

Supreme Court of the State of New York
Appellate Division: Third Department

In the Matter of ELAINE DE VERA, et al.,

Petitioners-Appellants,

-against-

MARYELLEN ELIA, as Commissioner of Education, et al.

Respondents-Appellees.

NOTICE OF UNOPPOSED
MOTION FOR LEAVE
TO APPEAR AS
AMICI CURIAE

Albany County Index No.
1014/2016

PLEASE TAKE NOTICE that, upon the attached affirmation of Victoria Dorfman, dated the 29th day of August, 2016, and the exhibits attached thereto, Achievement First, Brooklyn Charter School, Coney Island Preparatory Public Charter School, Democracy Prep Public Schools, New York City Charter School Center, Public Prep Network, and TFOA Professional Preparatory Charter School will move this Court at the Courthouse, State Street, Room 511, Albany, NY 12223, on the 19th day of September, 2016, at 9:30 a.m., for an order granting leave to appear as Amici Curiae in support of Petitioners-Appellants, and for submission of the enclosed brief and arguments for consideration, and for such other further relief as to the Court may seem just and equitable. This motion is unopposed.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR 2214(b), answering papers, if any, shall be served upon the undersigned counsel at least seven (7) days prior to the return date of this motion.

PLEASE TAKE FURTHER NOTICE that, pursuant to section 800.2(a) of the Rules of this Court, this motion will be submitted on the papers, and the personal appearance of counsel or the parties is neither required nor permitted.

Dated: New York, New York
August 29, 2016

Respectfully submitted,

JONES DAY

BY: _____

Victoria Dorfman
Joshua S. Stillman
250 Vesey Street
New York, NY 10281
(212) 326-3939

*Attorneys for Amici Curiae Achievement
First, Brooklyn Charter School, Coney
Island Preparatory Public Charter School,
Democracy Prep Public Schools, New York
City Charter School Center, Public Prep
Network, and TFOA Professional
Preparatory Charter School*

Supreme Court of the State of New York
Appellate Division: Third Department

In the Matter of ELAINE DE VERA, et al.,

Petitioners-Appellants,

-against-

MARYELLEN ELIA, as Commissioner of Education, et al.,

Respondents-Appellees.

AFFIRMATION OF
VICTORIA DORFMAN
IN SUPPORT OF
UNOPPOSED
MOTION FOR LEAVE
TO APPEAR AS
AMICI CURIAE

Albany County Index No.
1014/2016

VICTORIA DORFMAN, an attorney duly admitted to practice in the courts of the State of New York, affirms pursuant to CPLR 2106 the following under the penalty of perjury:

1. I am a Partner at Jones Day, attorneys for proposed Amici Curiae Achievement First, Brooklyn Charter School, Coney Island Preparatory Public Charter School, Democracy Prep Public Schools, New York City Charter School Center, Public Prep Network, and TFOA Professional Preparatory Charter School. I am familiar with the facts herein. I submit this affirmation in support of Proposed Amici Curiae's motion for leave to appear in this proceeding as Amici Curiae and to submit the brief attached hereto as Exhibit A to aid the Court.

2. Petitioners-Appellants appeal from a CPLR Article 78 proceeding that affirmed an adverse determination of the New York State Commissioner of Education. The Commissioner's decision required Petitioners-Appellants to execute a contract as a condition of payment for offering pre-kindergarten ("Pre-K") education. The NYC Department of Education's 38-page, detailed contract purports to pervasively regulate every facet of the Pre-K charter schools—from the curriculum, to play time, to the use of computers and field trips, to teacher training, and to hours of operation.

3. New York law recognizes that charter school autonomy is a quintessential, indispensable, and defining feature of these institutions—and the Commissioner’s decision unlawfully strips charter schools of the valuable autonomy the law was designed to protect. This issue is of great concern to the Proposed Amici, who are New York City charter schools, charter school management organizations, and charter school advocates, and who stand with Petitioners-Appellants in opposing the decision below, which will infringe on charter school autonomy.

4. Amici bring a unique perspective that will assist this Court in adjudicating the issues underlying this appeal. This case raises important issues of state-wide public interest—issues that are vitally important to New York City and State charter schools, students, parents, and educators.

5. Proposed Amici do not seek to reiterate Success Academies’ strong arguments. Rather, the proposed Amicus Curiae brief explains the unified opposition to the City’s contract by charter schools in New York City; the importance of autonomy to New York public charter schools; and the reasons why New York charter schools value autonomy and the ability to innovate in their curricular offerings, which are infringed by the erroneous decision below.

6. Indeed, Proposed Amicus Brooklyn Charter School has indicated that it wanted to offer Pre-K classes, but declined to do so based on its view that the DOE contract would stifle its autonomy and limit its ability to best serve students. Proposed Amicus Achievement First decided not to proceed with the Pre-K program in light of the DOE’s contract. *See* R. 939-40. Proposed Amicus Democracy Prep has indicated that it declined to offer Pre-K, but stands with Petitioners-Appellants and other Amici to ensure that autonomy remains a central value in New York’s charter schools. Proposed Amicus Public Prep did sign the DOE’s Pre-K

contract, but it believes that the contract is a clear overreach by the DOE, because SUNY is Public Prep's charter entity, not the DOE. *See* R. 936.

7. Counsel for Petitioners-Appellants consented to the filing of the attached Amicus Curiae Brief.

8. Counsel for Respondents-Appellees New York City Department of Education and Board Of Education of the School District of the City Of New York (together, "the City") consented to the filing of the attached Amicus Curiae Brief, on the condition that the brief be served and filed within 10 calendar days of Petitioners-Appellants opening brief.

9. Counsel for Respondent-Appellee MaryEllen Elia, As Commissioner of Education ("the State") also indicated that the State had no objection to the filing attached Amicus Curiae Brief. The State indicated that it reserves the right to respond to any amicus submission, and agreed with the City's proposed time frame for filing the Amicus Curiae Brief.

10. The instant motion and Amicus Curiae Brief have been filed and served within 10 calendar days of the filing of Petitioners-Appellant's opening brief.

11. The instant motion is unopposed.

12. Proposed Amici meet the criteria for submission of an amicus curiae brief. *See New York State Senator Kruger v. Bloomberg*, 1 Misc. 3d 192, 199, 768 N.Y.S.2d 76, 82-83 (Sup. Ct. New York County 2003). This case concerns questions of greatly important, state-wide public interest. The future of New York charter school autonomy and charter school Pre-K will be greatly affected by the Court's ruling—impacting students, parents, educators, and charter schools state-wide. Proposed Amici's participation would draw the Court's attention to law and arguments that might otherwise escape consideration, and their brief would assist the Court in

appreciating the importance of charter school autonomy under New York law and its importance to New York charter schools.

13. Moreover, this application and Proposed Amici's participation will not prejudice any party's rights or delay the proceeding.

14. No previous application has been made to this or any other Court for the relief sought.

WHEREFORE, it is respectfully requested that the motion by Proposed Amici to appear in this proceeding as Amici Curiae and to submit the brief attached hereto be granted in its entirety, along with such other relief that may be just and proper.

Dated: New York, New York
August 29, 2016



Victoria Dorfman

Exhibit A

New York Supreme Court
Appellate Division—Third Department

In the Matter of ELAINE DE VERA, et al.,

Petitioners—Appellants,

— against —

MARYELLEN ELIA, as Commissioner of Education, et al.,

Respondents.

**BRIEF OF AMICI CURIAE ACHIEVEMENT FIRST, BROOKLYN CHARTER
SCHOOL, CONEY ISLAND PREPARATORY PUBLIC CHARTER SCHOOL,
DEMOCRACY PREP PUBLIC SCHOOLS, NEW YORK CITY CHARTER SCHOOL
CENTER, PUBLIC PREP NETWORK, AND TFOA PROFESSIONAL PREPARATORY
CHARTER SCHOOL IN SUPPORT OF PETITIONERS-APPELLANTS**

Victoria Dorfman
Joshua S. Stillman
JONES DAY
250 Vesey Street
New York, NY 10281
212-326-3939
vdorfman@jonesday.com
jstillman@jonesday.com

Counsel for Amici Curiae

TABLE OF CONTENTS

	Page
ARGUMENT	1
I. AMICI SUPPORT PETITIONERS-APPELLANTS' POSITION.....	1
II. AUTONOMY ALLOWS CHARTER SCHOOLS TO THRIVE.....	3
A. Autonomy Is An Indispensable Characteristic Of Charter Schools.....	4
1. Charter Schools Grew Out of A Need For Innovation in Primary Education	4
2. Autonomy is a defining feature of charter schools under New York law.....	6
B. Autonomy Enables Charter Schools To Develop Innovative Educational Approaches To Successfully Serve A Variety Of Students.....	8
III. THE SUPREME COURT DISREGARDED THE IMPORTANCE OF CHARTER SCHOOL AUTONOMY UNDER NEW YORK LAW	11
A. The Supreme Court Wrongly Relied on The Fact That Some Charter Schools Have Signed The DOE's UPK Contract	11
B. The Supreme Court Ignored The Legislature's Clear Intent To Perpetuate Charter School Autonomy In Pre-K Programs	12
IV. AUTONOMY IS CRUCIALLY IMPORTANT TO AMICI	15
CONCLUSION.....	19

TABLE OF AUTHORITIES

	Page
 CASES	
<i>Bd. of Educ. of Roosevelt Union Free Sch. Dist. v. Bd. of Trust. of SUNY</i> , 185 Misc. 2d 704 (2000), <i>aff'd as modified</i> , 282 A.D.2d 166 (3d Dep't 2001)	5
<i>Idea Public Charter Sch. v. Belton</i> , No. 05-467, 2006 WL 667072 (D.D.C. Mar. 15, 2006)	8
<i>In re 1999-2000 Abbott v. Burke Implementing Regulations</i> , 348 N.J. Super. 382, 792 A.2d 412 (App. Div. 2002)	7, 8
<i>In re Grant of the Charter Sch. Application of Engelwood on the Palisades Charter Sch.</i> , 164 N.J. 316, 753 A.2d 687 (2000).....	7, 8
<i>Int'l High Sch.: A Charter Sch. at LaGuardia Cmty. Coll. v. Mills</i> , 276 A.D.2d 165 (3d Dep't 2000)	7, 8
<i>New York Charter Sch. Ass'n, Inc. v. DiNapoli</i> , 13 N.Y.3d 120, 914 N.E.2d 991 (2009).....	5, 7
<i>New York Charter Sch. Ass'n v. Smith</i> , 15 N.Y.3d 403, 940 N.E.2d 522 (2010).....	6
<i>Patterson Park Pub. Charter Sch., Inc. v. Balt. Teachers Union</i> , 399 Md. 174, 923 A.2d 60 (2007)	8
<i>Racine Charter One, Inc. v. Racine Unified Sch. Dist.</i> , 424 F.3d 677 (7th Cir. 2005)	8
<i>Riley v. Cnty. of Broome</i> , 95 N.Y.2d 455 (2000)	13
<i>Waters of Life Local Sch. Bd. v. Charter Sch. Rev. Panel</i> , 126 Haw. 183, 268 P.3d 436 (Ct. App. 2011)	8
 STATUTES	
2006 Haw. Sess. Laws Act 298 § 1	8
N.Y. Educ. Law Art. 56	passim

N.Y. Educ. Law § 2850(2).....	2, 7
N.Y. Educ. Law § 2853	2, 6
N.Y. Educ. Law § 2854(1).....	2, 13
N.Y. Educ. Law § 3602-ee.....	passim
N.Y. Stat. § 236.....	13

OTHER AUTHORITIES

ACHIEVEMENT FIRST, <i>The Achievement First Approach: Curriculum and Instruction</i> , http://www.achievementfirst.org/our-approach/curriculum-and-instruction/	16
Benjamin Michael Superfine, <i>Stimulating School Reform: The American Recovery and Reinvestment Act and the Shifting Federal Role in Education</i> , 76 MO. L. REV. 81 (2011)	4
BROOKLYN CHARTER SCHOOL, <i>About BCS</i> , http://brooklyncharter.org/about/our-proven-approach/	18
Clifford J. Levy, <i>Senate Passes Charter Plan For Schools</i> , N.Y. TIMES, Dec. 18, 1998, http://www.nytimes.com/1998/12/18/nyregion/senate-passes-charter-plan-for-schools.html	7
CONEY ISLAND PREP, 2014-2015 Annual Report (2015), http://coneyislandprep.org/storage/2014-15_Annual_Report.pdf	16
CONEY ISLAND PREP, <i>Academics</i> , http://coneyislandprep.org/about-us/academics	16
CONEY ISLAND PREP, <i>FAQs</i> , http://coneyislandprep.org/about-us/faqs	16
CTR. FOR RESEARCH ON EDUC. OUTCOMES, URBAN CHARTER SCHOOL STUDY REPORT ON 41 REGIONS (2015)	5, 6
Dana Brinson & Jacob Rosch, THOMAS B. FORDHAM INSTITUTE, <i>Charter School Autonomy: A Half-Broken Promise</i> 5 (2010), http://edex.s3-us-west-2.amazonaws.com/publication/pdfs/Charter%20School%20Autonomy%20-%20May%202010_8.pdf	4
DEMOCRACY PREP, <i>Approach</i> , http://democracyprep.org/about/approach	18

Edwin Cespedes, <i>My Son Got a Chance; Your Child Should Too</i> , N.Y. DAILY NEWS, Oct. 7, 2015, http://www.nydailynews.com/opinion/edwin-cespedes-son-chance-child-article-1.2387758	10
James D. Merriman, <i>De Blasio’s Charter School Envy: His PROSE Schools Show Why We Need To Lift The Cap On Innovative New Educational Models</i> , N.Y. DAILY NEWS, MAY 29, 2015, http://www.nydailynews.com/opinion/james-merriman-de-blasio-charter-school-envy-article-1.2239414	10
James D. Merriman, <i>The Facts Are In: NYC’s Charter Schools Are a Smashing Success</i> , N.Y. POST, Mar. 11, 2016, http://nypost.com/2016/03/11/the-facts-are-in-nycs-charter-schools-are-a-smashing-success/	9, 16
Kevin S. Huffman, <i>Charter Schools, Equal Protection Litigation, and the New School Reform Movement</i> , 73 N.Y.U. L. REV. 1290 (1998).....	4
Leslie Brody, <i>City Wins a Round in Charter Dispute</i> , WALL ST. J., Jun. 15, 2016	12
N.Y.C. DEP’T OF EDUC., N.Y.C. CHARTER SCHOOL DIRECTORY 2016-2017 (2016)	6
N.Y.S. Educ. Dep’t, Charter School Office, <i>2015-2016 Approved New York State Charter Schools</i> , http://www.p12.nysed.gov/psc/csdirectory/CSLaunchPage.html (last visited Jul. 11, 2016).....	6
NAT’L CTR. FOR EDUC. STATS, U.S. DEP’T OF EDUC., <i>THE CONDITION OF EDUCATION: 2016</i> (2016)	5
Nicole Nielson, <i>Comparable Populations and Charter Schools in New York State: Autonomy and Accountability?</i> , 4 ALB. GOV’T L. REV. 562 (2011).....	4
NYC CHARTER SCHOOL CENTER, <i>The State of the NYC Charter School Sector</i> (2012), http://c4258751.r51.cf2.rackcdn.com/state-of-the-sector-2012.pdf	8, 9
NAT’L ALLIANCE. FOR PUB. CHARTER SCHS., <i>The Health of the Charter Public School Movement: A State-by-State Analysis</i> (Mar. 2016), http://www.publiccharters.org/wp-content/uploads/2016/03/Health-of-the-Movement_2016.pdf	10

NEW YORK CITY INDEPENDENT BUDGET OFFICE, NEW YORK STATE STUDENT ACHIEVEMENT TEST RESULTS: NEW YORK CITY PUBLIC SCHOOLS NO LONGER LAG BEHIND REST OF THE STATE 3 (2016), <a href="http://www.ibo.nyc.ny.us/iboreports/new-york-state-student-achievement-test-
results-new-york-city%20-public-schools-no-longer-lag-rest-of-state.pdf">http://www.ibo.nyc.ny.us/iboreports/new-york-state-student-achievement-test- results-new-york-city%20-public-schools-no-longer-lag-rest-of-state.pdf	6
Paul E. Peterson, <i>Post-Regulatory School Reform</i> , HARVARD MAGAZINE (Sept.-Oct. 2016)	9-10
PUBLIC PREP, <i>What Makes Public Prep Academies Special</i> , http://www.publicprep.org/page.cfm?p=1321	14
Robert J. Martin, <i>Rigid Rules for Charter Schools: New Jersey As A Case Study</i> , 36 RUTGERS L.J. 439 (2005)	4
<i>Success Academy Families Fight Back at Threat to High-Quality Pre-K</i> , SUCCESS ACADEMY CHARTER SCHOOLS (Oct. 29, 2015), <a href="http://www.successacademies.org/press-releases/success-academy-families-
fight-back-at-threat-to-high-quality-pre-k/#sthash.8Q0VXu0Z.Uvd8g84h.dpuf">http://www.successacademies.org/press-releases/success-academy-families- fight-back-at-threat-to-high-quality-pre-k/#sthash.8Q0VXu0Z.Uvd8g84h.dpuf	10, 11
TFOA PROFESSIONAL PREPARATORY CHARTER SCHOOL, <i>Homepage</i> , http://tfoaprofessionalprep.org/	17

PRELIMINARY STATEMENT AND INTEREST OF AMICI CURIAE

Amici Curiae are New York City charter schools, charter school management organizations, and charter school advocates. They stand with Petitioners-Appellants in asking the court to reverse the Supreme Court’s erroneous determination that the New York City Department of Education (“NYC DOE” or “DOE”) may require charter schools that wish to offer prekindergarten classes (“Pre-K”) to sign a 38-page, detailed contract that pervasively regulates every facet of the Pre-K offered by charter schools. The Supreme Court’s decision is contrary to New York law, which recognizes that charter school autonomy is an indispensable and defining feature of these institutions. Here, the Supreme Court ignored the Legislature’s clear intent to perpetuate charter school autonomy in Pre-K programs. Its erroneous decision will substantially impede charter schools’ ability to participate in the statewide Pre-K program. In fact, two Amici decided not to proceed with their plans to offer Pre-K in significant part because of the DOE’s unlawful contract, and one Amicus that signed the contract has had their curricular decisions restrained by the restrictive contract. Amici submit this brief to express the importance of charter school autonomy from local school districts—both to charter schools generally and to Amici specifically. Amici urge the Court to grant the relief requested by Petitioners-Appellants.

ARGUMENT

I. AMICI SUPPORT PETITIONERS-APPELLANTS’ POSITION

The undersigned stand together with Petitioners-Appellants in urging this Court to correct the erroneous interpretation of New York Education Law § 3602-ee (the “UPK statute”) reached by the New York State Commissioner of Education (the “Commissioner”) and upheld by the Supreme Court in the Article 78 proceeding below. As Petitioners-Appellants demonstrate in their briefing, autonomy from local school district oversight is enshrined in both the Charter

Schools Act and in the UPK statute. *See* Brief of Petitioners-Appellants (hereinafter “Brief”) at 7-10, 26-27, 32-25, 37. Indeed, the opening sentence of the Charter Schools Act declares that the Act’s purpose is “to authorize a system of . . . schools that operate independently of existing schools and school districts.” N.Y. Educ. Law § 2850(2).

The Legislature vested oversight of Success Academy and all charter schools with the charter school’s charter authorizer (or “charter entity”) and the Board of Regents, rather than with local school districts, deeming such oversight “sufficient to ensure that the charter school is in compliance with all applicable laws, regulations and charter provisions.” *Id.* § 2853(2); *id.* § 2854(2)(c). For Success Academy, this charter authorizer is the State University of New York (“SUNY”). While requiring charter schools to “meet the same health and safety, civil rights, and student assessment requirements applicable to other public schools,” the Legislature nonetheless exempted them “from *all other* state and local laws, rules, regulations or policies governing public or private schools, boards of education, school districts and political subdivisions, including those relating to school personnel and students, except as specifically provided in the school’s charter or in this article.” *Id.* § 2854(1)(b) (emphasis added).

In 2014, the Legislature extended charter school programs to include Pre-K, and it did so with the express purpose of “incentiviz[ing] and fund[ing] state-of-the-art innovative prekindergarten programs and . . . encourag[ing] program creativity through competition.” *Id.* § 3602-ee(1). Not surprisingly, as with other charter school programs, the Legislature again vested oversight with a charter school’s charter authorizer. *See id.* § 2854(1)(b)-(2)(c); § 3602-ee (12).

Despite the UPK statute vesting oversight of the Pre-K program with the charter authorizer, charter schools in New York City wishing to offer Pre-K, such as Success Academy, were required to sign a 38-page contract with DOE prior to receiving funding for the program. This contract purports to regulate every facet of charter school Pre-K—from the curriculum, to

play time, to the use of computers and field trips, to teacher training, and to hours of operation. *See* Brief at 14-15 (citing R. 1247-50, 1260-61). As Petitioners-Appellants explain, this contract is flatly inconsistent with numerous provisions of the New York Education Law. *See* Brief at 25-40. And as shown below, New York law recognizes that charter school autonomy is an indispensable and defining feature of these institutions. The DOE's contract would encroach upon the charter autonomy that such provisions were expressly designed to protect, in violation of the statutory construct for Pre-K oversight.

The undersigned include various New York charter schools, charter school management organizations, and the New York City Charter School Center. Amici urge this Court to reverse the Supreme Court's erroneous decision, which applied the wrong standard of review in upholding the Commissioner's decision, ignored the plain language of the statute, and is inconsistent with charter school autonomy provided for in New York law. If this decision is not overturned, it will substantially impede charter schools' ability to participate in the statewide Pre-K program, as one Amicus is already restricted by the contract and two Amici decided not to proceed with their plans to offer Pre-K in significant part because of this unlawful contract.

II. AUTONOMY ALLOWS CHARTER SCHOOLS TO THRIVE

The defining feature of a charter school is the autonomy and independence from the traditional public school bureaucracy to experiment, innovate, and devise new methods to improve students' educational outcomes, while remaining accountable to the charter authorizer. As shown in Part I and as amply demonstrated by the Petitioners-Appellants, this is precisely what New York charter school legislation establishes. As a result, charter schools excel in innovative and successful approaches to education, including of students of need and underserved children.

A. Autonomy Is An Indispensable Characteristic Of Charter Schools

1. *Charter Schools Grew Out of A Need For Innovation in Primary Education*

“[T]he charter concept has been described as ‘simple but powerful’: a method of offering school choice in public education without the typical micromanagement by government bureaucracies.” Robert J. Martin, *Rigid Rules for Charter Schools: New Jersey As A Case Study*, 36 RUTGERS L.J. 439, 442 (2005) (citation omitted). Unlike other public schools, charter schools “receive considerably more autonomy from state and local regulation in terms of student recruitment, curriculum, budget, and staffing.” Kevin S. Huffman, *Charter Schools, Equal Protection Litigation, and the New School Reform Movement*, 73 N.Y.U. L. REV. 1290, 1291 (1998). Charter schools are “granted autonomy to operate outside of traditional school frameworks in exchange for higher levels of accountability” regarding “student performance [and] transparency of operations.” Nicole Nielson, *Comparable Populations and Charter Schools in New York State: Autonomy and Accountability?*, 4 ALB. GOV’T L. REV. 562, 569 (2011). “[T]he point of charter schooling is autonomy as an enabling condition for greater educational effectiveness.” Dana Brinson & Jacob Rosch, THOMAS B. FORDHAM INSTITUTE, *Charter School Autonomy: A Half-Broken Promise* 5 (2010);¹ see also Benjamin Michael Superfine, *Stimulating School Reform: The American Recovery and Reinvestment Act and the Shifting Federal Role in Education*, 76 MO. L. REV. 81, 117 (2011) (the goal is to “decentraliz[e] authority away from unresponsive, centralized bureaucracies to schools and neighborhoods in order to increase teacher autonomy and ultimately efficiency”).

¹ Available at http://edex.s3-us-west-2.amazonaws.com/publication/pdfs/Charter%20School%20Autonomy%20-%20May%202010_8.pdf.

In 1991, Minnesota became the first of 42 states and the District of Columbia to broaden educational options by passing charter school legislation. *See* NAT'L CTR. FOR EDUC. STATS, U.S. DEP'T OF EDUC., THE CONDITION OF EDUCATION: 2016, at 78 (2016). Charter school enrollment has increased substantially in the intervening years. 6,500 charter schools operated nationwide as of 2014. *See id.* From 2003 to 2014, public charter school enrollment nationwide increased from 0.8 million to 2.5 million. *Id.* at 79. During this period, the percentage of public school students attending charter schools increased from 1.6 to 5.1 percent. *Id.*

Studies demonstrate that charter schools have utilized their autonomy from public school bureaucracies to outperform traditional public schools. For example, urban charter school programs provide roughly 40 additional learning days of math and 28 additional learning days of reading per year. *See* CTR. FOR RESEARCH ON EDUC. OUTCOMES, URBAN CHARTER SCHOOL STUDY REPORT ON 41 REGIONS v (2015). Urban charter schools thus generally “provide significantly higher levels of annual growth in both math and reading” than traditional public schools, and “gains for charter-school students are larger by significant amounts for Black, Hispanic, low-income, and special education students in both math and reading.” *Id.*

Recognizing the value of charter schools and the opportunities they afford for a diverse assortment of students, the New York State Legislature passed the New York Charter Schools Act of 1998. N.Y. Educ. Law Art. 56; *New York Charter Sch. Ass’n, Inc. v. DiNapoli*, 13 N.Y.3d 120, 123, 914 N.E.2d 991, 992 (2009). The express goal of the Charter Schools Act was to allow “teachers, parents and community members [to] establish and maintain schools that operate independently of existing schools and school districts.” *Bd. of Educ. of Roosevelt Union Free Sch. Dist. v. Bd. of Trust. of SUNY*, 185 Misc. 2d 704, 706 (2000), *aff’d as modified*, 282 A.D.2d 166 (3d Dep’t 2001). The “entire thrust” of the Act is to “provide charter schools with

autonomy from the rules and regulations of existing schools and school districts,” *id.* at 708, thereby allowing them the freedom to innovate, experiment, and thrive.

Charter schools are an important—and highly successful—component of New York’s current approach to educating children. As of February 2016, 287 charter schools are approved to educate the youth of New York State. *See* N.Y.S. Educ. Dep’t, Charter School Office, *2015-2016 Approved New York State Charter Schools*.² 221 of these schools will operate within the five boroughs of New York City in the 2016-2017 school year. *See* N.Y.C. DEP’T OF EDUC., N.Y.C. CHARTER SCHOOL DIRECTORY 2016-2017 i (2016). According to a study conducted by an academic center at Stanford University, New York City charter schools “stand out for providing positive gains for their students in both math and reading and serving a student body with achievement equal to or higher than the average achievement within their state.” URBAN CHARTER SCHOOL STUDY REPORT ON 41 REGIONS, at 16. Recently, the New York City Independent Budget office released a study showing that, when controlling for student demographics, New York charter schools outperform schools in the rest of the state by 18.8 percentage points in LEA and 30.1 percentage points in math. *See* NEW YORK CITY INDEPENDENT BUDGET OFFICE, NEW YORK STATE STUDENT ACHIEVEMENT TEST RESULTS: NEW YORK CITY PUBLIC SCHOOLS NO LONGER LAG BEHIND REST OF THE STATE 3 (2016).³

2. *Autonomy is a defining feature of charter schools under New York law.*

“The Legislature created charter schools as ‘independent and autonomous public school[s].’” *New York Charter Sch. Ass’n v. Smith*, 15 N.Y.3d 403, 409-10, 940 N.E.2d 522, 525 (2010) (quoting Education Law § 2853(1)) (emphasis omitted). This legislation was

² Available at <http://www.p12.nysed.gov/psc/csdirectory/CSLaunchPage.html> (last visited Jul. 11, 2016).

³ Available at <http://www.ibo.nyc.ny.us/iboreports/new-york-state-student-achievement-test-results-new-york-city%20public-schools-no-longer-lag-rest-of-state.pdf>.

designed “to provide opportunities for teachers, parents, and community members to establish and maintain schools that operate independently of existing schools and school districts.”

DiNapoli, 13 N.Y.3d at 123, 914 N.E.2d at 992 (internal quotation marks omitted). Its animating idea was that “children and educators have a better chance of thriving if they are freed from local educational bureaucracies that . . . can stifle innovation.” Clifford J. Levy, *Senate Passes Charter Plan For Schools*, N.Y. TIMES, Dec. 18, 1998, at B1.⁴ Thus, charter schools “are, with limited exceptions, exempt from all laws and regulations typically imposed upon public schools.” *Int’l High Sch.: A Charter Sch. at LaGuardia Cmty. Coll. v. Mills*, 276 A.D.2d 165, 169 (3d Dep’t 2000). While allowing charter schools substantial autonomy and freedom, the law ensures that they remain “accountable for meeting measurable student achievement results,” N.Y. Educ. Law § 2850(2)(f), and vests the charter school’s authorizer or “charter entity” with oversight responsibility.

New York is not alone—other states have likewise recognized the importance of charter school autonomy. While charter schools are creatures of state statutes and the specific terms of their operations vary, there is a consistent theme running through court opinions addressing such schools—that autonomy is an indispensable feature of charter schools. In New Jersey, the “underpinning to the charter school movement was to foster ‘an alternative vision for schooling’ and . . . the desire to gain autonomy from State or district regulation.” *In re 1999-2000 Abbott v. Burke Implementing Regulations*, 348 N.J. Super. 382, 440, 792 A.2d 412, 447 (App. Div. 2002). As the Supreme Court of New Jersey has recognized, charter schools are defined by the fact that they have “more autonomy than other public schools in staffing, curriculum and spending choices.” *In re Grant of the Charter Sch. Application of Engelwood on the Palisades Charter*

⁴ Available at <http://www.nytimes.com/1998/12/18/nyregion/senate-passes-charter-plan-for-schools.html>.

Sch., 164 N.J. 316, 320, 753 A.2d 687, 689 (2000). New Jersey courts have recognized that imposing onerous regulatory standards on charter schools threatens to “erode the schools’ autonomy and flexibility to offer ‘innovative learning methods’ and ‘educational choices’ and their ability to ‘establish a new form of accountability for schools.’” *In re 1999-2000 Abbott*, 348 N.J. Super. At 440, 792 A.2d at 447.⁵

B. Autonomy Enables Charter Schools To Develop Innovative Educational Approaches To Successfully Serve A Variety Of Students

Charter school autonomy is essential because the schools “are encouraged to devise highly innovative teaching methods to foster opportunities for students to actualize their potential while providing community members a choice of education alternatives” *Mills*, 276 A.D.2d at 167. “Charter schools control their own lessons, budgets, staff, schedules, and culture, with an autonomy no district school enjoys.” NYC CHARTER SCHOOL CENTER, *The State of the NYC Charter School Sector*, at 12 (2012).⁶ “This flexibility makes the charter school sector a place for new educational ideas to be tried, and for existing ideas to be applied, refined, and re-combined.” *Id.*

Charter schools are “philosophically diverse,” and have used their autonomy to institute a variety of creative and exciting educational and student-support practices. *Id.* Just some

⁵ See also, e.g., *Waters of Life Local Sch. Bd. v. Charter Sch. Rev. Panel*, 126 Haw. 183, 187, 268 P.3d 436, 440 (Ct. App. 2011) (explaining that Hawaii’s charter school legislation “empowers local school boards and their charter schools by allowing more autonomy and flexibility”) (quoting 2006 Haw. Sess. Laws Act 298, § 1 at 1200); *Idea Public Charter Sch. v. Belton*, No. 05-467, 2006 WL 667072, at *2 (D.D.C. Mar. 15, 2006) (explaining that D.C. Public Charter Schools are granted ““more autonomy over their administration, operations and expenditures””); *Patterson Park Pub. Charter Sch., Inc. v. Balt. Teachers Union*, 399 Md. 174, 178-79, 923 A.2d 60, 63 (2007) (explaining that the “Federal Charter School Program” provides financial assistance only to states that “grants the[ir] charter schools autonomy over their budget and expenditures.”); *Racine Charter One, Inc. v. Racine Unified Sch. Dist.*, 424 F.3d 677, 682 (7th Cir. 2005) (emphasizing charter schools’ administrative autonomy).

⁶ Available at <http://c4258751.r51.cf2.rackcdn.com/state-of-the-sector-2012.pdf>.

examples include: use of a “rooftop greenhouse” to teach “environmental stewardship”; field trips to learn about the history of the civil rights movement; civics education including student-run get-out-the-vote campaigns; Japanese language instruction; a mock doctor’s office for students with special needs to practice social interaction; robot-building enrichment activities; healthier lunch options for students; and the provision of free legal and mental health services to at-risk students. *Id.* at 12-13. Many charter schools “operate with a longer school day” that provides students with substantial “additional instruction”—which allows, for example, one charter school’s kindergarteners to complete 135 science experiments over the course of a year. *Id.* at 12.

Granting charter schools the autonomy to innovate and thrive has paid off for students: a recent study found that “New York City charter students outperform their district peers by significant margins.” James D. Merriman, *The Facts Are in: NYC’s Charter Schools Are a Smashing Success*, N.Y. POST, Mar. 11, 2016.⁷ As Paul E. Peterson, Henry Lee Shattuck Professor of Government at Harvard University, Director of the Program on Education Policy and Governance, Senior Editor of *Education Next*, and Senior Fellow at the Hoover Institution, explained, “studies regularly reveal [that central-city charter schools] are outperforming their traditional public-school counterparts.” Paul E. Peterson, *Post-Regulatory School Reform*, HARVARD MAGAZINE (Sept.-Oct. 2016).⁸ Charter schools such as “Success Academy” and “others in New York City” are achieving “spectacular results.” *Id.*

Charter schools also utilize their autonomy to successfully serve a diverse student body. Charter schools in New York City and other prominent cities provide a “particularly striking

⁷ Available at <http://nypost.com/2016/03/11/the-facts-are-in-nycs-charter-schools-are-a-smashing-success/>.

⁸ Available at <http://harvardmagazine.com/2016/09/post-regulatory-school-reform>.

[advantage] for African-American students from low-income families,” and have the “ability to lift students who come from low-income, single-parent families to a high level of performance that prepares them for college.” *Id.* “[C]urrently, for many low-income black and Latino students, charter schools are the only realistic alternative to underperforming public schools.” Edwin Cespedes, *My Son Got a Chance; Your Child Should Too*, N.Y. DAILY NEWS, Oct. 7, 2015.⁹ In fact, in 2013-14, charter public schools in New York served a significantly higher percentage of racial and ethnic minority students (42 percentage points more) and of free- and reduced-price lunch students (28 percentage points more) compared to traditional public schools. NAT’L ALLIANCE FOR PUB. CHARTER SCHS., *The Health of the Charter Public School Movement: A State-by-State Analysis* at 118 (Mar. 2016).¹⁰

Moreover, charter schools’ autonomy and related ability to innovate benefit not only their students, but the public school system as a whole. One of the reasons “[c]harters should continue to open and innovate [is] because they are bringing fresh ideas for improving achievement to a once-stagnant public school system.” James D. Merriman, *De Blasio’s Charter School Envy: His PROSE Schools Show Why We Need To Lift The Cap On Innovative New Educational Models*, N.Y. DAILY NEWS (May 29, 2015).¹¹

Autonomy to innovate is especially essential in Pre-K, and state law was changed specifically to allow charters to provide Pre-K classes. N.Y. Educ. Law § 3602-ee(12). The charter school community in New York City was excited “to offer Pre-K classes to give children from underserved communities an early start on their education.” *See Success Academy Families*

⁹ Available at <http://www.nydailynews.com/opinion/edwin-cespedes-son-chance-child-article-1.2387758>.

¹⁰ Available at http://www.publiccharters.org/wp-content/uploads/2016/03/Health-of-the-Movement_2016.pdf.

¹¹ Available at <http://www.nydailynews.com/opinion/james-merriman-de-blasio-charter-school-envy-article-1.2239414>.

Fight Back at Threat to High-Quality Pre-K, SUCCESS ACADEMY CHARTER SCHOOLS (Oct. 29, 2015).¹²

The enthusiasm for charter Pre-K programs was, however, quickly dampened by the proposed DOE contract: “‘We were thrilled as a public charter school to finally be given the right to run a high-quality UPK, and bring all the innovations to enhance the education of young learners,’ said Ian Rowe, CEO of Amici Public Prep charter school network. ‘But this contract, including provisions such as mandated curriculum or limited exposure to technology, suppresses the very innovations our kids need to thrive.’” *Id.*

III. THE SUPREME COURT DISREGARDED THE IMPORTANCE OF CHARTER SCHOOL AUTONOMY UNDER NEW YORK LAW

The Supreme Court committed two fundamental errors when considering the importance of autonomy to New York’s charter schools. First, the Supreme Court placed undue value on the DOE’s statement that Success Academy was the only one of the thirteen charter schools offering Pre-K that has not signed the DOE contract. Second, although the Supreme Court briefly acknowledged in passing that autonomy is important to charter schools, the Court failed to see that the Legislature has mandated charter school autonomy not only in grades K-12, but also in Pre-K. Contrary to the Supreme Court’s erroneous conclusion, the fact that some charter schools have capitulated to the DOE’s terms does not somehow transform an unlawful contract that tramples on the charter school autonomy protected by New York law into a lawful one.

A. The Supreme Court Wrongly Relied on The Fact That Some Charter Schools Have Signed The DOE’s UPK Contract.

The Supreme Court noted that 13 charter schools in New York City participate in the Pre-K program. These 13 schools have accepted the terms of the DOE contract, according to the

¹² Available at <http://www.successacademies.org/press-releases/success-academy-families-fight-back-at-threat-to-high-quality-pre-k/#sthash.8Q0VXu0Z.Uvd8g84h.dpuf>.

City Respondents-Appellees. *See* R. 26, 2710, 2781. But plainly, the mere fact that 13 schools—out of the City’s 221 charter schools—have acquiesced to an otherwise unlawful contract does not mean that the contract is, in fact, legal. Nor does it mean that all other charter schools must accept the DOE’s unlawful contract as the price of offering Pre-K programs. Amici represent the numerous charter schools that do protest the terms of the DOE contract and who refuse to sign away their autonomy in order to offer Pre-K programs. Indeed, because Success Academy was forced not to offer Pre-K during the 2016-2017 year as a result of the Supreme Court’s erroneous decision,¹³ it now stands in the same shoes as those Amici that have had to forego plans to offer Pre-K as a result of the DOE’s onerous and unlawful contract. All Amici stand with Success Academy in protesting the DOE’s unlawful contract that violates the Legislature’s mandate that charter schools offering Pre-K must maintain their autonomy.

B. The Supreme Court Ignored The Legislature’s Clear Intent To Preserve Charter School Autonomy In Pre-K Programs.

As Petitioners-Appellants ably demonstrate, the plain meaning of subsection 12 is that charter schools enjoy the same autonomy in offering Pre-K programs that they do in their K-12 offerings. *See* Brief at 25-35, 37. The Supreme Court erred when it found that “[t]he fact that the Legislature included subsection 12 rather than simply amend the Charter Schools Act found at Education Law Article 56, is a telling decision.” R. 25.

The plain text of subsection 12 and the structure of the New York Education Law demonstrate why this is erroneous. The statute authorizing universal Pre-K programs, N.Y. Educ. Law § 3602-ee, did not abandon the autonomy that the Legislature has granted to charter schools in New York. Rather, the section maintains charter school autonomy through the very use of the term “charter school.” The term “charter school” is not defined in the law authorizing

¹³ *See* Leslie Brody, *City Wins a Round in Charter Dispute*, WALL ST. J., Jun. 15, 2016, at A17.

Pre-K programs in New York. Nor is the term defined in Article 72, which governs the Appropriation of Public Monies for education.

Instead, the Legislature imported charter school autonomy, which it had enshrined in N.Y. Educ. Law Art. 56, into § 3602-ee. The statutes within Article 56 create, authorize, and describe the roles, responsibilities, rights, and limitations of charter schools. This statutorily-granted autonomy defines “charter schools” under New York law and is consistent with the everyday use of the term. *See supra* at 6-8. Therefore, use of the term “charter school” in a section that does not otherwise define the term must incorporate the meaning of the term as defined by the charter school statutory scheme. *See* N.Y. Stat. § 236; *Riley v. Cnty. of Broome*, 95 N.Y.2d 455 (2000) (“As a general principle of statutory construction, ‘whenever a word is used in a statute in one sense and with one meaning, and subsequently the same word is used in a statute on the same subject matter, it is understood as having been used in the same sense.’”).

Subsection 12’s explicit references to Education Law § 2854(1) bolster this conclusion. Section 3602-ee(12) states that “[n]otwithstanding paragraph (a) of subdivision one of section twenty-eight hundred fifty-four of this chapter and paragraph (c) of subdivision one of section twenty-eight hundred fifty-four of this chapter, charter schools shall be eligible to participate in universal full-day pre-kindergarten programs under this section” Section 2854 is one of the sections within Article 56. The Legislature used § 3602-ee(12) to authorize charter schools to offer Pre-K. In the process, the Legislature referred explicitly to Article 56 and did nothing to change the definition of the term “charter school.” This is further evidence of the Legislature preserving charter school autonomy.

Subsection 12’s second reference to Article 56 further underscores charter schools’ autonomy. Subsection 12 provides that “monitoring, programmatic review and operation requirements *under this section* shall be the responsibility of the charter entity and *shall be*

consistent with the requirements under article fifty-six of this chapter.” Subsection 12 (emphasis added). Under this section, oversight of charter schools offering Pre-K has two components. First, the Legislature vested the responsibility to oversee charter schools’ Pre-K programs in “the charter entity.” *Id.* Second, the Legislature clearly stated that “monitoring, programmatic review and operation requirements . . . shall be consistent with the requirements” of Article 56. *Id.* As demonstrated above, the core purpose of Article 56 is to create *autonomous* charter schools. This cross-reference to Article 56 confirms that the Legislature intended § 3602-ee to import the concept of a charter school as an autonomous institution.

Importantly, the Legislature used the phrase “under this section” when granting oversight authority to charter entities in subsection 12. This reservation of authority to charter entities thus applies to *all* of § 3602-ee. The Legislature chose not to use a term such as “subdivision” (as it did in the very next sentence of subsection 12), further demonstrating its intent to import the charter school autonomy underlying Article 56 into charter school Pre-K programs. The fact that the Legislature included two additional provisions in subsection 12 that govern Pre-K applications and teacher certification requirements does not contradict legislative intent to maintain Article 56’s autonomy provisions in § 3602-ee. In fact, the specification of certain requirements that charter schools must follow when offering Pre-K programs is consistent with the state’s broader charter school statutory scheme, which provides certain guidelines that charter schools and their charter entities must follow while still preserving their autonomy in all other aspects.

For these reasons, the Supreme Court clearly erred in its interpretation of § 3602-ee. Contrary to its conclusion that the amendment of this section—rather than Article 56—was “telling,” [Sup. Ct. at 23], the plain text of the section demonstrates the Legislature’s intent to maintain the autonomy that charter schools enjoy and that allows them to

design innovative and successful educational programs. Autonomy is a fundamental principle in both the law and the practice of charter schools in New York. The Legislature recognized this and has applied the principle throughout the N.Y. Education Law—but the Supreme Court’s erroneous decision ignores this.

IV. AUTONOMY IS CRUCIALLY IMPORTANT TO AMICI

For each of the undersigned Amici, autonomy is vitally important. They have used that autonomy to innovate, experiment, and thrive in their own unique ways. They stand united with Petitioners-Appellants in defending charter school autonomy.

Amicus Public Prep Network offers single-sex education through three schools that operate on five campuses, as well as a co-educational Pre-K program. *See PUBLIC PREP, What Makes Public Prep Academies Special.*¹⁴ Autonomy allows Public Prep to offer unique programming at each of its locations. Across the network, the schools offer daily science education and immerse students in arts programming in pursuit of the school’s core values of community, merit, responsibility, and scholarship. The schools have a particular emphasis on STEM (science, technology, engineering, and mathematics) education, which has resulted in their scholars’ exceptional performance on the state science exam. Public Prep did sign the DOE’s Pre-K contract, but it believes that the contract is a clear overreach by the DOE, because SUNY is Public Prep’s charter entity, not the DOE. *See* R. 936, at ¶¶ 5-6 (affidavit of Tiffany Liston). One example of this overreach affecting Public Prep’s programming is that the DOE’s contract limits the amount of screen time that Pre-K students can have, which cuts into Public Prep’s media-enhanced curriculum.

Amicus the New York City Charter School Center believes strongly that the DOE’s contract, whether intentionally or not, has the potential to stifle the autonomy of charter schools.

¹⁴ Available at <http://www.publicprep.org/page.cfm?p=1321>

“With greater autonomy and high standards of accountability, charter schools are well poised to serve all kinds of students, regardless of their backgrounds.” James D. Merriman, *The Facts Are In: NYC’s Charter Schools Are a Smashing Success*, N.Y. POST , Mar. 11, 2016.

For Amicus Coney Island Preparatory Public Charter School (“Coney Island Prep”), which serves approximately 800 students in grades K-2 and 5-11, autonomy allows it to tailor its programs to its students’ unique needs. More than 23 percent of its students are classified as special education students, and over 82 percent qualify for free- or reduced-price lunch. This can require innovating on previous programmatic decisions and changing those decisions quickly when they are not working—which is only possible with autonomy. *See generally* CONEY ISLAND PREP, *2014-2015 Annual Report* (2015).¹⁵ Autonomy allows Coney Island Prep to “respond to community needs, try new approaches, and put student learning first.” CONEY ISLAND PREP, *FAQs*.¹⁶ Coney Island Prep operates with a “longer school day and year[, which] mean[s] more time in the classroom and more opportunities to succeed.” *Id.* Its “autonomy allows [it] to hire the best teachers, adopt educational tools and technologies that promote achievement, and offer more for students at no cost to their families.” *Id.*

For Amicus Achievement First—which operates 17 SUNY-authorized public charter schools in Brooklyn, including nine elementary schools—autonomy allows it to design and tailor its programs to suit its students’ educational needs. *See* ACHIEVEMENT FIRST, *The Achievement First Approach: Curriculum and Instruction*.¹⁷ Given the high demand for seats at Achievement First schools and interest from existing families with students at the schools, Amicus was

¹⁵ Available at http://coneyislandprep.org/storage/2014-15_Annual_Report.pdf; *see also* CONEY ISLAND PREP, *Academics*, available at <http://coneyislandprep.org/about-us/academics>.

¹⁶ Available at <http://coneyislandprep.org/about-us/faqs>.

¹⁷ Available at <http://www.achievementfirst.org/our-approach/curriculum-and-instruction/>.

initially enthusiastic about changes to the law that gave charter schools the opportunity to offer Pre-K education to public school students. *See* R. 939, at ¶ 3 (affidavit of Peter Cymrot). However, in light of the DOE’s proposed contract, which reserves the right to require that Pre-K providers implement certain curriculum and activities specified by the DOE—including requiring certain professional development activities, limiting the number of certain types of field trips, and specifying the maximum number of minutes of screen time—Achievement First decided not to proceed with the Pre-K program. R. 939-40, at ¶¶ 4-5. In its view, the contract would “undermine [its] ability to educate Pre-K students by regulating aspects that are inconsistent with [its] design and approach.” *Id.* ¶ 5.

For Amicus TFOA Professional Preparatory Charter School, the autonomy guaranteed under New York law is essential and integral to its ability to serve students in innovative ways that its students and their caregivers greatly value. From culturally relevant pedagogy, to its teacher-led organizational model, to its focus on social-emotional health, TFOA Professional Preparatory Charter School depends on autonomy to innovate and thrive. This innovation has yielded strong academic achievement, low suspension rates, high satisfaction and self esteem, and success in giving students the skills to succeed and stay out of the criminal justice system. *See generally* TFOA PROFESSIONAL PREPARATORY CHARTER SCHOOL, *Homepage*.¹⁸

Amicus Brooklyn Charter School, which offers kindergarten through fifth grades, highly values autonomy. The school is best able to suit the needs of children it serves by using a variety of methods to teach them. It has found that children all learn differently, so the ability to deliver focused pedagogy aimed at students’ specific needs is critical. The school follows the inclusion model, working with students of varying needs, but without singling them out. The classroom instruction creates a well-rounded academic program, reaching students as individuals, not just

¹⁸ Available at <http://tfoaprofessionalprep.org/>.

as numbers. *See generally* BROOKLYN CHARTER SCHOOL, *About BCS*.¹⁹ Brooklyn Charter School also wanted to offer Pre-K classes, but declined to do so based on its view that the DOE contract would stifle its autonomy and limit its ability to best serve students. *See* Affirmation of Victoria Dorfman in Support of Unopposed Motion for Leave to Appear as *Amici Curiae* (August 29, 2016) (“Dorfman Aff.”), at ¶ 6.

Amicus Democracy Prep Public Schools educates students at 12 schools and one program in New York City, as well as 7 additional schools in New Jersey, Washington, D.C., and Louisiana. Autonomy is crucial for Democracy Prep, as it allows Democracy Prep to offer longer school days and a longer school year, develop its own curriculum and methods to meet state standards, build civics education into its curriculum, pioneer Korean language studies in its high schools, and create a special education program based on cutting edge research. *See generally* DEMOCRACY PREP, *Approach*.²⁰ In addition, Democracy Prep values the ability to change a program immediately if it does not serve the goal of sending the schools’ scholars to college. Democracy Prep’s results are apparent, as its scholars attend college at nearly ten times the rate of other peers within their income level. Democracy Prep has declined to offer Pre-K but stands with Petitioners-Appellants and other Amici to ensure that autonomy remains a central value in New York’s charter schools. Dorfman Aff. at ¶ 6.

Thus, as shown above, autonomy is crucially important for Amici. Amici stand with Petitioners-Appellants in agreeing that this Court should overturn the Supreme Court’s erroneous decision, thereby protecting the statutorily-enshrined autonomy charter schools rely on to innovate, experiment, and provide their students with the best possible education.

¹⁹ Available at <http://brooklyncharter.org/about/our-proven-approach/>.

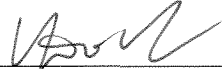
²⁰ Available at <http://democracyprep.org/about/approach>.

CONCLUSION

For the foregoing reasons, the Court should grant the relief requested by Petitioners-Appellants.

Dated: August 29, 2016

Respectfully submitted,



Victoria Dorfman
Joshua S. Stillman
JONES DAY
250 Vesey Street
New York, New York 10281
Phone: (212) 326-3939
Fax: (212) 755-7306
Email: vdorfman@jonesday.com
Email: jstillman@jonesday.com

*Attorneys for Amici Curiae Achievement
First, Brooklyn Charter School, Coney Island
Preparatory Public Charter School,
Democracy Prep Charter School, New York
City Charter School Center, Public Prep
Network, and TFOA Professional
Preparatory Charter School*