

EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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DC ASSOCIATION OF CHARTERED)
PUBLIC SCHOOLS, <i>et al.</i> ,)
)
Plaintiffs,)
)
v.)
)
DISTRICT OF COLUMBIA, <i>et al.</i> ,)
)
Defendants.)
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Civil Action No. 14-cv-1293 (TSC)

**MEMORANDUM OF AMICI CURIAE IN SUPPORT OF
DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT**

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
ARGUMENT	2
A. The D.C. Charter Sector Has Flourished	3
B. Additional Funding Is Necessary To Address Students’ Needs	5
1. Mathematical Parity and Equitable Funding to Meet Student Needs Are Not the Same	5
2. Plaintiffs’ Specific Examples Do Not Support Their Requested Relief	7
a. Facilities Maintenance	7
b. Teacher Retirement	9
c. Supplemental Funding	11
d. Enrollment Calculations	12
CONCLUSION	16

TABLE OF AUTHORITIES

Page(s)

STATUTORY AUTHORITIES

D.C. Code § 1-204.46	11
D.C. Code § 1-722	10
D.C. Code § 38-1802.07	9
Pub. L. No. 104-134, 110 Stat. 1321-107 (1996)	14
School Reform Act, D.C. Code § 38-1800 <i>et seq.</i>	<i>passim</i>

Amici Curiae, through undersigned counsel, submit this memorandum in support of Defendants' Cross-Motion for Summary Judgment (ECF No. 46) in the above-referenced action.

INTRODUCTION

Amici are residents of the District of Columbia, current and former District of Columbia Public Schools ("DCPS") parents, and organizations and individuals who are leaders in the effort to ensure that every child in the District of Columbia has a quality public education. With the Court's approval, some of these Amici previously filed a brief in support of Defendants' Motion to Dismiss (ECF No. 13). Amici submit this memorandum in support of Defendants' Cross-Motion for Summary Judgment because of the extraordinary relief requested by Plaintiffs and the detrimental impact granting such relief would have on public education in the District of Columbia.¹

Equity in the delivery and funding of public education is of great importance to Amici. They have been engaged around the issues of education quality and social justice over decades. Amici support a strong neighborhood, matter-of-right public school system, complemented by school choice options, including lottery access to out-of-zone DCPS neighborhood schools and to District of Columbia charter schools, and competitive admissions access to selective citywide DCPS schools. Amici believe that all of these publicly funded education options should be regulated in the interests of students, families, and the residents of the District of Columbia. In addition, they believe that the regulation of these options requires transparency of needs and spending as well as legislative and policy freedom to balance the many competing interests of the multiple stakeholders – DCPS, charter operators, union and non-union employees, District residents and taxpayers, parents, and, most importantly, students.

¹ No party or party's counsel authored this brief in whole or part or contributed money that was intended to fund authoring or submitting this brief. No person other than amici curiae or counsel contributed money that was intended to fund preparing or submitting this brief.

In the memorandum supporting their Cross- Motion for Summary Judgment, Defendants demonstrated that they should prevail because the Home Rule Act and the School Reform Act (“SRA”) provide locally elected District of Columbia officials with the necessary legislative and policy freedom to work towards achieving quality, equitable public education. As Defendants’ memorandum and the amicus curiae brief filed by the Council of the District of Columbia show, Congress did not lock District of Columbia public education into a mathematically rigid straitjacket which only the United States Congress can loosen. Instead, Congress has fully empowered local District of Columbia officials to make the day-to-day, year-to-year modifications necessary to maintain a functioning school system.

In this memorandum, Amici demonstrate that local officials have used that legislative and policy freedom rationally in ways that enhance public education for all students, DCPS and Charter. As shown below, consideration of all of the equities – avoiding a two-tiered system, and addressing the needs of students on an equitable basis – further supports granting Defendants’ motion and denying the extraordinary relief Plaintiffs seek.

ARGUMENT

In its Memorandum Opinion at the motion to dismiss stage, this Court declined to dismiss the action, seeking more information to determine whether Council actions had “built upon or undermined” the structures created in the SRA. While Amici do not believe that “built upon or undermined” is the appropriate legal test for evaluating Defendants’ actions, they submit that the challenged actions more than satisfy it.

Applying a “built upon or undermined” analysis, the question would be, have Defendants’ relevant actions undermined congressional purpose in enacting the SRA. Plaintiffs claim that Congress’ purposes in establishing the SRA’s funding formula provisions were to provide “safeguards to ensure that a two-tiered system of public schools would not result” from

the establishment of charter schools and to “clarify and focus decisions regarding funding for public education around students’ needs.” Pls.’ Statement of Material Undisputed Facts (“SOF”)

¶ 23. Defendants’ challenged actions have clearly furthered rather than undermined these purposes. The charter school sector has flourished, and funding to DCPS outside of the formula has been used to directly meet DCPS students’ needs and ensure that they did not become second-class citizens in a two-tiered system.

A. The D.C. Charter Sector Has Flourished

Far from being systematically adversely affected by District policies, including funding policies, the record could not be clearer that DC charter schools have flourished in the District.

The DC charter sector:

- Has grown from 160 students in the 1996-97 school year to 38,905 students (almost 45% of all DC public school students) in the 2015-16 school year.²
- Has enjoyed significant growth – 7,343 students or over 23% growth -- in the 2012 to 2016 period referenced in Plaintiffs’ Motion for Summary Judgment.³
- Has accumulated close to \$250 million in unrestricted cash and cash equivalents and over \$390 million in net assets as of June 30, 2015.⁴
- Has every reason to expect those holdings to grow since charter operators add to their net assets each year -- around \$55 million in 2014 and \$71 million in 2015.⁵

The objective facts simply do not tell a tale of woe for the DC charter sector.

Moreover, the descriptions of those within the charter movement most closely tracking their performance further erode the idea of systematic deprivation.

The Summary Results of the 2015 Audit stated:

² Public Charter School Board (“PCSB”) Data, www.dcpsb.org/data/student-enrollment.

³ *See id.*

⁴ Fiscal Year 2015 Financial Audit Review Report, A Study of DC Public Charter Schools’ Financial Results for the Fiscal Year July 1, 2014 – June 30, 2015 (“2015 Audit”) at Aggregated Tables, Statement of Financial Position, www.livebinders.com/play/play?id=2001256.

⁵ *Id.* at Aggregated Tables, Statement of Activities.

Over the past five fiscal years, since this report was first produced, the number of DC public charter schools earning Fiscal High-Performer status has more than doubled, while the number of schools earning Fiscal Low-Performer status has more than halved. The average fiscal performance of DC's charter schools has also increased significantly.⁶

The 2016 PCSB Annual Report opens quoting Nina Rees, President and CEO of the National Alliance for Public Charters Schools:

Washington, DC, has a diverse group of quality public charter school programs for students and families to choose from. For 20 years, DC PCSB and city leaders have diligently worked to make DC's public charter school movement the best in the nation through thoughtful policy decisions, effective authorizing practices, district and charter collaboration, and good school leadership. These efforts have made DC's public charter schools the healthiest charter sector year after year.⁷

The Center for Education Reform, a pro-charter organization, issues a ranking and scorecard each year measuring how hospitable jurisdictions are to charter schools. In each of the years between 2012 and 2015 (the 2016 ratings are not yet out), the District has ranked first as the most hospitable jurisdiction in the nation for charter schools.⁸

There is simply no evidence whatsoever that District policies have relegated DC charter schools to a second-tier status. Indeed, by every account, the District has been generous and accommodating to charter schools.

⁶ *Id.* at 2015 FAR, Introduction at 2.

⁷ PCSB 2016 Annual Report, Table of Contents, www.dcpsb.org/sites/default/files/2016.07.27-dcpsb-annual-report-single-page.pdf.

⁸ Center for Education Reform, 2015 Charter School Law Rankings and Scorecard with ratings for 2014 and 2015 and the same document for 2013 with ratings for 2013 and 2012, <https://www.edreform.com/wp-content/uploads/2015/03/CER-CharterLawsChart20151.pdf> and https://www.edreform.com/wp-content/uploads/2013/06/CER-CharterLaws2013_Chart_FINAL.pdf.

B. Additional Funding Is Necessary To Address Students' Needs.

1. Mathematical Parity and Equitable Funding to Meet Student Needs Are Not the Same

The Complaint cites the recent Adequacy Study⁹ for the proposition that funding is “inequitable” because DCPS receives funding outside of the formula, i.e. there is no mathematical parity. *See* Complaint at ¶¶ 74-76; *see also*, Plaintiffs’ Motion for Summary Judgment (ECF No. 43) at 10. The data in the Adequacy Study, however, makes clear that funding provided outside of the formula is important precisely to meet student needs on an equitable basis.

In a January 24, 2014 cover letter to education stakeholders, the Deputy Mayor for Education (“DME”) acknowledged that “[p]art of the challenge of this study was how to apply a uniform funding mechanism when DCPS and public charter schools differ in significant policy and regulatory ways. Although the funding formula assumes uniformity in funding across sectors, the two systems have unique characteristics and cost drivers that create challenges in devising uniform funding that is adequate for each sector.”¹⁰

The Adequacy Study assessed this reality by measuring necessary operating funding two ways. The first was using a professional judgment panel process. Under that approach, the consultants developed staffing models and calculated costs, generally relying on costs experienced by the DCPS sector. Given the lower cost structure for the Charter sector, the

⁹ Cost of Student Achievement: Report of the DC Education Adequacy Study, Final Report, prepared by The Finance Project: Cheryl D. Hayes, Shawn Stelow Griffin, Nalini Ravindranath, Irina Katz, Augenblick and Palaich and Associates: Justin Silverstein, Amanda Brown, John Myers (December 20, 2013) (the Adequacy Study”), dme.dc.gov/sites/default/files/dc/sites/dme/publication/attachments/DC%20ADEQUACY%20STUDY_FULL%20REPORT.pdf.

¹⁰ DME Cover Letter to Education Stakeholders at 3. *See* dme.dc.gov/sites/default/files/dc/sites/dme/publication/attachments/DME%20ADEQUACY%20COVER%20LETTER_0.pdf. *See also id.* at Attachment 5 (“The DME recognizes that there are most likely additional costs associated with DCPS being a system of right; this needs further analysis.”) and Adequacy Study at 90-92.

Adequacy Study found that DC charter school salaries plus fringe benefits were 73 to 79 percent of those paid by DCPS.¹¹ By definition, such an approach would provide Charter schools with excess dollars. However, even with the assumption that DC charter schools bear the same staffing costs as DCPS schools (when in fact their costs are lower), the professional judgment panel analysis suggested that DCPS would require approximately \$1,400 more per student in operating funds than DC charter schools.¹²

Under the second methodology – the successful schools model – the consultants measured actual expenditures for operations (of funds from all sources) for successful schools in both sectors. That method suggested DCPS schools require \$12,783 per student while DC charters (given their lower cost structure) require \$10,885 for operations, a \$1,898 difference.¹³

The Adequacy Study thus demonstrates that mathematical parity and providing equitable operating funding tailored to meet student needs are not the same. If both sectors received what was deemed required for DCPS under the successful schools model – a model based on careful study of actual experience – in the 2015 school year, DC charter schools would have received on the order of \$74 million (\$1,898 multiplied by 38,905 students) more than they required for operations, even before accounting for the nearly \$100 million a year they receive in federal and private funds, resulting in a \$170 million annual surplus. On the other hand, if DCPS were deprived of these dollars, it would have been underfunded to meet actual needs.

When Congress enacted the SRA, it did not have access to this kind of data based on experience. Fortunately, the system that was created provides the legislative and policy freedom

¹¹ *Id.* at 90.

¹² *Id.* at 93.

¹³ *Id.* at 107.

for local officials to react to the real world and make decisions that deliver equity and avoid creation of a two-tiered system – thereby furthering the congressional purpose.

2. Plaintiffs’ Specific Examples Do Not Support Their Requested Relief

Plaintiffs rely upon four categories of funding outside of the formula to support their claim: (1) facilities maintenance; (2) teacher retirement; (3) supplemental funding from other agencies; and (4) enrollment calculations. We discuss each, in turn, below, demonstrating that District of Columbia officials acted rationally and in furtherance of achieving educational equity in each instance.

a. Facilities Maintenance

Plaintiffs protest that DCPS has benefited from Department of General Services (“DGS”) support for maintenance, acknowledging that such funding has been steadily declining from 2012 to 2017 (from \$47,844,000 in 2012 to projected \$30,891,000 in 2017). Plaintiffs’ Motion for Summary Judgment at 11-14. It is worth noting that this decline has occurred at the same time that additional schools have been modernized and DCPS enrollment has steadily increased.¹⁴

The Adequacy Study repeatedly acknowledged that DCPS and DC charters face different facilities maintenance costs.¹⁵ The causes of this difference include the fact that as a matter-of-

¹⁴ See DCPS Enrollment Since the 2011-12 School Year, dcps.dc.gov/page/dcps-glance-enrollment.

¹⁵ See Adequacy Study at 81 referencing a \$1,338 per student difference. In fact, some DC charter schools have sufficiently low facilities costs that they can use a portion of their facilities allotment for operations, thereby receiving DC government funds outside of the formula for operations, the very thing they protest regarding DCPS. For example the FY 2015 Audit Report on Distribution of Expenses for Plaintiff Eagle Academy Public Charter School (“Eagle Academy”) shows “Occupancy Expenses” of \$2,250,418 (*see* 2015 Audit, Aggregated Data Tables, Distribution of Expenses by School, www.livebinders.com/play/play?id=2001256#anchor) and the 2015 Audit Report Card for Eagle Academy shows audited enrollment of 920 (*see* 2015 Audit, Financial Performance by School, Report Cards, Eagle Academy frames 45 and 46,

right system DCPS must maintain more space than the charter sector. DCPS must retain school locations across the city in order to offer families and neighborhoods equal access to by-right public schools. DCPS must retain capacity to be braced for population growth and students who arrive during the course of the year from outside the city or from private and charter schools, who, based on their residence, may enroll in DCPS at any time. In addition, DCPS has an important responsibility to maintain and operate its infrastructure of public school buildings and extensive school grounds which serve as emergency shelters, voting locations, neighborhood recreation areas, meeting places, locations for school-based services, and most importantly, the places where the city's commitment to universal public education in perpetuity is placed.

The fiscal impact of these responsibilities is significant. While conditions in DCPS and building efficiencies have been improving, there are structural challenges which DCPS must accommodate that the charters do not have. DCPS operates many important historic school buildings which include space in the historic designs that were not included in the standard space per student cost allowance used to develop the Uniform Per Student Funding Formula (UPSFF) – for just a few examples, large fixed seat auditoria and green houses in the high schools; and oversized hallways in large middle and high schools built to accommodate the large enrollment demands of earlier decades. This means utility, cleaning, maintenance and repair costs exceed the amount provided in the UPSFF. In addition, up until very recently, nearly all DCPS buildings were in poor condition,¹⁶ meaning that utilities, repairs, maintenance and custodial costs from the

www.livebinders.com/play/play?id=2001256#anchor). Eagle Academy's resulting per pupil occupancy expenses of \$2,446 was supported by a facilities allotment of \$3,000 per student. As a result, Eagle Academy received \$554 in non-formula District funds to spend on operations in 2015.

¹⁶ See Preliminary Facilities Master Plan 2005 for the District of Columbia Public Schools, August 14, 1995, http://www.21csf.org/best-home/docuploads/pub/251_DCPublicSchoolsPreliminaryMP1995_2005.pdf.

operating budget needed to compensate for capital disinvestment and exceeded the amount provided for maintenance and operations in the UPSFF.¹⁷

Plaintiffs suggest that the structurally heavier cost of maintaining DCPS buildings must come out of funding that would otherwise be used for educating students. That begs the question how such an approach would support the purported statutory purpose of avoiding a two-tiered system and tethering funding decisions to student needs. Plaintiffs' argument obviously fails that critical test.

b. Teacher Retirement

Plaintiffs object to the District's statutorily required funding of the Teachers Retirement Fund. Plaintiffs' Motion for Summary Judgment at 13-14. Plaintiffs further protest that "if a teacher leaves DCPS to teach at a D.C. Charter School, the teacher can elect to have the Charter School pay into the DCPS retirement fund at the DCPS rate, which is considerably higher than contributions made by D.C. Charter Schools under their 403(b) plans." Complaint ¶ 56.

On the latter point, maintaining the opportunity for DCPS teachers to transfer pension rights if they left to join a DC charter school was specifically required under the SRA.¹⁸ Similarly, as outlined by the Defendants and Council, the Teachers Retirement system long predated the SRA and separate contributions to it were clearly contemplated by Congress and part of the landscape from the start. Moreover, contrary to the suggestions made by Plaintiffs, only a portion of the contributions to the plan are made by the District government outside of the

¹⁷ See e.g. DME Cover Letter to the Adequacy Study to Public Education Stakeholders at 3, http://dme.dc.gov/sites/default/files/dc/sites/dme/publication/attachments/DME%20ADEQUACY%20COVER%20LETTER_0.pdf.

¹⁸ See SRA, Section 2207(b)(3)-(5), codified at D.C. Code § 38-1802.07 (2016).

formula. For the 2015 year, the District contributed \$39,513,000 while teacher members contributed \$31,621,000 out of their salaries paid with formula funds.¹⁹

As Plaintiffs noted, the District required contribution varies from year to year and has been as low as \$3 million. Plaintiffs' Motion for Summary Judgment at 13-14. The reason for that variability is that the District's annual contribution is made to maintain the actuarial soundness of the fund as whole and, accordingly, is driven by external factors such as fluctuation in the market and changes to projected life expectancies.²⁰ The District's annual funding of this defined benefit pension plan is, therefore, not directly or solely related to current DCPS teachers. Rather, the District must maintain the soundness of the fund for all present and future beneficiaries, which include current DCPS teachers, current DC charter school teachers who stayed in the program after leaving DCPS to join a charter school, retired DCPS teachers who retired after 1997 and retired DC charter teachers who stayed in the program after leaving DCPS who retired after 1997.

Against this background, Plaintiffs cannot plausibly pretend (1) that Congress barred the District from using its separately approved District budget appropriations to maintain the solvency of a statutory retirement fund paying pensions prescribed by law to retired teachers (who may have been outside of the classroom for close to 20 years), and (2) that the Defendants must, instead, divert the educational resources intended for current DCPS students to protect the retirement fund from market fluctuations and changes in life expectancies. Such an approach subverts longstanding legislation and cannot be reconciled with the SRA's purpose of tailoring school funding to student needs

¹⁹ *Report on the Actuarial Valuations of the District of Columbia Retirement Board, Teachers' Retirement Plan and Police Officers' & Firefighters' Retirement Plan*, Prepared as of October 1, 2015 at 24. See dcrb.dc.gov/sites/default/files/dc/sites/dcrb/publication/attachments/Valuation%20DCRB%202015%20Report%20FINAL.pdf.

²⁰ See D.C. Code § 1-722 (2016).

c. Supplemental Funding

Plaintiffs object to the fact that DCPS has received supplemental mid-year operating funds. Plaintiffs' Motion for Summary Judgment at 14-15. The data presented by Plaintiffs acknowledges that that did not happen in 2013. Data for 2016 as of June suggests it may have to the tune of \$750,000.²¹ As Defendants explained, in other years DCPS lost funds due to reprogrammings when there were greater needs in other agencies. Moreover, DC charter schools have also received supplemental funding. Defendants' Cross-Motion for Summary Judgment at 16-18.

Here again the differences between the sectors become important in understanding why mathematical equality is not equity and does not prevent the creation of a two-tiered system. DCPS is subject to the Anti-Deficiency Act²² (Defendants' Cross-Motion for Summary Judgment at 15), and is barred from carrying a reserve. It must spend its budget in the year granted, and start over the next fiscal year with a new budget. DC charter schools, by contrast, can and do carry a reserve. As noted above, that reserve is quite large – not for every school, but for many. If a contingency arises mid-year, DC charter schools generally have the means to address it. For DCPS, absent a supplemental appropriation to deal with such a contingency, something else, perhaps quite important, would have to be eliminated.

It would not serve the purpose of the SRA for this Court to issue the permanent injunction Plaintiffs seek that would prohibit, no matter the justification, the District from providing supplemental funding to DCPS even to meet the most acute need.

²¹ Office of the Chief Financial Officer Report, FY 2016 Local Funds Budget - Approved, Changes to Date, and Revised, http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/FY-2016-Revised-Budget-June-2016_0.pdf.

²² D.C. Code § 1-204.46.

d. Enrollment Calculations

Plaintiffs challenge the fact that the DCPS budget is based on a projection, while the DC charter schools budgets are based on actual enrollment in October. *See* Complaint ¶¶ 33-37. They argue that because the DCPS projection exceeded actual enrollment by as much as 2,826 and as little as 403 between 2012 and 2016, this is inequitable and a violation of the SRA. Plaintiffs' Motion for Summary Judgment at 15-17.

As outlined by the Defendants in the Memorandum supporting their Cross-Motion for Summary Judgment at 16, the method for conducting the enrollment count has been a work-in-progress from the start. Initially, the DCPS enrollments used for purposes of the UPSFF were the previous year's audited enrollment as of the October count. Since DCPS enrollment was declining from 1995-2008, this effectively smoothed the declining funding for DCPS. Starting in 2007 with PERAA, DCPS enrollments used for purposes of the UPSFF were based on enrollment projections, in a DCPS system seeing modest growth, this enables DCPS to accommodate growth in real time, rather than inadequately funding schools based on previous year's enrollment.

Each of these DCPS enrollment count approaches varies from the way charter enrollments are counted. However, again, like with the District's responsibilities for capital infrastructure, the adjustments made in how students are counted builds on the responsibility for the District to address student needs. As confirmed by recent studies, there is mid-year mobility in our schools.²³ The official data show that DC charter schools lost 1666, 1338 and 1330

²³ *See* Mid-Year Student Movement in DC A Report from the Division of Data, Accountability, and Research, Office of the State Superintendent of Education, District of Columbia (July 2015), http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/15%2007%2022_Mid-Year_Student_Movement_Final_toPost.pdf.

students respectively during the course of school years 2011-12, 2012-13 and 2013-14.²⁴ Meanwhile, DCPS gained 511, 709 and 890 students in the course of those school years.²⁵

Although DCPS received funding for more children than were present at the time of the October audit (Plaintiff's data suggest the average between 2012 and 2016 was 1,343), it absorbed additional children during the course of the year (on average 701 a year, according to the Mobility Study), contending with the associated disruption from such mid-year arrivals. In contrast, DC charter schools received not just operational funding but also a facilities allotment for the on average 1,444 students who left mid-year.

Using the 2013-14 school year, the most recent year for which there is appropriate data available, it is possible to estimate the financial implications of this movement. DC charter schools received on average \$16,476 per student from the District²⁶ and lost 1,330 students after the October audit in that year. If the departing students corresponded to the average, there would have been \$21,913,080 in District funding associated with them. DCPS, in the meantime, gained 890 students after the October audit that year. Assuming DCPS gained average DC charter students, the District funding associated with them would have been \$13,476 (the DC charter average less the \$3,000 facilities allowance). The dollars associated with those students would have been \$11,933,640. That suggests an over \$33.5 million difference, \$21,913,080 associated with the students who left DC charter schools midyear and \$11,933,640 associated with those who arrived at DCPS mid-year. This contrasts with the average annual overpayment to DCPS claimed by Plaintiffs of an alleged \$19.8 million.

²⁴ *Id.* at 4.

²⁵ *Id.*

²⁶ See 2015 Audit, Aggregate Tables, Financial Report Card, www.livebinders.com/play/play?id=2001256#anchor.

Moreover, as shown by Defendants, DCPS is not provided an adjustment for students who have their service levels identified after the October count, although they still have the responsibility to provide added services to any student with special needs. Defendants' Cross-Motion for Summary Judgment at 16. The District, however, has taken action to authorize such supplemental funding to DC charter schools.

If any party ought to be aggrieved by the way in which enrollment funding is calculated, it is DCPS. The data shows DCPS is absorbing students all year after the October audit with substantial disruption and no compensation. DC charters, on the other hand, are losing students all year long with no corresponding loss of funding. Moreover, DCPS, which serves a higher share of special education and at-risk students in by-right neighborhood schools, finds that it serves many additional students with unforeseen special education services and at-risk needs without the added funding.

This is not to suggest that the Court must wade into all of these details and determine the right way to fund DC schools using enrollment. The key point is that the proposition that the approach to enrollment-based funding to date has systematically harmed DC charter schools is not grounded in fact. Certainly the record is not close to justifying a permanent injunction requiring adherence to Plaintiffs' interpretation of the SRA.

This is even more the case because enrollment-based funding in the SRA was modified by the DC Council at the request of charter advocates. The original SRA required a second audit of DC charter school enrollment as of March 15 each year.²⁷ If enrollment in a DC charter school increased as compared to the findings of the October audit, it would receive an additional 50% of the annual per-pupil funding for each additional student. If enrollment had decreased, per-pupil

²⁷ SRA, Pub. L. No. 104-134, § 2403, 110 Stat. 1321-107, 139 (1996).

annual funding for the school would decrease by 50% for each lost student.²⁸ Given the consistent erosion of DC charter school enrollment after the October audit described above, this requirement of the original SRA would have cost DC charter schools on the order of \$10 million a year.

In 2005, the Council removed this second audit after being urged to do so by charter school advocates. In that year, the Council enacted the Public School Enrollment Integrity Clarification and Board of Education Honoraria Amendment Act of 2004. The Committee report cites testimony of Josephine Baker, Executive Director of the District of Columbia Charter School Board, and Robert Cane, Executive Director of Friends of Choice in Urban Schools (“FOCUS”), in support of the bill.²⁹

The experience relating to this amendment underscores two key facts: (1) the way in which the District can and should approach enrollment-based funding is more complex than Plaintiffs suggest (a reality Congress was fully aware of when it enacted the SRA); and (2) charter school advocates have shown a willingness and ability to obtain Council adjustments to the SRA, never questioning the Council’s authority to make such changes.

CONCLUSION

Amici care deeply about public education in the District of Columbia. They support a strong neighborhood, matter-of-right public school system. They also support complementing that system with school choice options including public charter schools. While by no means perfect, public education in the District of Columbia is improving. The relief that Plaintiffs seek

²⁸ *Id.*

²⁹ “Bill 15-411, The ‘Public School Enrollment Integrity Act of 2003,” The Committee on Education, Libraries and Recreation, Council of the District of Columbia (Dec. 6, 2004), <http://dclclims1.dccouncil.us/images/00001/20050126115621.pdf> (Ex. 8 to Memorandum of Amici Curiae in Support of Defendants’ Motion to Dismiss (ECF No. 12)).

would stop that progress in its tracks, and could potentially give a windfall to DC charter schools at the expense of necessary funds for DCPS schools. The requested relief would create the very two-tiered system that they acknowledge should not exist – destroying true equity in the name of formal mathematical equality. Fortunately, the law does not require that result. As Defendants and the Council demonstrated in their submissions, the Home Rule Act and the SRA do not straitjacket District of Columbia officials in the manner Plaintiffs argue. As shown above, those local officials have acted to achieve rather than undermine equity. Accordingly, Defendants' Cross-Motion for Summary Judgment should be granted.

Respectfully submitted,

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