CHOICE AND CONSEQUENCES: THE FIGHT FOR STATEWIDE CHARTER SCHOOL AUTHORIZERS IN GEORGIA

by

JASON DOUGLAS PATRICK

(Under the direction of John Dayton)

ABSTRACT

The rise of charter schools has been called one of the largest structural changes in education over the past twenty years. This research describes how studying this major shift, which has influenced statewide polices, bureaucracies, practitioners, learners, and local communities, could prove significant. By examining the legislation that has shaped Georgia's educational environment and interpreting the laws through an extensive review, explaining what charter schools are, investigating the history of charter schools in Georgia, and by describing how lawsuits, legislation, and funding have altered the educational landscape in this state since charter schools were established in the early 1990s, this major literature and law review seeks to shed light on an issue that impacts education and actors (large and small), and will try to answer whether or not charter school policy and the creation of statewide charter school authorizers (i.e., the growth and propagation of choice) have been worth the consequences—both intended and unintended. Index words: charter school authorizers, charter school law.

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by

JASON DOUGLAS PATRICK

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MED, University of Georgia 2013

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JASON DOUGLAS PATRICK

Major Professor: John Dayton

Committee: Elizabeth H. DeBray

Elizabeth A. St. Pierre

Electronic Version Approved:

Suzanne Barbour

Dean of the Graduate School

The University of Georgia

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DEDICATION

As with everything in my life since November 28th, 2012, this is for my son, Atticus James Triton Patrick—I love you more than twinkle stars and all the fish in the sea.

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INTRODUCTION

Significance of the Study

The United States has had a complex history of educational reform, research, and legislation over its 240 years, which has been, as Robert E. Slavin (1991) noted, "to put it mildly, a mess" (p. 69). Similarly, "[t]he history of public education in Georgia is complicated" (Georgia State Law Review, 2013)—something that has only been made more so by the fact that its ten constitutions have all affected educational control, administration, and power relations within the state. One of the most recent examples of the shifting balance of power in the Peach State was illustrated in the fight over the constitutionality of appointing a state-level charter school authorizing entity and the transference of power from local educational authorities (LEAs) to the newly created state-level bureaucratic offices and districts. In fact, as one of the newest brands of educational institution, charter schools have had a surprisingly disputatious past in their relatively short existence, spawning both legislation and litigation across the nation since Minnesota passed the first charter school law in 1991 and opened the country's first charter school, Bluffview Montessori, in 1992 (Olson, 1991). Yet, the controversial nature of these authorizers and institutions has in no way impeded their popularity or growth.

At the beginning of the 2015 school year, the number of charter schools in the United States reached over 6,800 (National Alliance for Public Charter Schools, 2016), up from just over 6,000 reported at the start of the 2013 school year (Barshay, 2014) with a rise in total enrollment of "[a]n estimated 250,000" students from 2014 to 2015 alone, an annual increase of nine percent (National Alliance for Public Charter Schools, 2016, p. 1); and this growth illustrated how these publicly funded, privately managed institutions have continued to increase their prevalence in a relatively short amount of time. To put this into prospective, the National Center for Educational Statistics (NCES) reported that the total increase in the number of new public schools opened from 2007 to 2013 was less than one percent (2015).

In an attempt to explain both the passage of increased legislation and the rise in enrollment rates, Regina Umpstead, Kevin McKenna, and Stephanie Klupinski (2014), proposed that this upsurge has been due to the fact that:

> States are allowing for (1) a greater number of charter schools be authorized, (2) the addition of new entities as potential authorizers, (3) a relaxation of the number of teachers within charter schools who need to be certified by the state, and (4) an expansion of virtual charter schools. (p. 14)

Part and parcel to these reformations, the choice movement has also sparked local and state enactments and/or constitutional amendments in forty-three U.S. states and the District of Columbia, with Alabama, Montana, Nebraska, North Dakota, South Dakota, Vermont, and West Virginia remaining as the last holdouts to passing charter school laws

(Ziebarth, 2016). Table 1.1 contains a full list of which states have adopted charter school laws and when they approved them.

Table 1.1: States With Charter School Laws and When These Laws Were Passed

State	Year Charter Law Passed
Alabama	No charter school laws
Alaska	1995
Arizona	1994
Arkansas	1995
California	1992
Colorado	1993
Connecticut	1996
Delaware*	1995
Florida	1996
Georgia	**1993**
Hawaii	1994
Idaho	1998
Illinois	1996
Indiana	2001
Iowa	2002
Kansas	1994
Kentucky	2016
Louisiana	1995
Maine	2011
Maryland	2003
Massachusetts	1993
Michigan	1993
Minnesota	1991
Mississippi	2010
Missouri	1993
Montana	No charter school laws

State	Year Charter Law Passed
Nebraska	No charter school laws
Nevada	1997
New Hampshire	1995
New Jersey	1996
New Mexico	1993
New York	1998
North Carolina	1996
North Dakota	No charter school laws
Ohio	1997
Oklahoma	1999
Oregon	1999
Pennsylvania	1997
Rhode Island	1995
South Carolina	1996
South Dakota	No charter school laws
Tennessee	2002
Texas	1995
Utah	1998
Vermont	No charter school laws
Virginia	1998
Washington	2012
West Virginia	No charter school laws
Wisconsin	1993
Wyoming	1995
District of Columbia	1995
Puerto Rico	1993

While legislation has bolstered charter schools' pervasiveness, autonomy, accountability, and funding, these policies have also been inexorably linked to an increasing number of lawsuits over the legality of said statutes, which, as Upmstead, McKenna, and Klupinski (2014) argued, has illustrated that "charter school legislation and litigation are interrelated" (p. 14). But these connections have not established a link between the number of schools in a state and/or the size of the state itself and the number of laws passed or lawsuits filed. Georgia, for example, has relatively few charter schools (115), especially when compared to California (1,234) or Florida (653) (Ziebarth, 2016), but the state has passed very strong legislation (The Center for Educational Reform, 2015) and has been embroiled in heated debates and courtroom fracases.

The discrepancy between the number of charter schools, charter laws, and lawsuits filed could be explained by the fact that some states have been more accepting of charters or because some regions have not had an immediate need to add new schools, especially those not considered traditional public schools, to their districts. Also, as argued by Bonnie Holliday (2013), who was, as of this writing, the Executive Director of State Charter Schools for the State Charter School Commission of Georgia:

> Georgia's political culture has been repeatedly characterized as traditionalistic and moralistic (Elazar, 1984), as ideologically conservative (Erikson, Wright, & McIver, 1993) and as distrustful of government (Fleishman & Pierannunzi, 2007). Within these political and cultural parameters, public policies are enacted to reflect the state's ideological traditions. Given the foundational tenant of conservatism throughout the state, it follows that Georgia has consistently created

policies—including those governing education—that champion deregulation and increased autonomy at the lowest levels of government. (p. 2)

Yet, within the fight for deregulation (i.e., the fight for additional charter school authorizers), the state's authority has grown, which has been counterintuitive to Georgia's historically conservative political culture. And these justifications and possible explanations for the continued growth of charter laws and policies seem equally as likely as the swaying of public opinion by the overall frustration with public education and anxieties over schools not being able to meet required standards (i.e., fears bred out of everything from Sputnik's launch in 1957 to "A Nation at Risk: The imperative for Educational Reform" (see Appendix A), which have aided the successful lobbying efforts launched in states by charter school supporters. Advocacy groups (i.e., Families for Better Public Schools, the Los Angeles Parents Union, the Wasserman Foundation, the Georgia Charter School Association, the Walton Family Foundation, and ALEC) have vastly accelerated educational reform to promote charter schools as bastions of educational choice and better options for students than "failing" community schools (Ladner & Mylinski, 2014). Likewise, politicians and businesses have provided aid in order to help charters flourish in key states and for them to begin to develop in regions that have generally distanced themselves from this popular movement, like Maine (Maine Department of Education, 2015).

With all of the potential motivations for increasing charter schools' prevalence (e.g., increased autonomy, additional state power, business interests, apprehensions, etc.), one might see the inherent difficulty in trying to find the most appropriate or novel way to approach researching charter schools. In this, Holliday noted that:

> Specifically, a study of educational policy change in Georgia is particularly well suited to buttress existing theoretical knowledge on both deregulation coalitions (Brown, 1985, 1987; Brown & Stewart, 1993; Kahn, 1983; Levine, 1981; Wilson, 1980) as well as education coalitions (Bishop, 1992; Bulkley, 2003; Bulman & Kirp, 1999; Ceperley, 1997; Fusarelli, 1998; Lewis, Young, & Sanders, 2008; Mawhinney, 1992, 1993; Morken & Formicola, 1999; Stewart, 1991) because it examines the emergence of the state's school choice policy coalition as an extension of Georgia's decades-old tradition of promoting deregulation and decentralized authority. (2013, p. 16)

And yet the promotion of decentralization through charter school authorization has bolstered the influence and power of the state, creating more regulation at *that* level of government, so a different and distinctive approach seems apropos.

Having noted this, the major literature review found within this work strives to understand policy shifts surrounding charters by attempting to fully understand the laws that govern them and the conflicts and disputes that guide them. After all, each and every policy change made to bolster charter school growth in the Peach State has been linked to the enactment of laws, Supreme Court decisions, constitutional amendments, and lawsuits.

Accordingly, this research presents the history of charter school laws—those that ultimately led to the immergence of charters in public education—charter school authorization policies and the mechanisms that allow them to function (like the rules and regulations behind charter authorizers and charter school funding), unintended

consequences of the laws and amendments, the politics behind campaigns for and against new legislation, and accountability measures within state charter systems.

Nevertheless, studies that include accountability have not been and are not without their complications. As Patrick McGuinn, Larry Berger, and David Stevenson asserted in their contribution to "Carrots, Sticks and the Pulpit" (2011), "[A] wide variation in state standards, tests, and proficiency definitions (along with debates over how to compare schools with different student populations) continues to make school-to-school caparisons challenging and frequently contested (p. 135)."

In this regard, Georgia finds itself in a unique position. The state's charter school authorizing body, the State Charter School Commission, was created as an autonomous school system—one that has operated within districts but outside of local control (i.e., with no interventions from school boards or administration by local actors)—but they are also quite similar to their public school counterparts (e.g., they take analogous standardized tests and have demographics that are close to those of traditional public schools because their learners come from the same student populations within the district). Thus, the SCSC's schools have corresponding demographics, standards, and proficiency definitions to traditional public schools. Moreover, in 2015, the SCSC published its first accountability report, which likened their schools to comparable educational institutions within the same districts, so, in this way, the SCSC's schools and traditional public schools could be viewed in more of an apples-to-apples comparison and a more accurate portrayal of charter school authorizers and, subsequently, state charter schools and their successes and/or failures could be ascertained. Having noted this, however, the interpretation of such results, their validity, and how they have been

conceptualized, supported, and disputed, will ultimately fold this data into the legalities that surround charter schools and legal theory. This information, while important in educational conversations overall, is less a major concern of charter school law and more of a byproduct of the mechanisms currently in place—this is in no way meant to undermine other works that base themselves on such comparisons (i.e., CREDO, Blazer, etc.), it merely creates a more focused definition as to how this data will be utilized.

In order to create a cohesive and comprehensive review of charters, this work has been broken into five chapters:

Chapter 1 includes the significance of the study, purpose of the study, research questions, and the organization of the study.

Chapter 2 contains a review of legal interpretivism (i.e., argument-based law and disputes and what they mean), which will be used to examine the relevant laws and literature, including state constitutions and legislations. As charter school laws have amended the Official Code of Georgia in order to justify the existence of the SCSC and the vote on the proposition for an Opportunity School District, this will be a primary focus of this review; however, it will also encompass how charter schools came to exist (e.g., market theory and the laws and measures, such as vouchers, that fostered their creation) and how these laws have reinvented public education. Further analysis of these authorizations and their purposes and considerations will be addressed, as well, but this will mainly serve to discuss this issue holistically and all information will be interpreted in a disputative manner.

Chapter 3 describes the research methodology. This will include a discussion of the reviewed documents, the validity of the texts, and limitations.

Chapter 4 presents the findings of the study.

Chapter 5 discusses recommendations and implications of the findings.

Purpose of the Study

The purpose of this study was to interpret charter school laws and their volatile past, which led to the creation of new statewide charter school authorizers in Georgia. This purpose guided the research in order to understand how wiles like this affected the institution of education and how said legislation affected learners, the fiscal impacts of such policies on schools, communities, and individuals, and the legal and political implications—some of which encompassed moral considerations—of such legislation. Many studies of charters have already been conducted (i.e., Bifulco & Ladd (2004), Blazer (2010), CREDO (2013), Holliday (2013), Patel (2013), Silvernail & Johnson (2014), etc.), but this research endeavor examined specific Georgia constitutional amendments (Amendment 1 (2012) and Amendment 1 (2016)), bills (House Bill (HB) 881, HB 797, and Senate Bill (SB) 133), and lawsuits and their appeals (i.e., Gwinnett County School District v. Kathy Cox and the current class-action lawsuit against Georgia over Amendment 1's (2016) misleading ballot question) in order to examine their affect on the educational and legal landscape within Georgia.

By using specific examples of charter school legislation and the SCSC's own accountability report—the first of its kind—this review presents a clearer picture of what

state-chartered special schools are and how they influence public schools, students, and taxpayers.

Research Questions

This study examined changes made in Georgia's constitution and in its public school districts resulting from the creation of statewide charter authorizing entities, continued charter legislation, and further state control. Legal interpretivism was used to scrutinize the historical relevance of prior legislation and to extrapolate inherent disputes within the state over this issue, which addressed the following questions:

1. How have charter school laws changed public education in Georgia, both in their scope and circumlocution?
2. How has the financial status of traditional public school districts been impacted by charter school legislation and its breadth?
3. How have actors used political platforms to inform and/or misinform communities about charter school authorizer laws and their impacts?
4. Has the authority of local actors been diminished as a result of charter school policies?
5. For whom were these charter school laws written?

Once the data collection process was finished, the findings were analyzed in order to measure the extent to which Georgia's school choice policies conformed to the enquiry of legal interpretivism. The research questions posed in this study were answered by

highlighting: (1) the conflict in each law passed, and (2) the impact of each dispute on the state's system of traditional public education.

Organization of the Study

Using legal interpretivism as an organizing framework, this study of school choice policy in Georgia begins with a historic analysis of the law throughout the state's history—this will be a constitutional review. By establishing the legal context that enabled charter school disputes to arise, it was possible to evaluate the various ways in which the fight for school choice has evolved. In other words, the constitution served as a standard against which future policy changes and movements were measured. The impetus for these changes was determined upon collection and analysis of major arguments surrounding this issue, pertinent legislation and litigation, historical media accounts, campaign finance records, and assessment reports. Additionally, inconsistencies in policy beliefs as well as ancillary aspects of legislation (i.e., unintended consequences) were examined in relation to the practical affects of laws once they were passed and enforced. Finally, peripheral influences, such as individual's understanding and/or misunderstanding of legislation, were examined and presented within the findings of this study.

CHAPTER 2

LITERATURE REVIEW

The first part of this review examines legal interpretivism as an extension of preceding theories of legal disputes in and out of education and assesses the utility of interpretivism for a study of charter school policy in Georgia. Thusly, the notion of interpretivism—what it is, does, and can be applied to—follows.

Legal Interpretivism and Why It Matters

Ronald Dworkin, the architect of this philosophy, believed that the law was interpretive, meaning that it doesn't always mean the same thing to everyone all of the time. In fact, as David Plunkett and Timothy Sundell (2013) noted of his work:

> LAW is an interpretative concept, a special kind of concept whose correct application depends neither on fixed criteria nor on an instance-identifying decision procedure but rather on the normative or evaluative facts that best justify the total set of practices in which that concept is used. The main argument that Dworkin gives for interpretivism about some concept—LAW, among many others—is a disagreement-based argument. (p. 242)

In this "disagreement-based argument," Dworkin contended that there was more than one kind of legal dispute. In fact, "[i]n the first type, it seems that the parties agree on the conditions for something's being a law—at least the conditions for the relevant

jurisdiction at the relevant time—but disagree about whether those conditions are met in the case at hand" (Plunkett & Sundell, 2013, p. 243).

Dworkin spoke about this in a 2009 keynote address for the release of his, then forthcoming, book "Justice for Hedgehogs." As he put it:

> I find it necessary to think about concepts, to distinguish among the kinds of concepts that we use. Some concepts we share because we share criteria for applying them. When we don't quite share the criteria in borderline cases, then our disagreement isn't real. Our disagreement about how many books there are on a table might turn out to be merely verbal because you take a different view of whether a pamphlet is a book than I do. We share the concept to the extent to which we share criteria for its application.

In this quote, Dworkin posited that certain "conditions," such as the understanding of whether or not a pamphlet is a book might nullify a disagreement between two opposing sides of a conflict. This introduced the notion of consensus, or a lack of consensus, in a dispute and of the interpretation of terms used when attempting to understand the law—a call back to his "semantic sting" argument that he used to refute legal positivism, which defined the law as determined by unanimity (by the canonized standard, which was established by H.L.A. Harts's Rule of Recognition (see Appendix B)) (Leiter, 2009).

Of his sting, Dworkin wrote:

> [O]ur legal philosophers try to save what they can. They grasp at straws: they say judges in hard cases are only pretending to disagree about what the law is, or that

> hard cases are only borderline disputes at the margin of what is clear and shared. They think they must otherwise settle into some form of nihilism about law. The logic that wreaks this havoc is the logic just described, the argument that unless lawyers and judges share factual criteria about the grounds of law there can be no significant thought or debate about what the law is. We have no choice but to confront that argument. It is a philosophical argument, so the next stage of our project must be philosophical.
>
> I shall call the argument I have just described…the semantic sting. People are its prey who hold a certain picture of what disagreement is like and when it is possible. They think we can argue sensibly with one another if, and only if, we accept to follow the same criteria for deciding when our claims are sound, even if we cannot state exactly, as a philosopher might hope to do, what these criteria are. (1986, p. 44-45)

Again, this is his main argument against falling into the misconception that everything is as black and white as one might think it to be, such as what criteria is set and understood in a disagreement, and it continues to redefine what a dispute is and when it occurs.

The second type of disagreement-based argument would be where "legal actors such as lawyers or judges express different views about 'what the law is…'" (Plunkett & Sundell, 2013, p. 243).

This would be akin to when, in 2008, the General Assembly and the local school districts in Georgia disagreed that the Constitution of 1983 allowed for the creation of a

statewide authorizing entity for charter schools. Basically, this would be where the state believed that the law, in this instance, was meant to serve a particular purpose (i.e., for it to give Georgia the power to overrule local school district decisions over charter petition denials) and the communities disagreed—more on that later. Now, some may look at this example and believe that it is a stretch to make this allusion or that it is an attempt to force a philosophy onto a dissimilar part of the legislative process in order to encompass all things under one ideological umbrella. But the law and its philosophical principles, even in legal positivism, is generally thought of as a two-fold structure: (1) the first part governs the people, and (2) the second part attempts to rationalize, understand, create, and enforce the rules that govern the constituency. In this way, it can be agreed upon that a fundamental misunderstanding of the law and its purposes was had between the General Assembly and public school systems.

Dworkin, himself, faced similar criticisms as the one presented above and said of them:

> You will have by now formed a suspicion. Poseidon had a son called Procrustes who had a bed and he suited his guests to the bed by stretching them or lopping them until they fit. You would not be ungenerous at this point in thinking that I'm acting like Procrustes, stretching and lopping conceptions of these great virtues so that they fit rather than conflict with one another. (2009)

This is, of course, a fair and even argument because not all systems of belief and understanding allow for overlapping or intermixing. One cannot, for example, say that astronomy and geology are the same, or that one could use the same form of investigative

inquiry to practice both sciences, even though they are regarded as scientific branches of study. Astrology and astronomy would have a similar problem. Both seem focused on the analysis of celestial bodies, but astrology attempts to glean a humanistic and mystical meaning from them (i.e., your daily horoscope), and astronomy is a natural science that observes the stars and galaxies with no concern of it affecting one's day-to-day life. Yet, in this, legal interpretivism finds a lifeline, because it *is* used to and was *made* to interpret what conflicting sides of a dispute believe about the law and the offensive measures and/or defenses they might present. Thus, political intrigues, advertisements, newspaper articles, and all parts of the process of creating, amending, and ratifying a law are open for interpretation—they are all part of a disagreement-based argument between two parties—as long as one foot is firmly grounded in the legal process.

When considering everything so far, the notions and concepts presented are powerful and relevant in the discussions about charter school laws because of the decades-long debates over why more schools, especially charter schools, are needed. The historical and traditional nature of Georgia's political climate, for example, and its "conservative" conventions—how, or if, these customs have influenced the arguments for and against more charter legislation—is one such facet of this discussion that warrants further attention. This particular issue is one that has already been discussed (i.e., Holliday (2013)), but it necessitates a review through the legal history of the state.

Another pertinent talking point has been the deconstruction of America's educational monopoly and market theory's entrance into the public school system. Leading up to the passage of new charter laws, there were, and still are, many who assumed charter schools would be more financially stable (i.e., cheaper and with more

balanced budgets) if run by for-profit organizations. Therefore, a discussion about how charter schools emerged from market conventions and their budgetary acumen must be addressed. Likewise, the assertion that charter schools outperform traditional public schools and achieve at greater rates is essential to both the passage of further charter legislation and further consideration of these educational institutions. Subsequently, interpretivism also calls into question the validity of comparing charter schools to public schools—even with Georgia's more positive position for comparison—and asks the difficult question of whether or not such paralleling *should* be done.

Lastly, legal interprevitism, unlike other dogmas, encompasses a moral imperative into its examination of the law and its processes. This was founded in the notion that conflicts and resolutions are, at heart, morally based. Dworkin supported this claim when he maintained: "In my view, legal argument is characteristically and pervasively moral argument. Lawyers must decide which of competing sets of principles provide the best—morally most compelling—justification of legal practice as a whole (Green, 2007, p. 1481). This kind of elucidation could prove useful in education, especially in regards to the question of whether or not education is a public good or whether or not legislation has had the learners' "best—morally most compelling" interests in mind when passing new legislation.

And all of this is important when reviewing literature by way of legal practices within a state. In this case, it's Georgia, but studies could just as easily be completed in Florida, Louisiana, California, Washington DC, or North Carolina (all places with strong charter school legislation). And yet, before any discussion of this kind can be had in regards to other states, it must first be had here. Of course, before any further

consideration can be had, the foundation for charter school authorization laws, and the basis of all law, must be addressed.

Because certain bills and amendments have changed the most fundamental part of Georgia's legal system, the Constitution of 1983, an understanding of where the law came from is paramount to grasping the extensiveness of these changes.

Georgia's Constitutional History

In the early 1990s, Senator Eugene P. Walker argued that there were three main periods in the history of public schools in Georgia:

1. The Developmental Period when education was available only to those who could afford it.
2. The Established School Period where the state assumed a role of responsibility for public education.
3. The Equalization Period when the state began to struggle with integration and equal educational opportunities. (1991, p. 2)

It should be noted that the periods Walker described were given as general guidelines—stages of growth without well-defined dates or events—and were more focused on the broad strokes of the state's history, especially those concentrated on or around large social and/or cultural changes, instead of emphasizing specific movements or changes that affected education as a whole. In this way, it was education that made history and not history that made education, and while these sweeping social and cultural vicissitudes of public education's past are of great relevance, this study will focus more

on the constitutional and legislative efforts that established and impacted education—it will focus on how Georgia's history informed and shaped its schools, schooling, and students. Furthermore, the historical prevalence and growth of public education used will be viewed specifically through its legislation, litigation, and amendments.

A Condensed History of Georgia's Constitutions and Educational Enactments

Georgia has had ten constitutions since the province's citizens adopted the Declaration of Independence in 1776 and were first compelled to support constitutional governance in 1777—a year after the Rules and Regulations of the thirteenth colony were espoused by the Georgia Trustees, a corporate body, or Trust, of twelve executors who acted as the colony's governing body after its original charter was shepherded by James Oglethorpe in 1732 (L.W. Hill & B. Hill, 2014). Implemented in 1777, this first constitution was executed without being submitted for a popular vote and bestowed powers to a state legislative body, integrated the separation of powers doctrine into its policies, granted citizens basic rights (e.g., the freedom of religion and trial by jury), and contained one educational provision: "Art. LIV. Schools shall be erected in each county, and supported at the general expense of the State, as the legislature shall hereafter point out" (Poore, 1878, p. 383). Yet, even though this first constitution mentioned education, it lacked many key points in the enactment and governance of schools, mainly how schoolhouses would be organized and administered and the appropriation of funding for education (i.e., an explanation of what "general expense" meant and where the money would come from).

The 1789 Constitution, the shortest of the ten, was fashioned after the U.S. Constitution and did not mention schools or education. In it, an executive branch, a judicial branch, and a bicameral legislature were sanctioned and the General Assembly was nominated and given the authority to elect a governor (L.W. Hill & B. Hill, 2014).

In 1798, the new constitution clarified the requirements of its predecessor and the legislative powers of the state were more narrowly defined. The governor's position was restructured as a seat won through the popular vote and provisions for the creation of the Supreme Court were approved. Yet, even with this approval, Georgia's first Supreme Court was not formally organized until 1846 (L.W. Hill & B. Hill, 2014).

The Civil War and Reconstruction that followed prompted a tetrad of revisions of the constitution: (1) The Constitution of 1861 was essentially a copy of the Confederate Constitution, which called for the state to secede from the Union, was the first to be ratified through the popular vote, and was also the first to contain a comprehensive bill of rights, called the Declaration of Fundamental Principals. (2) The Constitution of 1865, the first post-war authorization of Reconstruction, was written to reorganize the state into a body deemed acceptable by the federal government, which included the abolishment of the Ordinance of Secession, the end of slavery, a retraction of war debt (Georgia was destitute after the war), restricting the governor's time in office to two terms, a provision that required judges, save Supreme Court judges, to be elected to their seats, and, in Article II, Section V, which contained the most comprehensive constitutional education provision up to that point—this was only the second time education had been addressed in the constitution—stated "the General Assembly shall have power to appropriate money for the promotion of learning and science, and to provide for the education of the people,

and shall provide for the early resumption of the regular exercises of the University of Georgia, by the adequate endowment of the same" (Rich & Farnham, 1898, p. 603). Georgians subsequently refused to ratify the Fourteenth Amendment (mainly due to the civil rights clauses that gave citizenship to non-white males) and the state was placed under military rule (L.W. Hill & B. Hill, 2014). (3) The Constitution of 1868 included parts of the Fourteenth Amendment that expanded suffrage to all male citizens, lengthened the governor's term to four years, broadened the power of the governor and, in Article VI, stated "[t]he general assembly, at its first session after the adoption of this constitution, shall provide a thorough system of general education, to be forever free to all children of the State, the expense of which shall be provided for by taxation or otherwise (Rich & Farnham, 1898, p. 603). This created, at least in part, a blueprint for how schools would be funded (e.g., taxation) and made it explicitly clear that education was to be a no-cost benefit for all students. Private schools for Whites had dominated the educational landscape and any organized school programs Georgia had begun before the Civil War ceased during the conflict, but after the battles ended education recommenced and the new freedmen (e.g., the freed African American slaves) demanded educational services—a right to which they were constitutionally and lawfully entitled. (4) The Constitution of 1877 reduced and restricted individual, institutional, judicial, and legislative powers and was one of the most contentious pieces of legislations passed, having been amended 301 times during its lifespan (L.W. Hill & B. Hill, 2014). The 1877 Constitution also contained a comprehensive educational reform in Article VIII, aptly entitled "Education," which set forth six sections of sanctions. The most important to this record was the declaration set forth in Section I, which stated:

> Paragraph I. There shall be a thorough system of common schools for the education of children in the elementary branches of an English education only, as nearly uniform as practicable, the expenses of which shall be provided for by taxation, or otherwise. The schools shall be free to all children of the State, but separate schools shall be provided for the white and colored races. (Harris, 1906, p. 1069)

Section II mainly clarified how schools would be funded and ensured there would be a governor-appointed, senate-confirmed State School Commissioner, "whose term of office shall be two years, and until his successor is appointed and qualified" (Harris, 1906, p. 1069). Section III, which dealt with funding, dictated that the poll tax, educational funds, special taxes on entertainment (i.e., shows and exhibitions), the sale of alcohol, proceeds of taxes for military service, and all taxes assessed on domesticated animals were set apart and devoted to the support of common schools. Section IV granted counties the authority to establish and maintain public schools by local taxation, but made it clear that no laws would take effect until approved by a two-thirds "vote of persons qualified to vote at such election; and the General Assembly may prescribe who shall vote on such question" (McPherson, 1878, p. 84). Section V simply maintained that existing school systems would not be affected by the new constitution.

James E. Flynn III and Jefferson A. Holt (2012) also noted that "in 1870, the General Assembly enacted comprehensive education legislation" (p. 2); however, the Constitution of 1877, like those before it, did not set out provisions for, or make mention of, educational authorities or give them the power needed to build and govern schools. An 1872 amendment to the 1870 law made it clear that cities an/or counties could create

their own schools, and thirty-four years later, in 1906, the General Assembly enacted legislation that "require[ed] every county board of education in Georgia to divide the county into school districts with clear boundary lines" (Flynn & Holt, 2012, p. 3)—each boundary line was obligated to raise funding for and manage the schools contained within it. This law, along with many other socio-political and economic issues, led to the creation of nearly 2,000 school districts within the state by the 1940s.

The push for new a constitution was set aside because of other pressing issues (e.g., Women's Suffrage, World War I, and World War II), but was ultimately driven by a publication from the Institute of Public Affairs at the University of Georgia, which led to talks about new legislation, finally culminating in the 1945 Constitution (L.W. Hill & B. Hill, 2014). This new legislation's most notable alterations included the creation of the office of lieutenant governor, the Board of Corrections, the department of veterans' services, and the creation of one Board of Education (BOE) in each county and/or city that had the power to manage public schools. The latter was enacted as a direct result of the overabundance of schoolhouses being opened and, because of the superfluity of school districts, banned the creation of new and autonomous systems. As a result, the Constitution of 1945 consolidated the control of school districts into either city or county jurisdiction. Additionally, it barred the establishment of new districts and the creation of new schools.

Later, the Georgia Supreme Court's decision in Tipton v. Speer (1955), which "held that the Thomas County Board of Education could not, under the 1945 Constitution, contract to build a new high school to be operated and governed jointly with the independent City of Thomasville Board of Education" (Georgia Supreme Court,

2011), too rigidly applied the new law and began a series of challenges to the legislation. Five years later, in 1960, this decision was overturned to allow "…two or more counties, or any two or more municipalities, or any county and municipality, or combination thereof [to] jointly establish area schools, including vocational trade schools" (Georgia Supreme Court, 2011). More revisions followed, and in 1966, Article VIII, Section IX of the 1945 Constitution was replaced and "authorized the General Assembly to consolidate multiple county or independent school systems into an 'area school district,' pursuant to special or local law and with the approval of the voters in the school systems affected" (Georgia Supreme Court, 2011). These policies held that the General Assembly could not create "special schools"—that authority was reserved for the voters in each affected district—but the General Assembly did maintain the power to determine which local board created and operated a special school. These decisions would later become pivotal in the struggle to legitimize charter school legislation.

George Busbee, who was a member of the General Assembly and won the gubernatorial race in 1974, argued that each individual article needed to be considered for revision independently. Yet, after he took office, Busbee had the Office of Legislative Counsel merely rearrange the document into the 1976 Constitution instead of making substantive changes—his efforts, however, did herald more comprehensive reconsiderations of the constitution in the future (L.W. Hill & B. Hill, 2014).

A year later, the Select Committee on Constitutional Revision (SCCR) was sanctioned by the General Assembly. Some of the affiliates on this committee included members of both legislative houses and representatives from the judicial branch, the attorney general, the speaker of the house, the lieutenant governor, and the governor

(L.W. Hill & B. Hill, 2014). In one of its first actions, the SCCR approved a complete overhaul of the constitution with every article being written and/or edited by the committee. The SCCR's proposed amendments were completed in August 1981 and were submitted to the General Assembly in a September special session. The new constitution was approved on September 25th and then was further amended at a 1982 session before being submitted to voters. With extraordinary bipartisan support and efforts to make its content open to the constituency, the Constitution of 1983 was easily ratified and went into effect on July 1st, 1983 (L.W. Hill & B. Hill, 2014).

This much more concise and clear document was shorter than the 1976 Constitution by half and provided more flexibility for the General Assembly to handle statutes. What made the Constitution of 1983 different from all previous incarnations was that it forbid "any further constitutional amendments relating to only a particular city, county, or other local political subdivision" (L. W. Hill & B. Hill, 2014), which meant that any modifications to this document would impact the state as a whole. As it related to education, the 1983 Constitution ratified the "special schools" provision and held that only the constituency (i.e., the local boards of education) of the state could create schools, not the General Assembly.

Summary and Review

In regards to charter school authorizers, their laws, and their affect on the system of education in Georgia, the dictates in these ten constitutions were paramount (see Table 2.1 for how each constitution contributed to the conflict for statewide charter school authorizers).

Table 2.1 Georgia's Constitutions and Their Impact on Education and Affect on Charter School Authorizers.

Constitution	Contribution to Education	Contribution to Governor's Power	Affect on Charter School Authorizer's Creation, Conflicts, or Laws
1777	Made it clear that schoolhouses shall be erected in each county.	None.	Paved the way for all public education in Georgia. **Georgia was created by charter.*
1789	None specifically (to this research).	Gave the General Assembly the right to appoint a governor.	With the creation of the governor's position, this constitution would later greatly contribute to the passage of charter laws by contemporary politicians who held this office.
1798	None specifically.	Rearranged the governor's seat to an elected position. Provisions for a State Supreme court were approved—this, however, was not organized formally until 1846.	With the governor now having to be elected, this led to the many campaigns seen throughout the past two decades, many of which have used education as a major talking point. The Supreme Court would later make many important decisions about charter schools, charter laws, and their authorizers.
1861	None specifically.	None specifically.	First to be ratified by the popular vote. Such a vote, especially on constitutional amendments would later prove pivotal in the conflicts between the state and local educational authorities.
1865	Gave the General Assembly the power to obtain money for the education of the people.	Restricted the governor's time in office to two terms.	Generated the first way for the state to attempt to pay for education. Lessened the governor's overall influence to two terms—this, however, would become quite enough time to stir up controversy and conflict.
1868	Charged the General Assembly with providing free education to all children, which would be paid for through taxation.	Lengthened the governor's term to four years, broadened the power of the governor,	In general, the governor was held to an overall term of eight years—again, this would be enough time for several conflicts to arise between the state and local systems of education in the disputes over charter school authorizers. Created the first tangible way for the state to pay for free, public education—taxation. When architecting the later constitutional amendments, this would become an important component of educational legislation, especially for charter school authorizing entities.

1877	Provided for a thorough system of common schools for the education of children in the elementary branches—though these schools were meant to be uniform and segregated—and made it clear that taxation would continue to fund education. Also, provided specific examples of what taxes would pay for schools (i.e., alcohol).	None specifically.	Continued the work of the Constitution of 1868, but was far more specific. Again, taxation and school funding would become contentious in the disputes over charter school authorizers.
1906 (Legislation Non-Constitution)	Required every county board of education in Georgia to divide the county into school districts with clear boundary lines.	None specifically.	Because charter schools are public schools zoned into specific school districts, the zoning of schools would lead to major arguments and, eventually, a constitutional amendment.
1945	Created a Board of Education (BOE) in each county and/or city that had the power to manage public schools. Consolidated the control of school districts into either city or county jurisdiction and barred the establishment of new districts and the creation of new schools.	None specifically.	Created local educational authorities to preside over their designated districts. Effectively, this gave power to the local systems of education. Barred the creation of new schools, which led to the special schools provision in later constitutions.
1955-1960 (Lawsuit)	Georgia Supreme Court's decision in Tipton v. Speer (1955) was overturned, which allowed new schools to be opened once more.	None specifically.	Allowed schools to be opened by two or more bodies (i.e., two or more counties, two or more municipalities, etc.), which gave the ability to open schools back to the districts. Again, this eventually led to the special schools provision.

1966 (Revision)	Authorized the General Assembly to consolidate multiple county or independent school systems into area school districts with the approval of the voters and held that the General Assembly could not create "special schools"—schools that were not approved by LEAs. The General Assembly did, however, maintain the power to determine which local board created and operated a special school.	None specifically.	This becomes very important in the fight for charter school authorizers, because this is the first instance where it was held that the state could not open a "special school," or a school that does not fall under the control and definition of a traditional public school.
1976	Held with 1945.	Held with 1945.	This was little more than a reorganization of the Constitution of 1945, but it did continue the policies from its previous iteration.
1983	Forbid any further constitutional amendments relating to only a particular city, county, or other local political subdivision, which meant that any modifications to this new constitution would impact the state as a whole, and ratified the special schools provision.	None specifically.	This constitution did two things that would later become paramount in the disputes over charter school authorizers: (1) It made it clear that any amendments to the constitution would affect the entire state, so a statewide vote was required and a ballot would have to be created for any and all changes; and (2) It made it clear that state funds for schools and authority of educational institutions would be primarily left up to the local school districts.

The constitutions and their policies created and gave power to some of the main actors in and around charter school disputes—Georgia's governor, the General Assembly, and the Supreme Court—and also laid the groundwork for the constitutional challenges set before the court as litigation became a major factor in deciding the Peach State's charter school future.

Georgia's constitutional history set the stage for the disagreements over charter policies to come, but, before the first charter law was passed, there was already much conflict surrounding the issue of school choice—conflict that began with arguments over the entrance of market theory into the public school system via school vouchers, which were important to the creation of the charter movement and, subsequently, statewide authorizers.

The Demand for Charter School Authorizers and Why It Matters

Dominic Brewer and Richard O. Welsh (2014) argued that "concerns regarding efficiency and the effectiveness of the centrality of governments in the provision of education have resulted in the emergence of market-based mechanisms in the allocation of educational resources" (p. 455), which makes it seem almost inevitable that "'market-based' reforms such as charter schools…have grown in popularity in education" (Brewer and Welsh, 2014, p. 455). Accordingly, this section of the literature review will pivot and give a basis for the deliberations that fueled the fire of the choice movement and eventually led to the creation of statewide charter school authorizers in Georgia.

To give proper credence to this topic, a bit of background in market theory is warranted—this, in effect, ensures that no one in this particular dispute has any separate preconceived notions, contrasting criteria, or semantic divergences from how this part of the history of charter schools affected state and local actors (e.g., everyone will know that a pamphlet is and/or is not a book). By defining markets, scarcity, price, and need, this summation of major themes will aid in the comprehension of how supply and demand and competition have impacted the economic disputes over the state's new bureaucratic educational offices and will validate later arguments over charter school finance.

Defining Markets

To distinguish between the relationships that take place within markets, an understanding of what a market is must be acquired. As Brewer and Welsh (2014) asserted in their contribution to "The Encyclopedia of Education and Finance," "[a] market can be defined as a place where an exchange of a particular good or service between buyers and sellers occurs" (p. 453). To put it another way, markets are where transactions for the acquisition or vending of products and/or services are rendered. So, one's neighborhood grocery store, Amazon account, and local school district are markets. It may seem odd to some that educational institutions, or the institution of education itself, is, in fact, a market, especially "[g]iven that schooling is widely considered a public good" (Brewer & Picus, 2014, p. 455). And here some clarification may be needed.

Paul M. Johnson of Auburn University defined public goods as "a very special class of goods which cannot practically be withheld from one individual consumer without withholding them from all…for which the marginal cost of an additional person consuming them, once they have been produced, is zero" (n.d.). National defense is an example of a public good, because it is provided for by all, through taxation, and for all through its activities and engagements (Johnson, n.d.). In this vein, it would be easy to see public education as a public good, but, as ever, there are inherent disputes over whether or not this institution is and/or should be a social benefit.

School districts, at least those public facilities in the K-12 sector, have not traditionally been seen as marketplaces by local actors—outside of small dealings within

a school's infrastructure, like fundraisers or vending machine, of course—but they have grown and changed to include the statewide, nationwide, and global marketplaces within their organizations (Brewer & Picus, 2014). Mark Tucker, president of the National Center on Education and the Economy, explicated how the theory of markets, and a burgeoning marketplace for competing education reforms and services, began to encroach upon public schools. In his argument, he wrote:

> Years ago, Milton Friedman and others opined that the best possible education reform would be one based on good old market theory. Public education, the analysis went, was a government monopoly, and, teachers and school administrators, freed from the discipline of the market, as in all government monopolies, had no incentive to control costs or deliver high quality. (Strauss, 2012)

Since Friedman and his contemporaries began promoting the use of the theory of markets in education, schools have increasingly become a fixture in economic discussions and with the emergence of publically funded, privately administered schools (i.e., charter schools) have grown to attract more private sector attention and administration. Within this paradigm it becomes understood that a market, whether physical (e.g., a grocer), electronic (i.e., Amazon), or educational are places where buyers purchase products and vendors sell goods or services—they are environments in which a good or service is exchanged for an agreed upon price.

Scarcity and Price

Scarcity seems like an easily grasped concept, but as Thomas Sowell, a Senior Fellow at the Hoover Institution of Stanford University, argues: "This may seem like a simple thing, but its implications are often grossly misunderstood, even by highly educated people" (2015, p. 2).

Plainly stated, scarcity is the understanding that there are not enough resources to make everyone happy, or to fulfill people to an absolute state of satisfaction, all of the time (Sowell, 2015). Therefore, there will always be choices that need to be made and a want, demand, or need that will not be met. "'Unmet needs,'" as Sowell establishes, "are inherent…whether we have a capitalist, socialist, feudal, or other kind of economy" (2015, p. 2), so the insufficiency of resources is implicit in markets. Similarly, pricing is an inherent part of market economies. If "the key task facing any economy is the allocation of scarce resources which have alternative uses" (Sowell, 2015, p. 4) (i.e., to produce merchantable goods from a scarce marketplace), then the way a market economy regulates itself in the production and acquisition of goods and services would be by adjusting the price of commodities and services. In other words, price both drives the market and is driven by the market and its instruments. To illustrate this, the *law of demand* asserts that greater demand is directly correlated to the price of a good, and if the price of such goods is lower, then consumers will purchase more (Brewer & Welsh, 2014). Hence, if the price of products goes down, then the demand goes up and vice-versa. A practical example of this can be seen in the rise of standardized testing. Long argued as the standard by which students should be measured, the demand and need for

these tests has grown exponentially over the past few decades. In fact, in 2001, just before the passage of President Bush's No Child Left Behind Act (NCLB),

> [t]he National Board on Educational Testing and Public Policy at Boston College compiled data from The Bowker Annual, a compendium of the dollar-volume in test sales each year, and reported that while test sales in 1955 were $7 million (adjusted to 1998 dollars), that figure was $263 million in 1997, an increase of more than 3,000 percent. Today, press reports put the value of the testing market anywhere from $400 million to $700 million. (Public Broadcasting Service, n.d.)

More recently, "[a] new report by the Washington-based Brown Center on Education Policy at the Brookings Institution calculates states spend a combined $1.7 billion annually on standardized testing" (The Huffington Post, 2012), but "[p]er-pupil spending varies significantly across states, with New York ($7 per student), Oregon ($13 per student), and Georgia ($14) among the lowest-spending states, and Massachusetts ($64), Delaware ($73), Hawaii ($105) and the District of Columbia ($114) among the highest-spending" (The Huffington Post, 2012). One can suppose that these discrepancies are a result of either: (1) the amount of tests each state buys, either because of the population or the number of assessments given annually, which creates areas where there is less demand, inflating the price of testing per student; (2) some states, like Hawaii, spend more because the resource (i.e., the tests and test makers) are more difficult to acquire, which increases the cost of production, raising the price; or (3) there are some significant variances in state-to-state contractual negotiations with test makers. In any case, price is adjusted by the demand, and demand is, in turn, adjusted by scarcity.

Price and scarcity distinguish parts of the market that directly affect and are directly affected by supply and demand—higher prices, for example, may lower the demand for consumers but raise the seller's supply, and scarcity, or the fact that there will always be unmet needs, allows for businesses to continue to grow and diversify; however, these are all pieces of the same puzzle, and to fully comprehend how the theory of markets has transitioned into public schools, it is important to keep every component in mind.

Need, not Demand

Many confuse need with demand, but this is a mistake. *Demand* refers to consumer and/or market desires for a product or service—a concept that encompasses some amount of need—but *need* is not static or objective and "[s]eldom, if ever, is there a fixed quantity [of need] demanded" (Sowell, 2015, p. 28). Put differently, need is a part of demand, but does not completely encompass demand itself. When there is a need for a product, like education, but the utility is provided in excess and at low costs, then waste accumulates. This is because there is no tried and true way of gauging how much of something the market requires.

Supply and Demand, Competition, and Market Assumptions

Sowell explains that there is "no more basic or more obvious principal of economics than the fact that people tend to buy more at a lower price and less at a higher price. By the same token, people who produce goods or supply service tend to supply more at a higher price and less at a lower price" (Sowell, 2015, p. 28). Thus, it becomes evident that supply represents the amount of production or services that the market can

generate or is willing to offer, and demand represents the desires of the market and the willingness of buyers to pay a particular price for a good or service. Accordingly, the amount of a commodity available to consumers, the quantity that attempts to satisfy the need, denotes how much of a particular good producers are able and/or willing to yield for a certain price, so "[p]rices in a market economy are not simply numbers plucked out of the air or arbitrarily set by sellers" (Sowell, 2015, p. 18); they only become relevant and emerge as "economic realities…if others are willing to pay them—and that depends not on whatever prices you have chosen but on how much consumers want what you offer and on what prices other producers charge for the same goods and services" (p. 18).

Price is contingent on many factors, but two of the main influences in determining price are supply and demand—price, therefore, is a reflection of the supply-demand relationship, and this relationship underlies the systems behind the allocation of assets.

Similarly, "[c]ompetition is the crucial factor in explaining why prices usually cannot be maintained at arbitrarily set levels" (Sowell, 2015, p. 31). Competition moves prices towards parity while forcing resources (e.g., staff, money, and so forth) towards the highest rates of their return, basically shifting assets to where they can saturate areas of unmet demands. This means "that prices and rates of return on investments tend to equalize," (Sowell, 2015, p. 31) and "that their fluctuations, relative to one another, are what move resources from places where their earnings are lower to where their earnings are higher" (Sowell, 2015, p. 31). Competition drives assets or allocates capital and labor from where the amount supplied is the highest, to where the most unmet needs or unsatisfied demand is located. Similarly, the supply-demand model attempts to distribute resources in the most efficient way possible to try and clear the market and attain an

equilibrium price, which is when the amount charged for a particular good or service and "the quantity where what producers are willing to sell (quantity supplied) equals what consumers are willing to buy (quantity demanded)" (Brewer & Welsh, 2014, p. 454).

Consumers' and sellers' actions ultimately decide whether or not the market is balanced, particularly when considering competition, or if there is a shortage or surplus. Shortages occur when the supply of a product is exceeded by the demand for it (Brewer & Welsh, 2014), and, contrariwise, when the demand is exceeded by the quantity supplied, then a surplus is created (Brewer & Welsh, 2014).

Concerning market conventions, Welsh and Brewer (2014) described "one of three main assumptions about how market participants behave" (p. 454): purchasers and vendors participate in "rational behavior" (p. 454). This means that potential gains from business decisions and the possible consequences of those same decisions are weighed against one another.

Another assumption about market participants is that buyers and sellers participate in self-interested behavior in order to pursue their own personal agendas (Brewer & Welsh, 2014). To illustrate this, Crawford Lewis, a former superintendent in DeKalb County, Georgia, pleaded guilty this year to obstruction charges involved in a school construction scandal that stole millions of dollars from the district's education budget (WSB-TV, 2015). Lewis, himself, used the system to buy a car at a steep discount and to purchase his mistress chocolates and strawberries on a state credit card (WSB-TV, 2015). This, of course, is not the first instance of such exploitation or self-interested behavior, but it is one of the more recent examples and remains as both a

reminder of how people can, and will, manipulate the system and a warning of what could happen in the future.

Scarcity is the third assumption specified by Brewer and Welsh, but this concept has been previously addressed.

Summary and Review

So far, there has been a lot of information presented, but it is important to note that these are the basis for claims that outside market influences would benefit public education. First, many have claimed that competition would encourage education, but what kind of "competition" are they speaking of, and what does it mean? These are the questions that keep discussions and arguments like this from progressing. Likewise, what is a market? How can continually transforming schools and education into markets aid education? And what is market theory? Again, these are terms (criteria and concepts) used in various disputes over charter schools and charter school authorizers, but the actual meaning of these terms can easily be lost.

Therefore, from this brief explanation, it can be ascertained that a market is a place where goods and/or services are rendered or supplied and that schools have increasingly become marketplaces, that competition is used to try and move a business towards greater gains (in education, this would be measured by greater student achievement), that a public good is something paid for all and used for everyone (a concept that may or may not be applied to education), that certain market assumptions belie a social, if not human, aspect of the market, and that demand generally encompasses

some amount of need, even though a market is set to incorporate unmet needs, which are inherent and unavoidable.

Market Theory's Entrance Into Public Education

Throughout the history of and the relationship between economic theory and public education, it has conventionally been cited that the theory of markets was most predominately ushered into the K-12 system through Nobel laureate and economist Milton Friedman's concept of educational vouchers in 1955 (Brewer & Picus, 2014).

Vouchers, as proscribed by Milton, gave parents and students the power to select what schools learners could attend. The selection was based on the students' and parents' needs and preferences. In this way, learners were no longer compulsorily forced to attend the community schools in which they were zoned (Brewer & Picus, 2014). Proponents of Friedman's ideas believed that vouchers would engender antagonism and competition within and between districts, and that the addition of competition into public education would produce more efficient, cost-effective systems that would provide higher quality learning (e.g., the students could pick what program was best for them, which would/could provide them with the most appropriate education) (Brewer & Picus, 2014).

Vouchers, however, have varied both in size and organization. For example, some voucher programs have been organized by the level of education they were created to serve (e.g., early childhood, middle grades, etc.), while others were crafted to specifically include student characteristics—this has allowed vouchers to specify funds for disabled and disenfranchised learners (Brewer & Picus, 2014). Yet, even with these altruistic motivations in place, vouchers diverge in how outside funding affects student

mobility. For instance, some programs have had provisions within them that enabled parents the opportunity to provide additional resources (i.e., money) to the voucher itself, which has given some learners a better opportunity to attend more prevalent, higher-achieving schools (Brewer & Picus, 2014). These kinds of vouchers were created pliably and parents were given the opportunity to pay for their kids to attend other locations (e.g., a school that was further away or a private institution). Opponents of vouchers have contended that they, while initially created as an equity measure between students—something that would equalize the opportunities of learners—have generated systems that have made it easier for affluent families to receive more educational opportunities.

Charter schools were another way the theory of markets was applied to public education, but how were they conceived? What are they? And where did, and do, they come from? Who authorizes their petitions?

Charter Schools' Entrance into Georgia's Education System and Charter School Authorizer Laws

Ray Budde—a former junior high principal—was teaching educational administration at the University of Massachusetts when his interest in organizational theory led to his 1974 paper *Education by Charter*, which was one of the first instances that the term "charter" was used in educational conversations (Kolderie, 2010). Since then, charters have been legitimized, popularized, and criticized on a wide scale. Fundamentally, a charter school is a public school that is administered privately (Brewer & Picus, 2014).

In 1993, Georgia passed its first charter laws as a way for existing public schools to transform themselves—educational institutions were given the ability to reorganize as charter schools with enough support (i.e., the votes of two-thirds of the teaching staff and local community who attended charter school town hall meetings)—and the first rules for charter schools were shaped: local and state boards of education had to approve charter applications and a reorganized school had to reapply for a charter every three years (Kazlauskas, 1998). Two years later, an amendment to these first provisions was passed and school charters were extended from three years to five years.

Yet, the biggest change to come—the change that would lead to many of the debates still had today—began with Representative Kathy Ashe, the Democratic elect of the 56th district, in 1998. Representative Ashe petitioned for and was granted many expansions for charter schools. The most notable of these expansions were: (1) Instead of having to be created from an established school, charter schools could open as independent entities; (2) Private actors (i.e., citizens, businesses, and special interest groups) were allowed to apply for charters; (3) the Office of Charter School Compliance was created; and (4) "[C]harter status exempts the local school from certain state and local rules, regulations, policies, and procedures applicable to the public school system" (Kazlauskas, 1998, p. 1). The addition of private actors into public education systems became especially contentious with the passage of House Bill 881 in 2008.

But before reviewing the laws specific to the creation of charter school authorizers, a short clarification of what charter schools are and who authorizes them will follow.

What Charter Schools Are and Who Authorizes Them

Many people wonder what makes a charter school different from a public school, a magnet school, or a private school, and before a discussion about charter school legislation can begin, a clarification of what charter schools are and what they are not is important. According to the National Alliance for Public Charter Schools, a charter school can be defined as a "public" school that operates according to an approved contract or petition (2016). In exchange for some flexibility, these institutions are required to meet specific performance objectives that have been expressly detailed in their contract or face closure. Unlike private schools, charters cannot request or in any way obtain tuition from students, and unlike magnet schools, charters exist within publicly zoned school boundaries and are mainly funded by the state. Yet, much like private schools and magnets, and different from public schools, charters often require students to apply for admission and have differentiated instruction models, curriculums, and methodologies that are utilized in order to meet the goals stated in their agreements.

There are 159 counties in Georgia. As a part of these counties, there are 181 school districts, and each district has the power to authorize a petitioner's charter (Georgia Department of Education, n.d.). As in many states, charter school petitions had traditionally been approved or denied by a local educational authority (LEA)—a decision made by resident actors who had the most buy-in. However, in the past decade, policies governing the acceptance or rejection of charters have changed drastically. That is not to say LEAs cannot approve school petitions. They still have that authority. Yet, because of recent legislation, Georgia now has two different *flavors* of charter school authorization, which are delineated by the authorizing entities that ultimately send

approvals to the State Board of Education (see Figure 2.1) for a final review: (1) state-approved special schools that have been sanctioned by the State Charter School Commission (SCSC) and (2) locally-approved charter schools (Woods, n.d.).

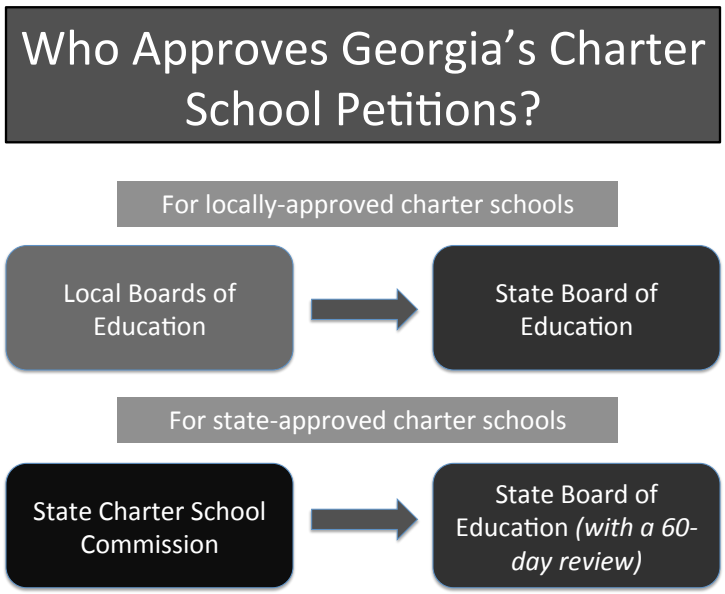


Figure 2.1: Who Approves Georgia's Charter School Petitions

If a petitioner is denied, then it can apply to the SCSC and get an approval without the endorsement of a school district in order to become a "state charter school" (Georgia Department of Education, n.d.). The consumers (i.e., parents, teachers, politicians, and interest groups) who were advocates for "choice" argued that there was a demand for special schools in the state and the need for more variety in education—something that traditional public schools could not provide.

But how did charter school authorization transition from a system where petitions were primarily approved or denied by local actors to having two paths for authorization? And how did charter authorization policies transform themselves, public education, and educational law? Well, it all began with HB 881.

House Bill 881 and Gwinnett County School District v. Kathy Cox

In 2008, the Georgia House of Representatives passed House Bill 881 with a vote of 114-40, and, soon after, the state Senate adopted the bill with a respectable margin of 30-21 (Georgia General Assembly, 2008). This bill was meant to "amend Chapter 2 of Title 20 of the O.C.G.A., relating to elementary and secondary education, so as to provide for legislative findings and intent; to establish the Georgia Charter Schools Commission; to provide for its powers and duties…to repeal conflicting laws; and for other purposes" (Georgia General Assembly, 2008), which basically meant that HB 881 was written to create a state-level charter school authorizing entity, entitled the Georgia Charter Schools Commission (GCSC), that would have the ability to approve or deny charters in communities across the state.

One might ask: Why was this bill needed? But to answer this question, a deeper look into local, district, and state divergences must be made.

Maureen Downey of the Atlanta Journal Constitution wrote about the power relations between the state and local school districts as the struggle between the two unfolded. As she reported:

> Lawmakers bristle over dictates to the hinterlands from the state folks in Atlanta. Except, of course, when the lawmakers themselves are the ones in Atlanta trampling local control.
>
> And that's exactly what the House Education Committee did this week when it endorsed a charter school law that allows applicants to bypass local school boards and pitch their case to a new state seven-member commission nominated by the

governor, lieutenant governor and speaker and approved by the state school board. (2008)

This "charter school law" was House Bill (HB) 881, which was created as a way for the state to respond to school districts that denied charter school applicants. In point of fact, "the sponsor of HB 881, state Rep. Jan Jones (R-Alpharetta) maintain[ed] that the Legislature had to intervene because too many school boards were 'indifferent, disinterested and occasionally hostile to charter schools'" (Downey, 2008). Therefore, HB 881 was written into law as a way to circumvent these "indifferent" school boards and create more competition—the ultimate goal being better education at more reasonable prices—within traditional school districts; however, when the bill became effective in July 2008, arguments about its legitimacy began almost immediately.

Downey, an avid proponent of local school control, wrote: "In its recently adjourned session, the 2008 General Assembly approved a bill that would allow the state to hijack local education tax dollars and divert those dollars to educators and entrepreneurs to start a charter school. The idea is bad policy" (2008). Additionally, charter disputants criticized the lack of research on charter schools that existed within the state, the absence of interest in reforming current schools, and the political motivations behind the legal maneuvering of HB 881 (Downey, 2008).

Yet, even with all of the back and forth, it was assumed that Governor Sonny Perdue would veto this bill because of his positive stance on the governance of school district decisions by the local community. That, however, did not happen.

House Bill 881 was sent to Governor Perdue, who signed it into law on May 13th, 2008. After HB 881 was adopted, disagreements over the constitutionality of the bill continued until ultimately coming to a head in 2009 when the fears expressed by Downey were actualized.

Gwinnett County had rejected Ivy Preparatory Academy's charter application several times in the years prior to HB 881's passage. In fact, "Ivy Prep applied to the Gwinnett County school board in 2007 for approval and was denied" (Turner, 2009), so the academy applied for and was granted an approval by the GCSC, overruling the authority of local actors. In an unprecedented act, the school was then appropriated an estimated $850,000 from Gwinnett County for its establishment and first-year costs (Dodd, 2009). The Gwinnett County School District began to appeal, protest, and, finally, threatened to file a lawsuit against the state over this issue.

When their warnings were ignored, "Gwinnett County Public Schools… [made] good on its threat to sue the state for taking funds away from its students…Gwinnett Superintendent J. Alvin Wilbanks said the district [was] suing the state because it had to take a bold stand to preserve the quality of public education for its 160,000 students" (Dodd, 2009). Gwinnett County filed against the Superintendent of Schools, Kathy Cox, and two years later, in May of 2011, the Supreme Court ruled in favor of the plaintiff, finding HB 881 unconstitutional and maintaining:

> Appellants/plaintiffs are local school systems whose 2009 and 2010 complaints were consolidated by the trial court; appellees/defendants are former State School Superintendent Kathy Cox (in her official capacity), the Georgia Charter Schools

> Commission, its chairperson and members (in their official capacities), the Georgia Department of Education, and the first three schools chartered under the Act. Appellants contend, inter alia, that the Act is unconstitutional because it violates the "special schools" provision in the Georgia Constitution of 1983. See Art. VIII, Sec. V, Par. VII (a). Because our constitution embodies the fundamental principle of exclusive local control of general primary and secondary ("K-12") public education and the Act clearly and palpably violates Art. VIII, Sec. V, Par. VII (a) by authorizing a State commission to establish competing State-created general K-12 schools under the guise of being "special schools," we reverse. (Georgia Supreme Court, 2011, p. 1-2)

This ruling effectively overturned HB 881 and upheld Gwinnett County School District's argument that the GCSC operated in direct opposition to the Constitution of 1983, specifically Article VIII, Section V, Paragraph VII (a). The Georgia Charter School Commission was then forced to close and the charters it approved were left in limbo.

This decision was unpopular with proponents of charter schools, but was championed by critics—critics that Jeffery R. Henig noted as being comprised of "coalitions of diverse interests. Laissez-faire proponents of pure market solutions, minority rights advocates, disgruntled parents, education entrepreneurs, progressive educators, and even teachers' unions" (2010, p. 45). Yet, overall, the situation seemed resolved. This resolution, however, was a short-lived one.

House Bill 797 and House Resolution 1162

Governor Nathan Deal ran for office in 2010 as an advocate of public schools, stating in one debate:

> With regard to education, I know we have some very hardworking educators, schoolteachers, and others, and our graduation rates have improved and that is certainly progress. We have a ways to go. We all acknowledge that. As governor, I'll be a governor who's friendly to education, because of my background and my affiliation with public educators. (Redgirlrising, 2010)

Further aligning himself to traditional education, his television ads frequently noted that he was "Born to public school teachers in southeast Georgia" (Nathan Deal, 2010). By identifying himself as "friendly to education" and campaigning as the son of educators, Deal created an image of himself that Henig (2013) would describe as an "education governor" (p. 87)—a moniker that sometimes blurs the lines between the highest offices of the state, local control, and the will of the constituency. As he wrote: "While holding the formal reins of authority, state governments until relatively recently left those reins slack, leaving most of the key decisions about public schooling—particularly K-12—to local governments" (Henig, 2013, p. 87). In Georgia, this was not only true, but it was the law—something decided by the Supreme Court in its ruling of Gwinnett County Schools v. Kathy Cox (2009)—so "[a]gainst this backdrop, the emergence of the education governors appears anomalous and calls out for explanation" (Henig, 2013, p. 37).

Months after HB 881 was found unconstitutional, it was reported that "Ivy Prep…[only] exist[ed] because of a…defunct controversial state commission created to give proposed charter schools an appeals process if rejected by local districts, be it for

anything from financial concerns to petty politics" (Blau, 2012), but that "Georgia voters [would] decide whether that commission should be brought back to life to provide parents and nonprofits another way to create an alternative to traditional public education" (Blau, 2012). How would voters be able to do this? The answer was simple: House Bill 797 and House Resolution 1162—a bill and constitutional amendment that would reverse the Supreme Court's decision by removing the special schools provision in the Georgia Constitution of 1983. Antagonists of this amendment contended that a state-level charter authorizer circumvented local boards of education, which were made up of elected officials specifically designated to such boards by their respective communities—something that those "friendly to education," established public education especially, might have seen as "bad policy."

Yet, contrary to the traditional-education-friendly rhetoric spread throughout his campaign, Governor Deal was "one of the amendment's staunchest supporters" (Blau, 2012). Challengers to HB 797—the reauthorization of the GCSC, which reorganized the committee to a new agency, entitled the State Charter School Commission (SCSC)—took exception to the continued growth of the private sector in public systems and contended that business and personal interests had the potential and propensity of corrupting the foundation of public education in Georgia (Dodd, 2009). Part of the fodder for these fears was grounded in donations from conglomerates, political gifts, and reciprocity of politicians to donors who supported candidates for various governmental offices and positions (Georgia Government Transparency and Campaign Finance Commission, 2009). The fact that Governor Deal appointed Helen Odom Rice, a retired teacher from Lagrange, GA who contributed to his 2010 gubernatorial campaign monetarily and

through gifts (Georgia Government Transparency and Campaign Finance Commission, 2009), as the State Board of Education's 3rd Congressional District's representative did not aid in allaying the fears of those who believed that business and personal interests would and could muddy the political waters in educational debates. This, however, was just one example of many such reciprocities made after a major political campaign, and it did not stop HB 797 from being signed into law, nor did it halt the progress of HR 1162, which was slated for a vote in November 2012. Quite the contrary, such opposition only helped to bring more donors to the campaign for increased school choice.

During the lead up to the resolution's vote, a now non-operational lobbying organization named Families for Better Public Schools (FBPS) raised $1,789,655 for advertisements and advocacy measures in the seventy-five days before the vote (Georgia Government Transparency and Campaign Finance Commission, 2012). The top contributor during this time was Alice Walton, daughter of Wal-Mart CEO Sam Walton, who donated $600,000, and the seventh highest donation came from Charter School USA, a for-profit educational management organization (EMO), which donated $50,000. In fact, three of the top fifteen donators during this time were EMOs, two of which now manage several charter schools in Georgia, and six of the top ten donators were from out-of-state organizations (Georgia Government Transparency and Campaign Finance Commission, 2012). Contestants of HR 1162 were a bit more varied than their corporate counterparts and consisted of many teachers' organizations, such as the Georgia Association of Educational Leaders (GAEL), Educators First, Cobb County Association of Educators (CCAE), Georgia School Superintendents Association (GSSA), and the Georgia Association of Educators (GAE). One of the major campaigns against the

resolution was Vote SMART! No to State-Controlled Schools! During the same 75-day period before the vote on HR 1162, it raised $105,163 (Georgia Government Transparency and Campaign Finance Commission, 2012). Many of these donations came from individuals, like the $250 that was given by Marietta Superintendent, Dr. Emily Lembeck, and nearly everyone that donated to Vote Smart! either lived in or was based in Georgia.

Furthermore, the affects of such a vote created a tense political environment in much of the state and amongst many voters. As journalist Max Blau described:

> The ballot measure has divided political parties, prompted huge advocacy and opposition campaigns, sparked lawsuits intimidating local school officials from speaking out against the measure, and called into question the entire charter school system. Each side has employed scare tactics to sway voters, and, with less than a week left, the race remains in a dead heat. What's more, the ballot measure's wording is entirely misleading, making it difficult for Georgians to decipher what the amendment would actually do. A tiny, [seven]-person commission seems like it wouldn't have much of an impact on citizens, but that couldn't be further from the truth. (2012)

And speaking of the language of Amendment 1, which was the vote over changing the Constitution of 1983 and removing the special school provision, the Georgia Association of Educators (GAE) was incensed by its wording. Fred Gould, Field Representative for the GAE, said in a televised interview:

> It's very disingenuous to have the language that they do on the ballot to lead people to think that: 'Well, if I don't vote for this, then my local school system won't have the opportunity to be able to create charter schools, which could be a good thing for our children.' They can already. That language is misleading on its face. (WTVC NewsChannel 9, 2012)

Henig noted that claims such as this are not uncommon. In his work "Spin Cycle: How Research Is Used in Policy Debates: The Case of Charter Schools," he argued, "Choice critics charge their opponents with 'chicanery'" (2008, p. 5) and "Choice proponents charge their adversaries with employing bad science as part of a campaign to, as some put it, 'pillory, marginalize and suppress' their research" (2008, p. 5). To be fair, the ballot itself was worded as such: "Provides for improving student achievement and parental involvement through more public charter school options" (WTVC NewsChannel 9, 2012), which, as Gould contended, did not fully express the impact that the state's new charter school authorization entity would have on local schools, taxation, and traditional public education, nor did it mention that there were already pathways to charter school approval, that the SCSC created more governmental control and offered less "involvement" with communities, or that the SCSC would only be able to consider petitions that had already been denied by LEAs.

This misinformation and its affect on the public was exemplified in an impassioned call for the passage of HR 1162 and HB 797 by a mother named Mrs. Cheryl Kirchbaum, who posted a video speaking out against those who opposed the resolution on YouTube. In her address, Kirchbaum (2012) asked,

> Are you the one who's going to close the school that is just right for my gifted son, who also has Asperger's syndrome? Are you the one who's going to close the school that provides character education that my children and our community needs? Are you the one who's going to take away my choice in education? I only get one chance to get this right for my kids. Please do not take away my freedoms. Support HR 1162 and HB 797 and keep those schools open for the 99,000 Georgia children who attend those schools. (Moonwaxing23, 2012)

Yet, her questions and pleas, while affecting, were a distortion of the facts surrounding the vote for Amendment 1. First, the schools that would have been closed were the "16 approved charters by the GCSC," (Robinson, 2012) which would have affected "16,000 students" (Robinson, 2012), not 99,000. Mrs. Kirchbaum was confusing the state-chartered special schools and locally-approved charters when she made that statement, and the mention of her son's Asperger's Syndrome and that he was gifted was also not relevant to this argument as the school her son attended, Coweta Charter Academy, did not concentrate on special education as its main focus for curriculum or instruction. Now, she was correct in stating that her son's school—a location approved by the GCSC in 2010—would have been closed, but in no way, were laws written to undermine the charters of schools created through local educational authorities, and there were never any plans in the pipeline to create an educational institution specifically for Mrs. Kirchbaum's, or anyone's, child. Likewise, HR 1162 was not written to impede or enable any of Mrs. Kirchbaum's "rights." A right, or civil liberty, such as the freedom of religion or protection from unequal treatment, is not the same as being given the ability, or privilege, to have one's child attend a privately run,

publically funded educational institution, so the rhetoric used in her appeals was more than likely a mixture of misinformation from personal life experience and "chicanery" from the campaigns for school choice.

In the end, HR 1162 passed the popular vote, leaving many to speculate whether or not education and constitutional amendments were up for sale or part and parcel to propaganda. After the vote, the Georgia Department of Education (GDOE) was assigned the task of officially appointing the members and coordinating with the committee to ensure it fulfilled the commission's twelve major responsibilities, which were: (1) To review petitions and support the establishment of state charter schools; (2) To "develop, promote, and disseminate best practices for state charter schools" (Georgia General Assembly, 2012, p. 3); (3) To create and require high standards of accountability; (4) To supervise, review, and assess the academic and financial performance of charter schools yearly; (5) To direct state charter schools to sources of funding; (6) To seek additional moneys from grants funds—both federal and institutional—and from charitable organizations; (7) To endorse necessary changes to any statutory requirements to the General Assembly; (8) To connect state charter schools with local boards of education; (9) To encourage teamwork between state charter schools and local public schools; (10) To govern superior state charter schools; (11) To assist state charter schools in negotiating with local boards of education; and (12) To provide yearly training to educators.

Essentially, the SCSC was given the power to open and fund state charter schools and the responsibility to ensure that they were high-quality establishments.

Speaking of funding, the budgets of schools authorized by the SCSC and whether or not these schools would, in fact, be more fiscally responsible or less expensive than traditional public schools has been a major point of contention in the conflict over charter school authorizers.

Funding State-Approved Charter Schools in Georgia

As previously mentioned, charter schools are publically funded, meaning that the majority of the monetary resources provided to finance their operations comes from the government. However, it was their status as publically funded institutions that led to the lawsuit filed against State Superintendent Kathy Cox. When Gwinnett County Superintendent Wilbanks filed suit, he did so because money from his district's coffers was taken in order to pay for a school that the local board of education had denied a charter to several times. To illustrate this issue, the GCSC's ruling was like having a judge tell someone that not only could her neighbor build a toolshed in her backyard, but that she would have to pay for the construction and then continue to provide her neighbor with money for the upkeep of the new structure. Yet, because of the legal propensity of Superintendent Wilbanks, this action was overturned and found unconstitutional by the Supreme Court, for a short while, at least.

Flynn and Holt (2012) found that HB 797 was little more than a recapitulated reauthorization of HB 881 and that the main changes the drafters made was that HB 797 "guarantee[d] that no State [Quality Based Education] funds would be diverted from the local school to the charter school" (p. 26). This deviation from preceding guidelines was a direct result of the opposition charter schools faced before and after the Supreme

Court's ruling of HB 881 as unconstitutional, which was why HR 1162 was attached to HB 797—because it fundamentally changed Title 20 of the Official Code of Georgia Annotated so that petitioners and charter school advocates would be met with less antagonism. Nevertheless, Georgia was still faced with the challenge of paying for charter schools that had had their petitions authorized, especially those sanctioned by the SCSC, like Ivy Preparatory.

The funding of state-authorized charter schools and charters approved by local districts is based on the Quality Based Education Act of 1985, which created the still-used QBE formula for school funding. According to the Georgia Department of Education (2008), the Peach State has used a state funding formula based on the full-time equivalency (FTE) of student enrollment counts in nineteen educational programs, which are classified into two categories—General and Career Education Programs (i.e., kindergarten, grades 1-3, grades 4-5, two groups of grades 6-8, and grades 9-12) and Special Programs (e.g., six categories of special education and then remedial education, English for speakers of other languages (ESOL), early intervention, and alternative education)—in order to determine the amount of money that will be allocated to schools. Each of these programs also gets weighted due to various costs associated with instruction, such as expenses related to direct instruction (i.e., teachers' salaries, technology, and textbooks), indirect costs (e.g., funds for administration, media specialists, and maintenance), and the training and experience of teachers—resources get apportioned to recompense for disparities between beginning teachers and their veteran counterparts. For example, a general education, elementary student would most likely be rated and scaled as needing less resources than a student of the same age who suffered

from mental retardation and required adaptive technology and an additional teacher or paraprofessional—it would simply cost more for one student to attend school than the other—but the general education student might be able to even out this discrepancy, at least to some degree, if he/she had a novice teacher and his/her peer had a veteran teacher, which would factor into how that student was weighted, and every student calculated in the enrollment counts must be weighted and given a value.

The student counts have adjustments, too, where schools compare the fall numbers from two previous years to update their present fiscal year's (FY) assigned budgets, so if a district's student count has risen from 2014 to 2016 (i.e., schools that have seen gains in full-time student enrollment), then more money can be allotted to that system. Funds, however, cannot be withdrawn if the student enrollment count declines. Most of the QBE formula and its conditions have to be met by charter and public schools, but there have been some differences between public and charter schools that have developed (Barge, 2012). The largest disparity has been that the QBE Act mandated that school systems meet certain conditions, such as class size restrictions, minimum and maximum spending caps, and teacher certification requirements, but charter schools have the ability to bypass these guidelines through specific or general waivers (Barge, 2012). Exceptions to waivers would include those things that would or could directly affect "health and safety, funding formulas, and accountability provisions" (Barge, 2012, p. 10). Furthermore, state-charted special schools may not receive local funding. Resources from communities have only been approved for conversion charters (i.e., public schools that converted into charter schools) and start-up charters (e.g., those schools opened by businesses or private individuals) that have been approved by the local education

authority, so all funding for state-chartered special schools comes from the state. Actually, in order to account for the funding difference between public schools and locally-endorsed charter schools and state-approved special schools, additional "[s]tate funds equal to the average amount of local revenue and state equalization grant funding for the five school districts with the lowest assessed valuation per student, and [t]he statewide average of total capital revenue per full-time equivalent student" (State Charter School Commission, n.d.) has been used to supplement funding for the charters appropriated by the State Charter School Commission. But there was also a major unintended consequence of this. Due to the fact that QBE formulas cannot be negatively influenced by charter schools—meaning that their fulltime enrollment counts (i.e., part of the formula that dictates their budget) cannot decline because a charter school opens and some students may transfer from the traditional setting to the charter setting—some students are being paid for twice: once by the local community, whose city and county taxes are used to fund the local schools, and then again by those same community members' state taxes, which provide for SCSC schools and operating expenses. This, of course, was not the intended purpose of HB 797 and HR 1162, but because of the way the laws were written, a kind of paradox was created—one by where charter school students, who, with the influence of market theory, were supposed to be less expensive than traditional public school students have instead become an additional cost to traditional public education. And this has only continued to burden the state's education budget, especially since it is underfunded by $1.1 billion annually (Flynn & Holt, 2012).

Basically, after Gwinnett County School District sued to keep Ivy Preparatory from taking funds from its students, HB 797 dictated that the funding of state-approved

special schools would come solely from a newly created apportionment of Georgia's education budget that was specifically crafted in order to circumvent lawsuits from districts that did not want any of their funds to be appropriated in order to pay for a school that their system did not support, but all resources used to pay for public schools, traditional and charter alike, come from the same place—the taxpayers. So, even with all of the political gerrymandering and litigation, the same constituency that was accountable for paying for schools approved by HB 881's Georgia Charter School Commission would be, and still are, footing the bill for any schools sanctioned by HB 797's State Charter School Commission, while also continuing to pay for empty seats in public schools.

The Cost of the State Charter School Commission and State-Chartered Schools

The cost for Gwinnett County School District v. Kathy Cox was about $300,000, the SCSC's yearly administration budget was set at $2,511,278, and a current supplement for its schools of $7,371,346 was approved in early 2013 (Deal & MacCartney, 2015). This has not included the campaign costs, human capital (see Appendix C), or other resources that accumulated over the years-long battles for and against charter school authorizers.

As for the operating expenses of the schools themselves, the State Charter School Commission has provided the following information (see Figure 2.2) about their district schools' budgets for the 2017-2018 academic year:

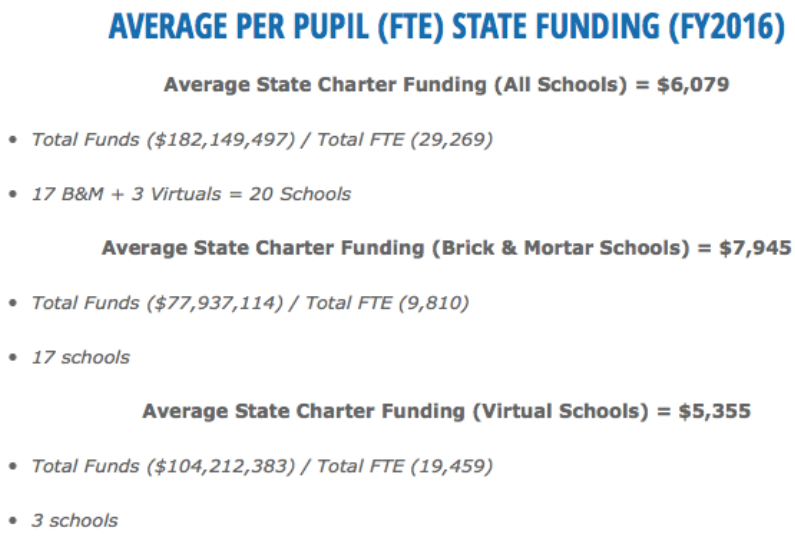


Figure 2.2: Average Per Pupil (FTE) State Funding (FY2016)

(State Charter School Commission, n.d.)

As one may note, there are twenty schools slated for operation in the current fiscal year (i.e., the current year's budget that is scheduled to fund next year's schools): seventeen brick and mortar locations and three virtual schools, but currently, the SCSC only has fifteen active schools. The budget above is the most current available and best demonstrates the annual fiscal outputs of this bureaucratic office, but to understand the fiscal cost of these schools a multi-year view of this school system is needed.

Facilitating this multi-year approach to examining this charter school authorizer's budget, the SCSC's previous years' budgets, which were substantially smaller, can be seen in Figure 2.3 below.

Average State Charter Funding (All Schools) = $5,548

- *Total Funds ($130,372,553) / Total FTE (23,497)*
- *12 B&M + 3 Virtuals = 15 Schools*

Average State Charter Funding (Brick & Mortar Schools) = $7,821

- *Total Funds ($46,459,425) / Total FTE (5,940)*

  12 schools

Average State Charter Funding (Virtual Schools) = $4,779

- *Total Funds ($83,913,128) / Total FTE (17,557)*
- *3 schools*

Figure 2.3: Average Per Pupil (FTE) State Funding (FY2015)

(State Charter School Commission, n.d.)

One may notice that the SCSC's yearly budget has increased by $51,776,944 in a single year, but in the 2011-2012 school year, there were only thirteen state-chartered special schools in operation (Barge, 2013), but there have been fifteen schools in this system since 2013 (Woods, 2014), which means that since its inception, the SCSC and its schools have cost Georgia and its constituents hundreds of millions of dollars—at the very least $695 million (i.e., $30 million for yearly administration costs and the state supplement, $130 million annually from 2013 to 2015, and $182 million in 2016). Again, this is an additional cost to the traditional public school system, which does not reduce its budget when students transition from a traditional school to a charter.

Comparing State Charter School Commission Schools to Their Public School Counterparts

As mentioned in Chapter 1, comparing charter schools with public schools is a precarious business. The State Charter School Commission, itself, stated as much when it presented the findings in its 2016 performance evaluation. As Tim R. Sass, professor at Georgia State University and the researcher who compiled the data for this report, put it:

> In order to evaluate the performance of state charter schools, there are two related challenges that must be addressed. First, like schools chartered by local school districts, state charter schools are schools of choice. As such, students and their

> parents have made a conscious decision to attend these schools rather than their neighborhood traditional public school. This individual selection process makes simple comparisons of student performance in state charter schools to traditional public schools problematic. Average test scores or other measures of student performance could reflect the attributes of the students and their families, rather than the performance of the school they attend. For example, if more highly motivated students/families select state charter schools, this would impart an upward bias to the measured performance of state charter schools. Conversely, if students who are struggling are more likely to seek out alternatives to their neighborhood traditional public school, this could bias downward the average achievement in state charter schools. (2016, p. 8)

Here, Sass made a good point, but if charter schools cannot be adequately measured against public schools, then why compare them at all?

It is true that variations (i.e., criteria) can impact outcomes, but, even as such, there has been an overwhelming demand for assessments such as these—demand even with the understanding that there will always be some amount of unmet needs—which is why this report and studies likening charters to traditional public schools exist.

Sass made another strong argument when he noted that the "[e]valuation of the performance of state charter schools is further complicated by the fact that they frequently serve students from multiple counties and have specialized missions" (2016, p. 8). Because of this, the example used in this section will have two separate parts: (1) an overview of state charter schools as compared to traditional public schools; and (2) a

specific example of an established state-approved charter school, its mission, demography (i.e., who it serves), and how it faired in the SCSC's assessment.

An Overview of State Charter Schools As Compared to Traditional Public Schools

As of this writing, the State Charter School Commission has fifteen schools in its district—five new schools are slated to be opened in the fall of 2017—and because the SCSC is directly in charge of these schools, it is reasonable to consider it and its settings as an autonomous scholastic system, even though the individual schools are zoned into other districts. See Table 2.2 for a general, itemized overview of the State Charter School Commission's fifteen schools.

Table 2.2: General Characteristics of State Charter Schools

School Name	Calendar Year Opened	EMO Affiliation	Grades	Curriculum Focus	School Year	Single-Gender School	Virtual / Online School	Serves Multiple Counties	Parental Involvement Requirement	Enrollment Restrictions
Atlanta Heights	2010	National Heritage Academies	K-8	None	Normal	No	No	No	Not Specified	Atlanta Public Schools Zone
Charter Conservatory for Liberal Arts and Technology (CCAT)	2002	No	6-12	Multi-age classrooms - students grouped by skill level	Year-round	No	No	No	1 Hour of Service/week	Bulloch County Public Schools Zone
Cherokee Charter Academy	2011	Charter Schools USA	K-8	None	Normal	No	No	No	Not Specified	Cherokee County Public Schools Zone
Coweta Charter Academy	2010	Charter Schools USA	K-7	None	Normal	No	No	No	20 hours volunteer /year	Coweta County Public Schools Zone
Fulton Leadership Academy	2010	No	6-10	STEM with focus on aviation and aeronautics with Civil Air	Normal	Boys Only	No	No	Not Specified	Fulton County Public

				Patrol						Schools Zone
Georgia Connections Academy	2011	No	K-12	Online Curriculum	Normal	No	Yes	Online	Not Specified	Students residing in State of GA
Georgia Cyber	2009	K-12	K-12	Online Curriculum	Normal	No	Yes	Online	Not Specified	Students residing in State of GA
Grad Achievement (formerly Provost Academy)	2012	No	9-12	Online Curriculum	Normal	No	Yes	Online	Not Specified	Students residing in State of GA
Ivy Preparatory Academy at Gwinnett	2008	No	6-12	Curriculum is entirely College Preparatory. Saturday Academy is available to struggling students.	Extended Day/Week / Year	Girls Only	No	No	Not Specified	Gwinnett County Public Schools Zone
Ivy Preparatory Academy at Kirkwood	2011	No	K-9	Curriculum is entirely College Preparatory. Saturday Academy is available to struggling students.	Extended Day/Week / Year	Girls-Only	No	No	Not Specified	DeKalb County Schools Zone
Ivy Preparatory Young Men's Leadership Academy	2011	No	K-9	College Preparatory urriculum for all students.	Extended Day/Week/ Year	Boys-Only	No	No	Not Specified	DeKalb County Schools Zone
Mountain Education Charter School	2007	No	9-12	Self-paced, individualized, evening high school for students struggling at other schools	Year-round	No	No	Yes	No	Students residing in State of GA
Odyssey School	2004	No	K-8	Multi-age classrooms - students grouped by skill level/Looping: students remain with teacher two years	Normal	No	No	No	18 hours per academic year	Coweta County Public Schools Zone
Pataula Charter	2010	No	K-10	Expeditionary Learning: project based	Normal	No	No	Yes	Not Specified	Students residing in Baker,

Academy				lectures and curriculum delivery/Looping: students remain with teacher for two years						Calhoun, Clay, Early, Randolph Public School districts
Utopian Academy for the Arts	2014	No	6-7	Expeditionary Learning Curriculum. Single-gender instructional approach and classes in dramatic, media, and culinary arts.	Extended Day/Week / Year	No	No	No	Attendance of a New Parent Orientation Meeting & sign an agreement	Students residing in Clayton County, GA

Note: Grade levels served based on enrollment as of October 2014.

Sources: Georgia Department of Education (2010), Georgia Department of Education (2011), Georgia Department of Education (2015a), Georgia Department of Education (2015c), individual-level data from GA•AWARDS and state charter school websites.

(Sass, 2012, p. 4-6)

And the SCSC school system's overall demographics in Table 2.3.

Table 2.3: Students Served by State Charter Schools

School Name	*Pct. Female*	*Pct. White*	*Pct. Black*	*Pct. Hispanic*	*Pct. Other*	*Pct. FRL*	*Pct. LEP*	*Pct. SWD*	*Pct. Gifted*
Atlanta Heights Charter School	50.7	0.1	95.0	4.4	0.4	95.3	1.9	7.6	0.0
CCAT School	51.0	78.9	17.7	1.4	2.0	0.0	0.0	12.9	2.0
Cherokee Charter Academy	47.8	75.6	12.6	6.5	5.3	99.9	2.6	11.8	10.3
Coweta Charter Academy	50.3	79.1	8.9	5.9	6.1	20.0	0.0	8.8	14.4
Fulton Leadership Academy	0.0	0.0	99.6	0.4	0.0	99.6	0.0	13.4	14.5
Georgia Connections Academy	55.6	53.3	31.6	7.2	7.9	46.6	0.2	10.3	4.2
Georgia Cyber Academy	51.3	55.5	31.9	5.9	6.7	65.4	0.2	12.8	8.2
Grad Achievement (Formerly Provost Academy)	51.0	23.4	66.0	7.9	2.7	0.9	0.4	12.1	0.0
Ivy Preparatory Academy at Gwinnett	100.0	1.6	71.2	17.8	9.4	42.4	3.6	7.4	0.0
Ivy Preparatory Academy at Kirkwood for Girls	100.0	0.8	98.4	0.3	0.5	46.1	0.0	3.9	1.3

Ivy Preparatory Young Men's Leadership Academy	0.0	0.9	97.0	0.6	1.5	41.7	0.0	7.7	2.1
Mountain Education Center	48.9	87.8	5.8	6.1	0.3	66.9	2.0	15.0	0.0
Odyssey School	43.9	54.0	24.9	10.6	10.4	25.2	1.6	19.5	13.5
Pataula Charter Academy	45.8	80.2	11.1	5.2	3.5	57.1	2.7	11.8	6.6
Utopian Academy for the Arts	60.7	0.6	97.1	1.2	1.2	1.7	0.0	5.2	22.5

Note: For the purposes of this table, students who attended more than one school were attributed to the school where they attended the longest period of time during the year.

(Sass, 2016, p. 7)

The system has three cyber schools—two of which, Georgia Cyber Academy and the Odyssey School, just fell under the SCSC's umbrella at the beginning of the 2014-2015 school year—and "[f]our of fifteen schools serve only elementary and middle grades, another five serve elementary, middle and at least some high school grades, three serve both middle and high grades, one serves only middle school students and two only serve grades 9-12" (Sass, 2016, p. 1). There were also four single-gender schools, five locations that served an African-American student population of 95 percent or more, twelve locations that provided in-person instruction, and "[o]ne school has over 20 percent of students classified as gifted, while four report no gifted students" (Sass, 2016, p. 1).

In the report, each school was described in arduous detail and was coupled with an explanation of how the data (i.e., test scores and achievement measures) was interpreted. How this assessment evaluated each of "three general categories: value-added models, student growth percentiles and proficiency benchmarks" (Sass, 2016, p. 8) was also discussed and a measurement of student achievement for each school was given.

Sass began by appraising SCSC primary schools, arguing that:

> The majority of state charter schools serving elementary grades perform as well as the average public elementary school in the state. The estimated contribution to student achievement in grades 4 and 5 across all four Milestones-tested subjects (math, ELA, science and social studies) was not significantly different from the state average for five of the nine state charter schools serving elementary grades. Performance for the other four was significantly below the state average... (2016, p. 1)

Overall, elementary schools in the SCSC system were about equal to traditional elementary schools, being regarded as generally no better or no worse. Middle schools faired somewhat better, but still did not flourish.

As the evaluation specified:

> Most state charter schools serving middle grades perform as well or better than the average public middle school in the state. The estimated contribution to student achievement in grades 6-8 averaged across all four Milestones-tested subjects is not significantly different from the state average for seven of the 13 state charter schools that enroll students in one or more of grades 6-8…Performance of state charters serving middle grades is particularly strong in language arts, with the performance of six schools exceeding the state average and the performance of another six is not significantly different from the state average; only one school's performance in language arts is significantly below the state average. In contrast, performance of state charter schools was relatively weak in science. None of the 13 state charter schools serving middle school

> students had estimated contributions to student achievement in science that exceeded the state average, the performance of seven schools was not significantly different from the state average and the performance of six fell below the state average. Performance in math and social studies were both quite mixed, with some state charters exceeding the statewide average and some falling below the state average in each subject. (Sass, 2016, p. 1)

These seven middle schools outperformed public schools in many ways, but struggled to provide better test results in state evaluations (i.e., Georgia Milestones) and science remained a stagnant subject for learners across the SCSC schools—not having exceeded the state average in any way.

Yet, the "mixed bag" (Tagami, 2016) of schools was found at the secondary level. High schools in the SCSC system did not achieve at nearly the same levels as primary or middle schools.

Sass wrote:

> The performance of state charter schools serving high school grades is uneven when compared to the average public high school in the state…In 9th Grade Literature, five of nine state charters are performing above the state average and the performance of the other four is not significantly different from the state average. For the five schools with test scores for American Literature, the contribution to student achievement for three schools is not significantly different from the state average while performance of the other two exceeds the state average. For Analytic Geometry four of six schools perform at a level

> indistinguishable from the state average and two perform below the state average. In Coordinate Algebra, performance of two of nine state charter schools exceeds the state average, performance of six is not significantly different from the state average and the performance of one school falls below the state average. In Biology two of nine schools perform above the state average, performance of four schools is indistinguishable from the state average and performance of the other three schools is significantly below the state average. In Physical Science four of seven schools have estimated contributions to student achievement below the state average and performance of the other three is indistinguishable from the state average. In economics three of four schools fall significantly below the state average and one school is above the state average. Performance is also generally low in U.S. History, with four of six schools performing below the state average and two whose performance is indistinguishable from the state average. (2016, p. 2)

From this estimation, it can be noted that nearly 62% of the SCSC's schools scored at or below the same levels on standardized tests as public schools and achieved at or below their public counterparts in "student growth percentiles and proficiency benchmarks."

A School-to-School Comparison Between an SCSC Institution and Its Public School Counterpart

For continuity's sake, it would have been fitting to liken Ivy Preparatory Academy to a traditional public school in a charter-public-style argument-based

examination. Ivy Prep was the catalyst for Gwinnett County School District v. Kathy Cox, which led to the Supreme Court ruling that overturned HB 881, after all. But Ivy Prep is an all-girls school, which skews the results of such a appraisal too severely, so this examination will use the oldest, most established school in the SCSC system, Charter Conservatory for Liberal Arts and Technology (CCAT) and its contemporary Portal Middle High, both of which are located in Bulloch County.

As detailed in the table above, CCAT is 51% female and 49% male, based on the 2014-2015 school year. Portal Middle High is roughly 50% female and 50% male, based on the most recently available data, retrieved from U.S. News, for the 2013-2014 school year (U.S. News, n.d.).

It may trouble some to see that the results of this evaluation were drawn from two separate school years, but seeing as how "Charter Conservatory for Liberal Arts and Technology's performance in middle grades in 2014/15 is generally better than in 2013/14; its performance in high school is better in most subject[s] relative to its performance in 2013/14" (Sass, 2016, p. 54), it can be acknowledged that any data that may seem biased is not influenced by an aspiration to muddy the results. In fact, this estimation takes these schools, which were both in operation in the 2013-2014 and the 2014-2015 school years, and presents the preeminent, most recent, and most relevant data available on the two—in this way, the comparison can be viewed as a contrast of these educational institutions at their best, and, thus, the criteria of these schools and this appraisal can be set and viewed objectively.

Portal Middle High has a population of 56% Caucasian, 36% African American, 5% Hispanic, 2% mixed race, and .4% Hawaiian Native/Pacific Islander, and, like CCAT, it services students from 6-12 grades and is zoned within the rural Bulloch County School District (U.S. News, n.d.). The Charter Conservatory for Liberal Arts and Technology's population is 78.9% Caucasian, 17.7% African American, 1.4% Hispanic, and 2% other races.

As for the accountability of the school, again, it should be noted that there are variances in how the data can be interpreted. Obviously, the student populations were different, and the schools themselves had inherent distinctions; however, CCAT has been open for fourteen years and has served the population of Bulloch County since its inception, and, just like Portal Middle High, the students in both schools were drawn from the same community. Furthermore, while "commonly misunderstood as a private academy that 'picks and chooses' only gifted students, CCAT is a public school with a strong and diverse student body that includes a high school population of around 100 and a middle school that numbers approximately 75 students" (Murphy, n.d.), while Portal has an estimated student population of about 450 learners (U.S. News, n.d.). It should be noted that while these schools are diverse and dichotomous environments, they are as close an approximation to one another as one will find when attempting to liken a charter environment to a traditional public school. This can be noted because: (1) public schools generally have larger populations, (2) state-authorized charter schools require students to apply for admittance, which affects diversity and demography, and (3) the value-added models used in the SCSC valuation took into account the appraisal of similar schools,

which likened the tests taken by educational institutions within traditional districts to the SCSC's sites, creating an average with which to measure the schools against one another.

So, how did CCAT compare to the other schools in its district? Sass detailed that it performed:

- above the district average in 9th Grade Literature
- below the state and district averages in middle school math
- indistinguishable from the district and state average in middle school ELA, science and social studies and in Biology Coordinate Algebra, Physical Science and U.S. History. (2016, p. 54)

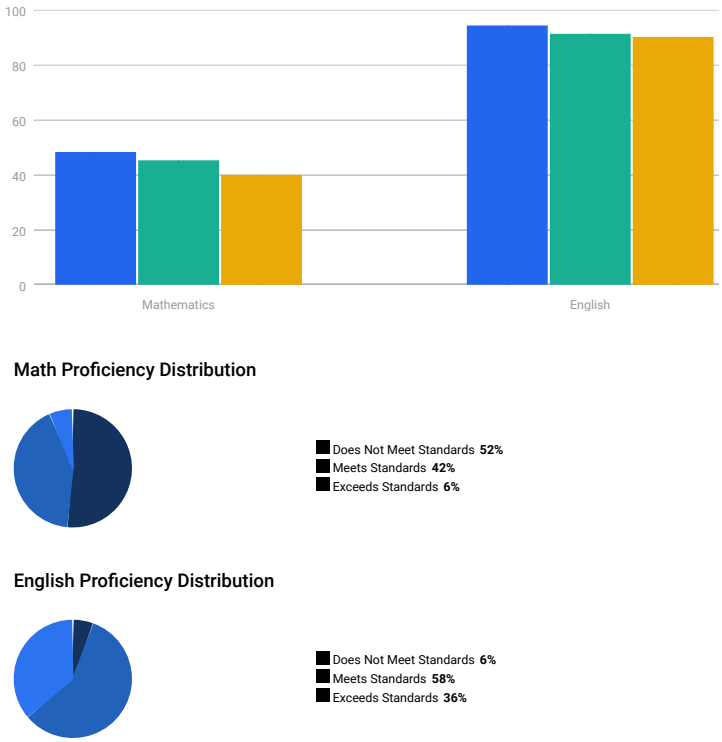
Overall:

> The value-added estimate of the school's impact on a student's average achievement across all subjects is 0.0059 in middle grades, meaning that in the middle grades the performance of Charter Conservatory for Liberal Arts and Technology is not significantly different from the state average of middle schools. The value-added estimates in Biology, Coordinate Algebra, Physical Science and U.S. History are also not significantly different from the state and district averages. (Sass, 2016, p. 54)

Portal Middle-High, on the other hand, achieved above the district and the state in both math and English, having 42% of learners meeting expectations and 6% of students exceeding expectations on state standardized tests—the state average was 40% achievement at or above expectations, and Bulloch County Schools was 45% at or above expectations. In English, Portal performed at 94%—58% meeting expectations and 36%

exceeding expectations—up from the district, at 91%, and the state, at 90% (U.S. News, n.d.). See Table 2.4 for a breakdown of student proficiency testing scores.

Table 2.4: Student Proficiency Testing



(U.S. News, n.d.)

It can be seen that the measures for these schools look different (i.e., the SCSC's report was more specific than the U.S. News's data, for example), but the value added model created the means with which to bridge these differing data sets, so the information seen above is in line with the statistics presented by Sass in his estimation.

Overall, the Conservancy for Liberal Arts and Technology did not fair as well as the district schools and underperformed when compared to the closest approximation of a public school foil within Bulloch County.

Senate Bill 133: Opportunity School District

The newest development in the cantankerous history and disputative past surrounding the continued creation of charter school authorizers has been the promotion and disagreement resulting from the establishment of an Opportunity School District, which has fueled arguments and conflicts over the state's continued charter school legislation and the fractious power relations across the state.

In 2015, Governor Deal stimulated the state's charter authorization powers by championing Senate Bill 133 and its attached constitutional reform, Amendment 1: The Georgia Authorization of the State Government to Intervene in Failing Schools. As written on his website:

> In order to turn around struggling schools, Gov. Nathan Deal proposed creation of an Opportunity School District (OSD). Based on similar, successful initiatives in Louisiana and Tennessee, it would authorize the state to temporarily step in to assist chronically failing public schools and rescue children languishing in them. (Governor Nathan Deal, Office of the Governor, n.d.)

This initiative was not met with much enthusiasm and was instead confronted by a stark backlash from special interest groups and educational organizations. As reported by 11 Alive News—an Atlanta broadcast affiliate—"On Amendment 1, it's a battle between the teacher's unions and the private sector" (Reed, 2016).

Yet, it was not just a conflict between unions and private entities. Erica Hernandez of the Atlanta Journal Constitution reported, "Students of all ages, including students from Columbia High School, Cedar Grove Middle, Cedar Grove Elementary and

Oak Grove Elementary in DeKalb County, rallied against the proposed education bills in the Capitol" (2015). These children, many of which were minority students from lower socioeconomic neighborhoods around DeKalb County, held signs reading "Makeover not Takeover!" (Hernandez, 2015).

Even with these protests, though, the more organized and bureaucratic opponents of Amendment 1 definitely made their voices heard. In fact, Atlanta Mayor Kasim Reed broke with Governor Deal and stated, "There's a genuine concern about the impact this will have on the quality of education and on it weakening our public schools, because it may take resources that were meant for public schools out of the system" (Reed, 2016). Likewise, the Georgia PTA and NAACP came out against the measure (Tagami, 2016), even advertising their discontent in several anti-Amendment 1 commercials.

And yet, "[s]upporters say Amendment 1 will allow them to fix failing schools; they would actually take away local control until the schools can get back on track" (Reed, 2016). For instance, Freddie Powell Simms, a Georgia State Senator argued that "our children can not wait for a good education; they deserve a good education…This is an opportunity to help those students who have been failing for decades…Vote yes on Question 1" (the.ksmm, 2016).

The basics of Governor Deal's Opportunity School District and its powers can be distilled down to five main characteristics, each as contentious in this fight as the last: (1) The OSD would have the authority to take control over schools that were failing, including powers to remove administrators and teachers, to change the schools' curriculums, and to seize the educational institutions' budgets; (2) If ratified, the OSD

would start to take over schools in the 2017-18 school year and would base each assumption of control on the College and Career Readiness Performance Index (CCRPI) data from the previous three years; (3) The OSD would be shaped after the 10-year-old Recovery School District in Louisiana, where the state took control of 100+ of New Orleans's underperforming schools in an effort to restore the district; (4) Georgia's constituency was slated to vote on the OSD on November 8th, 2016; and (5) The details of the takeover plans were not well known.

Hernandez described the perplexity surrounding this issue, pronouncing:

> Opponents of state takeover say it would give control of schools to an aloof entity that is not accountable to voters or parents. They say it's unclear what the state would do to improve schools that local districts aren't already doing. And the real issue for many schools, they say, is poverty. (2015)

Another piece to this puzzle, as was present in the conflict over HB 797 and HR 1162, was the outside influences that asserted their will and their resources into this dispute. To illustrate this, the largest contributors to support of Amendment 1 were AT&T ($25,000), Metro Atlanta Chamber ($35,000), 50CAN Action Fund Inc. ($310,000)—"a national advocacy group that raises…money for low-performing school initiatives" (Reed, 2016)—and "by far the biggest supporter is Georgia Leads"—a charter advocacy group "set up as a nonprofit after Deal won re-election in 2014. It was designed to raise and spend money to push the governor's second-term agenda" (Saltzer, 2016). Also, with Georgia Leads being a private firm, "they don't have to disclose their donors, so we don't know where all of this $850,000 is coming from" (Reed, 2016). On the other

side of the aisle, "[o]pponents [to Amendment 1] have raised $2,000,000, all from the National Teachers' Union" (Reed, 2016).

To make matters worse, or at least more complicated, "Atlanta parent Kimberly Brooks, Rev. Timothy McDonald and public school teacher Melissa Ladd" filed a lawsuit in September that "goes after Gov. Nathan Deal, Lt. Gov. Casey Cagel and Secretary of State Brian Kemp over the language in the Amendment 1 'Opportunity School District' ballot question" (Downey, 2016). According to the plaintiffs the "language is 'so misleading and deceptive that it violates the due process and voting rights of all Georgia voters'" (Downey, 2016).

The suit proposed that:

> First, the language states that the constitutional amendment "increase[es] community involvement" when it does the opposite. Second, the language claims that impacted schools will be "fixed" when there is no research, data or evidence that state takeovers of local public schools yields any better outcomes. Third, the language describes the targeted schools as "failing" while many of them have made as much or more progress on state school assessments as traditionally high performing schools. Accordingly, the ballot language by which the Proposed Amendment will be presented to the Georgia electorate deprives voters of their due process right to an effective vote in violation of the Georgia Constitution. (Downey, 2016)

As Dworkin would put it, this is another issue of criteria in an argument-based philosophy of the law, and the state and local communities are, once again, disagreeing on what the law is meant to do.

Additionally, the campaigns have further split their verbiage (i.e., semantics) in their advertisements. Supporters' commercials moved to calling the referendum Question 1, while adversaries continued to rally against Amendment 1, while persisting to call it such. Again, this could confuse the issue (How many books are on the table? Is a pamphlet a book?).

As for Nathan Deal's contribution to this dispute, his website states that: (1) The governor's proposal would seize persistently failing schools, which are defined as "scoring below 60 on the Georgia Department of Education's accountability measure [in] the College and Career Performance Index, for three consecutive years" (Governor Nathan Deal, Office of the Governor, n.d.); (2) The OSD would not take over any more than twenty schools a year and would not govern any more than 100 schools at any time; and (3) Schools in the OSC would not be in the district for more than ten years, but no less than five—after ten years, all schools would return to local control. When asked in an interview about the backlash from local actors and organized groups, like the PTA and NAACP, Deal said, "The irony of some of the groups who are opposing doing something to help these minority children is beyond my logic. If you want to advance the state of colored people, start with their children" (Bult, 2016).

Ultimately, 60% of voters, some 2,386,252 constituents, voted down the measure, and 40%, or 1,586,977 voters, supported for the measure, which led the state to terminate

this conflict over statewide charter school authorizing entities and to abandon its quest for an OSD (Reed, 2016).

CHAPTER 3

METHODOLOGY, DOCUMENT REVIEW, VALIDITY OF TEXTS, AND LIMITATIONS

The methodology used for this study was qualitatively devised and examined. Specifically, this dissertation used legal interpretivism, a branch of hermeneutics, in order to explore charter school laws and how they have affected local actors, the politics within the state, campaigns, and even the verbiage used in voting booths.

As Pushkala Prasad (2005) states, "The philosophy of hermeneutics is fundamentally concerned with matters of text and interpretation. What is text? How can it be understood?" (p. 31). These questions and concerns were addressed and examined, but, along with them, the issue of whether education is a public good, a right, or a business was also examined—these were concerns that evoked inquiry in the "fundamental or constitutive explanation of legal rights and obligations (powers, privileges, and related notions) or, for short…the grounds of law" (Stavropoulos, 2014). By employing legal interpretivist traditions, the individual texts (i.e., the original documents, transcripts, advertisements, etc.) of relevant legislation and litigation as they pertain to charter schools authorizers (i.e., HB 881, HB 797, HR 1162, and SB 133) and the campaigns surrounding them were analyzed and their influence on contemporary educational shifts was addressed. This documentation encompassed the political

climates, tactics, and financial outputs surrounding these issues. Legal interpretivism was a valuable tool because:

> First, interpretivism says that the explanation of rights and obligations in which both moral principles and institutional practice play some role is a kind of interpretation...In the case of law, an interpretation so understood may correctly identify, say, some change in rights and obligations that obtained in virtue of an enactment, even though the enactment's having that impact was not considered and endorsed, in some specified sense, by the enacting institution.
>
> Second, interpretivism says that interpretation identifies some moral principles which justify, in some specified sense, the enactment's having the impact in question...
>
> Third, for interpretivism, the justifying role of principles is fundamental: for any legal right or obligation, some moral principles ultimately explain how it is that institutional and other nonmoral considerations have roles as determinants of the right or obligation. In the order of explanation, morality comes first. (Stavropoulos, 2014)

Basically, the enactment of laws is based on a moral obligation to the citizenry and such obligations (e.g., legislation) have consequences—those that are intended, a "change in rights," and others that are unintended, "rights and obligations that obtained the virtue of an enactment, even though the enactment's having that impact was not considered" (Stavropoulos, 2014). This is not to say that morality in the legal sense has been inexorably linked to justice, quite the opposite, actually.

According to Dworkin (1985), laws have a moral obligation to the people—to be created for the betterment of society—but many laws have little to do with justice (think about speed limits), but are created with the moral obligation to the people and with the idea that citizens will follow said laws because they were crafted by an authority that seeks to serve the constituency.

Dworkin (2009), himself, stated:

> We are taught from the early days of law school about a potential conflict between law and justice. I try to describe law, not as something to be set beside morality and studied in conjunction with it, but as a branch of morality. This requires me to stress what might be called procedural morality, the morality of fairness as well as justice. (2009)

Dworkin went on to say, "Moral reasoning, I argue, is interpretive reasoning," but that "[t]here is a striking difference between personal and political morality. I said that…we in our political role, must treat each of us in the governed with equal concern" (2009). In regards to equal concern, it should also be stated that legal interpretivism is primarily a humanistic philosophy. While not grounded in positivism, it is:

> A rational philosophy informed by science, inspired by art, and motivated by compassion. Affirming the dignity of each human being, it supports the maximization of individual liberty and opportunity consonant with social and planter responsibility. It advocates the extension of participatory democracy and the expansion of the open society. (American Humanist Society, n.d.)

On the other hand, Joseph Raz's theory of legal positivism is one of the principal competing theses in legal philosophy. In fact, as he wrote in his work "Authority, Law and Morality," there are three main views of how the law is created:

> Sources Thesis: All law is source-based, i.e. its existence and content can be determined by reference to social facts alone.
>
> Incorporation Thesis: All law is either source-based or entailed by source-based law.
>
> Coherence Thesis: The law consists of source-based law together with the morally soundest justification of source-based law. (1979)

Source-based law is, as it sounds, the source from which law originates. Hence questions, such as: Why is there a speed limit? Why are there laws governing child development and learning? Why have charter schools amended the constitution, and for whom were these alterations made? Would engender such discussions about the true nature of the law and where it is derived.

For the purposes of this study, Dworkin's philosophy—distinguished herein as the Coherence Thesis—was employed.

With charter school legislation and politics embroiled in heated debates over the equality of schools, the need for more competition within the public system of education, and the push for further state control over local systems, legal interpretivism best analyzes these components and how they have affected legislation, educators, schools, learners, and communities. It would also provide a response to

> [t]he philosophers who deny that moral or political judgments can be true, and offer such various different accounts of their role or function...They say we can get on just as well if we treat the moral judgments we and others make as only expressions of attitude or something of the sort. But that wouldn't do in politics. Politics is coercive. Politics is life and death. (Dworkin, 2009)

Every text, from Georgia's constitutions to the State Charter School Commission's accountability report, was scrutinized individually and arbitrated, and, since legal interpretivism was a branch of hermeneutics, any article, book, or written artifact pertaining to this study was assumed to contain layers of text with hidden meanings and agendas that played a role in the exploration of these educational reforms.

Each document contained veiled information that was obscured within what was explicitly stated (Prasad, 2005). Thus, by seeking to understand the "hidden text" that existed within the manuscripts, transcripts, and laws, a new understanding of modern educational institutions, politics, and practices was brought to light. The unintended consequences of HB 797's policies, for instance, created a new, separate, and autonomous public school system (one completely independent from traditional public schools) and shifted the political nature of Georgia's historically conservative leanings to a more social system by giving the state additional power over local actors. And while charter schools have been studied both qualitatively and quantitatively, this kind of liturgical review and consideration was able to respond to questions in a manner that could not have otherwise been done.

Furthermore, the hermeneutic circle, being the foundation for hermeneutic inquiry, espouses that text must be viewed through an interpretive spiral of understanding (Arnold & Fisher, 1994). This means that both the individual parts of texts and the texts as a whole must be regarded and equally treated. Knowledge of legal terminology and phrases and how they relate to the cultural and socio-political context, along with thoroughly exploring each text's area of study and background in relation to the elements of their field, provided the foundation for the hermeneutic circle. Prasad (2005) used corporate policy manuscripts to describe this by emphasizing that:

> The hermeneutic circle suggests that the meaning of these texts does not reside solely in the words and sentences of the policy statements. A researcher would have to closely examine the wider organizational background (structure, culture, interpersonal relations, etc.) to understand (a) why specific policies have been initiated, (b) which organizational actors have been most influential in its creation, (c) what local interests it may serve, and so on. At the same time, a close analysis of the policy documents themselves, especially their rhetorical elements, can tell us interesting things about what is important to members of the organization. Thus, an examination of the context sheds light on the text itself, whereas an examination of the text, in its turn, can illuminate our understanding of its context. Together, they result in a broader understanding and more meaningful understanding of diverse organizational phenomena. (p. 35)

Accordingly, if public education is seen as am organization, educational reforms are regarded as "specific policies," and politicians are defined as executives or "organizational actors," who "have been most influential," then this research stands to

provide a "more meaningful understanding" of what transpires in disputes surrounding educational administration and policy, especially with the proper background in economic, educational, and political conflicts, and the organizational phenomena of schools as they pertain to charter school authorizers.

All of this considered, legal interpretivism best met the criteria set forth by John W. Creswell (2007), who suggested that qualitative research must state the problem leading the analysis, provide research questions to be answered, and articulate the purpose of the study.

Document Review

A review of relevant literature coalesced important policy developments at the state and local levels. An archival analysis of Georgia's constitutions, local publications, legislative funding records, advertisements, lawsuits, Supreme Court decisions, and a review of relevant disputes (i.e., market theory's entrance into schooling, education as a public good, etc.) was conducted in order to produce the foundational data for this study. The exploration of literature provided a basis for the overall criteria, which was vital to an argument-based examination of Georgia's educational policy shifts as they pertained to the creation of statewide charter school authorizers.

Holliday argued that "a lack of historical situating of observations and interviews limits the researcher's work because…culture does not stand still; it changes over time" (2013, p. 35). Furthermore, "grounding interpretations of present circumstances within a historical context provided a 'powerful and useful portrayal that focuses on processes that transcend static, descriptive accounts'" (Glesne, 1999, p. 158), so the documents

investigated in this study and their interpretations were important because they created the criteria for which these disputes were based. This both forms the historical underpinning for and bolsters the narrative of the arguments over contentious charter school laws and power relations between the state and local school districts, while also illustrating Georgia's fluctuating political climate, especially with the state's continued shift from its customarily conservative stance (i.e., more local control) to a more liberal governance (i.e., more state-level control and less local authority).

Validity of Texts

The texts reviewed in this study were original to the time and date for which they were used. Georgia's constitutions, for example, were viewed in their original forms and interpreted using the unique verbiage that was inimitable to the documents. Likewise, House Bill 881, HB 797, House Resolution 1162, Senate Bill 133, Amendment 1 (2012), and Amendment 1 (2016) were also interpreted by examining them exclusively in the way they were written and intended to be understood.

Nevertheless, there are many differed methods for determining the validity of texts in qualitative studies. Creswell and Dana Miller asserted:

> There is a general consensus…that qualitative inquirers need to demonstrate that their studies are credible. To this end, several authors identify common procedures for establishing validity in qualitative projects (e.g., Lincoln & Guba, 1985; Maxwell, 1996; Merriam, 1998). Qualitative researchers routinely employ member checking, triangulation, thick description, peer reviews, and external audits. (2000, p. 124)

Yet, in the same article, Creswell and Miller (2000) also describe such measures "[a]s helpful…[but] these discussions about validity procedures provide little guidance as to why one procedure might be selected for use by researchers over other procedures" (p. 124). Similarly, the validity of qualitative research has generally been concerned with ensuring the participants in studies have given reliable data, which was not a concern in this analysis.

This study was a review of original documents—many of which were historical in nature and/or previously peer reviewed—so this research relied on ubiquitously dependable sources and the most up-to-date information to ensure its validity.

Limitations

Legal interpretivism is not the prevailing philosophical ideology in legal circles of thought, and it is a very small branch of investigation that has far less influence than other theories, such as legal positivism. In fact, as Michael Steven Green argued:

> Ronald Dworkin's theory of law has not been adequately appreciated by other philosophers of law. At first glance, this statement might seem absurd. After all, Dworkin is, by a wide margin, the most famous living philosopher of law. But his influence is primarily upon *non*-philosophers. The philosophers of law themselves would choose Joseph Raz as their most influential member. While countless philosophers of law have declared their debt to Raz, the number of self-described Dworkinians is small. (2007, p. 1477)

Green went on to deconstruct Dworkin's criticism of Hart, arguing that his fundamental error was in asserting "that *Hart's* conventionalist theory of law was the result of his conventionalist metasemantic views" (2007, p. 1489) (see Appendix D).

Dworkin argued this when he wrote: "I said that Hart assumed, in effect, that the doctrinal concept of law is a criterial concept and that analyzing the concept means bringing to the surface criteria that lawyers actually use, even if unselfconsciously, in applying it" (2006, p. 31). Dworkin's work was heavily "criticized since the publication of *Law's Empire,* [where] he insists that his [ideology] is 'the best available' and that his 'original diagnosis was correct.'" (Green, 2007, p. 1488), but "Dworkin's argument is a fallacy, for, as many philosophers of law have argued, conventionalist theories of law do not follow from conventionalist metasemantic views" (Green, 2007, p. 1488).

Thus, if Dworkin's philosophy does not follow from conventionalist metasemantic views, then it is not regarded as applicable and other, more fitting, ideologies would and should overtake it as the prevailing legal philosophies, like Raz and his writings on legal positivism. Of course, as Green also stated, "[Dworkin's] influence is primarily upon *non*-philosophers," which is an important distinction to make, because charter school authorizer legislation teeters the line between true, positivist law and a social good for communities, especially communities that value children and learning.

CHAPTER 4

FINDINGS AND DISCUSSION OF THE STUDY

Findings

The purpose of this study was to investigate charter school authorizing entities in Georgia and the laws that have led to their creation, and, ultimately, how they have affected traditional public schools. This investigation identifies the criteria that influenced Georgia's public policy reforms, which led to the creation of the SCSC's autonomous school system and the fight over Georgia's proposed Opportunity School District.

As described in Chapter One, the following research questions guided this study:

1. How have charter school laws changed public education in Georgia, both in their scope and circumlocution?

2. How has the financial status of traditional public school districts been impacted by charter school legislation and its breadth?

3. How have actors used political platforms to inform and/or misinform communities about charter school authorizer laws and their impacts?

4. Has the authority of local actors been diminished as a result of charter school policies?

5. For whom were these charter school laws written?

In order to unpack these questions, a look into each inquiry and the data ascertained to answer each query is best to ensure data availability and reliability.

How have charter school laws changed public education in Georgia, both in their scope and circumlocution?

Initially, this question might seem obtuse. The wording is a bit confusing, and the criteria for what this inquiry is actually asking for is not entirely direct. Yet, it is meant to be a straightforward query that seeks to find out if the laws passed for charter school authorizers—those proposed and ratified—have affected the public education system in the Peach State, and how this legislation has changed a system that is already confusing to most people, especially those outside of education as a profession.

Before anything else, the question of whether charter school authorizer laws have affected traditional systems of public education needs to be addressed, and the simple answer is, yes.

Charter school authorizer laws have changed the educational landscape in Georgia. First, they have created a new, autonomous school system—the schools under the purview and direction of the State Charter School Commission—and have taken, and continued to attempt to take, control away from local school systems, which has moved the state away from its more conservative historical propensities.

Additionally, these laws have created a dichotomous and contentious relationship between educators, teacher's unions, parents, learners, communities, the state, and the

governor that has cost Georgia much in human capital and in actualized monetary expenditures. House Bill 797 and House Resolution 1162 took control away from the local community by making it legal for the SCSC to upend a district's decision to deny a charter school the ability to open in its zoned area of operation, and Senate Bill 133 aimed at continuing in this vein and seizing more control over public school funding, staffing, and community involvement. And these measures were not the first of their kind, nor will they be the last, but they have created a precedent for additional policies that aim to reorganize and redefine what public education is in this state and all across the country.

How has the financial status of traditional public school districts been impacted by charter school legislation and its breadth?

Charter school authorizer policies have cost the state in the campaigns for and against these measures, in lawsuits, and in the funding of public schools in general.

Originally, HB 881 took $850,000 from Gwinnett County School District (GCSD) and gave it to Ivy Preparatory Academy, but this action was overturned by the Supreme Court after GCSD won its lawsuit against the state in Gwinnett County School District v. Kathy Cox. As a result of this ruling, HB 797, which was an amended version of HB 881, reorganized its powers so as not to directly take funds from districts' coffers. Yet, because of the wording in the funding formula for schools, the amount of money a traditional public school receives cannot be lessened if the student population drops—it does, however, increase if the student population increases—so Ivy Preparatory, which did not close its doors because of HB 797 and HR 1162, could attract students from

around Gwinnett County and those students could leave their home schools to attend Ivy Prep, but the amount of funding their home school receives would not be lessened and Ivy Prep's budget would increase. This essentially means that the students who moved from one school to another would be nearly twice as expensive as traditional public school students (i.e., county taxes would not lessen because they left the Gwinnett County School District, but state taxes would increase because Ivy Prep's student population would rise, increasing their budget according to the funding formula). Now, this affects taxpayers directly, and it subsequently affects public schools, students, and communities because learners' families, especially those from lower socioeconomic statuses, would be burdened by the cost of students in the SCSC district. The lawsuits against the state (i.e., GCSD v. Kathy Cox and the class action against the wording over Amendment 1 (2016)) also have this affect on constituents and their communities.

Moreover, while SB 133 and Amendment 1 were defeated in the general election, it is not out of the realm of possibility for another policy like SB 133 to be reorganized and reemerge in a more successful manner, especially with nonprofits like Georgia Leads in operation, which is something that would cost the state, schools, and taxpayers even more money. It has happened before, after all.

How have actors used political platforms to inform and/or misinform communities about charter school authorizer laws and their impacts?

Dworkin would argue that this question is about criteria (i.e., Is a pamphlet a book?), which it is. The state is being sued over this issue because it decided to use vague language to try and sway the electorate to vote for its proposed Opportunity School

District. Likewise, the use of separate language during television advertisements, appearances, and speeches by proponents, like Governor Deal, were ways the use of misinformation was utilized to force this issue. In commercials against the measure, it was said to "Say No to Amendment 1" (Keep Schools Local, 2016). In similar commercials for the measure, it said, "Say yes to Question 1" (the.ksmm, 2016). This may seem like splitting hairs, but for voters who may not be as informed on this issue, phrasing the ballot as "Question 1" instead of "Amendment 1" could lead to a greater number of positive votes, especially since the phrasing of this amendment was overwhelmingly positive.

To put this into prospective, one may simply observe the length of Amendment 1 when compared to Amendment 2—both of which were on the ballot on November 8th:

> Amendment 1:
>
> Shall the Constitution of Georgia be amended to allow the state to intervene in chronically failing public schools in order to improve student performance? (King, 2016)
>
> Amendment 2:
>
> Shall the Constitution of Georgia be amended to allow additional penalties for criminal cases in which a person is judged guilty of keeping a place of prostitution, pimping, pandering, pandering by compulsion, solicitation of sodomy, masturbation for hire, trafficking of persons for sexual servitude or sexual exploitation of children and to allow assessments on adult entertainment establishments to create and fund the Safe Harbor for Sexually Exploited Children

Fund to pay for care and rehabilitative and social services for individuals in this state who have been or may have been sexually exploited? (King, 2016)

These constitutional modifications are obviously very different in their intentions, but the complexity of the information presented to the constituents at the voting booths is also noticeably different. The description of Amendment 1 is both shorter and less detailed, while Amendment 2 is packed full of information about what it is, does, and will do. The lack of information in Amendment 1 is as important as the presence of data in Amendment 2 and leads one to suppose that the educational amendment was left short in order to influence the vote and support a particular political agenda.

Amendment 1 was voted down, but other constitutional changes (i.e., Amendment 1 (2012)) have been passed and have fallen under the same scrutiny of 2016's proposition, which leads one to presume that this pattern will continue and that it will affect other political and educational policy shifts in the future.

Has the authority of local actors been diminished as a result of charter school policies?

With the SCSC taking control away from local districts and the proposition for the state's OSD—even with the OSD being denied ratification—the state continues to try and assume more control over charter school authorization and education in general. Currently, local communities maintain the bulk of control over public schools, but the state is quickly moving away from its historically, if not constitutionally, conservative, small government stance in order to augment its powers and sanctions over public education, especially in the dominance over charter school authorization.

For whom were these charter school laws written?

The SCSC's school district has not been a failure. That said, it has not been a resounding success, either. Learners are performing at about the same levels as their peers in traditional public school settings.

But students in the SCSC school district also cost the constituency more money, and the conflicts over charter school authorizers have cost the taxpayers much—personally, professionally, and monetarily.

So, who were these laws written for? In answering this, it may be simpler to delineate for whom charter school laws were not written for. First, charter schools have not been successful enough to say that these policies were written for students, particularly because many of them are still underperforming. That, however, has not halted legislation designed to take more control away from local actors, because these laws continue to make their way through the House and Senate. Similarly, these laws were not written for Georgia's communities. Quite the contrary, in fact, because they are meant to circumvent the power of districts and neighborhoods, which has made many local actors feel helpless and disregarded. And these laws have cost taxpayers more money for what can only be described as the same thing—public education (whether charter or traditional)—so it can be logically presumed that these policies were not created with the taxpayers in mind. Lastly, educators have openly campaigned and protested charter school authorization policies, which makes it difficult for one to believe that such legislation was created for teachers and/or administrators.

It seems that charter authorization laws have more political intentions than personal or professional regard. Therefore, it can be ascertained that charter school laws, and authorization laws in general, were written for those who would best benefit from them (i.e., special interests, businesses, and politicians).

Discussion

Do charter school authorizer policies affect public schools and communities? Can the politicization of educational legislation have a positive and/or negative impact on local actors and students? Do major policy changes affect the practice of instruction? Of course they do.

In Georgia alone, charter school policies surrounding authorizing bodies have divided districts, led to lawsuits and protests, and altered the state's constitution. Whether or not these changes have been for the better or the worse still remains to be seen—ultimately, these laws are still in their infancy.

Additionally, within these conflicts the idea that added competition is beneficial has almost always been one of the first arguments for adding new varieties of schools into the public education system, but competition within or between districts does not always produce the most positive results. Edward Fiske and Helen Ladd, in their work "When Schools Compete: A Cautionary Tale," claimed that competition in New Zealand—arguably one of the most aggressive school choice systems worldwide—has led high-achieving schools to draw more affluent students, particularly those with parents who have higher expectations, away from the lower performing schools (2000). Ron Zimmer and Jonathon Attridge refer to this phenomenon as "cream skimming" and

describe it as a peer effect where charters recruit the best students in a community, which creates a high concentration of lower-achieving students in underperforming schools (2014, p. 523)—something that cannot truly be accounted for when applying market theory to public education, which, again, warrants the question of whether or not education is a business or a public good.

Consequently, if underachieving schools were given the funds needed to provide an equitable and adequate education to all students, then the demand for student mobility would not be so high. Hence, if the hundreds of millions of dollars spent on lawsuits and statewide charter districts and authorizers was appropriated for maintenance, conservation, curriculum, and teacher recruitment, then maybe real changes could be made.

John D. Barge, State School Superintendent, said as much in a brief he penned against HB 797 and HR 1162 in 2012. In his report, he suggested:

> Our students deserve a full 180-day school year and our teachers deserve full pay.
>
> - Restore the 180-day school year for Georgia's students
> - Restore essential student services like student transportation and student support to effective levels
> - Restore all teacher positions with full pay for a full school year (p. 1)

His recommendations came as the vote for HR 1162 and HB 797 were about to take place and the state was laying off teachers and reducing the school year due to

budgetary concerns. He went on to state, "Rather than spending millions of dollars on lobbying for a new state agency, amendment advocates should spend that money on developing high quality charter school applicants that our local school districts can easily approve" (p. 6).

After seeing how the SCSC schools have performed and how much the commission has cost the state, it is difficult to say that he was wrong.

CHAPTER 5

IMPLICATIONS AND RECOMMENDATIONS

Implications

Charter school authorization legislation has had far-reaching implications and great, if not grave, influence over leaders, parents, and learners. From the minutest detail to the broadest strokes of these laws, they have the potential for many unintended and/or unforeseen consequences for schools and individuals alike.

Implications on Schools and Political Campaigns

The language used in HB 797 when describing the SCSC's tenth responsibility—"To meet the needs of state charter schools and local school systems by uniformly administering high-quality state charter schools, thereby removing administrative burdens from the local school systems" (Georgia General Assembly, 2012)—was something that, at first, might have seemed innocuous and even quite pleasant; however, this obligatory responsibility of the SCSC showed that it was not intended to create a method to *relieve* the encumbrances of the local school systems. Instead, it isolated state charter schools from public schools by eliminating local leaders from decisions made within the district about charter schools—something that seemed completely counterintuitive to the SCSC's ninth charge: to "encourage collaboration" (Georgia General Assembly, 2012, p. 3). The language of the bill did not state that the SCSC would "alleviate" or "help" in any

capacity. It asserted that the commission would "remove" duties from the community, which then segregated the public schools and the state-approved special schools. School leaders have found it difficult to justify this kind of detachment from one "public" school to another, especially a school in the same district, town, or zone. As Julie A. Marsh and Priscilla Wohlstetter (2013) argued in their article *Recent Trends in Intergovernmental Relations: The Resurgence of Local Actors in Education Policy*, "the proliferation of charter schools remains a significant challenge and threat to district authority" (p. 297).

Another concern of HB 797 was the scope of powers given to the SCSC. As written in the bill (2012), "The commission shall have the power to: (1) Approve or deny petitions for state charter schools and renew, nonrenew, or terminate state charter school petitions" (p. 3). Because this agency was given the power to approve a school's charter without the endorsement of the local districts, it could, in turn, also deny a school's charter request, which it has. In fact, in a recent Appen Media Group article that was focused on the denials for a pair of Fulton County schools—the Fulton Science Academy High School (FSAHS) and the Fulton Sunshine Academy Elementary School (FSAES)—it was reported that "the SCSC…offered no comment in its decision to deny a charter to the two schools despite evidence the schools are performing well and providing a positive educational option to the area" (Waylock, 2014.). The State Charter School Commission denied the petitions of four out of the nine schools in that one session, so Georgia and its citizens—many of whom believed that the state's control of charter requests would garner more variety—have often been left in the perplexing position of having less choice.

Subsequently, HB 797 and HR 1162 have greatly damaged the perceptions of educators, individuals, and communities across the state. Arguments have been made about the use and/or abuse of the law and whether or not politicians should be allowed to skirt around standards and normal practices in order to push political agendas (Dodd, 2009). School and district leaders have since increased their awareness of charter legislation because of the impacts that such policies have on their positions (Waylock, 2014).

Implications on Individuals

The most important group of individuals affected by charter policy has been, is, and always will be the students. In regards to learners, Marsh and Wohlstetter (2013) posited that "[d]espite federal support for charters from both Democratic and Republican administrations, many school districts have been embroiled in polarizing debates about whether charters are 'faux' public schools…or…'real' public schools… In fact, one could view the growth of charter schools as weakening the authority of local districts" (p. 280).

The "weakening" of local districts aside, it has been the displacement of students, the potential lack of diversity, and the application of law to continually change policy as it pertains to schools—regardless of their "real" or "faux" status—that has created the greatest effect. Wohlstetter and Marsh went further to suggest that "states have bypassed the authority of local districts…leading to considerable disruption" (p. 280).

Also, there have been arguments about schools being restructured (i.e., transformed from public schools to charters) into exclusive schools that allow high-

achieving students access to their educational institutions and segregate English learners (ELs), special education students, and minorities (Wohlstetter and Marsh, 2013). These fears have persisted because of the continued misinformation and the politicization of charter school studies (Henig, 2008) and the campaigns for and against charter school authorizers (i.e., advertisements, misleading ballot questions, misinformation, etc.). This has led to divided communities like those Marsh and Wohlstetter mentioned and has had a lasting effect on the relationships between parents, learners, teachers, and educational leaders.

Recommendations

Simply put, charter schools are an experiment that is still new and there hasn't been enough time or data to truly say they have failed or succeeded. Having said this, there is only one recommendation that the author would make: trust in local schools, teachers, and students, because while they may fail, they have the most buy in and the most to lose. Politicians and businesses lose positions of power and money, but communities lose children, and they only lose them when they lose the heart and soul of their neighborhoods, their districts, and their local schools. Politics is pitiless, markets are merciless, and the law is, at best, aloof, but education has always been a labor of love, and when that is lost, when the ideals of teaching others so that they may have a better life are gone, then there really is nothing left to save.

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APPENDICES

APPENDIX A

When it reported that America had fallen behind other major powers in teaching and learning, "A Nation at Risk" thrust education to the top of the national political agenda and started major conversations about elementary and secondary education reform (Johanningmeier, 2010). Before it, Sputnik—the satellite launched into space by the Russians in 1957—was considered the catalyst for a nationwide conversation about education, especially science-based education, and focused national attention to the anxieties and suspicions that were bred from the Cold War—namely that Russian science had progressed faster than American engineering (Johanningmeier, 2010). Both of these events created lasting effects that impacted reform—from Goals 2000 to No Child Left behind to Common Core—and fostered continued concerns that American education was not as advanced, progressive, or sophisticated as its worldwide equivalents.

APPENDIX B

As a central part of H.L.A. Hart's theory of legal positivism, the rule of recognition is the foundational rule by which other subsequent rules are identified, understood, and agreed upon. Hart contended that all societies' laws were based on rules and that there were two forms of obligatory rules: primary and secondary. Primary rules of obligation dictate the actions of people within each society (i.e., laws that govern one's actions and obligations to the civilization at large). Secondary rules of obligation are those that are used to understand, change, create, and identify the primary rules. Thus, a rule of recognition is a secondary rule that identifies a public regulation as a rule of obligation.

APPENDIX C

Human capital is the manpower behind any endeavor that pushes it to succeed—it is the hours, the work, and the human factor that propels any industry forward. Volunteers, for example, are a kind of human capital and their worth, like gifts or donations, can be seen as a kind of principal (Brewer & Welsh, 2014).

APPENDIX D

Green argued that:

> [M]etasemantic conventionalism is a view about how concepts—including the concept of law—get the contents they have. According to this view, the content of the concept of law is determined by the criteria for using the concept agreed upon by those employing it. In saying this, one has not yet said what the content of the concept is. In contrast, a conventionalist theory of law says what the content of the concept of law is, without yet saying how the concept gets that content. (2007, p. 1489)

Here Green states that there is a distinction between a conventionalist theory of law and metasemantic conventionalism, meaning mainly that these are not compatible and are instead two separate philosophies that cannot overlap in how they are organized or utilized. Basically, "[c]onventionalist metasemantics does not entail conventionalist theories of law" and "the metasemantic fact that the content of the concept of law consists of the criteria agreed upon by those using the concept has yet to tell us what these criteria are and therefore cannot yield any particular theory of law" (Green, 2007, p. 1489).