

IN THE SUPREME COURT OF ALABAMA

—◆—
JULIE P. MAGEE and THOMAS L. WHITE, JR.,
Appellants,

v.

DR. DANIEL BOYD, et al.,
Appellees.

—◆—
RACHELL PRINCE, et al.,
Appellants,

v.

DR. DANIEL BOYD, et al.,
Appellees.

—◆—
TEQUILA ROGERS, et al.,
Appellants,

v.

DR. DANIEL BOYD, et al.,
Appellees.

—◆—
Appeal from the Montgomery Circuit Court, No. CV-13-901470
—◆—

**BRIEF OF THE ALABAMA POLICY INSTITUTE AS AMICUS CURIAE IN
SUPPORT OF APPELLANTS**

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NO ORAL ARGUMENT REQUESTED

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IDENTITY AND INTEREST OF AMICUS CURIAE

The Alabama Policy Institute (API) is a non-partisan, non-profit research and educational organization dedicated to the principles of limited government, free markets, fiscal responsibility, the rule of law, and strong families. Established in September 1989, API bases its pursuits on the founding fathers' ideas of liberty and the equality of all people. API studies important matters of policy by researching the issues being debated in Montgomery and Washington, D. C. and then offering its analysis and ideas through reports and publications to public servants, citizens and the media. As a conservative "think tank", API addresses a wide range of emerging policy issues in the areas of economics, education, the environment, government, family and society.

As part of its dedication to quality education for all of Alabama's children, API has strongly supported, and helped implement, the Alabama Accountability Act. This Act has allowed hundreds of children, the vast majority of whom are very poor and minority, to escape from failing schools.

For the first time in their lives, and in most cases for generations, these children have a chance to get a quality education in a safe environment and, thus, a much better chance of escaping from poverty. Overturning the Accountability Act would be devastating to these hundreds of students and families which have relied upon the Act to create opportunities for better education.

As a public policy institute promoting quality education for all of Alabama's children, including those in underserved communities, API urges this Court to reverse the decision of the Circuit Court of Montgomery County.

SUMMARY OF THE ARGUMENT

API's purpose in filing this amicus brief is a limited one. It is simply to show - using the facts of real world people and institutions - that the Alabama Accountability Act is meeting its single purpose: Creating more educational opportunity for students in Alabama by providing choice to parents of children in failing schools and needed flexibility to traditional public schools. This is shown by reports in the argument about actual students who have benefited from scholarships under the Act. It is also shown by reports from institutions that have been able to create more opportunity for underprivileged students through the use of Accountability Act scholarships. Finally, the additional flexibility for traditional public schools has enabled them to create innovative educational opportunities for students in their communities. The fact that the purpose is being met further supports the Defendants/Appellants position that the Accountability Act has one over-arching purpose: to provide more publicly-supported education options for students in Alabama,

particularly students in underserved education environments.

ARGUMENT

Alabama Policy Institute's purpose in filing this amicus brief is a limited one. API agrees with Defendants/Appellants that the Accountability Act does not violate the Alabama Constitution either in its adoption or implementation, as set out in the briefs of Appellants/Defendants. API's purpose in this amicus brief is to support Defendants/Appellants' position that the Act does not violate the original-purpose and single-subject rules (since both the flexibility provisions and the school-choice program both have the purpose of improving education opportunities for Alabama children) by providing real-world cases and information to show that the Act has already improved educational opportunities and the future for numerous children. The Act provides flexibility for local school boards to enhance learning and correct deficiencies for both failing and non-failing schools, while at the same time providing a school-choice program that empowers parents with children trapped in the state's

failing schools to move their children to schools that provide a quality and safe education.

This brief will provide the above information from three perspectives. One is from the perspective of families that have been able to move their children to quality schools and, thus, have hope for the future. Another is from the perspective of education leaders from around Alabama able to understand the devastating consequences for students if the Alabama Accountability Act is found unconstitutional. The final perspective is from the traditional public schools using the Accountability Act to increase their flexibility in providing better educational opportunities for the students they serve.

I. THE ALABAMA ACCOUNTABILITY ACT'S TAX CREDIT AND SCHOLARSHIP PROVISIONS ARE CREATING OPPORTUNITIES FOR STUDENTS AND FAMILIES.

Before giving "real life" examples of the Alabama Accountability Act's opportunities for students and families, it would be helpful to take an overall look at the racial and socio-economic background of the students and families that have been helped by the Act in its first year of operation. One of the scholarship granting

organizations, the Alabama Opportunity Scholarship Fund, has provided the following statistics in regard to scholarships handled by their organization: Seventy-six percent of the students receiving scholarships were African-American, sixteen percent were white, three percent were multiracial, and almost two percent were Hispanic. The families of African-American students had an average yearly income of \$19,059.51, white families' average income was \$33,535.44, Hispanic average income was \$32,304.12, and multiracial income was \$22,091.54. Average income for all students was \$21,914.66.¹

The following are some examples of life-changing opportunities created by the Alabama Accountability Act:

- Larry Newby said his two grandsons are thriving at Union Chapel Christian Academy after he got them out of a frightening situation at Ed White Middle School, which he could not have done without an Accountability Act Scholarship. Newby is one of many parents who just want things to

¹ Source of statistical information: Sonya DiCarlo, Director of Communications, Alabama Opportunity Scholarship Fund.

continue as they have. "I wish that it would continue to go on; not only for the safety and protection and great education for my two children, but for other kids and parents as well." Newby's grandsons talked about being bullied and harassed and said they were not making good grades and were getting suspended at their failing school. Now, the principal at their new school says the boys are thriving and doing well in school. Newby said the situation they were in before was just setting them up to fail. In regard to the judge's decision striking down the Act, Newby said "He's taking away a great opportunity for a lot of kids." ²

- The Accountability Act allowed Wanda Reynolds to send her four grandchildren to Churchill Academy in Montgomery and she said they benefited from the twelve to one student to teacher ratio. "Their grades went from D's and

² www.myfoxal.com/story/25633608/lawmakers-react-to-accountability-act-overturn

F's to all A's in 2.5 months. I mean all four of them are A's. I can't ask for anything better than that and that is all because of the care, the attention, and the structure that they have at Churchill," she said.³

- One mother in Montgomery called Montgomery Christian School to say that she had three children - first, third, and fifth graders. She said her first grader was a boy who was having a terrible time being bullied at his previous school. He cried every day and hated going to school. She had very little income and was desperate to find him another school. All three children were able to attend Montgomery Christian School this past year due to Accountability Act scholarships. The principal of Montgomery Christian School said that the first grader came out of his shell and had a wonderful year thanks

³ www.wsfa.com/story/256327041/parents-teachers-react-to-overturning-of

to his mother's initiative, his teacher and the Alabama Accountability Act.⁴

- Dalphine Wilson, with two children, had to choose which child would go to the school of her choice in Montgomery, AL. She was unable to afford, on a teacher's salary, to send both of them to school and pay tuition. After learning about the scholarship program, both of her children qualified for scholarships. Ms. Wilson says, "For parents who desire a quality education, they only have one chance to get this foundation."⁵

- Joshua Todd is a single father. He is not happy with the local school his son is zoned for in Albertville, AL. After being injured in Afghanistan, this veteran is determined to find a good education for his son even though his funds are limited. He strongly believes that, "having a child is having a responsibility greater than

⁴ Kathi Atkins, principal, Montgomery Christian School.

⁵ Information from Alabama Opportunity Scholarship Fund.

yourself. My needs come secondary, his education comes first.”⁶

- Tashinique Dismuke says she is encouraging parents everywhere to visit a school that accepts a scholarship, see if it's a good fit and give it a shot. She was faced with dwindling funds recently and had to pull her three boys out of the private school of her choice. After learning about the Alabama Opportunity Scholarship Fund, she qualified and her boys have returned to the school of their choice in Huntsville, AL. ⁷

- Gloria McMeans sacrificed her rent money and moved into public housing in Birmingham so she could afford to transfer her son out of a failing public school and into the private school of her choice. Not knowing how she would afford it, Ms. McMeans learned about the scholarship program and her son was awarded a scholarship. It took a while for it to sink in that this was real! “It's

⁶ Information from Alabama Opportunity Scholarship Fund.

⁷ Information from Alabama Opportunity Scholarship Fund.

real, it's real!" She is now encouraging parents everywhere to put their child in a school where it's going to work for them.⁸

- Ruben and Miguel Gudino in Union Springs, AL are waiting to hear if they will receive a scholarship. When they grow up, Ruben wants to be an electrician. Miguel would like to be a doctor. Their parents work on a farm and are struggling financially. They are hoping to keep the boys out of the failing school in their area. Their father wants them to have a better life than his, so they don't have to struggle to make their dreams come true.⁹

- 16 year old scholarship recipient, Diamond Lowe, moved to Ellwood Christian Academy in Selma, AL in the middle of a school year. She was awarded a scholarship thanks to the Alabama Accountability Act. She says she was willing to say goodbye to her friends at the public school

⁸ **Information from Alabama Opportunity Scholarship Fund.**

⁹ **Information from Alabama Opportunity Scholarship Fund.**

she was zoned for so she could get a better education. Diamond wants to go into the Air Force when she grows up.¹⁰

- 17 year old Christopher Caldwell is a scholarship recipient and is attending Ellwood Christian Academy in Selma, AL. He says he had always been an A/B honor roll student until he attended the public high school he is zoned for. He says now, with smaller class sizes and less behavior distractions, he is on the honor roll again.¹¹

- Ronnie James has three children, ages 15, 13 and 10. He plans to send his kids to the school of his choice in Selma, AL with the help of scholarships made available with the Alabama Accountability Act. "I want them to do things that I couldn't do and from my research, this is going to be the place where they're going to be able to get that." He strongly believes, "not only

¹⁰ Information from Alabama Opportunity Scholarship Fund.

¹¹ Information from Alabama Opportunity Scholarship Fund.

are you changing a life, you're changing probably generations on down because what's instilled in them will be instilled in their children."¹²

- Kim Mashburn says she'll do whatever is necessary to move her 8 year old son Garrett from his assigned public school in Albertville, AL. "He is struggling. He is being bullied every day. It hurts my heart when he comes home crying." She says her son hates school, at the tender age of 8. She's hoping a scholarship with the help of the Alabama Accountability Act, will provide a better atmosphere so he can see a bright future ahead. ¹³

- According to the principal of Montgomery Christian School (MCS), parents were extremely appreciative for the opportunity for their children to receive a great education that could help break the cycle of poverty in their lives. She said the Accountability Act will allow even more students to benefit from the educational

¹² Information from Alabama Opportunity Scholarship Fund.

¹³ Information from Alabama Opportunity Scholarship Fund.

opportunities the school provides to the community.¹⁴ MCS is a small school that was started by Trinity Presbyterian Church with the express purpose of serving underprivileged children, primarily African-American and primarily from center-city and western Montgomery. Because of the Alabama Accountability Act, 20 new students were able to attend MCS.

- Lisa Schroeder, Director of Churchill Academy in Montgomery, said that the Alabama Accountability Act has created new opportunities for a slew of new students. "It's had such a wonderful impact. Because of the Alabama Accountability Act, 27 new students were able to attend Churchill Academy. Our kids are special needs kids so they were sometimes not getting all that they might have needed in public school settings and so we have been able to offer them a

¹⁴ Source of information: Kathi Atkins, principal, Montgomery Christian School.

lot more one on one time. It's making a huge, huge difference in their lives."¹⁵

- Drayton Nabers, Jr., Chairman of the Board of Directors of Cornerstone School says: "Cornerstone School is an inner-city Christian school with its original location in the Woodlawn area of Birmingham. Ninety percent of its students are poor by federal guidelines and ninety-eight percent are African American. Its primary school is accredited under the International Baccalaureate standard. Its students score materially higher on standardized tests than comparable students in the Birmingham public schools. In the 2013-2014 school year, Cornerstone had 275 students in pre-school and grades K-5 through 8. As a result of the scholarships provided by the Accountability Act, more than 450 students will be able to enroll in Cornerstone next year and, for the first time in most of their lives, receive a quality education.

¹⁵

www.wsfa.com/story/25637041/parents-teachers-react-to-overturning-of.

Almost all of the additional 175 students will be poor and African American and could not have the advantages of a quality education without tax-credit scholarships. If the AAA is invalidated, the education of hundreds of children at Cornerstone will be in jeopardy. Their fate will be to return to failing Birmingham public schools. Hundreds of parents will be dismayed.”¹⁶

- Jenny McCain, President of Scholarships for Kids reports: “I have spoken with parents across the state who got my phone number from the Department of Revenue’s website. These are parents who are desperate to get their children into the right school for their child’s needs, but who aren’t financially able to make that happen.

The Alabama Accountability Act has brought hope to these parents. Over the past year, Scholarships for Kids has worked to move students off schools’ waiting lists and into the

¹⁶ Source of information: Drayton Nabers, Jr., Chairman, Board of Directors, Cornerstone School.

classrooms. Parents of students who receive scholarships from Scholarships for Kids want the best for their children. Each of these families pay a portion of their child's tuition and the tax credit scholarships provide the balance of the tuition. The parents have skin in the game and are making a real financial sacrifice so that their children can go to the best school for them. These families are willing to do their part."

Mrs. McCain went on to say: "Because of the Alabama Accountability Act, many schools that serve primarily low income students, such as Restoration Academy, Prichard Preparatory School, Cornerstone School, St. Barnabas Catholic School, Lincoln Academy and Montgomery Christian School, just to name a few, are increasing their capacity for the 2014-2105 school year. Many are adding 5 year old kindergarten classes. This is happening because we can provide scholarships. Many of the top academic schools in the state have registered with the Department of Revenue, including schools

such as St. Luke's Episcopal School in Mobile and St. Bernard's Preparatory School in Cullman. Students will attend St. Luke's and St. Bernard's in 2014-2105, life changing opportunities that but for the Alabama Accountability Act would not have been possible."¹⁷

II. EDUCATION LEADERS UNDERSTAND THE POSITIVE IMPACTS OF THE ALABAMA ACCOUNTABILITY ACT AND THE DEVASTATING CONSEQUENCES FOR STUDENTS IF THE ACT IS FOUND UNCONSTITUTIONAL.

Schools and scholarship granting organizations in every part of the state have used the Alabama Accountability Act to create opportunity for many underprivileged students who come from impoverished areas that lack familial, societal, financial and other resources. They understand the devastating consequences for students if the act is found unconstitutional. Many have already expressed their dismay at the decision invalidating the Alabama Accountability Act.

- Nancy Archuleta of Pope John Paul II Catholic School, who worries about the students

¹⁷Scholarships for Kids

who will now be unable to attend, said "We really hurt the children with this. And that is my biggest concern. The minute I heard this, my first thought was, 'Oh, my goodness, we've lied to these children again.'"

- The Black Alliance for Education Options said "The children will lose without educational options. Today's decision puts us right back to where we started, too many students stuck in failing schools."

- In Huntsville, the Rocket City Scholarship Granting Organization launched less than a year ago. Leaders of Rocket City SGO said that they've already raised more than \$10,000 for scholarships. Now, that money is sitting in an account rather than creating opportunity for underserved children in Alabama as the SGO looks at what to do next because of the Court's ruling. "We put in a lot of hours to get this thing set up" said Brad Garland of Rocket City SGO. "To have this kinda put on hold, it's just very frustrating for us."

- An official with the Alabama Opportunity Scholarship Fund said the following:

"I cannot think of another law that does more to break the cycle of poverty, high school drop-out rates, teenage violence, and teenage pregnancy than the Alabama Accountability Act. I have witnessed countless stories, in a span of only a few months, where children's lives have been immediately changed providing them hope where there was none. I've seen examples of parents and grandparents sacrificing because they know a good education is the way out for the children they love so dearly. And I've heard heartbreaking stories of children who are 'falling through the cracks' in overcrowded, stressed public schools.

- Children who have no books to learn from in the new paperless classrooms. When technical problems creep in there are no alternatives.

- Children who find themselves frequently isolated in hallways or principal's offices when teachers feel too stressed or ill equipped to handle their individual needs.

- Children who cried to us because they are bullied verbally and/or physically as teachers look away.

We should not expect our Alabama children to be sacrificed in these types of settings while the adults in education try to figure out how to fix those public schools that are 'broken'. An 8th grade child trying to learn Algebra can't wait around a year or two. There is no time to waste."¹⁸

III. THE INNOVATION PROVISION OF THE ALABAMA ACCOUNTABILITY ACT HAS CREATED OPPORTUNITIES FOR STUDENTS IN SCHOOL SYSTEMS ACROSS ALABAMA.

¹⁸ Alabama Opportunity Scholarship Fund.

The opportunity for innovation provided by the Alabama Accountability Act creates opportunities for Alabama's students. This provision allows local schools to enter into a contract with the State Board of Education to allow for flexibility from certain state laws and regulations in order to encourage innovation and creativity, while promoting the school system's autonomy. A number of public school systems have already experienced success in getting their flexibility applications approved by the State Board.

- The Birmingham City School System applied for flexibility to create a feeder pattern, Pre-K to Grade 12, known as the "Woodlawn Innovation Network." The Network is designed to provide a path for every student to earn up to 60 hours of college credit, an associate degree, or a trade certificate through coordination by teachers, leaders, and community teams in all five schools within the Network. This contract was approved by the State Board.¹⁹

- The Brewton City School System submitted a flexibility proposal to adopt an enrichment model to better

¹⁹ <https://www.alsde.edu/innovations%20applications/forms/allitems.aspx>.

serve intellectually gifted students, as well as underprivileged students who regularly underperform on intellectual evaluations. These students will be given opportunities to participate in units of students and enriching activities that are specifically tailored to their capabilities and interests. This contract was approved by the State Board.²⁰

- Recently, the Baldwin County School System was given approval by the State Board to establish the Digital Renaissance Virtual School as a permanent, stand-alone high school. The purpose of this school is to provide students better suited for independent learning the chance to earn their high school diploma through a flexible, personalized online curriculum.²¹

In each of the aforementioned examples, the local school system recognized a need in their particular community for new programs and expanded opportunities that would uniquely benefit their students and propel them

²⁰ Id.

²¹ Id.

towards their highest potential. Furthermore, schools are recognizing ways to maximize efficiency and reallocate resources to areas with the potential for meaningful impact.

CONCLUSION

The order of the Circuit Court of Montgomery County declaring the Alabama Accountability Act unconstitutional should be reversed. The Act does not violate the Constitution. The Act has one purpose, which is clearly set out in the title, and that is to provide flexibility and create education opportunity both to school boards in Alabama and also to parents of children who are in failing schools. Overturning the Accountability Act will be devastating for thousands of Alabama school children who, for the first time in their lives, have an opportunity for a quality and safe education. This will, in most cases, be their only way out of generational cycles of poverty and hopelessness.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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