdivision of the Franks Landing Indian Community that began in 1974, entered into a State-Tribal Education Compact with the Washington State Superintendent of Public Instruction on July 25, 2017.²⁷ That newly forged state-tribal educational accord, and four others like it, now weigh in the balance.

b. State-Tribal Education Compacts

On May 15, 2013, Governor Inslee signed into law a bill “authoriz[ing] the superintendent of public instruction to enter into state-tribal education compacts.” RCW 28A.715.005(3). Representative McCoy, who introduced the legislation, testified to his colleagues in the House of Representatives that, consistent with the above research, the passage of this bill was *essential* for Native American students to succeed.²⁸

Over the past four years, four tribal governments have also entered into State-Tribal Education Compacts with the Superintendent of Public Instruction: the Muckleshoot Indian Tribe, the Suquamish Tribe, the Quileute Tribe (as

²⁶ Paul Nyhan, *Want to Fix U.S. Schools? Look to Native American Communities*, EQUAL VOICE NEWS, Aug. 10, 2016, available at <https://www.equalvoiceforfamilies.org/want-to-fix-u-s-schools-look-to-native-american-communities/>.

²⁷ Office of Native Education Tribal Schools, Washington State Office of Superintendent of Public Instruction, <http://www.k12.wa.us/IndianEd/TribalSchools.aspx> (last visited Sept. 29, 2017).

²⁸ House Cmty. Development, Hous., & Tribal Affairs Comm., H.B. Report on HB 1134, at 4, Reg. Sess. (Wash. 2013).

referenced above), and the Lummi Nation.²⁹ Wa He Lut's compact this year brought the total number of tribal compact schools to five.³⁰

Notably, these compact public schools are very similar to the charter public schools that Appellants hope to declare unconstitutional. Compact public schools:

- Must abide by a strict application process. RCW 28A.715.010(2).
- “[A]re exempt from all state statutes and rules applicable to school districts and school district boards of directors, except those statutes and rules” required by RCW 28A.715. RCW 28A.715.020.
- Are open to the all students. RCW 28A.715.030(2).
- Must employ certificated instructional staff as required in RCW 28A.410.025. RCW 28A.715.020(3)(b).
- Must comply with the employee record check requirements in RCW 28A.400.303. RCW 28A.715.020(3)(c).
- May not charge tuition. RCW 28A.715.030(1).
- Must report student enrollment. RCW 28A.715.040(1).
- Must comply with nondiscrimination laws. RCW 28A.715.020(3)(d).
- Must adhere to generally accepted accounting principles and be subject to financial examinations and audits as determined by the state auditor, including annual audits for legal and fiscal compliance. RCW 28A.715.020(3)(e).
- May not engage in any sectarian practices in its educational program, admissions or employment policies, or operations. RCW 28A.715.020(4).

²⁹ Office of Native Education Tribal Schools, *supra* note 27.

³⁰ There are presently no tribal-state compact schools east of the mountains, but such alternative to common schools there could do much to improve educational opportunity for Native American youth.

c. The Need for Tribal Charter Public Schools

The most significant aspect of compact public schools is that, like charter public schools, they are given the leeway to define their own educational success and develop curriculum specific to their community's priorities.

Approximately nineteen of the 297 public school districts in Washington State have a Native student population that comprises more than twenty percent of the general population, and at least eight of those have a Native American enrollment over sixty-five percent.³¹ Unfortunately, unless educators are allowed to implement an education system that reflects and respects tribal culture, perceptions, and interests, as indicated above, a large majority of these students “will most likely fail.”³²

Charter public schools provide means to provide these opportunities for Native American students who are not as lucky as to live near one of the five tribal governments or instrumentalities that currently operate K-12 compact schools. Again, state-run common schools do not work for these students. State-run common schools are simply ill-equipped to address “the historical circumstances that conspired against Native American educational achievement.”³³ Charter public schools, run by educators familiar with the specific needs of Native students, can fill this gap where compact schools are not an option.

³¹ PAVEL, *supra* note 19, at 8.

³² *Id.* at 24

³³ *Id.* at 152

2. Other Charter Public Schools

Native American students are not the only demographic left behind by common schools. State-run common schools are not adequately meeting the educational needs of other groups of diverse children. And there is broad bipartisan agreement that this failure is at least partially caused by a decades-long reliance on state educational bureaucracies exercising control over public, and, especially, urban common schools.³⁴

a. Background

Following the U.S. Supreme Court's decision in *Brown v. Board of Education*, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954), municipalities in Washington State began collecting data on the racial makeup of K-12 students. This data on enrollment mirrored the segregation seen citywide in housing patterns.³⁵ For example, in its first census of enrollment by race, the Seattle School Board found that five percent of its students were African American and that eighty-one percent of these students were concentrated in just nine of the city's one hundred and twelve schools.³⁶ The census also revealed that this concentration had a negative impact on the quality of African American public

³⁴ Raam *supra* note 1, at 1, 3-4 (2016) (citing JOHN E. CHUBB & TERRY M. MOE, POLITICS, MARKETS, AND AMERICA'S SCHOOLS 35-38 (1990); THEODORE SIZER, HORACE'S COMPROMISE: THE DILEMMA OF THE AMERICAN HIGH SCHOOL 209 (1984)).

³⁵ Douglas Judge, *Housing, Race, and Schooling in Seattle: Context for the Supreme Court Decision*, 2 J. EDU. CONTROVERSY 1, 2 (2007); *see, e.g.*, U.S. COMM'N ON CIVIL RIGHTS, SCHOOL DESEGREGATION IN TACOMA, WASHINGTON (1970).

³⁶ Quintard Taylor, *The Civil Rights Movement in the American West: Black Protest in Seattle, 1960-1970*, 80 J. NEGRO HIST. 1, 3 (1995).

education.³⁷ It also had a negative impact on public school decision-making, as local school boards consisted entirely of white board members.³⁸

Aside from acknowledging the imbalance, however, no steps were taken to desegregate Seattle's public schools until 1978—over twenty years later—when a district-wide busing program was put into place.³⁹ In response, Washington State voters proposed an Initiative to prohibit public school desegregation—and it passed by “a substantial margin.”⁴⁰ In 1982 the Initiative was stricken down—in a decision what would be appealed all the way up to the U.S. Supreme Court—because it was adopted with a “racially discriminatory purpose.”⁴¹ Needless to say, these students were not well received in the suburban, majority-white schools that they were bused into.

Thus, although well meaning, desegregation programs like Seattle's busing plan did not work. Desegregation did not raise academic achievement.⁴² Nor did it improve relationships between teachers and students, rigor, or instruction.⁴³ Minority parents also found that these schools were out of sync with their family and cultural values; their children were often misunderstood and

³⁷ Brooke Clark, Seattle Civil Rights & Labor History Project: The Seattle School Boycott of 1966 (2005), http://depts.washington.edu/civilr/school_boycott.htm#_ednref1 (last accessed Sept. 29, 2017). “Segregated schooling was part of a much larger cycle of segregation, and it perpetuated segregation in employment, housing, and every day of these students’ daily lives. These schools had less funding, less parent involvement, less experienced teachers, lower test scores, and lower graduation rates.” *Id.*; see also *Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 460, 102 S. Ct. 3187, 73 L. Ed. 2d 896 (1982) (“[S]egregated housing patterns in Seattle have created racially imbalanced schools.”)

³⁸ Taylor, *supra* note 36, at 5.

³⁹ *Seattle Sch. Dist. No. 1*, 458 U.S. at 461.

⁴⁰ *Id.* at 463.

⁴¹ *Seattle Sch. Dist. No. 1 of King Cty., Wash. v. State*, 473 F. Supp. 996, 1012 (W.D. Wash. 1979), *aff'd in part, rev'd in part sub nom., Seattle Sch. Dist. No. 1 v. State of Wash.*, 633 F.2d 1338 (9th Cir. 1980), *aff'd sub nom., Seattle Sch. Dist. No. 1*, 458 U.S. 457.

⁴² Linda Shaw, *The Resegregation of Seattle's Schools*, SEATTLE TIMES, Jun. 1, 2008, available at <https://www.seattletimes.com/seattle-news/education/the-resegregation-of-seattles-schools/>.

⁴³ *Id.*

targeted for violence from other students; and the (mostly white) teachers often had low expectations for the students.⁴⁴ It was also found that the hiring practices revealed a preference for hiring white teachers.⁴⁵

Over time many districts across the nation “slowly, steadily resegregated.”⁴⁶ Seattle, according to a 2016 Stanford University study, now has the fifth largest achievement gap between white and African American students, with African American students lagging behind white students by a whopping 3.5 grade levels.⁴⁷ In short, desegregation did not work, but the current situation is not acceptable either. These students require another option.

b. The Need for Charter Public Schools

Similar to compact public schools, charter public schools allow for a flexible mechanism to address local needs, conditions, and values; which, in turn, allows students to succeed. This means the ability to “special attention to our students of color”⁴⁸—something that is currently absent from many common schools, yet widely recognized as essential to closing the education gap.⁴⁹ In fact, special attention to this underserved and population is *mandated* by the CSA’s

⁴⁴ JOAN DAVIS RATTERAY & MWALIMU SHUJAA, DARE TO CHOOSE 156-58 (1987); *see also* Frank Reeves, *Foes of Busing for Integration Present Their Case to Lawmakers*, PITTSBURGH POST-GAZETTE, Oct. 27, 1995, at D4 (noting that African American “parents feared that their children would lose their sense of community because they’re attending school in someone else’s neighborhood”).

⁴⁵ Patty Yancey, *Independent Black Schools and the Charter Movement*, in THE EMANCIPATORY PROMISE OF CHARTER SCHOOLS 125, 128 (Eric Rofes & Lisa M. Stulberg, eds., 2004).

⁴⁶ Shaw, *supra* note 42.

⁴⁷ Gene Balk, *Seattle Schools Have Biggest White-Black Achievement Gap in State*, SEATTLE TIMES, May 9, 2016, available at <https://www.seattletimes.com/seattle-news/data/seattle-schools-have-biggest-white-black-achievement-gap-in-state/>.

⁴⁸ Balk, *supra* note 47.

⁴⁹ *See, e.g.*, Ming-Hsuan Wu, *Innovative Education for Diverse Students in a Changing Era*, 16 INTERNATIONAL J. MULTICULTURAL EDU. 36 (2014).

preference for “charter schools that are designed to enroll and serve at-risk student populations.” RCW 28A.710.140(2).⁵⁰

V. CONCLUSION

For the foregoing reasons, *Amici Curiae* Wa He Lut Indian School and Black Education Strategy Roundtable respectfully request that this Court AFFIRM the King County Superior Court’s order below.

Respectfully submitted this 2nd day of October 2017.



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⁵⁰ At-risk student” includes students (1) with academic or economic disadvantages; (2) at risk of dropping out of high school; (3) in chronically low-performing schools; (4) with higher than average disciplinary sanctions; (5) with lower participation rates in advanced or gifted programs; (6) who are limited in English proficiency; (7) who are members of economically disadvantaged families; and (8) who are identified as having special educational needs. RCW 28A.710.010(2).

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