

No. 05-983

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IN THE  
**Supreme Court of the United States**

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JACOB WINKELMAN, A MINOR, BY AND THROUGH  
HIS PARENTS AND LEGAL GUARDIANS,  
JEFF AND SANDEE WINKELMAN, *et al.*,  
*Petitioners,*

*v.*

PARMA CITY SCHOOL DISTRICT,  
*Respondent.*

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ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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BRIEF FOR SENATOR EDWARD M. KENNEDY,  
SENATOR TOM HARKIN, SENATOR CHRISTOPHER J.  
DODD, SENATOR RUSSELL D. FEINGOLD,  
REPRESENTATIVE GEORGE MILLER, REPRESENTATIVE  
EDWARD J. MARKEY, REPRESENTATIVE MAJOR R.  
OWENS, REPRESENTATIVE LYNN C. WOOLSEY,  
REPRESENTATIVE DANNY K. DAVIS, REPRESENTATIVE  
RUSH HOLT, AND REPRESENTATIVE DENNIS KUCINICH  
AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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### QUESTION PRESENTED

Whether, and if so, under what circumstances, non-lawyer parents of a child with disabilities may prosecute an Individuals with Disabilities in Education Act, 20 U.S.C. §§ 1400 *et seq.*, case *pro se* in federal court.

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## LEGISLATIVE HISTORY

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## OTHER AUTHORITIES

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ON WRIT OF CERTIORARI TO THE  
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This *amici curiae* brief is submitted in support of Petitioners Jacob Winkelman, by and through his parents, Jeff and Sandee Winkelman; Jeff Winkelman; and Sandee Winkelman. By letters filed with the Clerk of this Court, Petitioners and Respondent have consented to the filing of this brief.<sup>1</sup>

**INTEREST OF *AMICI CURIAE***

*Amici curiae* are four United States Senators and seven members of the United States House of Representatives. Senator Edward M. Kennedy was an original sponsor of the 1975 Education for All Handicapped Children Act (EHA) and is Ranking Member of the Senate Health, Education, Labor, and Pensions (HELP) Committee. Senator Kennedy

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<sup>1</sup> As required by Rule 37.6 of this Court, counsel for *amici* submits the following: No counsel for a party authored this brief in whole or in part, and no person or entity other than *amici* and its counsel made any monetary contribution toward the preparation or submission of this brief.

introduced the bill to reauthorize the Individuals with Disabilities Education Act (IDEA) in 2004 and introduced the 1997 IDEA with Senator Tom Harkin and Senator Christopher J. Dodd.<sup>2</sup> Senator Harkin serves on the HELP Subcommittee on Education and Early Childhood Development and sponsored the IDEA in 2004. Senator Dodd also sponsored the IDEA in 2004 and is Ranking Member of the HELP Subcommittee on Education and Early Childhood Development. Senator Russell D. Feingold strongly supported the IDEA in both 1997 and 2004. As Ranking Member of the Senate Judiciary Committee's Subcommittee on the Constitution, Civil Rights, and Property Rights, Senator Feingold has a strong interest in access to justice issues.

Congressman George Miller is the Senior Democrat on the House Education and the Workforce Committee, one of the original authors of the 1975 EHA, and a supporter of the 1997 IDEA. Congressman Edward J. Markey has served in the House of Representatives since 1976 and is a strong supporter of the 1997 IDEA. Congressman Major R. Owens is a member of the House Committee on Education and the Workforce and supported the IDEA in 1997. Congresswoman Lynn C. Woolsey is a member of the House Committee on Education and the Workforce and the Senior Democrat on the Subcommittee on Education Reform, a position she held at the time of the 2004 IDEA reauthorization. She also supported the 1997 IDEA. Congressman Danny K. Davis is a member of the House Committee on Education and the Workforce and its Subcommittee on Education Reform and voted for the 1997 IDEA. Congressman Rush Holt is a member of the House Committee on Education and the Workforce. Congressman Dennis Kucinich is also a member of the House Committee on Education and the Workforce, as well as its Subcommittee on Education Reform. He repre-

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<sup>2</sup> Congress reauthorized and amended the IDEA in 2004. See Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446, 118 Stat. 2647 (to be codified at 20 U.S.C. §§ 1400 *et seq.*). Unless otherwise indicated, citations are to the statute as amended in 2004.

sents Ohio's 10th Congressional District, which includes the Winkelman family among its constituents and the Parma City School District, where this case originated.

*Amici* have a significant interest in seeing that the IDEA, like any law passed by Congress, is faithfully enforced. The Sixth Circuit Court of Appeals' decision in this case, if allowed to stand, would severely limit the rights of parents to ensure that their children with disabilities receive a free appropriate public education (FAPE) pursuant to the IDEA. This result would contravene the text of the statute, as well as Congress's purposes in enacting the IDEA.

*Amici* also have a significant interest in avoiding the need to expend legislative resources to amend a statute that is already clear on an issue. This interest would be adversely affected if the rule announced by the Court of Appeals in this case is upheld. A lengthy and expensive legislative effort would be required in order to amend the IDEA to restore parental rights.

#### SUMMARY OF ARGUMENT

The Court of Appeals erroneously concluded that parents may not appear *pro se* in federal court to challenge a public school's failure to provide a FAPE to their child with disabilities, as mandated by the IDEA. This interpretation of the IDEA contradicts the plain language of the statute and the rich legislative history that accompanies this fundamental special education law.

In 1975, Congress enacted the EHA, a groundbreaking piece of legislation that reshaped the American educational landscape and remains the foundation of special education programs in all fifty states. Since 1975 and through the EHA's reenactment as the IDEA, Congress has jealously preserved a comprehensive set of safeguards that empowers parents to participate in the development and implementation of special education services for qualified children and to challenge a public school's non-compliance with the IDEA.

The IDEA recognizes parents as parties to all stages of administrative and judicial proceedings when disputes arise

between parents and schools. Thus, parents can be “parties aggrieved” by an adverse, local-level due process hearing under Subsection 1415(g) of the IDEA and consequently have the right to state-level administrative review. The statutory text and legislative history indicate that parents can likewise be “parties aggrieved” by adverse findings arising out of a state-level due process hearing under Subsection 1415(i)(2)(A). Thus, parents have the right to appeal that adverse decision by bringing a cause of action in federal court.

When a local school system violates the IDEA, the Act gives parents the right to initiate a civil suit regarding any matter relating to the provision of a FAPE for their child. In providing this cause of action, Congress expressly recognized the interest of parents in shaping the course and substance of their child’s education, in receiving the same financial benefit of a public education as other parents, and in obtaining services guaranteed by the statute that enhance the opportunity of the child to mature into a self-sufficient adult. Thus, parents may independently assert their own right to the guarantee of a FAPE by suing in federal court. Pursuant to 28 U.S.C. § 1654, parents may represent themselves in such actions without the assistance of a lawyer.

Denying or circumscribing the types of claims that parents may bring under the statute has had the effect of denying parents the ability to mount a challenge to the denial of a FAPE when they lack the means to secure counsel for their child. When Congress passed and amended the IDEA over time, it clearly intended to provide parents with the authority to participate significantly in the development and provision of educational services for their child. This participation includes the right to challenge a local school system’s failure to meet the standards set forth in the IDEA. Congress provided these rights to parents with the specific goals of easing the financial burden on families of children with disabilities and ensuring that those children receive the same free and appropriate public education as their peers without disabilities.