IN THE SUPREME COURT
STATE OF GEORGIA

HENRY COUNTY BOARD OF EDUCATION,	:	Petition No. S16G1700
Petitioner,	:	Georgia Court of Appeals Case No. A16A0201
v.	:	
S.G.,	:	
Respondent.	:	

BRIEF OF *AMICUS CURIAE* AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF GEORGIA, GEORGIA CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, AND GWINNETT STOPP IN SUPPORT OF S.G.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutuion & Statutes

Other Authorities

INTRODUCTION

Across the country more than 2.8 million children are suspended from school each year. *See* U.S. Dept. of Education, Office for Civil Rights, *2013-2014 Civil Rights Data Collection: A First Look* (2016). Black children are four times more likely to be suspended from school than white children. *Id.* In Georgia, more than 300,000 children are suspended each year. *See* Ga. Dept. of Education, Discipline Action Counts, School Year 2013-14 and School Year 2014-15.

Children, especially black children, in Georgia public schools are at risk of losing their constitutional right to education because of the rote application of zero tolerance policies[1] that deprive students of a meaningful disciplinary hearing in violation their constitutional right to due process. Children must be allowed to exercise their right to raise affirmative defenses in their disciplinary hearings to protect their right to education.

IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici curiae the American Civil Liberties Union (ACLU) and the American Civil Liberties Union Foundation of Georgia (ACLU of Georgia), the Georgia

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[1] Zero tolerance "can be defined as a highly structured disciplinary policy that permits little flexibility in outcome by imposing severe sanctions (often long-term suspension or expulsion) for even minor violations of a school rule. A hallmark of zero tolerance is that it permits little or no consideration of the student's intentions or the circumstances of his or her misbehavior." Anne Gregory, *et al.*, *"'Tolerating' Adolescent Needs: Moving Beyond Zero Tolerance Policies in High School,"* 48 Theory into Practice 106, 107 (2009).

Conference of the National Association for the Advancement of Colored People (NAACP), and Gwinnett SToPP are civil rights organizations whose work includes dismantling the "school to prison pipeline" and working to protect the rights of children in public schools. The "school to prison pipeline" is a disturbing national trend where children are funneled out of public schools through the disciplinary process and into the juvenile and criminal justice systems. *See* ACLU, *School-to-Prison Pipeline,* https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline.

The ACLU is a nationwide, nonprofit, nonpartisan organization with more than a million members, and the ACLU of Georgia, the state affiliate, has more than 20,000 members across Georgia. The ACLU and its members are dedicated to the principles of liberty and equality embodied in both the U.S. and Georgia Constitutions and civil rights laws. The ACLU and its affiliates have identified the "school to prison pipeline," a set of policies and practices that render at-risk youth more likely to become incarcerated than to receive a high school diploma, as a major civil rights challenge of our time.

Gwinnett SToPP is a grassroots parent-driven organization focused on dismantling the "school to prison pipeline" in Gwinnett County. Gwinnett SToPP seeks to build and strengthen relationships within the community by increasing public awareness of the injustice that all children face within the educational

system as it relates to the pipeline and by promoting policy changes through data accountability and fact-based incident reporting.

The Georgia NAACP is Georgia's largest and oldest civil and human rights organization with more than 10,000 members statewide. The mission of the NAACP is to ensure the political, educational, social, and economic rights of all persons and to eliminate race-based discrimination. Students of color are disproportionately suspended and expelled from public schools; dismantling the "school to prison pipeline" is a primary objective of the NAACP.

Because the *Amici* are committed to ensuring that youth in public schools obtain the constitutional protections to which they are entitled, the proper resolution of this case is a matter of significant concern to *Amici*, their members, and the communities they serve.

SUMMARY OF ARGUMENT

"Students do not shed their constitutional rights at the school house gate." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). In Georgia, students have a constitutional right to education. Ga. Const. Art. VIII, § 1, Para. 1 ("[t]he provision of an adequate public education for the citizens shall be a primary obligation of the State of Georgia."); *see also Crim v. McWhorter*, 242 Ga. 863, 867 (1979); *D.B. v. Clarke County Bd. of Educ.*, 220 Ga. App. 330, 331 (1996). Before school authorities can deny a student their right to education, the

student must be provided due process, including a meaningful opportunity to be heard. The Georgia Legislature, understanding both the importance of education and the importance of a correct determination of wrongdoing before punishment is imposed, has established that in Georgia the right to due process includes the right to raise self-defense as an affirmative defense in school disciplinary hearings. Local school boards do not have the authority to ignore the instructions of the Legislature or to deprive students of their right to due process.

Students and the community have an interest in insuring that school discipline is imposed only against a wrongdoer. Disciplining all students involved in a fight at school because it is administratively convenient re-victimizes the victim and is a violation of the student's right to due process protected by both the Georgia Constitution and the U.S. Constitution.

Between 1974 to 2000, the number of children suspended each year nearly doubled from 1.7 million to 3.1 million. Steven C. Teske, *et al*., *Collaborative Role of Courts in Promoting Outcomes for Students: The Relationship Between Arrests, Graduation Rates, and School Safety*, 51 Family Court Rev. 418 (July 2013). During the 2013-2014 school year in Georgia, out-of-school suspension was imposed 459,090 times; in-school suspension was imposed 372,367 times; 2,764 referrals were made to the juvenile justice system; 8,065 assignments were made to alternative schools; and 199 students were permanently expelled. *See* Ga. Dept. of

Education, Discipline Action Counts, School Year 2013-2014. Students of color are disproportionately disciplined at school. In Georgia, black students are four times more likely to be suspended than white students. *See* Center for Civil Rights Remedies, *Elementary and Secondary School Suspension Rates by State*, http://www.schooldisciplinedata.org/ccrr/resultsstate.php?us_state=GA&searchtype=raceonly&numState=1. In Henry County, although black students are 48.1% of the student population, black students received 66.1% of the out-of-school suspensions, 63.6% of the in-school suspensions, 60.5% of the referrals to the juvenile justice system, and 69.6% of the expulsions. *See* U.S. Dept. of Education, Henry County/McDonough GA Discipline Report (2013-14), http://ocrdata.ed.gov/. Black students in Georgia, including Henry County, are being disproportionately excluded from public school in violation of their constitutional rights. *See* Tammy Joyner, *Fairness of School Discipline in Spotlight in Henry County,* Atlanta Journal-Constitution (May 20, 2016) ("federal Education Department officials have an ongoing investigation of Henry's school district . . . for possible racial and disability discrimination").

ARGUMENT

I. Under Georgia law, a student's due process rights in a school disciplinary hearing include the affirmative defense of self-defense.

The school must provide a student with due process before the student can be deprived of their right to education. *See* Ga. Const. Art. VIII, § 1, Para. 1.

Although the process due may vary depending upon the severity of the deprivation (discipline) imposed, the minimal process due in Georgia is provided by law. When a Georgia statute sets out the process a student is entitled to, neither a local school board or the State Board of Education have the authority to ignore the protections granted the student. *See* O.C.G.A. § 20-2-109 (local school superintendent has duty to enforce rules not in conflict with state laws); O.C.G.A. §20-2-735(d) ("all due process procedures required by federal and state law will be followed"). A school board may not adopt and then use zero tolerance policies as a reason to deny a student their right to an individual determination of wrongdoing.

Georgia law is clear. In a school disciplinary hearing, the school has the burden of showing, by a preponderance of the evidence, that the student violated a school rule. *J.G. v. Columbia County Bd. of Educ*., Case No. 1996-40 (State Bd. Of Educ. Sept. 12, 1996) ("The burden of proof rests upon a local board to establish that a student has violated some policy established by the local board."); *Owens v. Burke Co. Bd. of Educ*., Case No. 1978-6 (State Bd. Of Educ. June 12, 1978) (same) (State Board of Education decisions are located at http://www.gadoe.org/External-Affairs-and-Policy/State-Board-of-Education/Pages/PEABoardDecisions.aspx). Students must be provided a meaningful opportunity to be heard, to defend themselves or explain their actions. As part of that opportunity to be heard, the Georgia Legislature has provided that a

student who raises self-defense is entitled to the protections of Georgia Code Section 16-3-21(a), which provides that "[a] person is justified in . . . using force against another when and to the extent that he or she reasonably believes that such threat or force is necessary to defend himself or herself. . . ." O.C.G.A. § 16-3-21(c) (declaring any rule, including a school board rule, in conflict with Section (a) void and of no effect). When a student raises the affirmative defense of self-defense, the State bears the burden of disproving the asserted defense. *See Daniley v. State*, 274 Ga. 474 (2001). Ultimately, if the student acted in self-defense, the student did not violate the school's code of student conduct, the school has no authority to discipline the student, and any discipline imposed violates the student's rights to due process and education.

II. In order for a school disciplinary proceeding to comport with constitutional due process, a student must be able to raise an affirmative defense of self-defense.

Even if the Georgia Code did not specifically provide that a student could raise an affirmative defense of self-defense, the due process clauses of both the Georgia and U.S. Constitutions require that a student be provided such an opportunity. The due process clauses of both Constitutions provide that before a property right or liberty interest can be taken away because of misconduct, there must be "fundamentally fair procedures" in place to determine whether the misconduct did in fact occur. *Goss v. Lopez*, 419 U.S. 565, 574 (1975); *see also*,

O.C.G.A. § 20-2-754(b) (setting out procedures that must be followed, including written notice of charges and an opportunity to present and respond to evidence). At a minimum, a student is entitled to notice of the charges against them and a meaningful opportunity to be heard. *Goss*, 419 U.S. at 579.

A. The due process clause of the Georgia Constitution requires that the school board have sufficient justification before disciplining a student.

The Georgia Supreme Court has held that the due process clause of the Georgia Constitution, although mirroring the language of the due process clause of the Fourteenth Amendment to the U.S. Constitution, provides greater protections than does federal due process. *See, e.g.*, *Barrett v. Hamby*, 235 Ga. 262 (1975) (struck zoning ordinance because Georgia due process was not satisfied when city could not justify its decision); *Avant v. Douglas County*, 253 Ga. 225 (1984) (Georgia due process not satisfied when government action lacked substantial relationship to government interest); *Suber v. Bullock County Bd. of Educ*., 722 F. Supp. 736, 744 (S.D. Ga. 1989) ("the higher due process standard imposed by the due process clause of the Georgia Constitution requires that [the government] present 'sufficient justification' for its decision").

A school cannot establish a "sufficient justification" for its decision to punish a student if the decision does not further the school board's interest in educating students, including the interest in maintaining the school's educational

environment. *Avant*, 253 Ga. at 225. The school board's disciplinary action here does not further the school's interest in maintaining the educational environment because the disciplined student was not the disruptor. *See Tinker*, 393 U.S. at 509 (school can discipline students whose conduct "materially and substantially interfere[s] with the requirements of appropriate discipline in the operation of the school."). Georgia law makes clear that a student who defends herself in a fight or steps in to break up a fight has not broken any rule, regulation, or policy. *See* O.C.G.A. § 16-3-21(a), (c). Accordingly, when a school punishes a student who acts in defense of self or others, the school is punishing a student who has not broken a school rule. Such punishment lacks the required substantial justification and is a violation of the student's right to due process guaranteed by the Georgia Constitution.

Further, there is no "substantial justification" to deny a student the opportunity to raise self-defense as an affirmative defense in a school disciplinary hearing. In *Goss*, the U.S. Supreme Court stated that the purpose of the disciplinary hearing is to "guard" against imposing erroneous or unwarranted discipline on a student. 419 U.S. at 579-80. Thus, the school's interest in the disciplinary hearing is to determine what happened, who is responsible, and the level of culpability. Providing the student the opportunity to raise an affirmative defense in the disciplinary hearing furthers the purpose of the hearing and the school's interest in

determining culpability. Denying the student the ability to raise self-defense as an affirmative defense in the disciplinary hearing lacks the required substantial justification and is a violation of the student's right to due process guaranteed by the Georgia Constitution.

B. In order to satisfy the meaningful opportunity to be heard as required by the due process clause of the U.S. Constitution, students must be allowed to raise self-defense as an affirmative defense.

The U.S. Supreme Court has set out the following balancing test to determine what type of process is due prior to deprivation of a property or liberty interest: "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

First, the interest at stake is the student's constitutional right to education. Not only is education "the most important function of state and local government," *Brown v. Bd. of Educ*., 347 U.S., 483, 493 (1954); in Georgia, education is a constitutional right. *See* Ga. Const. Art. VIII, § 1, Para. 1. Education is also the foundation of an individual's social and economic life. *See* Clive Belfield, *The Economic Burden of High School Dropouts and School Suspensions in Florida* 4

(Center for Civil Rights Remedies, Nov. 2014) (education has positive impact on economic, health, and social benefits; "[m]any youth without a high school diploma will face a precarious economic future") (available at https://www.civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/summary-reports/the-economic-burden-of-high-school-dropouts-and-school-suspensions-in-florida/111816_FL_Belfield_CCRR_final-combined.pdf). Studies show that students who are suspended are more likely to drop out of school and have contact with the juvenile justice system. *See* Daniel Losen & Tia Elena Martinez, *Out of School & Off Track: The Overuse of Suspensions in American Middle and High Schools* (Center for Civil Rights Remedies, Apr. 8, 2013) (being suspended doubles the likelihood of a student dropping out) (available at https://www.civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/out-of-school-and-off-track-the-overuse-of-suspensions-in-american-middle-and-high-schools/OutofSchool-OffTrack_UCLA_4-8.pdf); Daniel Losen & Jonathan Gillespie, *Opportunities Suspended: The Disparate Impact of Disciplinary Exclusion from School* 34 (Center for Civil Rights Remedies, Aug. 2012) (available at https://www.civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-

remedies/school-to-prison-folder/federal-reports/upcoming-ccrr-research/losen-gillespie-opportunity-suspended-2012.pdf).

Second, the student, the school, and the community have an interest in avoiding unfair punishment and mistaken exclusion from school. *See Goss*, 419 U.S. at 479 (neither the student's interest or the interest of the State is served if the student's "suspension is in fact unwarranted"); *see also* Edward Morris & Brea Perry, *The Punishment Gap: School Suspension and Racial Disparities in Achievement*, 63 Social Problems 68 (2016) (research found that "minority students are more likely to be suspended from school" and "that school suspensions account for approximately *one-fifth* of black-white differences in school performance, demonstrating that exclusionary discipline may be a key driver of the racial achievement gap") (available at https://www.researchgate.net/publication/289687063_The_Punishment_Gap_School_Suspension_and_Racial_Disparities_in_Achievement); Press Release, Center for Civil Rights Remedies, *School Suspensions Cost Taxpayers Billions* (June 2, 2016) (the economic cost of 10th Grade suspensions exceeds $35 billion) (available at https://www.civilrightsproject.ucla.edu/news/press-releases/featured-research-2016/school-suspensions-cost-taxpayers-billions).

The additional safeguard of providing the student an opportunity to raise the affirmative defense of self-defense in the hearing that is already required by

constitutional due process, *see Goss*, 419 U.S. at 579-80, increases the likelihood of a fair and accurate determination of whether the student violated the rule as charged. In addition, providing the student with the opportunity to voice their position furthers the positive discipline model that the Georgia Legislature adopted in its 2015 session. *See* O.C.G.A. § 20-2-741 (encouraging local school boards to adopt Positive Behavioral Interventions and Supports).[2]

Finally, the Government's interest is to insure that a student who has violated a school rule is appropriately punished and that a student who has not violated a school rule is not wrongfully punished. *See* 419 U.S. at 579-80. When a school denies a student the opportunity to raise a claim of self-defense or ignores a student's claim of self-defense, the school is imposing an irrebuttable presumption that once charged a student is guilty. Using irrebuttable presumptions in school disciplinary hearings denies a student their right to be heard before they are deprived of their constitutional right to education and thus violates due process. *See, e.g., Vlandis v. Kline*, 412 U.S. 441, 451-52 (1973) (irrebuttable presumption

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[2] According to the Georgia Department of Education, "PBIS is a preventative and proactive system of addressing discipline problems that includes fair and consistent discipline practices unlike traditional discipline methods that have addressed discipline problems through punishment." John D. Barge, *Positive Behavioral Interventions and Supports of Georgia: The Strategic Plan 2014-2020* at 1 (Georgia Dept. of Educ. Feb. 5, 2014) (available at https://www.gadoe.org/Curriculum-Instruction-and-Assessment/Special-Education-Services/Documents/PBIS/GaDOE%20PBIS%20Strategic%20Plan.pdf).

that is not universally true violates due process); *Stanley v. Illinois*, 405 U.S. 645 (1972) (same). Such actions by the school negate the reason for holding the hearing and result in the arbitrary imposition of discipline and exclusion from school in violation of the student's rights to due process and to education.

Requiring a school official or hearing officer to listen to and give appropriate weight to the student's version of events and requiring the school to carry its burden of proof improves the quality of the hearing and thus, the accuracy of the outcome while providing the student with the required due process. Moreover, the Georgia Legislature has recognized the need for school officials to listen to children when it encouraged local school boards to adopt a policy of positive discipline. *See* O.C.G.A. § 20-2-741(encouraging adoption of Response to Intervention framework which addresses academic and behavioral needs of students).

The administrative convenience of punishing all children involved in a school fight is not sufficient to overcome a student's individual right to due process. *See, e.g., Frontiero v. Richardson*, 411 U.S. 677 (1973) (administrative convenience not a sufficient government interest to sustain constitutionality of government action infringing on constitutional right); *Califano v. Goldfarb*, 430 U.S. 199 (1977) (same); *Stanley*, 405 U.S. at 656 ("Due Process Clause . . . was

designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy").

III. Failure to provide due process feeds the "school to prison pipeline," resulting in minority students' overrepresentation in the pipeline in violation of their right to equal protection.

Across the country and throughout Georgia, students of color are disproportionately disciplined in comparison to their white counterparts and are disproportionately represented in the "school to prison pipeline." *See* U.S. Dept. of Education, Office of Civil Rights, *2013-14 Civil Rights Data Collection: A First Look*, https://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf. Black students are four times more likely to be suspended or expelled than white students. *Id*. The available data shows that Georgia follows this National trend. *See* U.S. Dept. of Education, Office of Civil Rights, *Civil Rights Data Collection, Data Snapshot: School Discipline, Issue Brief No. 1* (Mar. 2014), http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf. More than 300,000 students are suspended from Georgia public schools each year, and a majority of suspended students are minorities.

As former U.S. Secretary of Education, John B. King Jr., stated, the "data are more than numbers and charts — they illustrate in powerful and troubling ways disparities in opportunities and experiences that different groups of students have in our schools." U.S. Dept. of Education, *Persistent Disparities Found Through*

Comprehensive Civil Rights Survey Underscore Need for Continued Focus on Equity (June 7, 2016), https://www.ed.gov/news/press-releases/persistent-disparities-found-through-comprehensive-civil-rights-survey-underscore-need-continued-focus-equity-king-says.

There is a correlation between the adoption of discipline policies, including zero tolerance policies, the increase in the number of students suspended, and the disparate impact on minority students. *See* Anne Gregory, *et al.*, *The Discipline Gap and African Americans: Defiance or Cooperation in the High School Classroom*, 46 J. of School Psychology 455 (2008) (black students may be disciplined more severely for less serious or more subjective reasons); NAACP Legal Defense and Education Fund, *Dismantling the School-To-Prison-Pipeline* (2005) (black and Latino students are more likely than white students to be suspended, expelled and arrested for similar conduct at school) (available at http://www.naacpldf.org/files/publications/Dismantling_the_School_to_Prison_Pipeline.pdf); Teske, 51 Family Court Rev. at 419. The correlation between discipline policies and the increase in the number of suspensions exists because discipline policies, especially zero tolerance policies, punish children for normal childhood behavior. *Id.* at 420; Gregory, 48 Theory into Practice 106. Research into adolescent brain development has found that "the frontal lobe of the brain, which filters emotion into logical response, is not fully developed until about age 21."

Teske, 51 Family Court Rev. at 419. *See also J.D.B. v. North Carolina*, 564 U.S. 261, 272 (2011) (recognizing children "often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them" and discussing the need for the law to take into account the child's development). The required meaningful hearing in the school disciplinary context should incorporate an understanding of students' ongoing psychological/biological development when determining whether discipline is warranted.

While brain development may explain children's tendency to engage in risky behavior that can trigger punishment, brain development does not explain the disparity between the races. *Amici* were unable to find any studies which could explain on any logical basis the disparate impact of discipline on minority children, particularly on black boys. *See* Anne Gregory, Russell J. Skiba & Pedro A. Noguera, *The Achievement Gap and the Discipline Gap: Two Sides of the Same Coin?*, 39 Educational Researcher 62 (Jan./Feb. 2010) (reporting that "[s]tudies using both measures of student self report and extant school disciplinary records . . . have generally failed to find evidence of racial differences in student behavior," and further describing the findings of one such research study: "[The researchers] found no evidence that either Black or White students were referred to the office for more serious behaviors. The analyses did show, however, that reasons for referring White students tended to be for causes that were more objectively

observable (smoking, vandalism, leaving without permission, obscene language), whereas office referrals for black students were more likely to occur in response to behaviors (loitering, disrespect, threat, excessive noise) that appear to be more subjective in nature."); Russ Skiba & Natasha Williams, *Are Black Kids Worse?: Myths and Facts about Racial Differences in Behavior* (Equity Project at Indiana University, Mar. 2014) (available at http://www.indiana.edu/~atlantic/wp-content/uploads/2014/03/African-American-Differential-Behavior_031214.pdf); Daniel J. Losen, *Discipline Policies, Successful Schools & Racial Justice* at 6-8 (National Education Policy Center 2011), http://files.eric.ed.gov/fulltext/ED524711.pdf (same); Tony Fabelo, *et al.*, *Breaking School's Rules: A Statewide Study on How School Discipline Relates to Students' Success and Juvenile Justice Involvement* at 46 (The Council of State Governments, 2011) (finding that even after controlling for multiple variables, "race was a predictive factor for whether a student would be disciplined, particularly for discretionary disciplinary actions") (available at https://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf).

Zero tolerance policies cannot be justified on the grounds of school safety because "studies show that zero tolerance strategies in general are ineffective, harmful to students and fail to improve school safety." Teske, 51 Family Court

Rev. at 418; Losen & Martinez, *Out of School & Off Track* at 2 (according to the American Pediatrics Association "research has demonstrated . . . that schools with higher rates of out-of-school suspension and expulsion are not safer for students or faculty"); Brea Perry & Edward Morris, *Suspending Progress: Collateral Consequences of Exclusionary Punishment in Public Schools*, 79 American Sociological Review 1067 (2014) (noting that "high rates of suspension at the school level tend to depress student achievement, even for students who were not personally suspended").

The application of zero tolerance polices has pushed minority children out of public schools in Georgia and into the "school to prison pipeline" at a rate four times higher than white children. Children who are suspended are more likely to drop out of school and are more likely to have contact with the juvenile justice system. *See* Teske, 51 Family Court Rev. at 419. Because the disparate impact of discipline policies on minority children cannot be explained on the basis of anything other than race, the application of these disciplinary policies raises serious concerns that black children's right to equal protection is being violated. *See Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266 (1977) (one factor in determining discriminatory intent is "a clear pattern, unexplainable on grounds other than race" (citing *Yick Wo v. Hopkins*, 118 U.S. 356 (1886))); *see also* Morris & Perry, *The Punishment Gap*, 63 Social

Problems at 82 (blacks and Latinos more likely to be suspended than whites within the same school even after controlling for socio-economic status and other variables); Losen, *Discipline Policies, Successful Schools, and Racial Justice* at 12-13 ("The prevalence of implicit bias . . . may affect the choice of a policy or practice resulting in disproportionate suspensions for children of color. Similarly, disciplinary decisions made by individual teachers with unconscious racial bias may cumulatively add up to large racial disparities at the school or district level."); Susan Dominus, *An Effective but Exhausting Alternative to High-School Suspensions*, New York Times (Sept. 7, 2016) (discussing need to address implicit and systemic race bias of faculty and administrators in imposing discipline); Tanzina Vega, *Schools Discipline for Girls Differs by Race and Hue*, New York Times (Dec. 10, 2014) (discussing difference in discipline of a black girl and a white girl involved in same incident in Henry County, Georgia).

Moreover, requiring children to conform their behavior to disciplinary rules based on zero tolerance that do not account for the natural process of adolescent development, without providing that child with a real opportunity to present a defense — including the affirmative defense of self-defense, violates the student's constitutional rights to due process and to education.

CONCLUSION

For the reasons presented above and in the Brief of Appellee, *Amici Curiae* request that this Court affirm the decision of the Court of Appeals. Students in Georgia public schools are entitled to due process, including the right to raise the affirmative defense of self-defense, and to equal protection in the school disciplinary process.

Respectfully submitted this 1st day of May, 2017.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of BRIEF OF *AMICUS CURIAE* AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF GEORGIA, GEORGIA CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, AND GWINNETT STOPP IN SUPPORT OF S.G. upon the parties by depositing same in the United States mail with proper postage affixed to ensure delivery and addressed as follows:

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