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TESTING THE CONSTITUTIONALITY OF CHARTER SCHOOLS

A Guide for Legislators

Since the inception of charter schools, special interest groups have fought against the rising tide of parental choice in education. Opponents launched their first attacks against charter schools in the nation's statehouses – staging sophisticated and costly legislative campaigns to block charter school legislation. It hasn't worked. Driven by a desire to give parents control of their children's education, more than 40 state legislatures have passed and maintained charter school laws.

Increasingly defeated in committee rooms and on the floors of both chambers – charter school opponents have been forced to get even more creative in finding ways to stifle charter schools. They have had limited success and they have added a new weapon to their arsenal – the lawsuit. From New York to California, opponents have publicly challenged the constitutionality of charter schools. Their claims have been baseless – intended to generate news coverage more than to stand up in court. But the legal battles have failed. Time and time again, state supreme courts and lower courts have upheld the constitutionality of charter schools.

The following is a glimpse of major legal battles across the states since 1996. There are hundreds of others at lower levels but this analysis reveals that all of the state legal battles against charter schools are battles of publicity, not legal merit.

CALIFORNIA

Wilson v. The State Board of Education

Two taxpayers in Marin County brought suit to challenge the constitutionality of California's new charter school law in 1998. The case was dismissed by the district court for lack of merit. To date, more than 500 charter schools serve California children.

COLORADO

Booth v. Board of Education

When a local school board denied a charter school's application, the Colorado State Board of Education stepped in and overturned the decision. The district sued claiming that the State over-stepped its constitutional authority and asked the court to declare charter schools unconstitutional. The Board of Education prevailed. In 1999, the Colorado

Supreme Court ruled that the charter school law was indeed a valid public education exercise.

MICHIGAN

Council of Organizations v. Governor

In July 1997, the Michigan Supreme Court ruled in favor of the Public School Academies Act. The coalition of charter school opponents and special interest groups argued that charter schools are not public schools and should not receive funds. The Court said that the Public School Academies Act is constitutional because the section of the state constitution prohibiting public money to nonpublic schools does not apply to charter schools.

MISSOURI

St. Louis Board of Education v. African-American Rite of Passage, Inc.

The St. Louis School Board and the Missouri School Boards Association opposed the creation of the city's first charter school in 1999. They took their opposition to the district court – challenging the constitutionality of the state's charter school law. The court eventually ruled that the school, which targets students who have dropped out of the conventional system, could indeed open to serve St. Louis children. The court effectively ruled that Missouri's charter school law was well within the confines of the state's constitution.

NEW JERSEY

In re Grant of Charter School Application of Englewood on Palisades Charter School

In this case, three school districts challenged the constitutionality of the New Jersey Charter School Program Act. The districts said that charter schools would drain funds from districts and conflict with districts' authority thereby being unconstitutional. In June 2000, the Supreme Court of New Jersey held that the Charter School Act is constitutional and the decision to open the Englewood school was upheld.

NEW YORK

New York State United Teachers & New York School Boards Association

In 1999, New York State United Teachers and the New York School Boards Association joined together to challenge the constitutionality of the state's charter school law. The New York Court of Appeals – the state's highest court – ruled that the law is constitutional and allowed new schools to open as scheduled.

OHIO

Ohio State Federation of Teachers et al. v. State of Ohio Board of Education, et al.

The case of *OFT v. OH Board of Ed.* is still in front of the Ohio Supreme Court. The suit claims that the state's charter law is unconstitutional. The "Coalition", which is an umbrella group for various local and state teachers' unions came away empty handed when the court denied their constitutional claim in 2003. (They have since re-filed in 2004)

PENNSYLVANIA

West Chester Area School District v. Collegium Charter School

In the case of *West Chester*, the district questioned the establishment of new charter schools as unconstitutional. In 2000, the Supreme Court of the Commonwealth denied the claim – ruling the charter school law constitutional and that approval of the schools was in accordance with the law.

SOUTH CAROLINA

Beaufort Co. v. Lighthouse Charter

In 2000, the state Supreme Court ruled that the state's law was unconstitutional because of a provision in the law that requires charter schools to mirror the district's racial balance. Rather than just finding that provision unacceptable the court threw out the whole law and legislators went back to the drawing board. The legislature amended the law in 2002 to address the problem – ensuring that South Carolina's charter school law is well within the confines of the state's constitution.

UTAH

Utah School Boards Association v. Utah State Board of Education

In 1998, the Utah School Boards Association challenged the constitutionality of the state's charter school law. Three years later the Utah Supreme Court ruled that the law is indeed constitutional and that the State Board has authority to govern a diverse system of public schools.

WISCONSIN

Milwaukee Teachers' Education Association v. Milwaukee Board of School Directors

One of the nation's most avid opponents of all forms of school choice, the Milwaukee Teachers' Education Association began tying up the Wisconsin courts with challenges to the state's charter school law back in 1996. Three years later – just before the Wisconsin Supreme Court was to decide the matter – the union feared defeat and agreed to drop the suit. Over 160 charter schools now thrive in Wisconsin.