IN THE FIRST APPELLATE DISTRICT
HAMILTON COUNTY, OHIO

BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF CINCINNATI	)	**Appeal No. C100399**
Plaintiff-Appellant,	)	**Trial No. A1001252**
-VS-	)	
DR. ROGER CONNERS, *et alia*,	)	
Defendant-Appellees.	)	

FILED
COURT OF APPEALS
OCT 14 2010
PATRICIA M. CLANCY
CLERK OF COURTS
HAMILTON COUNTY

MERIT BRIEF OF THE OHIO ALLIANCE FOR PUBLIC CHARTER SCHOOLS, AS AMICUS CURIAE, IN SUPPORT OF DEFENDANT-APPELLEE, DR. ROGER CONNERS

Maurice Thompson
Tyler Kahler
1851 Center for Constitutional Law
208 E. State Street
Columbus, Ohio 43215

Counsel for Respondents-Appellees

Chad A. Readler (0068394)
Jones Day
325 John H. McConnell Boulevard, Ste 600
Columbus, OH 43215-2673
Tel: (614) 281-3891
Fax: (614) 461-4198
careadler@jonesday.com

Counsel for Amicus Curiae, The Ohio Alliance for Public Charter Schools

Scott D. Phillips
Austin W. Musser
Frost Brown Todd LLC
9277 Centre Pointe Drive, Suite 300
West Chester, Ohio 45069

Counsel for Plaintiff-Appellant

FILED
2010 OCT 14 P 1:10
PATRICIA M. CLANCY
CLERK OF COURTS
HAMILTON COUNTY, OH

D90389896

TABLE OF CONTENTS

TABLE OF CONTENTS i
INTRODUCTION/ STATEMENT OF INTEREST 1
Anderson/Maltbie Partnership v. Levin, Slip Opinion No. 2010-Ohio-4904 1
Race to the Top Program, *Executive Summary*, available at http://www2.ed.gov/programs/ racetothetop/executive-summary.pdf. 2
ARGUMENT 3
I. OBTAINING APPROPRIATE EDUCATIONAL FACILITIES IS CRITICAL TO THE SUCCESS OF CHARTER SCHOOLS. 3
A. Ohio charter schools face obstacles to obtaining suitable facilities. 3
Cincinnati Public Schools website, http://www.cps-k12.org/Facilities/Facilities.htm 4
Jennifer Smith Richards, *Charter Grades Making Progress*, Columbus Dispatch, Aug. 30, 2009, available at http://www.dispatch.com/live/content/local_news/stories/ 2009/08/30/ charter_status.ART_ART_08-30-09_A1_SCETO6V.html?sid=101 3
Kimbell Perry, *Judge Sets Charter School Precedent*, Cincinnati Enquirer, June 1, 2010. 5
Ohio School Facilities Commission, *Fiscal Year 2009 Annual Report*, at 15, available at http://www.osfc.state.oh.us/LinkClick.aspx?fileticket=nxHN6jVjBqU%3d&tabid=79. 4
R.C. 3318.50. 4
R.C. 5705.01. 3
Thomas B. Fordham Foundation, National Alliance for Public Charter Schools, National Association of Charter School Authorizers, *Turning the Corner to Quality* (2006). 3
B. While Ohio charter schools are meeting the state's expectations for yearly academic progress, they expend valuable time and resources to obtain suitable and affordable facilities. 5

Anderson/ Maltbie Partnership v. Levin, Slip Opinion 2010-Ohio-4909..... 8

Insider, Columbus Monthly, October 2010. 7

R.C. 3314.012. 6

R.C. 3314.016. 6

II. THE CPS DEED RESTRICTION IS UNENFORCEABLE BECAUSE IT VIOLATES OHIO PUBLIC POLICY. 8

A. Ohio public policy favors the transfer of disused public school facilities to charter schools..... 8

Am.Sub.H.B. No. 215, 147 Ohio Laws, Part I, 909, 1187. 9

Am.Sub.H.B. No. 215, Section 50.52, Subsection 2(B), 147 Ohio Laws, Part I, 2043..... 9

Arbino v. Johnson & Johnson (2007), 116 Ohio St.3d 468, 2007 Ohio 6948, 880 N.E.2d 420. 9

Chambers v. St. Mary's Sch. (1998), 82 Ohio St.3d 563, 1998 Ohio 184, 697 N.E.2d 198. 9

Dixon v. Van Sweringen Co. (1929), 121 Ohio St. 56, 166 N.E. 887..... 8

R.C. 3313.41(G)(1). 10

R.C. 3313.41(G)(2). 10

State ex rel. Ohio Cong. of Parents and Teachers v. State Bd. of Educ. (2006), 111 Ohio St.3d 568, 2006 Ohio 5512, 857 N.E.2d 1148..... 9

B. The CPS deed restriction is unenforceable because it violates this policy. 10

Benner v. Hammond (1996), 109 Ohio App.3d 822, 673 N.E.2d 205..... 11

Bryan v. Darlington (Tex.Civ.App. 1947), 207 S.W.2d 681, 1947 Tex. App. LEXIS 1040. 12

Carranor Woods Prpty. Owners Ass'n v. Driscoll (1958), 106 Ohio App. 95, 153 N.E.2d 681. 11

Clifton George Co. v. Great Southern Life Ins. Co. (Tex.App. 1923), 247 S.W. 912, 1923 Tex. App. LEXIS 630. 11

Dixon v. Van Sweringen Co. (1929), 121 Ohio St. 56, 166 N.E. 887 11

Grange Mut. Casualty Co. v. Lindsey (1986), 22 Ohio St. 3d 153, 489 N.E.2d 281, 22 OBR 228. 12

Houk v. Ross (1973), 34 Ohio St.2d 77, 296 N.E.2d 266. 11

Hunt v. Held (1914), 90 Ohio St. 280, 107 N.E. 765 11

Lamont Bldg. Co. v. Court (1946), 147 Ohio St. 183, 70 N.E.2d 447 12

State Farm Mutual Insurance Co. v. Grace (2009), 123 Ohio St.3d 471, 918 N.E.2d 135. 12

CONCLUSION 13

INTRODUCTION/ STATEMENT OF INTEREST

Securing adequate and affordable facilities remains one of the greatest challenges to Ohio's charter schools. Ohio charters, although public and publicly funded, lack access to many of the resources district schools have: they cannot draw from a tax base to fund facilities, nor can they partner with the Ohio Schools Faculties Commission, which funds construction and renovation projects for school districts. Further, as reflected by a recent Ohio Supreme Court decision, charter schools that lease buildings cannot take advantage of the public-schoolhouse property tax exemption enjoyed by public district schools.[1] These current realities not only present obstacles to the growth of charter schools, but also discourage nationally-acclaimed, high-performing charter school operators from opening schools in Ohio.

The Cincinnati Public School District's ("CPS") attempt here to prevent a public school from operating where a different public school once existed unlawfully exacerbates these facilities challenges and, at the same time, needlessly prevents students from getting a public education at the school of their choice. Understandably, this issue is of deep concern to the Ohio Alliance for Public Schools ("OAPCS"), a non-profit, non-partisan, independent membership organization dedicated to the enhancement and sustainability of quality charter schools. OAPCS advocates for charter schools and strives to remove barriers that impede school choice and inhibit students' abilities to obtain the education they are entitled to by law. Based on its experience working with over 150 Ohio charter schools, OAPCS understands the challenges charter schools face in finding suitable facilities, challenges that can take valuable time away from focusing on the school's educational mission. OAPCS submits this *amicus curiae* brief in support of

[1] *Anderson/Maltbie Partnership v. Levin*, Slip Opinion No. 2010-Ohio-4904, at ¶ 1, 13.

appellee Dr. Roger Conners because CPS's deed restriction violates public policy, undermining the General Assembly's intent that public charter schools have access to facilities no longer needed by traditional public schools.

Charter schools are public schools, open to all students. They offer parents and students more choice in education, particularly those who live in poorer areas with low-performing schools. While the schools have some operational freedom that district schools do not, they also face the possibility of being shut down if they fail to perform, unlike traditional public schools.

Charter schools have played a major role in public education reform in the United States. In 1992, Minnesota opened the nation's first charter schools, and forty states have followed suit, including Ohio, which passed its charter law in 1997. Currently, nearly 100,000 Ohio students choose to attend charter schools, giving Ohio the fifth-largest charter enrollment in the nation. The majority of the state's charter schools are clustered in the Big 8 urban districts.

The federal government is also encouraging the growth of charter schools: The federally-funded Race to the Top competition recently awarded $4.35 billion in competitive grants to states—including Ohio—that demonstrated bold commitment to education reform. A significant component of a successful Race to the Top application was the state's commitment to "ensuring successful conditions for high-performing charters and other innovative schools."[2]

[2] Race to the Top Program, *Executive Summary*, available at http://www2.ed.gov/programs/racetothetop/executive-summary.pdf (visited Oct. 12, 2010).

ARGUMENT

I. OBTAINING APPROPRIATE EDUCATIONAL FACILITIES IS CRITICAL TO THE SUCCESS OF CHARTER SCHOOLS.

A. Ohio charter schools face obstacles to obtaining suitable facilities.

Finding appropriate, affordable facilities is one of the biggest issues facing Ohio charter schools. Unlike Ohio's school districts, charter schools do not have taxing authority.[3] Consequently, they must rely on limited capital funds and their operating revenue to pay for facilities. Additionally, most charter schools do not have the credit history and legal status to obtain facilities financing on their own.[4]

It is thus no surprise that many Ohio charter schools have been forced to be creative in finding facilities. For example, Columbus Collegiate Academy, one of the highest performing charter schools in the state, is located on a few floors of a church next to a dollar store and a laundromat.[5] Dozens of other charter schools are forced to tackle their educational mission without libraries, gymnasiums, playgrounds, and/or significant classroom space.

Traditional district schools, by comparison, enjoy the luxury of being able to use property and local tax levies to raise money for facilities. District schools have also had access to billions of dollars in facilities funding through the Ohio Schools Facilities Commission ("OSFC"). In the 2010-11 budget alone, for instance, OSFC received over $340 million. Established in 1997, the

---

[3] R.C. 5705.01.

[4] Thomas B. Fordham Foundation, National Alliance for Public Charter Schools, National Association of Charter School Authorizers, *Turning the Corner to Quality* (2006).

[5] Jennifer Smith Richards, *Charter Grades Making Progress*, Columbus Dispatch, Aug. 30, 2009, available at http://www.dispatch.com/live/content/local_news/stories/ 2009/08/30/ charter_status.ART_ART_08-30-09_A1_SCETO6V.html?sid=101.

commission has worked with more than 75 percent of Ohio school districts helping them fund, plan, design, build, or renovate schools.[6] OSFC has helped open more than 680 new buildings across the state.[7] One of the many districts OSFC is assisting is the Cincinnati Public School District, which is currently in the sixth year of a ten year, $1 billion rebuilding plan.[8]

Charter schools, on the other hand, are currently without access to the state construction or renovation funds provided by the OSFC. Under Ohio law, charter schools can use loans guaranteed under the Community Schools Classroom Facilities Loan Guarantee Program for the construction of new school buildings, and the OSFC previously funded fifteen charter guarantees through this revolving loan fund.[9] OSFC, however, has since expended its capital for this program.

At the same time charter schools are struggling to find appropriate facilities, Ohio's urban districts are shuttering dozens of school buildings in the face of budget constraints and declining student enrollment. In fact, in 2009, when Dr. Conners purchased the building at issue here from CPS, eight other buildings were auctioned off by the school district.[10] While closing old buildings, districts across the state, including Cincinnati, are modernizing their other school

---

[6] Ohio School Facilities Commission, *Fiscal Year 2009 Annual Report*, at 15, available at http://www.osfc.state.oh.us/LinkClick.aspx?fileticket=nxHN6jVjBqU%3d&tabid=79 (last visited Oct. 12, 2010).

[7] *Id.*

[8] Notably, the district's website announces that when the plan is complete, "every CPS student will be educated inside new or fully renovated buildings that are attractive, efficient and technology-ready for the 21st century."[8] Other districts across the state are engaging in similar rebuilding plans as they partner with the Ohio School Facilities Commission. Cincinnati Public Schools website, http://www.cps-k12.org/Facilities/Facilities.htm (last visited Oct. 13, 2010).

[9] R.C. 3318.50.

[10] Kimbell Perry, *Judge Sets Charter School Precedent*, Cincinnati Enquirer, June 1, 2010.

buildings with help from local taxpayers and the OSFC. And yet while districts are enjoying the use of new, state-funded buildings, they are at the same time thwarting efforts by charter schools to purchase buildings rejected by the districts, even where those buildings would be used to enhance our State's comprehensive public education system.

B. While Ohio charter schools are meeting the state's expectations for yearly academic progress, they expend valuable time and resources to obtain suitable and affordable facilities.

Ohio charter schools continue to improve their record of achievement, but that does not erase the fact that they continue to face challenges in securing appropriate facilities. Simply put, charter schools could serve more students and focus more on academics if they did not have to commit so much of time, energy, and money to acquiring facilities.

According to the most recent school report cards analyzing the achievement test data, fifty-five percent of charter schools are in continuous improvement status or better. Seventy-four percent of charter schools met or exceeded expected growth on the Ohio standardized tests, while only sixty-four percent of district schools did. In the Big 8 districts, where many charter schools operate, seventy-five percent of those schools met or exceeded expected growth, compared with only sixty-three percent of district schools. In Cincinnati, the two types of schools were nearly identical in the percentage of schools meeting or exceeding expected growth.

Plaintiff correctly asserts that the General Assembly has focused attention on stricter guidelines monitoring the performance of charter schools. Setting aside the fact that OAPCS and

many others in the charter school family supported those elevated standards,[11] it nevertheless deserves noting that those measures are aimed at monitoring academic performance once a school has opened, not determining whether a school should be opened to begin with. CPS's deed restriction, on the other hand, attempts to prevent a public school from opening in a building formerly used by another public school. Simply put, no public policy supports that effort. Indeed, the law is to the contrary.

More to the point, whether a new charter school can open is not for CPS to decide. It is a question for the State and charter school sponsors—the entities that evaluate charter school performance and decide whether a school can and should remain open.[12] Sponsors are accountable to the Ohio Department of Education and subject to all Ohio laws governing charter schools. CPS should not be allowed to improperly frustrate this legislative scheme.

Furthermore—and contrary to what CPS contends here—this case has nothing to do with the performance of charter schools or the General Assembly's attempt to improve the statutory framework governing charter schools. In fact, as shown, charter schools in Ohio have continued to improve their performance, so much so that they often outperform their district counterparts.

OAPCS has and continues to support strict accountability for charter schools. The success of the charter school movement depends upon accountability requirements, including the

---

[11] In 2006, the Ohio legislature passed a law that greatly increased charter school and charter authorizer accountability. In 2009—with support of the OAPCS—the legislature strengthened these requirements. R.C. 3314.012, R.C. 3314.016.

[12] The district does have the authority to make such decisions when the district itself is the sponsor (also called authorizer) of the school. That is not the case here—Dr. Conners' school is sponsored by Richland Academy, a nonprofit organization that began sponsoring schools in 2006.

closing of underperforming charter schools. But as Ohio lawmakers have recognized, charter schools must be given the chance to open and demonstrate performance once they have been approved by the state. CPS's attempt to prevent another public school from opening where a public school had existed makes it more difficult for students to attend a public school that they are legally entitled to attend, in violation of Ohio public policy.[13]

The future of Ohio's charter school movement, it bears repeating, depends upon appropriate, affordable facilities. Charter schools are labs of experimentation, designed to allow the best schools to replicate and infuse their successful ideas into the broader public education system. But this goal is unobtainable if charter schools are repeatedly blocked from the facilities they need to serve students. Columbus Collegiate Academy earned an effective grade on its most recent report card, deemed "an unusually high mark for an urban middle school with low-income students" by *Columbus Monthly* magazine.[14] But the school remains crammed into a church, hoping to acquire an enhanced facility someday.

The Ohio Supreme Court recently underscored the importance of allowing charter schools to obtain their own facilities. In *Anderson/Maltbie Partnership v. Levin*, the Supreme Court held that property owned by private entities and leased to public charter schools is not tax exempt because the owner receives a profit from the lease agreement.[15] The decision highlights the importance of removing the obstacles charter schools face in purchasing facilities. By acquiring their own facilities, charter schools can avoid leasing property, a situation which

---

[13] See infra, Section II.

[14] *Insider*, Columbus Monthly, October 2010, p. 16. Andrew Boy, the founder and executive director of the school, explained, "[W]e're almost 100 percent sure we cannot stay in this building after this year." *Id.*

[15] Slip Opinion 2010-Ohio-4909.

requires them to pay property taxes, taxes that those schools who own their facilities, like school districts, are exempt from paying under Ohio law.

II. THE CPS DEED RESTRICTION IS UNENFORCEABLE BECAUSE IT VIOLATES OHIO PUBLIC POLICY.

Ohio public policy requires that charter schools have access to disused school buildings. The CPS deed restriction frustrates this policy by prohibiting Dr. Conners from using the building he purchased to operate a charter school. Deed restrictions that violate public policy are unenforceable.

A. Ohio public policy favors the transfer of disused public school facilities to charter schools.

In Ohio, public policy is determined by the legislature through the enactment of statutes. The Ohio General Assembly has determined that public policy favors transferring disused public school buildings to charter schools for educational purposes, and has passed laws that facilitate this policy. While CPS may not share this public policy view, it may not circumvent the will of the General Assembly by use of a deed restriction which violates that policy.

Ohio's long-accepted definition of public policy is found in *Dixon v. Van Sweringen Co.*: "That principle of law which holds that no subject can lawfully do that which has a tendency to be injurious to the public or against the public good."[16] What constitutes "the public good" is embodied by state law. "A fundamental principle of the constitutional separation of powers among the three branches of government is that the legislative branch is the ultimate arbiter of

[16] (1929), 121 Ohio St. 56, 62–63, 166 N.E. 887.

public policy."[17] Thus, the General Assembly establishes the public policies of Ohio by passing legislation.[18]

Public policy establishing the desire to transfer disused school buildings to charter schools is a relatively recent development. The General Assembly created charter schools in 1997 when it enacted R.C. Chapter 3314.[19] Charter schools are independently governed public schools funded from state revenues.[20] The legislative purpose of creating charter schools was to "provid[e] parents a choice of academic environments for their children and provid[e] the education community with the opportunity to establish limited experimental educational programs in a deregulated setting."[21]

To facilitate the creation of charter schools, the General Assembly subsequently enacted R.C. 3313.41(G). This section establishes a public policy in favor of selling disused public school facilities to charter schools at bargain prices. The statute provides that "[w]hen a school district board of education decides to dispose of real property suitable for use as classroom space * * * it shall first offer that property for sale to the governing authorities of the start-up community schools [a.k.a. charter schools] * * * located within the territory of the

---

[17] *Arbino v. Johnson & Johnson* (2007), 116 Ohio St.3d 468, 472, 2007 Ohio 6948, 880 N.E.2d 420 (internal citation and quotation marks omitted).

[18] *Chambers v. St. Mary's Sch.* (1998), 82 Ohio St.3d 563, 566–67, 1998 Ohio 184, 697 N.E.2d 198.

[19] Am.Sub.H.B. No. 215, 147 Ohio Laws, Part I, 909, 1187 (emphases added).

[20] *State ex rel. Ohio Cong. of Parents and Teachers v. State Bd. of Educ.* (2006), 111 Ohio St.3d 568, 569, 2006 Ohio 5512, 857 N.E.2d 1148.

[21] Am.Sub.H.B. No. 215, Section 50.52, Subsection 2(B), 147 Ohio Laws, Part I, 2043.

school district, at a price that is not higher than the appraised fair market value of that property."[22]

Further, the statute provides that "[w]hen a school district board of education has not used real property suitable for classroom space for * * * educational purpose[s] for one full school year * * * it shall offer that property for sale to the governing authorities of the start-up community schools [a.k.a. charter schools] * * * located within the territory of the school district, at a price that is not higher than the appraised fair market value of that property."[23]

As reflected by its inclusion of a deed restriction seeking to prevent Dr. Conners from using the building to operate a charter school, CPS seemingly disagrees with policy established in R.C. 3313.41. That said, it is the General Assembly, not CPS, that makes our State's public policy. And here, the General Assembly has determined that the public benefits when charter schools are able to purchase disused school buildings to facilitate educational options for Ohio parents and students.

B. The CPS deed restriction is unenforceable because it violates this policy.

This court should hold that the CPS deed restriction is unenforceable, as it violates public policy. In this case, the CPS deed restriction violates Ohio's policy favoring the transfer of disused school buildings to charter schools. Ohio courts refuse to enforce contract terms that violate public policy.

---

[22] R.C. 3313.41(G)(1).

[23] R.C. 3313.41(G)(2).

Because restrictions on the free use of land are viewed unfavorably, courts construe deed restrictions narrowly, in favor of the free use of land.[24] Courts, moreover, will not enforce deed restrictions that would violate public policy.[25] As the Ohio Supreme Court has stated, "[T]he owner of land, desiring to protect and improve the neighborhood for any special purpose, may impose such restrictions as he sees fit in making sales of his land, *provided such restrictions are not against public policy.*"[26]

If the CPS deed restriction were valid, CPS and other school districts could effectively abrogate R.C. Chapter 3313.41(G). Even though the General Assembly instructs that charter schools be able to purchase disused school buildings, charter schools would be wholly frustrated in this effort by such deed restrictions.

While Ohio courts have not previously been asked to void a deed restriction that prevents the use of property for school purposes, other jurisdictions have concluded that such deed restrictions violate public policy. In *Clifton George Co. v. Great Southern Life Ins. Co.*,[27] the court held that a deed restriction against commercial use was unenforceable against the use of property to operate a for-profit school.[28] The court reasoned that such a restriction would violate Texas public policy of encouraging education.[29] Another Texas court of appeals applied *Clifton*

---

[24] *See, e.g., Hunt v. Held* (1914), 90 Ohio St. 280, 107 N.E. 765, paragraph one of the syllabus; *Houk v. Ross* (1973), 34 Ohio St.2d 77, 296 N.E.2d 266, paragraph two of the syllabus; *Benner v. Hammond* (1996), 109 Ohio App.3d 822, 827, 673 N.E.2d 205; *Carranor Woods Prpty. Owners Ass'n v. Driscoll* (1958), 106 Ohio App. 95, 101, 153 N.E.2d 681.

[25] *Dixon v. Van Sweringen Co.* (1929), 121 Ohio St. 56, 60, 166 N.E. 887.

[26] *Id.* (Emphasis added).

[27] (Tex.App. 1923), 247 S.W. 912, 1923 Tex. App. LEXIS 630.

[28] *Id.* at 914.

[29] *Id.*

George to reason that a restrictive covenant against using property for business purposes was void per public policy when applied to a teacher who used the property to operate a day school.[30]

A deed is a contract.[31] Therefore, the trial court was correct in refusing to enforce CPS's. After all, contract provisions that violate public policy are unenforceable.[32]

That was the result in *Grange,* where the Ohio Supreme Court held that an automobile liability insurance contract provision was void per public policy.[33] The contract provision purported to offset coverage under an underinsured motorist provision by the amount of benefits paid under the medical provision in the same contract.[34] The General Assembly, however, had mandated—through R.C. 3937.18—that all automobile liability insurance policies in Ohio include underinsured motorist coverage.[35] The court reasoned that enforcing the contract provision would defeat the purpose of the statute.[36]

The unenforceable contract provision in *Grange* is analogous to the CPS deed provision. Both provisions seek to achieve the opposite result mandated by a state statute. Just as the subrogation provision in the Grange insurance contract was void, so too is CPS's deed restriction due to conflicting Ohio public policy.

---

[30] *Bryan v. Darlington* (Tex.Civ.App. 1947), 207 S.W.2d 681, 682, 1947 Tex. App. LEXIS 1040.

[31] *Dixon v. Van Sweringen Co.* (1929), 121 Ohio St. 56, 63, 166 N.E. 887.

[32] *See, e.g., Grange Mut. Casualty Co. v. Lindsey* (1986), 22 Ohio St. 3d 153, 155, 489 N.E.2d 281, 22 OBR 228 (discussed infra), superseded by statute as stated in *State Farm Mutual Insurance Co. v. Grace* (2009), 123 Ohio St.3d 471, 476, 918 N.E.2d 135; *Lamont Bldg. Co. v. Court* (1946), 147 Ohio St. 183, 184–185, 70 N.E.2d 447 (voiding apartment rental contract prohibiting children from occupying the premises as against public policy).

[33] *Grange, supra.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

CONCLUSION

Ohio lawmakers created charter schools to enhance the public school options available to Ohio parents and their schoolchildren. Charter schools, in turn, are held to stricter accountability measures while enjoying some greater autonomy. To facilitate these goals, the General Assembly requires public school systems such as CPS to offer disused school buildings for sale to charter schools. Because CPS's deed restriction frustrates this policy, the Court should hold that the deed restriction is unenforceable.

Respectfully submitted,

Chad A. Readler (0068394)
Jones Day
325 John H. McConnell Boulevard, Ste 600
Columbus, OH 43215-2673
Tel: (614) 281-3891
Fax: (614) 461-4198
careadler@jonesday.com

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was served upon the parties specified below this 14th day of October, 2010.

Chad A. Readler (0068394)

Scott D. Phillips
Austin W. Musser
Frost Brown Todd LLC
9277 Centre Pointe Drive, Suite 300
West Chester, Ohio 45069

Counsel for Plaintiff-Appellant

Maurice Thompson
Tyler Kahler
1851 Center for Constitutional Law
208 E. State Street
Columbus, Ohio 43215

Counsel for Respondents-Appellees