IN THE SUPREME COURT OF GEORGIA

DISTRICT and DR. EUGENE) WALKER, Individually and in his) Official Capacity as a Member and) Chairman of the DEKALB COUNTY) BOARD OF EDUCATION,) Vs.) CASE NO. S13Q0981 GEORGIA STATE BOARD OF) EDUCATION, and) NATHAN DEAL, in his Official) Capacity as Governor of the State of) Georgia,)	DEKALB COUNTY SCHOOL)	
Official Capacity as a Member and Chairman of the DEKALB COUNTY BOARD OF EDUCATION,)Ns.)vs.)CASE NO. S13Q0981GEORGIA STATE BOARD OF EDUCATION, and NATHAN DEAL, in his Official Capacity as Governor of the State of)	DISTRICT and DR. EUGENE)	
Chairman of the DEKALB COUNTYBOARD OF EDUCATION,)vs.)Vs.)CASE NO. S13Q0981GEORGIA STATE BOARD OFEDUCATION, and)NATHAN DEAL, in his Official)Capacity as Governor of the State of	WALKER, Individually and in his)	
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REPLY BRIEF OF APPELLANT DR. EUGENE WALKER

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INTRODUCTION

The State's Brief attempts to sustain the constitutionality of the Removal

Statute, O.C.G.A. § 20-2-73, based on an argument that the Statute merely establishes "additional qualifications" for holding the office of local school board member. The State also contends that the Statute does not conflict with the constitutional requirement that local board members be elected and that its suspension and removal provisions satisfy the requirements of due process. None of these positions can withstand a reading of the Removal Statute itself. In particular, the provision setting the supposed standard of, and procedure for, possible "reinstatement" of board members after suspension cannot withstand constitutional scrutiny under any of the State's three purported defenses.

The Removal Statute provides that a democratically elected board member, who has neither been charged with nor found to have committed any wrongdoing, can and will be barred from retaining the seat to which he was elected unless the Governor or his designee concludes after a hearing that "it is more likely than not that the local board of education member's continued service on the local board of education improves the ability of the local school system or school to retain or reattain its accreditation." That standard, even if (and *especially if*) the Governor attempts to apply it conscientiously, is inconsistent with both the specific constitutional provisions relating to election, removal and qualifications of local school board members, as well as the basic requirements of due process.

ARGUMENT AND AUTHORITIES

A. The General Assembly's broad authority does not authorize it to enact legislation that conflicts with, or renders meaningless or superfluous, other provisions of the Constitution.

The arguments presented under the first two sections under Heading A in the Brief of Appellant Walker (*Appellant's Brief*, at 6-11) have gone largely uncontested by the State and will not be further expanded here. The State's brief does not contest Appellant Walker's assertions that (a) local school board members are constitutional officers (under Article VIII), who shall be elected as provided by law; and (b) the only provision in the Constitution directly applicable to removing local board members from office is Article II, Section II, Paragraph IV authorizing recall by the voters. *See Brief of Appellant*, at 7-11.

It should be noted that for this Court to accept the State's suggestion (State's *Brief*, at 13-15) that the General Assembly nevertheless has *carte blanche* to establish any kind of removal process it likes under its "absolutely unrestricted" power to legislate would necessitate reading the relevant provisions of both Article II and Article VIII out of the Constitution altogether – the former because the recall provision would be superfluous and the latter because the results of the elections of local school boards may be legislatively overturned without any finding of individual board member misconduct or failure to meet qualifications to hold office. It is a basic rule of constitutional and statutory interpretation that a provision is not to be interpreted as superfluous or meaningless if an equally reasonable interpretation would provide meaning. See, e.g., State v. C.S.B., 250 Ga. 261, 263, 297 S.E.2d 260 (1982) (courts must construe statutory language so as not to render it meaningless or mere surplusage). If the drafters of the Constitution had intended to provide alternative processes (beyond recall) for removal of elected local school board members from office, they certainly could

have done so – and in fact did do so, with regard to other constitutional officials, including state educational officials.¹

Contrary to the State's contention (at pages 3 and 16 of its brief), it is not the position of Appellant Walker that "local officials" may be removed from office only through the recall process. In fact, the General Assembly, in its wisdom and discretion, may provide for any reasonable and non-arbitrary grounds and process for the removal and replacement of the large number of local officials (such as county commissioners) who hold elected or appointed offices, or serve on boards, that are *created by state statute*. Locally elected school board members, however, are not such officials, as their boards and their positions (like those of the General Assembly and this Court) are established by the Georgia Constitution. What the General Assembly may not do is to enact a law to remove such constitutional officials, except as authorized by the Constitution. In the case of local school board members, the Constitution permits removal by recall or for failure to meet prescribed "additional qualifications" provided by law. The Removal Statute attempts to provide for removal beyond those constitutionally permissible parameters and thus cannot stand.

¹ For example, see Ga. Const., Art. VIII, §II, ¶ I (d); (members of State Board of Education may be removed "as provided by law"); Art. VIII, § IV, ¶ I(f) (Board of Regent members may be removed as provided by law).

B. The Removal Statute does not establish a constitutionally permissible "Additional Qualification" for office.

The essential position set forth in the State's brief is that the Removal Statute falls within the authority of the General Assembly, under Article VIII, Section V, Paragraph II, to provide for "additional qualifications as may be provided by law" for local school board members. Not surprisingly, at no point does the State's brief attempt to describe the additional "qualification" for office that the Removal Statute sets out, much less how Appellant may have failed to meet it so as to forfeit his right to continue to hold his elected constitutional office. Nor does the State even attempt to explain how the Removal Statute, or any portion of it, sets out a "qualification" for office that can fit within any feasible definition of that word. Instead, the State's brief merely recites, much like a mantra, its circular and conclusory assertion that Appellant is "unqualified" to hold office. See, e.g., State Brief at 3 (Appellant "does not meet the standards of office); at 5 (Appellant seeks to retain his board position "even though he is unqualified").

An additional refrain throughout the State's brief – that Appellant (and presumably other DeKalb County Board members) should be removed because they have in some way broken some unspecified laws – is unsupported by anything in the record, is unrelated to anything in the Removal Statute, and is irrelevant to answering the certified questions regarding the constitutionality of the Statute. In the florid and passionate final page of its brief, the State reminds this Court that "<u>all</u> public officials are required to comply with the law and, when they fail to do so, they can be sanctioned or removed from office." (State Brief, at 29 (emphasis in original)). Apparently imagining – or wishing – that this appeal involved (and the Removal Statute required) even an *allegation* of unethical or illegal conduct by a sitting board member, the State also asserts that school board members "are required to comply with the laws that govern their conduct" (Id., at 12.), and that Appellant is not "free to act above the law." (Id., at 24).

The State's argument only highlights the most glaring deficiency in the Removal Statute – that it allows for the removal of a democratically elected local school board member, without any accusation of, much less proof or opportunity to rebut, any violation of law, or of any charge of individual wrongdoing whatsoever. The statutory "removal/reinstatement" hearing procedure, in fact, does not even authorize the "judge" (the Governor or his designee) to address the question of whether the individual board member has engaged in any improper, illegal, or irresponsible actions while on the board. According to the express terms of the Removal Statute, the *only* issue for determination is whether the reinstatement of the duly elected individual board member will increase the likelihood that the accrediting agency (in this case, SACS) will approve accreditation, when

compared with the continued service of the replacement board member already appointed by the Governor.² In the State's view, it thus becomes an "additional qualification," in order for a democratically elected constitutional official to retain his seat, to convince the Governor that a private entity will find the duly elected official's presence in office preferable to that of the person the Governor appointed to replace that very official.

Rather than setting forth any kind of qualifications for holding office, the Removal Statute creates a process for suspending and removing board members from office that (a) applies only to board members whose school districts are on accreditation probation; (b) requires suspension of all local board members, or none, without regard to any individual culpability or wrongdoing; and (c) sets an impermissibly vague and/or impossibly high standard for reinstatement, thus permitting, or even compelling, the Governor or his designee to refuse to re-seat an elected local board member who has neither been accused of nor engaged in any wrongdoing.

² It is ironic that the issue of threatened loss of accreditation could trigger *any* potential legislative sanctions, much less removal of entire elected local school boards, given that Georgia law does not require that any school system even seek, much less obtain, accreditation. Were accreditation truly the "bellweather . . . of a school system's performance" (State Brief, at 6) and its potential loss the catastrophe suggested by the State, should not the General Assembly at a minimum have attempted to make it a statutory requirement for all school systems, before authorizing the removal of elected board members based on the mere prospect accreditation might be lost in the future?

Refusing even to grapple with the challenge of explaining how this legislative effort to overturn the results of democratic elections of constitutional officials supposedly constitutes nothing more than the establishment of an "additional qualification" for office, the State attempts to dismiss the entire inquiry by contending that "it is empty semantics to suggest that O.C.G.A. § 20-2-73 does something other than call for the suspension and removal of board members who are found not qualified to hold office." (State Brief, at 18, note 13.) To the contrary, engaging in careful analysis and proper interpretation of the language in our Constitution is considerably more than "empty semantics;" it is the essential activity undertaken by this Court when interpreting and assessing the constitutionality of any law. In that process, this Court should be loath to interpret words or phrases in a manner that is essentially at odds with a reasonable understanding of what those words mean. See Slakman v. Continental Cas. Co., 277 Ga. 189, 191, 587 S.E.2d 24 (2003) ("[T]he fundamental rules of statutory construction ... require us to construe a statute according to its terms, to give words their plain and ordinary meaning,...). Yet that is precisely what the State insists this Court do by asking it to accept its circular reasoning that the Removal Statute merely establishes a method for removing "unqualified" members from service on local school boards.

The State has most likely abstained from any attempt to describe the "qualification" contained in the Removal Statute because the very terms of the statute defeat any attempt to categorize it in those terms. Had the State ventured to make the effort, it would probably be something like this: "The Removal Statute creates, as an additional qualification for an individual to serve on a local school board, a requirement that where (a) such member's school system has opted to seek accreditation, (b) such member's school system shall not be placed on accreditation probation while that member sits on the board, unless (c) the State Board or the Governor decides to exempt the member's entire board from the application of this qualification, or unless (d), after a hearing regarding that individual board member, the Governor decides that such member's presence on the local board makes it more likely that a private accrediting agency will maintain the accreditation of that member's school system if that member, rather than the replacement already appointed by the Governor, serves out that member's elected term of office."

If the above were deemed to constitute a qualification for holding office, no individual board member would even have it in his ability to insure that he met such an amorphous and arbitrary "qualification," which is neither objective nor uniform, much less related to any credential, educational attainment, residence requirement, or ethical standard that could reasonably be considered to meet the

definition of a qualification. The Removal Statute thus goes far beyond establishing an additional qualification for a locally elected school board member to hold office. To reach that conclusion, one need only interpret the word "qualification" consistently with its clear and reasonable meaning and within the context it appears in Article VIII. No "empty semantics" are required.

C. On its face, the Removal Statute's provisions regarding both suspension and reinstatement deny due process to local school board members in school districts placed on accreditation probation.

The State contends that Dr. Walker's due process claim "has already been rejected, for the purpose of preliminary injunction, at the district court." (State Brief, at 20). The State's characterization of the district court's finding is incomplete at best and also ignores the broad scope of the certified question before this Court. The district court found that Dr. Walker "failed to show a substantial likelihood of success on his Fourteenth Amendment claim." (Order of March 4, 2013 by the district court, p.5). However, the district court's analysis focused almost entirely on the proceedings provided for under subsection (a) of the Removal Statute (which at that time was the impending hearing sought to be enjoined by Dr. Walker), and included only a passing reference to the proceedings provided for under subsection (c). Indeed, as the district court acknowledged, "the focus of Dr. Walker's challenge has been on the initial stages of the suspension proceedings; i.e., the SACS report and the hearing before the SBOE." (Id., at 4).

The district court's findings on the due process claims were limited to the

following:

In the present case, the Board Members received notice of the hearing before the SBOE. The SACS report provided the claims against the members. Plaintiffs challenge the sufficiency of this notice for not stating a standard against which they would be measured...

The Court finds that the SACS report provided the Board Members adequate notice. The report contains specific allegations of conduct that violate applicable standards and policies. Though more specificity could have been provided, an "ordinary person exercising ordinary common sense can sufficiently understand" the allegations. The Court further finds that the hearing before the SBOE met the basic requirements of pre-termination due process. Moreover, the Statute provides additional process before a termination can take place. If a Member petitions for reinstatement, subsection (c) provides for another hearing (conducted in compliance with the Georgia Administrative Procedure Act) and judicial review. Thus, there is considerable evidence that due process as required by the Fourteenth Amendment has been satisfied.

(Id.). The content of the district court's order shows that, during the federal proceedings, both Dr. Walker's and the district court's focus was on the SBOE "suspension" hearing provided for under subsection (a) of O.C.G.A. § 20-2-73. Moreover, the district court's order is silent regarding the constitutionality of the controlling standard to be applied during the "removal/reinstatement" hearing provided for under subsection (c), to wit, whether "it is more likely than not that the local board of education member's continued service on the local board of education improves the ability of the local school system or school to retain or reattain its accreditation." O.C.G.A. § 20-2-73(c). The district court simply

acknowledged that "additional process" would be afforded pursuant to the Georgia Administrative Procedures Act before the termination can take place.³ Thus, the district court did not address the portion of the Removal Statute that is most offensive to constitutional due process.

The district court's due process analysis of the proceedings provided for under subsection (c) went no further than the State would have this Court take the analysis: because there is a "process" of some kind, there is no evidence that a due process violation is likely. Even if this approach was sufficient for the district court's purposes of determining the propriety of a preliminary injunction, for this Court now to adopt such a restricted approach would preclude it from fully answering the very question certified for review: i.e., whether the Removal Statute complies with the Georgia Constitution.

The State argues that the Removal Statute is constitutional and that local board members enjoy the full protections of due process because they have the opportunity to participate in one of the "full administrative proceedings before OSAH that are subject to appeal." (State Brief, at 4). The State further argues that each board member is:

³ It is not entirely accurate that a suspended board member can *only* be terminated from his public office after additional process is afforded pursuant to a Georgia APA hearing. If a board member does not timely petition for a hearing under subsections (b) and (c) of the Removal Statute, his or her suspension will be converted to a termination by operation of law, and that board member will have been deprived of his or her public office without any post-deprivation guarantees.

entitled to two (2) separate hearings, first under sec 20-2-73(a) for suspension and then again under sec 20-2-73(c) regarding potential removal. Both are independently conducted. The first, under (a), is in the nature of an expedited process due to the exigencies of the potential threat to accreditation. The second, under (c), allows for a full blown trial and appeal.

(Id., at 21). In other words, the State argues that, because the Removal Statute affords a local board member the opportunity to request a "full blown trial and appeal," it affords him constitutionally sufficient due process.

Notwithstanding the trappings of procedural due process that may adorn the Georgia APA removal/reinstatement hearing provided for under subsection (c), the purported standard contained in the Removal Statute denies board members the *individual* right to have meaningful due process accompany the termination of their elected term of office. The Statute violates due process because it is unconstitutionally vague, indefinite, and ambiguous. "A statute must be definite and certain to be valid, and when it is so vague and indefinite that persons of common intelligence must necessarily guess at its meaning and differ as to its application, it violates the first essential of due process of law. To withstand an attack of vagueness or indefiniteness, a civil statute must provide fair notice to those to whom the statute is directed and its provisions must enable them to determine the legislative intent." Anderson v. Atlanta Committee for Olympic Games, Inc., 273 Ga. 113, 114(1), 537 S.E.2d 345 (2000) (citing Jekyll Island-State Park Auth. v. Jekyll Island Citizens Assn., 266 Ga. 152(2), 464 S.E.2d 808

(1996)). The Removal Statute does not provide fair notice to those at which it is directed, nor does it enable them to determine the legislative intent.

In particular, during the Georgia APA proceedings provided for under subsection (c), the Governor or his designee must consider the purely speculative issue of whether the local board member's continued service on the local board is "more likely than not to improve the ability of the local school system or school to retain or reattain its accreditation." O.C.G.A. § 20-2-73(c). Since accreditation decisions are made by independent, private agencies, the Governor would be deciding upon constitutionally protected property interests based on nothing more than conjecture that is multi-faceted and substantially unrelated to individualized findings regarding the petitioning board member.

Six DeKalb County School Board members have been suspended, and their respective seats have been filled by six individuals appointed by the Governor.⁴

⁴ In a classic "bootstrap" argument, the State's brief attempts to sidestep the obvious fact that the State Board and the Governor knowingly failed and refused to apply the express terms of the Removal Statute when they suspended only six of the board members, rather than all nine. The Statute provided them only two options: to suspend "all eligible members" or none at all. The State Board nevertheless determined, without any statutory basis, that only six sitting board members would be suspended, apparently because the remaining three were not sitting on the board when the original SACS interviews occurred. In any event, the only support offered by the State for its assertion (State Brief, p. 9, footnote 9) that "only six of these members were eligible for suspension" is the February 25, 2013 Executive Order issued by the Governor, suspending the six members, which itself states (also without any explanation or authority) that only the six suspended members were "eligible."

Because the issue of whether the DeKalb County School District retains accreditation is substantially related to issues of board governance, then the critical determination of whether continued service on the local board by Appellant Dr. Walker (or any other board member) is "more likely than not to improve the ability of the local school system or school to retain or reattain its accreditation" must contemplate multiple factors and facts related to individuals other than the appealing board member or that member's actions while in office.

For example, even if it were established that Dr. Walker (or any other suspended board member) had engaged in no wrongdoing and was generally a positive force on the local board, the Removal Statute would compel his removal from the board based solely on a determination that the newly constituted collection of board members, including the individual the Governor appointed to fill Dr. Walker's seat, was more likely to result in the District retaining accreditation. The Removal Statute thus requires that the ultimate decision about whether an elected school board member retains office be based on factors that are beyond that individual member's control and are not even directly related to that individual's actions.⁵

⁵ Considering the Removal Statute in mathematical terms, given the dozens of possible board formations that include various combinations of elected and appointed board members, the standard set forth in subsection (c) essentially requires the Governor or his designee to rank each possible grouping to determine which is the most likely to improve the accreditation prospects. Such a

In the case of *Smith v. Goguen*, the United States Supreme Court found a Massachusetts statute regarding the treatment of the United States flag void as impermissibly vague under the due process clause. *See Smith v. Goguen*, 415 U.S. 566, 94 S.Ct. 1242 (1974). At issue was whether the term "contemptuous treatment" with respect to the flag was impermissibly vague. There, the court held

> This criminal provision is vague not in the sense that it requires a person to conform his conduct to an imprecise but comprehensible normative standard, but rather in the sense that no standard of conduct is specified at all. Such a provision simply has no core. This absence of any ascertainable standard for inclusion and exclusion is precisely what offends the Due Process Clause. The deficiency is particularly objectionable in view of the unfettered latitude thereby accorded law enforcement officials and triers of fact. Until it is corrected either by amendment or judicial construction, it affects all who are prosecuted under the statutory language. In our opinion the defect exists in this case. The language at issue is void for vagueness as applied to Goguen because it subjected him to criminal liability under a standard so indefinite that police, court, and jury were free to react to nothing more than their own preferences for treatment of the flag.

Id., at 578 (cits. and punct. omitted). The removal and reinstatement provisions in

the statute now before this Court are similarly lacking in a constitutionally

determination would necessarily require the Governor to compare other elected board members (some of whom may still have reinstatement hearings pending) to their appointed counterparts. Thus, before the Governor could make a final determination about any appealing board member, he would need to calculate the respective probabilities of SACS's accreditation determinations associated with reinstatement of each of the other elected board members. Although the Governor (or even his designee) might possess the executive and political skills to attempt such a determination, it would certainly be reasonable to anticipate that, at best, that determination will be founded on little more than conjecture necessarily reflecting personal and political preferences. sufficient "core" or are devoid of "any ascertainable standard" such that they offend due process. This Court should thus hold that the purported standard for permanent removal of local school board members in the Removal Statute fails to meet minimum due process requirements. The Statute subjects elected constitutional officials to the loss of their constitutionally protected property interests under a standard that is not only vague, indefinite and ambiguous, but is disconnected from actions over which those officials have control or for which they are responsible.

The State misstates Appellant's argument regarding the recall provisions set forth in Article II, Section II, Paragraph IV of the Georgia Constitution. The State characterizes Appellant as contending that the Article II recall power "trumps any other power the General Assembly has." (State Brief, at 18). The State then concludes that the same argument has already been dispatched with by this Court's decision in *Eaves v. Harris*, 258 Ga. 1, 364 S.E.2d (1988). In reaching this conclusion, the State distinguishes between "elected" and "appointed" officials but ignores the critical distinction between this case and *Eaves;* that is, local school board members hold constitutionally created offices, whereas county commissioners hold offices that are created by statute. Even though this distinction was highlighted on page 16 of Appellant's brief, the State's brief fails to acknowledge or address it.

In *Eaves*, this Court considered a statute (the "suspension statute") authorizing the Governor to temporarily suspend from office a public official who is under a felony indictment. The suspension statute was challenged on the constitutional grounds (1) that it deprived due process and equal protection to both the office holder and the voters, (2) that it violated the separation of powers, and (3) that it conflicted with the provision of the Georgia Constitution prohibiting one *convicted* of a felony from holding public office. *Id.*, at 1. The Court recognized that "Eaves has a constitutional right to hold the public office to which he has been duly elected and that he cannot be deprived of that right through state action without due process of law." Id., at 3. However, the Court held the suspension statue was "not unfair; it bears a rational relationship to a compelling state interestthat of insuring the public's confidence in government." Id. The Court balanced "the public good against the indicted public official's right to hold office" and concluded that the suspension statute "does not offend traditional notions of fair play and justice." Id., at 4.

In reaching these conclusions, the Court emphasized that the involuntary suspension was of a limited duration: either the matter under indictment would resolve favorably for the public official, or it would not be promptly tried (within four months or less in some cases); in either event, the public official would automatically be fully restored to office. *Id.* The Court placed perhaps the most

emphasis on the fact that the suspension was triggered by an indictment, that "depends upon a finding by a properly constituted grand jury that probable cause exists to believe the official has committed a crime." *Id*.

All of the hallmarks of fair play, justice, and individualized determinations present in *Eaves* are absent in this case. In *Eaves*, the suspension process was triggered by a properly constituted and public-serving grand jury finding that probable cause existed to believe that the specified official had committed a statutorily defined crime. By contrast, the suspension and removal process in the Removal Statute is triggered only when an un-regulated, private enterprise decides to place a school or school system on accreditation "probation" based on potentially arbitrary "school board governance reasons" and without the necessity of any allegations against any of the individual board members subject to possible suspension. In *Eaves*, the involuntary suspension was temporary and essentially guaranteed to be resolved by operation of law: upon the public official's felony conviction, or by the dismissal of the indictment, or by the failure to promptly prosecute the case. The public official who was suspended from office was thus effectively guaranteed that, unless he was convicted of a felony or delayed the trial, he would automatically be restored to office after only a temporary suspension. Under the Removal Statute, on the other hand, the suspended public official must affirmatively seek reinstatement by asking for a hearing before the Governor or a

designee, where the public official, having already been suspended by the Governor because of "board governance reasons" as determined by the accrediting agency, faces an arbitrary standard of establishing that his or her "continued service on the local board of education is more likely than not to improve the ability of the local school system or school to retain or reattain its accreditation." O.C.G.A. § 20-2-73(c). In short, even if the *Eaves* case were not limited in its application to statutorily created officials rather than those holding constitutional offices, neither the holding nor the reasoning in *Eaves* applies to the Removal Statute at issue here.

D. Contrary to the State's argument, the Removal Statute establishes the private accreditation agency as the sole determinant of what school board members shall be subject to the statutory procedures, and potential removal from office, under the Removal Statute.

Choosing to misstate Appellant's argument rather than to address it, the State (at p. 22 of its brief) mischaracterizes Appellant's position as contending that the Removal Statute delegates to SACS (and other accrediting agencies) "the right to remove school board members." Responding to its own created straw man, the State asserts that "the statute does no such thing." Appellant never stated or implied that the statute gave SACS the final authority to remove board local board members. What Appellant's brief accurately did contend – and what the State did not attempt to refute – is that the Removal Statute "impermissibly delegates to a private agency the authority to decide what school boards *may be subject to removal*." (Appellant's Brief, at 20.)

Under the Removal Statute, no local board of education member, no matter how corrupt, how incompetent, or how harmful to their constituents, is even subject to possible removal unless and until the accrediting agency places that board member's school system on probation. Conversely, *every* school board member who serves in a system whose accreditation status is in jeopardy, no matter how excellent, competent, and dedicated that member may be, is subject to the suspension and removal procedures of the statute, without even an allegation of individual wrongdoing. Even though it is the Governor who "pulls the trigger" on the final decisions to suspend or remove, it is SACS (or another accrediting agency) who decides against whom the State Board and the Governor can take any action at all. Moreover, at the final stage of the process – the "removal/reinstatement" hearing – the only issue for determination by the Governor or his designee is not whether the suspended local board member has committed any wrongdoing, but whether SACS is more likely to approve the local system's accreditation if the suspended board member is reinstated to replace the new board member already appointed by the Governor. It is *this* statutory delegation of authority, and deference to the will of a private accrediting agency over the decisions of the voters, which is constitutionally impermissible and should

be struck down for the reasons discussed on pages 20-23 of Appellant's Brief. *See Rogers v. Medical Ass's of Georgia*, 244 Ga. 151 (1979) (discussed in Appellant's Brief, at 21-22).

CONCLUSION

The provisions in Article VIII of the Georgia requiring that local school board members be elected as provided by law and granting the General Assembly the authority to establish additional qualifications for service as board members, when viewed together with the recall provision of Article II (and in the absence of any other constitutional provision relating to the removal of locally elected school board members), can only be reasonably read to demand the conclusion that the Removal Statute violates the Georgia Constitution because (1) it permits the removal of elected board members by a statutory process other than recall; (2) it cannot correctly be interpreted as establishing an "additional qualification" for office under any reasonable reading of that phrase; and (3) it permits the removal of individual elected local school board members without any necessary accusation, much less any proof, of any malfeasance or non-feasance while in office. Moreover, even if the constitutional provisions in Articles II and VIII relating to recall, election, and constitutional authority of local boards of education did not exist, the Removal Statute is nevertheless unconstitutional on its face, as its purported removal standard necessarily denies basic due process of law to local

board members subject to its vague and inherently arbitrary provisions.

Accordingly, this Court should answer the certified questions in the affirmative

and hold that O.C.G.A. § 20-2-73 violates the Georgia Constitution.

Respectfully submitted this 29th day of May, 2013.

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CERTIFICATE OF SERVICE

This is to certify that on this date, the undersigned served counsel for all

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