

Supreme Court Case No. S195852

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

TODAY'S FRESH START, INC.,

Plaintiff, Respondent, and Cross-Appellant,

vs.

LOS ANGELES COUNTY OFFICE OF EDUCATION, et al.,

Defendants, Appellants, and Cross-Respondents.

After A Decision By The Court Of Appeal
Second Appellate District, Division One
2d Civil Case No. B212966 c/w B214470
Los Angeles County Superior Court Case No. BS 112656

**ANSWER BRIEF OF LOS ANGELES COUNTY OFFICE OF
EDUCATION AND LOS ANGELES COUNTY BOARD OF
EDUCATION TO BRIEFS OF AMICI CURIAE PACIFIC LEGAL
FOUNDATION, OPTIONS FOR YOUTH, AND CALIFORNIA
CHARTER SCHOOLS ASSOCIATION**

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INTRODUCTION

The issue before this Court is whether due process requires an evidentiary hearing before an impartial hearing officer before the revocation of a charter school's charter. Reversing the trial court, the Court of Appeal held that Today's Fresh Start, Inc. ("TFS") was not entitled to such a hearing before the revocation of its charter by the Los Angeles County Board of Education ("County Board"). (Opinion at pp. 28-29.) The two amicus curiae briefs filed on behalf of TFS not only urge this Court to reverse the decision of the Court of Appeal, but also appear to part company with the trial court ruling. The clear implication of one brief is that the trial court did not go far enough to protect the due process rights of charter schools; the implication of the other is that the trial court went too far in that it unnecessarily advanced into due process territory when it could have resolved the case on the ground of statutory violation.

Specifically, from the perspective of Pacific Legal Foundation and Options For Youth (collectively, "Pacific Legal Foundation"), *any* participation in the revocation process by chartering authorities—presumably even a vote to accept or reject a hearing officer's findings, as the trial court envisioned—violates due process. The gist of its argument is that an allegedly inherent adversarial relationship between charter schools and chartering authorities—the so-called "public education

establishment”—spells doom for the former if chartering authorities are permitted to make decisions about their continued existence.

California Charter Schools Association (“CCSA”) asks this Court to disregard the issue upon which review was granted, and simply to find that the County Board and its staff in the Los Angeles County Office of Education (“LACOE”) failed to comply with the Education Code, something the trial court did not do.

As discussed below, Pacific Legal Foundation’s position, stripping chartering authorities of their authority to revoke, is flawed analytically and contrary to law. CCSA’s position that factual issues not addressed below should be the basis of this Court’s opinion is simply untenable. Neither Pacific Legal Foundation nor CCSA has provided a sound rationale for overturning the Court of Appeal’s decision, and that decision should be affirmed.

ARGUMENT

I. PACIFIC LEGAL FOUNDATION’S NOTION THAT CHARTERING AUTHORITIES SHOULD BE DIVESTED OF ANY POWER TO REVOKE A CHARTER IS UNSUPPORTED BY FACT AND CONTRARY TO LAW.

A. Pacific Legal Foundation’s Premise Does Not Withstand Scrutiny.

Pacific Legal Foundation shares TFS’s view that competition for public funds between traditional public schools and charter schools provides a financial incentive for chartering authorities to revoke charters. (Application and Brief Amicus Curiae of Pacific Legal Foundation and Options For Youth (“PLFB”) at pp. 9-10; TFS’s Opening Brief On The Merits at pp. 15, 18.)^{1/} However, Pacific Legal Foundation goes well beyond allegations of pecuniary bias to allegations of institutional bias in favor of the status quo. Referring to the “public education regime,” Pacific Legal Foundations states that “some school administrators and teachers unions view charter schools as a threat to the status quo” and that “[t]he biases and prejudices toward charter schools inherent in the existing public education complex and in the regulators of charter schools” were at work in

^{1/} The County Board and LACOE have addressed TFS’s charges of pecuniary bias in their Answer Brief On The Merits, pages 18-23, and do not repeat their points here.

this case “where those biases and prejudices led to the revocation of [TFS’s] charter.” (PLFB at pp. 11-12.) The purported source of this institutional bias is the competition created by expanded options for education that charter schools provide. (See, e.g., PLFB at p. 10.) However, there is no sound basis upon which to conclude that competition among types of educational opportunities automatically translates into bias in favor of the status quo on the part of chartering authorities.

In enacting the Charter Schools Act of 1992 (Ed. Code, § 47600 et seq.), the Legislature intended, among other things, to “[p]rovide vigorous competition within the public school system to stimulate continual improvements in all public schools.” (Ed. Code, § 47601, subd. (g).) Pacific Legal Foundation’s argument ignores that chartering authorities are the *instruments* of that purpose insofar as they grant and renew charters in the first instance, a fact that is wholly inconsistent with any institutional bias in favor of the status quo on their part. (Ed. Code, § 47607, subd. (a).)^{2/} Thus, revocation cannot logically be seen as a way to eliminate

^{2/} In this case, for example, the County Board granted TFS’s charter in 2003 and renewed it for a term of five years in 2005, thereby contributing to the competition between traditional public schools and charter schools within its jurisdiction. (6 Clerk’s Transcript (“CT”) 1208; III Administrative Record 1434.) Pacific Legal Foundation takes particular aim at the Los Angeles County Unified School District (“LAUSD”). (PLFB at p. 10.) According to its amicus curiae brief, LAUSD currently has authorized 198 charter schools to compete with the traditional public schools in its district. (LAUSD Amicus Curiae Brief, at p. 1.)

the competition—indeed, the number of charter schools permitted in California is continually expanding. (See Ed. Code, § 47602, subd. (a) [providing for a state-wide increase of 100 charter schools per year].) Rather, revocation is a way to eliminate a particular charter school that is violating its charter or the law.

In sum, Pacific Legal Foundations’s premise that chartering authorities cannot make fair decisions because of their entrenched bias against charter schools and in favor of traditional public schools has no basis in fact and simply does not make sense in light of the chartering authorities’ role in *creating* the competition they purportedly seek to eliminate.

B. Pacific Legal Foundation’s Call To Divest Chartering Authorities of Their Power To Revoke Is Contrary To Law.

Not only is Pacific Legal Foundation’s premise flawed, but its conclusion is contrary to law. Education Code section 47607, subdivision (c), provides that “[a] charter may be revoked by the authority that granted the charter” if the charter school is found to have done or not done certain things. Subdivision (e) of section 47607 of the Education Code provides that “the chartering authority shall hold a public hearing, in the normal course of business, on the issue of whether evidence exists to revoke the charter” before making its decision whether to revoke a charter.

Significantly, Pacific Legal Foundation makes no mention in its brief of Education Code section 47607, much less subdivisions (c) or (e). Instead, it contends that charter schools should not be “forced to justify their continued existence to the very forces that are biased and prejudiced against them.” (PLFB at p. 12.) “If those districts and unions which hold the most direct biases against charter schools are permitted to make the decisions regarding the continued existence of charter schools, the death knell for charter schools will sound. California’s charter schools . . . would be forced to kowtow to their competition.” (PLFB at pp. 17-18.)^{3/} Although Pacific Legal Foundation is not explicit on the point, it necessarily follows from such contentions that, in its view, chartering authorities are inherently incapable of exercising the power to revoke without offending due process, and someone else will have to do so—a third-party decisionmaker, the impartial hearing officer.

But charter schools are “part of the Public School System” and are deemed to be “under the *exclusive control* of the officers of the public schools.” (Ed. Code, § 47615, subd. (a)(1), (2), emphasis added; cf. *Mendoza v. State of California* (2007) 149 Cal.App.4th 1034, 1039

^{3/} Pacific Legal Foundation views revocation as pitting a charter school against the “public education establishment” (PLFB at p. 17) in which it includes teacher unions. According to this theory, teachers unions are decisionmakers as much as county boards or school districts are when it comes to revocation.

[“The California Constitution also prohibits the transfer of authority over any part of the school system to entities outside of the public school system”].) The power to revoke is a necessary part of the oversight responsibility the Legislature has assigned to chartering authorities. (Ed. Code, §§ 47604.32, 47607, subd. (c).) Without the power to revoke, oversight is meaningless. (See *California School Bds. Assn. v. State Bd. Of Education* (2010) 186 Cal.App.4th 1298, 1326 [“If monitoring and enforcement are, in reality, either lax or nonexistent, then the entire statutory scheme governing charter schools is called into question’].) Thus, it is plain that Pacific Legal Foundation advocates not simply the introduction of another layer of administrative process in the form of an evidentiary hearing before a neutral third-party before a charter can be revoked, but a radical overhaul of the statutory scheme by which charter schools are incorporated into the Public School System. The elimination of meaningful oversight by chartering authorities is not what the Legislature envisioned nor what due process demands. Pacific Legal Foundation’s argument should be rejected

II. THE FACTUAL ISSUES CCSA RAISES HAVE NO BEARING ON THE LEGAL ISSUE BEFORE THE COURT.

CCSA asks this Court to “issue an opinion . . . finding that LACOE failed to provide [TFS] appropriate process by failing to comply with [Education Code] section 47607, the statute governing charter revocation.” (CCSA’s Amicus Curiae Brief In Support Of Petitioner (“CCSAB”) at p. 16.) If CCSA is saying that Education Code section 47607 adequately protects charter schools against erroneous deprivation of their charters without the extra layer of administrative process envisioned by the trial court, the County Board and LACOE agree. However, it appears CCSA may only be saying due process concerns need not be addressed—“should not be implicated”—unless a chartering authority has complied with Education Code section 47607, and because LACOE purportedly did not comply with the statute, such concerns are premature here. (CCSAB at p. 7.) In other words, CCSA contends the Court is set to resolve the wrong question.

But for the opinion CCSA wants issued, the Court would have to resolve purely factual threshold questions. These appear to be: (1) whether LACOE failed to give adequate notice of violation to TFS insofar as the problems identified in the notice given were not explicitly tied to particular violations listed in Education Code section 47607 (CCSAB at pp. 13-14); (2) whether the investigations of TFS were unreasonable attempts to micromanage (see *id.* at p. 13 [volume of documents “demonstrate[s] LACOE micromanagement under the guise of its oversight authority”]); and

(3) whether TFS was provided a reasonable opportunity, i.e., time, to cure (*id* at p. 15).

Obviously, this Court is not a trier of fact, and none of these questions were addressed in the trial court. The only allegation of noncompliance with the Education Code in TFS's motion for judgment concerned lack of statutory notice pursuant to Education Code section 47607, subdivision (d), based solely on the fact that LACOE, rather than the chartering authority (the County Board), actually gave notice. (8 CT 1697-1698.) On that point, both the trial court and the Court of Appeal found substantial compliance, and TFS did not ask for review on the issue.

(Opinion at pp. 39-41; Petition For Review at p. 1.)^{4/}

While it is conceivable there might be a case where reinstatement of a charter could be denied or ordered without reaching the constitutional issue of due process, that is, purely on the basis of whether or not there was compliance with Education Code section 47607, this is not that case. CCSA's arguments shed no light on the issue that TFS focused on in the trial court and that it has placed before this Court. CCSA's arguments must be rejected on that basis.

^{4/} TFS does complain about the amount of documentary evidence, but not in the context of statutory notice, as CCSA asserts (CCSAB at p. 11). Rather it does so in the context of its argument for a formal evidentiary hearing, which in its view might by its nature limit the amount of documentary evidence. (See, e.g., Reply Brief On The Merits at p. 22.)

CONCLUSION

The fundamental question presented by this case is whether due process requires more than what Education Code section 47607, subdivision (c), requires before a charter may be revoked. The County Board and LACOE contend that it does not, and that TFS had a full and fair opportunity to make its case under the procedures of that statute. For the reasons set forth above and in the Answer Brief On The Merits, this Court should affirm the decision of the Court of Appeal.

DATED: April ____, 2012

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CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.520(c)(1), I certify that the attached ANSWER BRIEF OF LOS ANGELES COUNTY OFFICE OF EDUCATION AND LOS ANGELES COUNTY BOARD OF EDUCATION TO BRIEFS OF AMICI CURIAE PACIFIC LEGAL FOUNDATION, OPTIONS FOR YOUTH, AND CALIFORNIA CHARTER SCHOOLS ASSOCIATION is proportionately spaced and has a typeface of 13 points or more. Excluding the caption page, tables of contents, authorities, and appendix signature block and this certificate, it contains 2,047 words.

DATED: April ____, 2012

Alison M. Turner

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