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**Court of Common Pleas**

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By: CAROLINE GENTRY 0066138

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GOVERNING AUTHORITY, ETC., ET AL

CV 15 847974

VTS.

**Judge:**

OHIO DEPARTMENT OF EDUCATION, ETC.

DANIEL GAUL

**Pages Filed: 11**

GOVERNING AUTHORITY C/O	:	Case No. CV-15-847974
PRESIDENT TONYIKA BRINGHT	:	
CLEVELAND COMMUNITY SCHOOL,	:	
et al.,	:	Judge Daniel Gaul
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
OHIO DEPARTMENT OF EDUCATION,	:	<b>MOTION OF THE THOMAS B.</b>
OFFICE OF SCHOOL SPONSORSHIP,	:	<b>FORDHAM INSTITUTE, NATIONAL</b>
	:	<b>ASSOCIATION OF CHARTER</b>
	:	<b>SCHOOL AUTHORIZERS AND</b>
	:	<b>NATIONAL ALLIANCE FOR PUBLIC</b>
	:	<b>CHARTER SCHOOLS TO FILE BRIEF</b>
	:	<b>AS <i>AMICI CURIAE</i> IN SUPPORT OF</b>
Defendant.	:	<b>DEFENDANT</b>

Based upon their considerable research and experience in this area, *amici* have concluded that it is in the best interests of Ohio's charter school pupils, the public, and the charter school system to ensure that Defendant has the ability to hold charter schools accountable and close them when necessary. *Amicis'* research and experience in this area may be helpful to the Court as it considers the issues presented in this case. Moreover, *amici* have a direct interest in this case because of its potential impact on the charter school system in Ohio. Therefore, *amici* respectfully request that they be granted leave to file the brief that is attached as Exhibit A.

Respectfully submitted,

/s/ Caroline H. Gentry

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 22<sup>nd</sup>, 2015, I served a true and accurate copy of the foregoing  
via email and first-class United States mail, postage prepaid, upon the following counsel:

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DAYTON/656004v.1

GOVERNING AUTHORITY C/O	:	Case No. CV-15-847974
PRESIDENT TONYIKA BRINGHT	:	
CLEVELAND COMMUNITY SCHOOL,	:	
et al.,	:	Judge Daniel Gaul
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	:	<b>FORDHAM INSTITUTE, NATIONAL</b>
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	:	<b>SCHOOL AUTHORIZERS, AND</b>
OHIO DEPARTMENT OF EDUCATION,	:	<b>NATIONAL ALLIANCE FOR PUBLIC</b>
OFFICE OF SCHOOL SPONSORSHIP,	:	<b>CHARTER SCHOOLS AS <i>AMICI</i></b>
	:	<b><i>CURIAE</i> IN SUPPORT OF DEFENDANT</b>
Defendant.	:	

The Thomas B. Fordham Institute (“Fordham”) is one of the nation’s leaders in advancing educational excellence for every child through quality research, analysis, and commentary, as well as on-the-ground action and advocacy in Ohio. Fordham also sponsors eleven charter schools that serve 3,200 children throughout Ohio.



The National Association of Charter School Authorizers (“NACSA”) is committed to advancing excellence and accountability in the charter school sector and to increasing the number of high-quality charter schools across the nation. To accomplish this mission, NACSA works to improve the policies and practices of authorizers—the organizations designated to approve, monitor, oversee, renew, and, if necessary, close charter schools. NACSA provides training, consulting, and policy guidance to authorizers. It also advocates for laws and policies that raise the bar for excellence among authorizers and the schools they charter.

The National Alliance for Public Charter Schools (the “National Alliance”) is the leading national nonprofit organization committed to advancing the quality, growth, and sustainability of charter schools. The National Alliance advocates for the millions of students attending and hoping to attend a charter school. It also provides assistance to state charter school associations and resource centers, and develops and advocates for improved state and federal policies.

**I. THE OHIO GENERAL ASSEMBLY ENACTED O.R.C. 3314.015 AS PART OF HOUSE BILL 364 IN AN EFFORT TO RESPOND TO SYSTEMIC PROBLEMS AND HOLD CHARTER SCHOOLS ACCOUNTABLE.**

The Ohio General Assembly first introduced charter schools (also called community schools) in 1997. Since that time, the Legislature has revised the governing statute (O.R.C. Chapter 3314) numerous times to improve and strengthen the charter school system.

The provision at issue here—O.R.C. 3314.015—was enacted in 2003 by House Bill 364. H.B. 364 was intended, in part, to respond to a highly critical audit of charter schools issued in February 2002 by State of Ohio Auditor Jim Petro.<sup>1</sup> Auditor Petro described “several dramatic school failures” and concluded that “[b]ecause of ODE’s lack of involvement in the Community

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<sup>1</sup> J. Petro, *Ohio Department of Education Community Schools Operational Review* (Feb. 7, 2002), available at [http://www.ohioauditor.gov/auditsearch/Reports/2002/ode\\_community\\_schools\\_01\\_performance-franklin.pdf](http://www.ohioauditor.gov/auditsearch/Reports/2002/ode_community_schools_01_performance-franklin.pdf) (“2002 ODE Audit”).

School Program, significant systemic problems have developed.”<sup>2</sup> He recommended that the Ohio General Assembly grant the Ohio Department of Education (“ODE”) authority to oversee and monitor charter school sponsors, give the ODE additional tools to hold charter schools accountable, and plan for the fact that some charter schools will inevitably fail and need to be closed.

The Ohio General Assembly responded by enacting House Bill 364. Among other things, H.B. 364 authorized the ODE to oversee and monitor all charter school sponsors and gave it the ability to revoke a sponsor’s approval to sponsor charter schools.

As is relevant here, amended R.C. 3314.015(C) further provides that after a sponsor’s approval has been revoked, Defendant “*may* assume the sponsorship of any schools with which the sponsor has contracted until the earlier of the expiration of two school years or until a new sponsor ... is secured by the school’s governing authority.” Notably, the Senate Education Committee replaced the word “shall” with the emphasized word “may” after an earlier version of HB 364 was passed by the House.<sup>3</sup> The plain intent of R.C. 3314.015(C) as it was enacted is to permit—but not to require—Defendant to assume the sponsorship of a sponsorless charter school for a period of up to two school years or until another sponsor is found.

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<sup>2</sup> 2002 ODE Audit at 1-1 to 1-3.

<sup>3</sup> Compare H.B. 364 as passed by the House (available at [http://archives.legislature.state.oh.us/bills.cfm?ID=124\\_HB\\_364\\_PH](http://archives.legislature.state.oh.us/bills.cfm?ID=124_HB_364_PH)) with H.B. 364 as reported by the Senate Education Committee (available at [http://archives.legislature.state.oh.us/bills.cfm?ID=124\\_HB\\_364\\_RS](http://archives.legislature.state.oh.us/bills.cfm?ID=124_HB_364_RS)).

**II. THE ABILITY TO CLOSE FAILING CHARTER SCHOOLS IS NECESSARY TO ENSURE ACCOUNTABILITY—WHICH IS ESSENTIAL TO PROTECT THE PUBLIC, THE STUDENTS AND THE CHARTER SCHOOL SYSTEM.**

**A. The Promise Of Charter Schools: Flexibility In Exchange For Accountability.**

A key tenet of the charter school movement is that increased flexibility will allow for innovation and create more optimal educational outcomes for students—but only if that flexibility is balanced by accountability. As described by Auditor Petro in February 2002:

Essentially, charter schools are public schools that are free from most state and federal requirements that regular schools are subject to. The premise behind charter schools is that in return for this freedom, the school is held accountable for student performance.<sup>4</sup>

Without accountability, no mechanism exists to sort out the wheat from the chaff. Failing or underperforming charter schools will continue to exist side-by-side with other charter schools, even if they prove unable to meet required standards. The continued existence of failing charter schools violates the public trust and causes harm to the students that attend them, the community that funds them, and the excellent charter schools that are tainted by a broken system.

**B. Accountability Means That The Entity With Oversight Authority—Here, The Defendant—Must Have The Ability To Close Failing Charter Schools.**

Charter schools must be held accountable for their performance. There are at least three reasons why accountability requires, in some instances, that a failing charter school be closed.<sup>5</sup>

The first reason why a failing charter school should be closed is to safeguard the interests of students and parents, and protect them from a school's failure to meet basic standards. Those standards include a safe learning environment, free from emotional or physical harm, the same

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<sup>4</sup> 2002 Ohio Audit at 1-18.

<sup>5</sup> NACSA, *Accountability in Action: A Comprehensive Guide to Charter School Closure*, ed. by K. Wechtenhiser, A. Wade and M. Lin (2010) (available at [http://www.qualitycharters.org/assets/files/images/stories/publications/2010\\_NACSA\\_Closure\\_Guide.pdf?q=images/stories/publications/2010\\_NACSA\\_Closure\\_Guide.pdf](http://www.qualitycharters.org/assets/files/images/stories/publications/2010_NACSA_Closure_Guide.pdf?q=images/stories/publications/2010_NACSA_Closure_Guide.pdf)) (“NACSA Closure Guide”) at 5-6.



academic performance standards that apply to comparable public schools, and, often, higher academic performance standards via the contract between the charter school board and its sponsor. Students and their parents have a right to expect that these standards will be met.

The second reason why a failing charter school should be closed is to create leverage for broader reform by raising the bar. There are limited resources available to support charter school education. If an existing charter school is using valuable resources but failing to perform, then it should be closed so that other, more successful charter schools can take its place.

The third reason why a failing charter school should be closed is to protect the public interest from poor governance or mismanagement. Charter schools are funded by public dollars and must be held accountable for their use (or misuse) of taxpayers' money, just like all entities that accept public funds. Charter schools that fail to govern themselves properly or mismanage public funds must be held accountable to maintain the public's trust and continued support.

Moreover, it should be noted, and applauded, that Defendant offered appropriate due process – another critical tenet of growing and advancing a high-quality charter school community – during its review and non-renewal decision. Affording public charter school operators sufficient notice, an opportunity to be heard, and an opportunity to enlist counsel and provide rebuttal evidence has been a long-standing pillar of the National Alliance for Public Charter Schools' Model Law.<sup>6</sup> Defendant adhered to these best practices, reinforcing its commitment to fair and deliberative decision-making and demonstrating its commitment to not acting in an arbitrary or overreaching manner.

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<sup>6</sup> National Alliance for Public Charter Schools, *A New Model Law For Supporting The Growth Of High-Quality Public Charter Schools* (June 2009) (available at [http://www.publiccharters.org/wp-content/uploads/2014/01/ModelLaw\\_P7-wCVR\\_20110402T222341.pdf](http://www.publiccharters.org/wp-content/uploads/2014/01/ModelLaw_P7-wCVR_20110402T222341.pdf)) at 40-42.

**C. Research Has Shown That Students Who Attend Failing Charter Schools Typically Do Better After Their Schools Have Been Closed.**

These are compelling reasons to close a failing charter school. Even so, it can be an agonizing decision because of the effect on the students. As described recently by Fordham:

Part of the difficulty is political, but another important part is a genuine moral dilemma: Are we sure that kids will be better off after their schools close? What is the quality of the remaining schools in their neighborhoods? Most importantly, do students gain or lose ground academically when their schools close and they are obliged to enroll somewhere else?

To answer these questions, Fordham retained two university researchers to conduct an empirical study of the achievement trends of 22,722 students in grades 3-8 who attended one of 198 Ohio urban schools that closed between 2006 and 2012.<sup>7</sup> Drs. Carlson and Lavertu were asked to determine the characteristics of students whose schools had closed, whether they subsequently attended higher-quality schools (as indicated by their test scores), and how school closure affected their academic achievement.

In April 2015, Drs. Carlson and Lavertu reported that the results of the study indicate the following answers to the questions posed by Fordham:

- Students displaced by closed schools were disproportionately black, economically disadvantaged and low achieving;
- On average, displaced students ended up in more effective schools populated by higher-achieving students; and

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<sup>7</sup> D. Carlson and S. Lavertu, *School Closures and Student Achievement: An Analysis of Ohio's Urban District and Charter Schools* (April 2015) (available at <http://edexcellence.net/publications/school-closures-and-student-achievement-an-analysis-of-ohio's-urban-district-and>) ("Fordham Study").

- Closing charter schools and urban schools had a positive impact on the academic achievement of displaced students.<sup>8</sup>

Accordingly, the available empirical evidence strongly suggests that the best way to protect the interests of students who are attending a failing charter school is to close that school and allow those students to enroll in other, more effective schools.

### III. CONCLUSION.

The *amici* have repeatedly asserted that failing charter schools must be held accountable. Accountability requires that Defendant have the authority to close charter schools. Accordingly, *amici* urge the Court to find in favor of the Defendant.

Respectfully submitted,

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<sup>8</sup> Fordham Study at 8-9.

**CERTIFICATE OF SERVICE**

I hereby certify that on July 22<sup>nd</sup>, 2015, I served a true and accurate copy of the foregoing  
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