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COMMONWEALTH OF KENTUCKY  
SUPREME COURT  
NO. 2011-SC-00658

JEFFERSON COUNTY BOARD OF EDUCATION, et al.

APPELLANTS

COURT OF APPEALS NO. 2010-CA-001830

v.

APPEAL FROM JEFFERSON CIRCUIT COURT  
CIVIL ACTION NO. 10-CI-004174  
Division Ten, Hon. Irv Maze

CHRIS FELL, as Father and Next Friend of L.F., et al.

APPELLEES

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BRIEF FOR *AMICI CURIAE*: CHERYL ARMSTRONG; JOCELYN MOORE; PATRICIA  
KANNAPEL AND JOHN GROSSMAN; SEANA GOLDER AND ROGER BRADSHAW;  
JEFFERSON COUNTY TEACHERS ASSOCIATION; LEAGUE OF WOMEN VOTERS OF  
LOUISVILLE AND JEFFERSON COUNTY, INC.

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Stephen T. Porter  
2406 Tucker Station Road  
Louisville, Kentucky 40299  
502-297-9991  
[stpoulou@aol.com](mailto:stpoulou@aol.com)

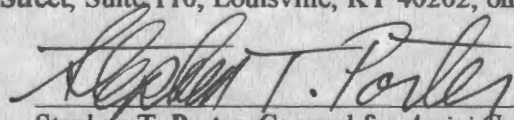
Everett C. Hoffman  
Priddy Cutler Miller & Meade, PLLC  
429 W. Muhammad Ali Blvd., Ste. 800  
Louisville, Kentucky 40202  
502-632-5278  
[hoffman@pcmlaw.com](mailto:hoffman@pcmlaw.com)

Gerald Neal  
462 S. Fourth Street, Ste. 1270  
Louisville, Kentucky 40202  
502-584-8500  
[bags776@insightbb.com](mailto:bags776@insightbb.com)

Counsel for *Amici Curiae*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of this Brief were served by hand delivery upon Susan Stokely Clary, Clerk, Kentucky Supreme Court, 700 Capitol Avenue, Frankfort, KY 40601; and by hand delivery or U.S. Mail on Samuel Givens, Jr., Clerk, Kentucky Court of Appeals, 360 Democrat Drive, Frankfort, KY 40601; the Honorable Irv Maze, Judge, Division Ten, Jefferson Circuit Court, 700 West Jefferson Street, Louisville, KY 40202; Byron E. Leet, Lisa C. DeJaco, Anne R. MacLean, 500 West Jefferson Street, Louisville, KY 40202; Teddy B. Gordon, 807 W. Market St., Louisville, KY 40202; J. Bruce Miller, Norma C. Miller, Waterfront Plaza, 20<sup>th</sup> Floor, 325 W. Main Street, Louisville, KY 40202; Sheila P. Hiestand, Republic Plaza, 200 S. 7<sup>th</sup> Street, Suite 110, Louisville, KY 40202, on this 17th day of January, 2012.

  
Stephen T. Porter, Counsel for *Amici Curiae*

## AMICI CURIAE FOR THIS BRIEF

The *Amici Curiae* who are presenting this brief are as follows:

1. Cheryl Armstrong, mother and next friend of C.O, a student in the Jefferson County Public Schools (JCPS);
2. Jocelyn Moore, mother and next friend of S.K. and J.K., students in the JCPS;
3. Patricia Kannapel and John Grossman, mother and father and next friends of L.G., a student in the JCPS.
4. Seana Golder and Roger Bradshaw, mother and father and next friends of B.B. and V.B., students in the JCPS;
5. The Jefferson County Teachers Association (JCTA), the bargaining agent for all teachers in the JCPS; and
6. The League of Women Voters of Louisville and Jefferson County, Inc. (League), a civic organization active in studying the local school system.

## STATEMENT OF THE CASE

The above-named *Amici Curiae* have read the facts and background of this case as presented by the counsel for the Appellants in its Statement of the Case. We are sufficiently familiar with this case from its inception to agree with the facts of the case as presented by the Appellees to accept that recitation as accurate. Therefore, we do not need to burden this Court with any further statement of the case.

## ARGUMENT

While the above-named *Amici Curiae* may seem, at first glance, to represent disparate or distant or even curiously dissimilar backgrounds or interests with regard to this case, their commonality comes because of their support for the right of an elected body, in this case the Jefferson County Board of Education, to express the will of the people who elected the board members in a manner that is for the best for the education of the whole community it represents. That Board has established goals and

objectives for the education of the children of the Jefferson County community. In order to meet those goals and objectives, the Board must be free to administer the system of education in a manner that best supports those goals. In relation to this case, that means the Board must have the freedom to assign its students in a manner that will help the entire system, and every student in that system, meet those goals. As long as that assignment meets constitutional standards, the Board must have that freedom. It is now clear, from the line of cases litigated over the past few years in this community, that the assignment process of the board meets all constitutional standards.

The parents represented here as *Amici Curiae* have faith in the elected Board members to accomplish the stated goals of the Board of Education. These parents, like most in the community, believe a student assignment plan based on those goals is necessary to achieve the ends stated in the Board's goals and objectives.

The Jefferson County Teachers Association is in a superb position to know what is best for the education of students, maybe even better than members of the Board, because these teachers are in the schools and classrooms every day of the school year. The JCTA has made it clear in its governing document, The Policy Manual (Section J-12), that "students learn best in racially, culturally, and economically diverse environments in which the richness of our community is reflected through heterogeneous staff and student populations. As such, the organization believes the Jefferson County Public Schools should find the most effective strategies possible, consistent with the law, to promote integration and student success across our district, within our schools, and in our classrooms."

The League of Women Voters of Louisville and Jefferson County, Inc. has spent many years since its formation in 1973 studying the local education process. The League does not take positions without intense research, discussion, feedback and fact-finding. In its series of Positions on Local Issues, the League has addressed this school attendance issue. In a report first adopted in the 1980's, revised in 1994, and revised again in 2010, the League supported "School attendance zones that provide for

socioeconomic as well as racial integration” in order to “secure and sustain a quality program of public education in this community.”

With regard to the only legal argument that should be considered by this Court in this case, that of the interpretation of KRS 159.070, the above-named *Amici Curiae* agree wholeheartedly with the arguments of the Appellants. It seems clear to us that the Kentucky General Assembly in 1990 consciously and specifically removed any reference to “attendance”. Enrollment at the nearest school is a matter of convenience for the parents of a child. Attendance at a particular school is a more complicated matter of coordinating parental preference, student needs and school policies. Again, we will not burden this Court with duplicate legal arguments. However, there are a few statements we wish to make to add to that argument.

First, we wish to endorse the process by which the Board is currently assigning students. While any one individual or any one organization, even within our group, might have some differences with the details or might have suggestions for improvement, we are unanimously behind the current process for assigning students and the process by which that plan has been developed, administered, evaluated and even revised. The Board has even proposed adjustments to that system as recently as this past week. The process is an open one that will be decided, after public input and debate, by the duly elected members of the Board, as it should be.

Second, those members of our *Amici Curiae* group who are parents of current Jefferson County Public Schools students are happy with the system of student assignment and believe that we represent the great majority of parents who have students in that system. In fact, every poll that we have seen has always shown huge support for the student assignment plan and the need for the Board to assign students under a carefully and fairly administered process. As recently as January, 2011, a survey conducted by Dr. Gary Orfield of the University of California at Los Angeles (UCLA) showed that parents in the system were strongly in favor of diversity and deeply committed to the type of school choice present in the current assignment plan.

**Third**, in order to achieve the goals of this school system, this Board must have the freedom to assign students in a responsible manner in order to meet many objectives. There are so many factors that need to be considered in assigning students. The most obvious one is the one which has risen to the forefront in recent years, that of achieving diversity in the areas of economic background, educational background and racial make-up. We agree with the Board that these are of such importance to the education of all public school students that the Board must have the ability to pursue its current directions. However, we also know that there are many other factors that must be considered by the Board in achieving its goals. These include, but are certainly not limited to: school capacity, traditional programs, magnet programs, partial magnet schools, Montessori programs, performing arts programs, aviation programs, language programs, international studies programs, transportation routes, personnel considerations, English as a Second Language programs, advanced programs, programs for students with disabilities, student conduct programs, and other special programs.

**Fourth**, our neighborhoods are constantly changing. New housing, sometimes in the form of a subdivision, sometimes a new apartment complex, or a conversion of an historic building to new housing, is a constant in the economic life of an urban area. In addition, some previous housing becomes obsolete and is destroyed or converted to non-residential use or a more limited residential use. Many examples of this have occurred recently in the downtown areas of Louisville Metro where older, concentrated public housing projects, filled with school-age children, have been converted to mixed-use developments with a far greater percentage of childless occupants. Even without new construction or destruction, neighborhoods change naturally. Homes that may be filled with child-age couples this year may become havens for empty-nesters and retirees within a relatively short period of time, followed by a return of young couples at a future date. A school board must be able to react sensibly to this ebb and flow without the constraints of a strict requirement.

**Fifth**, if the neighborhoods of Jefferson County were truly integrated on the basis of economics, education and race, then neighborhood schools would not even be an issue. Diversity as a goal could be accomplished almost no matter which school a child attended. But, sadly, that is not the case for Jefferson

County, as it is not for almost any school district in the state, or the nation, for that matter. Segregation by race dates back to the days of *de jure* segregation in housing and continued through the days of *de facto* segregation by race. Our housing patterns still feel the burden of those governmental and societal actions, which cannot be erased in only a few generations. Separation by economics and parental education is a fact of life as those with the ability to choose make their decisions to leave areas where people do not have that choice because of economics and to live in areas where most of the inhabitants have similar educational and economic backgrounds and wherewithal. The Jefferson County Board of Education cannot control or solve these problems, so, in order to achieve the goals of a diverse educational system which is best for all students, the Board must have the ability to assign students in accordance with a diversity plan. When the original KRS 159.070 was adopted, with the language "enroll their children for attendance", we contend that was a thinly veiled attempt to return to *de jure* segregation. That statute passed in 1976, just one year after the United States District Court ordered a busing plan to integrate Jefferson County schools. The purpose of the statute was obvious. We contend that the statute with that language still intact would be unconstitutional (violating the Fourteenth Amendment to the United States Constitution). That point is moot now because the Kentucky General Assembly chose to delete the words "for attendance" in 1990. That removal eliminated the unconstitutional application. However, to now interpret the "enroll" language as applying also to attendance would return us to a position with the same constitutional violation. Allowing "enroll" to include "attendance" would be the same as returning to the Jim Crow laws of the past that this state and this nation must forget forever. We may as well forget the *Brown* decisions or the *Haycraft* or *Newburg Area Council* decisions that ended *de jure* and *de facto* segregation in our schools.

Sixth, this community has consistently shown its support for a student assignment plan of one type or another at the ballot box. Since 1975, sometimes under a Federal Court Order but for many years not, this community has elected members to the Jefferson County Board of Education who have designed and implemented a series of assignment plans in order to achieve the educational goal of diversity in the whole system. That current plan, as we stated previously, includes diversity in the areas of income,

parental education and race. In that 36-year period, there has never been any concentrated political movement resulting in a change in Board membership that has supported a student assignment plan based on a "neighborhood school" concept.

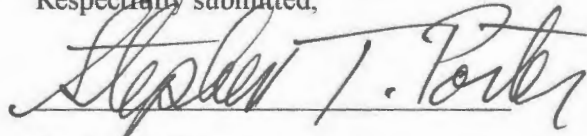
**Seventh**, the members of this group are appalled by the attempt of two judges of the Kentucky Court of Appeals to substitute their own preferences, their own attitudes and their own prejudices for the wise decision-making of our current elected Board members. It is never the place of a Court to substitute its own personal attitudes for those of a legislative or administrative body. Only if a clear violation of constitutional or statutory duties has occurred, should a Court overturn such decisions and require reconsideration. In this case, the center of that discussion should be solely on the legislative wording and intent of KRS 159.070, not on the judges' personal distaste for a particular Board policy and method of implementing that policy. One judge even went so far as to state that: "The benefit of children attending neighborhood schools is obvious." The members of our group can just as easily say that the benefits of the current student assignment plan are obvious. However, that judgment is not up to us any more than it is up to the Kentucky Court of Appeals. It is up to the duly elected members of the Jefferson County Board of Education. Absent constitutional or statutory violations (and there are none here), as we said before, the policies of the Jefferson County Board of Education must be respected and supported.

**Eighth**, this decision by the Kentucky Court of Appeals, if upheld, would apply to all levels of education for primary, middle and high school students and would apply to every school district in the Commonwealth of Kentucky. The restrictions of that kind of decision would create chaos across the Commonwealth. Certainly, the members of the General Assembly did not mean to set up that scenario. Actually, by removing the word "attendance", they made sure that would not burden every school district in the commonwealth with unreasonable restrictions. For example, a school district with only two high schools could not balance the attendance. If 70% of the students lived nearer one school, for example, even though the other school was in an area of future growth and was built to reduce overcrowding at the older school, one school might remain overcrowded while the other has empty classrooms. Such a result makes no sense.

## CONCLUSION

This Court must affirm the well-reasoned Circuit Court Order and overturn the 2-1 decision of the panel of Court of Appeals judges. The Jefferson County schools must not be forced to return to a system of *de jure* segregated schools because the elected Board members are not allowed to exercise their judgment on school goals and policies. This Court must affirm the prerogative of the community, through its elected officials, to make decisions that are best for the entire community and all of its children. This Court must reject the selfish attempt by a few disgruntled parents to overturn the will of a duly elected school board. This Court must reject a decision of the Court of Appeals panel that was made with obvious prejudice. This Court must not allow the school system to be reduced to chaos because special programs could be made impossible because of parental choices. We respectfully request this Court to dismiss the original Complaint in this case and allow the duly-constituted and elected Jefferson County Board of Education to do its duty.

Respectfully submitted,



Stephen T. Porter  
2406 Tucker Station Road  
Louisville, Kentucky 40299  
502-297-9991  
[stpintou@aol.com](mailto:stpintou@aol.com)

Gerald A. Neal  
462 S. Fourth Street, Ste. 1270  
Louisville, Kentucky 40202  
502-584-8500

Everett C. Hoffman  
Priddy Cutler Miller & Meade, PLLC  
429 W. Muhammad Ali Blvd., Ste. 800  
Louisville, Kentucky 40202  
502-632-5278  
[hoffman@pcmmlaw.com](mailto:hoffman@pcmmlaw.com)