IN THE SUPREME COURT OF FLORIDA
CASE NO. 80,158

BOARD OF COUNTY COMMISSIONERS
HERNANDO COUNTY, etc., et al.,

Petitioner,

v.

FLORIDA DEPARTMENT OF COMMUNITY
AFFAIRS,

Respondent.
_____/

PETITIONER'S SUPPLEMENTAL ARGUMENT

On Appeal from the First District Court of Appeal, First District
Case Nos. 91-194, 91-195, and 91-196

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PREFACE

The abbreviations and terms used in Petitioner's Brief on the Merits will be continued in this Supplemental Argument. The Department and Amicus DOR will be collectively referred to as the "state." References to the Appendix to the Petitioner's Brief on the Merits will be indicated in the manner previously established, i.e., App. I, followed by the appropriate tab letter; and App. II, followed by the appropriate tab letter. References to documents provided in the Appendix to this Supplemental Argument will be cited as "App. III" followed by the appropriate tab letter.

STATEMENT OF BASIS FOR SUPPLEMENTAL ARGUMENT

After hearing oral argument in this case, the Court decided Florida Department of Education v. Glasser, 18 F.L.W. S301 (Fla. May 20, 1993) (App. III, C), wherein it held that the Legislature could constitutionally require school districts to levy less than ten mills. Petitioner appeared as amicus curiae (along with Dade and Orange Counties) in Glasser and moved for clarification, but because the School Board of Sarasota County did not seek clarification or rehearing, the motion was not considered. Petitioner then filed in this case a motion for leave to file supplemental argument limited to a discussion of the Court's opinion in Glasser; the motion was granted on June 17, 1993.

SUPPLEMENTAL ARGUMENT

The Unique Constitutional Relationship between the Legislature and School Funding demands a Different Construction of the Direct Grant of Ad Valorem Taxing Capacity to Counties in the 1968 Constitutional Revision From the Construction of the Constitutional Authorization of School Millage in Article VII, Section 9.

Florida Department of Education v. Glasser, 18 F.L.W. S301 (Fla. May 20, 1993) (App. III, C), involved a challenge to section 236.25(1), Florida Statutes (1989), and chapter 91-193, section 1, item 509, Laws of Florida, on the ground that the Legislature could not, irrespective of the constitutional mandate for uniform public schools, reduce the millage of school boards below ten mills. This Court decided against the position of the School Board of Sarasota County and declared the challenged statute and budget provision constitutional.

The primary rationale of Glasser concerned a rejection of the argument by the school board that article VII, section 9(b) is self-executing. This rejection is illustrated by the following statement from the majority opinion:

> The school board nevertheless argues that the word "shall" gives the school district full authorization to levy taxes without the necessity of an enactment. This argument fails to give meaning to the accompanying words "be authorized by law."

18 F.L.W. at S301. (App. III, C)

Hernando County agrees that article VII, section 9(b) is not self executing.[1] That some legislative act is required to implement article VII, section 9 is undisputed by its clear language and the subsequent commentary. Obviously, under the 1968 constitutional

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[1] This point is argued at length under Point IA appearing on pages 1 through 3 of the Petitioner's Reply Brief.

scheme, the Legislature is required to authorize ad valorem taxation. However, this constitutional direction for legislative authorization does not include the power to limit the county purpose millage capacity of counties. The intricate constitutional framework for schools and its implementation in the Florida Education Finance Program (the "FEFP") provides a striking contrast to the constitutional provisions applicable to counties.[2] The record of proceedings leading up to the adoption of article VII, section 9 underscores the distinctions. Additionally, any limitation on counties' capacity to govern involves policy considerations fundamentally different from those bearing on the funding of school districts.

The Constitution states: "Counties, school districts and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes ... for their respective purposes...." Art. VII, § 9(a), Fla. Const. As to school districts, article IX, section 4, mandates that the Legislature make adequate provision for a uniform system of free public schools. Also, the Legislature, in creating the FEFP, required a specific school millage as a condition of appropriating state monies to school districts. Such condition was imposed pursuant to article VII, section 8, of the Florida Constitution. Neither of these additional constitutional provisions applies to counties. Neither bears on the construction of the constitutional ad valorem taxing power of counties provided in article VII, section 9.

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[2] As discussed below, the constitutional framework for schools requires the Legislature to make adequate provisions for a uniform system of free public schools (article IX, section 9) and authorizes the Legislature to place general law conditions on appropriations of funds to school districts [article VII, section 8 as implemented by section 236.25(1), Florida Statutes].

The nature of the unique relationship between the state and public schools is obvious from the structure of the FEFP. Under this plan, adopted to meet the uniformity mandate, the state sends money to public schools, thus relieving the school districts of a considerable revenue-producing burden. There is no such similar program available for other local governments. It should also be noted that individual school districts may opt out of the FEFP, which presumably would enable them to levy up to the full ten mills permitted by the Constitution for school purposes. See, e.g., § 236.25(1), Fla. Stat. (referring to "each school board desiring to participate"). The school districts cannot object to the state demanding a quid pro quo. Or, stated another way, school districts cannot object to a condition imposed on a state appropriation under the constitutional authority of article VII, section 8. This special funding relationship between schools and the Legislature is not shared by counties.

The 1968 Constitution makes it clear that school districts are to be subject to greater and different legislative considerations than those that apply to counties and municipalities. The different treatment recognizes the functional distinction between the narrow focus of school districts on public education and the wide focus of counties and municipalities with their potential responsibility to provide a myriad of essential services within the broad concept of municipal or county purposes. Whether one construes the concept of public school uniformity as a floor of minimum standards, or as a mandate to equalize public education throughout the state, it is indisputable that uniformity of services is not a consideration for local governments. There is no uniformity provision for county or municipal services in the Florida Constitution. School districts are unique.

As to counties, unincumbered by any constitutional mandate for uniformity in the providing of essential services, the meaning of "shall be authorized by law" is limited to the authorization by the Legislature of uniform assessment and collection procedures. This constitutional obligation of the Legislature to provide the procedural framework for property taxation need not include the power to impair or reduce the direct constitutional grant of ad valorem taxing capacity to counties incorporated into the 1968 revision. Ad valorem taxing capacity within a ceiling of ten mills for county purposes is constitutionally granted, and thereby constitutionally preserved. The limitation on the ad valorem taxing capacity of counties is the millage ceiling incorporated into article VII, section 9. However, within the constitutional millage limitation, the direct constitutional grant of ad valorem taxing capacity to counties in article VII, section 9 is an express limitation of the power of the Legislature.

The change in emphasis by the language used in the 1968 revision from that in the 1885 version is direct and mandatory: Counties shall be authorized by law to levy ad valorem taxes not in excess of ten mills for county purposes. The Legislature is directed to establish constitutionally mandated principles for the levy of this constitutionally protected local revenue source.[3] This directive to the Legislature is consistent with the constitutional design of the 1968 revision. The state is constitutionally prohibited from levying an ad valorem tax. Art VII, § 1(a), Fla. Const. The revolutionary promise of the 1968 revision of local home rule is an empty one

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[3] See, e.g., the taxation principles established in the following constitutional provisions: Art. VII, §§ 2 (uniform rate); 3 (property tax exemptions); 4 (just valuation assessment); and 6 (homestead exemption). See also Art. III, § 11(a)(2), which prohibits special laws or general laws of local application pertaining to the "assessment or collection of taxes for state or county purposes."

without the direct constitutional grant of ad valorem taxation as the local revenue source. The dramatic and fundamental alteration of the inter-governmental relationship between counties and the state is examined at length under Part IA appearing on pages 10 through 13 of Petitioner's Brief on the Merits. As discussed there, the relationship between the Legislature and county government is precisely the opposite under the 1968 constitutional revision than it was under the 1885 Constitution. Today, counties are presumed to have the power to govern unless specifically prohibited by the Legislature. An essential component of the power to govern and provide essential services is the power to tax.

The record of proceedings of the 1968 constitutional revision demonstrates the clear intent of the framers to limit the power of the Legislature to impair or diminish the ten mill county purpose taxing capacity.[4] The history of the 1968 constitutional revision shows that the focus of the framers in drafting article VII, section 9 was on counties and municipalities and the home rule capacity granted in the 1968 revision. The record of proceedings on this point is analyzed in detail on pages 15 through 18 of Petitioner's Brief on the Merits and pages 4 through 6 of Petitioner's Reply Brief. Additionally, it should be noted that in the initial drafts considered by the Constitutional Revision Commission, the taxing authority of school districts was placed in a separate section of the Constitution from the taxing authority of other local governments. See Preliminary Draft of Revised Constitution, June 30, 1966 (available in Supreme Court of

[4] This construction of the constitutional taxing capacity of counties is consistent with the reasoning of Justice Grimes, joined by Justice Harding, in his concurring opinion in Glasser. Legislative authority to establish uniform assessment and collection procedures is constitutionally mandated. The level of ad valorem taxation below the constitutional limit of ten mills for county purposes is within the discretion of the county and no legislative authorization is required.

Florida Library) (App. III, A). The taxing authority of counties, municipalities and special districts appeared in Section 9. The taxing authority of schools appeared in Section 10.[5] In any constitutional analysis of article VII, section 9, the constitutional significance of such different treatment is compelling.

The fact that the Constitutional Revision Commission faced the question of the direct grant of ad valorem taxing power to counties is clearly illustrated by the following framed issue taken from an issue paper prepared by Commission staff:

> Should counties and cities have constitutional power to impose taxes for local purposes without legislative authorization (Section 5)?

David F. Dickson, James B. Craig, and Albert L. Sturm, Issues for State Constitutional Revision [,] Florida Constitution of 1885, analysis prepared for Constitution Revision Commission, March, 1966 (available in Supreme Court of Florida Library) (App. III, B). This issue was before the Commission at the time of the colloquy between Justice Sebring and Revision Commission Member Ralph Marsicano discussed on pages 15 and 16 of Petitioner's Brief on the Merits. The debate in such colloquy demonstrates that the focus of article VII, section 9 was on the ad valorem taxing power of counties, municipalities and special districts, not that of school districts.[6] Additionally, the rejection of specific amendments proposing to grant to the Legislature the power to limit

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[5] Although the exact date of the merger of the taxing authority of school districts and other local governments cannot be determined with precision, it is clear that they remained in separate sections at least until August, 1967.

[6] At the time of this colloquy, the language of article VII, section 9 that was under debate was limited to "counties, municipalities, and special districts" and did not include the taxing power of school districts. (App. I, H)

or diminish county purpose millage demonstrates the different treatment given by the framers to counties, municipalities and special districts.[7]

The conclusion that Glasser decided the constitutional authority of school districts to levy millage, not by discretely applying article VII, section 9, but by synthesizing the complete array of intricate constitutional mandates applicable to public education, does not change the result of the opinion nor alter its obvious constitutional analysis. And such an interpretation of Glasser is clearly supported by the following reasoning in the majority opinion:

> The right to education is basic in a democracy. Without it neither the student nor the state has a future. Our Legislature annually implements a complicated formula to fund this basic right. We find that the legislation at issue here, which is part of the overall funding formula, is in harmony with the Florida Constitution.

18 F.L.W. at S302. Moreover, an equally obvious and cogent constitutional analysis, applied in the absence of any necessity to balance the intricate mandates of school district funding, yields a different construction of the application of article VII, section 9 on the constitutional ad valorem taxing capacity of counties.

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[7] See, for example, the rejected Yarborough amendment which would make subsection (b) read: "Ad valorem taxes may be limited by general or special law" (discussed on page 17 of the Petitioner's Brief on the Merits). See also the defeated Mann amendment that would have read: "Ad valorem taxes may be limited by general or local law" (discussed on page 18 of the Petitioner's Brief on the Merits).

CONCLUSION

The constitutional analysis of this Court in Glasser is limited to a construction of the constitutional ad valorem taxing power of school districts reached by balancing article VII, section 9, with the school uniformity provision of article IX, section 4 and the conditions imposed on the receipt of state funds by the FEFP under the power of the Legislature in article VII, section 8. As to counties, unfettered by the unique school district funding mandates, article VII, section 9 under the 1968 constitutional revision is a direct grant of ad valorem taxing capacity and an express limitation on the power of the Legislature.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by United States Mail to the parties on the attached Service List, this 28th day of June, 1993.

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APPENDIX III TO PETITIONER'S SUPPLEMENTAL ARGUMENT

On Appeal from the First District Court of Appeal, First District
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FD 3 - 1A

A Preliminary Draft

of

a

Proposed

REVISED CONSTITUTION OF FLORIDA

Prepared for Use

at

Public Hearings

of

The Florida Constitution Revision Commission

NOTE: This is a rough draft prepared from preliminary suggestions and tentative reports of Committees of the Commission. It is offered only as a basis for public discussion and comparison with the present Constitution. It has not been considered by the full Commission. In some instances committee recommendations have been adjusted in the interest of uniformity and these changes have not been resubmitted to the committees for their consideration.

The details of style and expression of any part of this draft will be the subject of more careful study and coordination before being presented to the Commission for final action.

Released June 30 - 1966

Section 9. Local taxes - counties - municipalities - special districts. -- Counties, municipalities and special districts may be authorized by law to levy taxes for their respective purposes, except ad valorem taxes on intangible personal property.

Section 10. Local school taxes. -- County and special district taxes for the support of public schools shall be authorized by law, but no ad valorem tax for current school operating expenses in excess of ten mills on the dollar of assessed value of property shall be levied except when higher maximum taxes, for periods not exceeding two years, are approved by vote of the electc of the county or special district who pay a tax on real or personal property.

Section 11. Credit and taxing power - limitations. -- Neither the state nor any county, municipality, special district, or agency of any of them shall become a joint owner with or stockholder of or give, lend, or use its taxing power or credit directl or indirectly to aid any corporation, association, partnership, or person; but this shall not prohibit the investment, until needed, of public funds in obligations of, or when insured by, the United States or any of its instrumentalities, or the investment of state trust funds as may be provided by law.

Section 12. State bonds. -- No bonds or revenue certificates shall be issued by the state or any of its agencies except

(a) state bonds pledging the full faith and credit of the state may be issued for the purpose of repelling invasion or suppressing insurrection; capital outlays, constructions, and improvements, when the proposal is first submitted and approved in a statewide referendum as provided by law; or refunding the principal and interest of any outstanding bonds;

JD 3 - 1

ISSUES FOR STATE CONSTITUTIONAL REVISION

FLORIDA CONSTITUTION OF 1885

Prepared for the
Florida Constitution Revision Commission
(Created by Senate Bill No. 977, Approved June 24, 1965)

By

David F. Dickson, Graduate Assistant
James B. Craig, Jr., Research Associate
and
Albert L. Sturm, Director
Institute of Governmental Research
The Florida State University

Institute of Governmental Research
The Florida State University
Tallahassee
March, 1966

6. Should not all matter pertaining to taxation and finance be incorporated into one article? Should not the exemptions established by Article X and the school tax provisions of Article XII, for example, be combined with present Article IX?

Specific Issues

1. Is not Section 1 an example of the detailed and restrictive limitation on state taxing power that should be avoided? Is the supposed protection of a "uniform and equal taxation" clause meaningful at present?

2. Is not the first clause of Section 2, directing the legislature to raise revenues for paying expenses and debts, superfluous? Should the prohibition on state ad valorem taxes as prescribed by Section 2 be continued?

3. Should counties and cities have constitutional power to impose taxes for local purposes without legislative authorization (Section 5)? Second, would the legislature not have power to authorize local taxation in the absence of a constitutional grant of this power, as provided by Section 5? Third, should local taxation be geared to the "principles established for state taxation" (Section 5)? Fourth, should the capitation tax provision be retained?

4. Regarding Section 6, see comment under General Issues.

5. Should present Sections 7 and 10 be replaced by a "public purpose" clause that would permit financial participation with intergovernmental corporations and other related associations?

6. Should not Section 8, if retained, be revised to provide for a bond or other security deposit as an alternative to payment of the alleged illegal assessment or tax?

7. Are the exemptions presently provided by Section 9 necessary or desirable, in view of present welfare programs, veterans' benefits, etc.?

8. Should the income tax restriction be eliminated (Section 11)? Is the $500 household goods and personal effects exemption desirable (Section 11)?

9. Could provision for estate taxes be revised to provide for statutory, in lieu of constitutional, recognition of the federal exemption?

10. Sections 12 and 14 should be deleted.

great." *Baird*, 572 So. 2d at 908 (emphasis supplied). If there is a threat that the statement might have a prejudicial effect, then that prejudicial effect "generally can be limited by giving instructions cautioning the jury as to the limited use of the testimony." *Id.* at 906. Had an objection to the state attorney's argument been made, the trial judge could have made an appropriate instruction.

* * *

Taxation—School district does not have constitutional authority to levy ad valorem taxes in the absence of enabling legislation—Declaratory judgments—Before any proceeding for declaratory relief is entertained all persons who have an actual, present, adverse, and antagonistic interest in the subject matter should be before the court—Department of Education should have been named as party to declaratory action by school board against tax collector seeking to direct tax collector to collect and remit to school board taxes assessed against nonvoted discretionary millage as set by school board

FLORIDA DEPARTMENT OF EDUCATION, Appellant, vs. KAY E. GLASSER, et al., Appellees. Supreme Court of Florida. Case No. 80,286. May 20, 1993. An Appeal from the District Court of Appeal - Statutory or Constitutional Invalidity. Second District - Case No. 91-02336 (Sarasota County). Robert A. Butterworth, Attorney General and Joseph C. Mellichamp, III, Senior Assistant Attorney General, Department of Legal Affairs, Tallahassee; Sydney H. McKenzie, III, General Counsel and Barbara J. Staros, Deputy General Counsel, Department of Education, Tallahassee; and Talbot D'Alemberte of Steel, Hector and Davis, Tallahassee, for Appellant. A. Lamar Matthews, Jr., Jeanne S. Medawar and Arthur S. Hardy of Matthews, Hutton & Eastmoore, Sarasota, for Appellees. Robert L. Nabors, Sarah M. Bleakley and Thomas H. Duffy of Nabors, Giblin & Nickerson, P.A., Tallahassee, Amicus Curiae for Dade, Hernando and Orange Counties.

(SHAW, J.) We have for review *State, Department of Education v. Glasser*, 17 Fla. L. Weekly D1846 (Fla. 2d DCA July 31, 1992), in which the district court affirmed the trial court's declaratory judgment that section 236.25(1), Florida Statutes (1989),[1] and chapter 91-193, § 1, item 509, Laws of Florida, are unconstitutional. We have jurisdiction. Art. V, § 3(b)(1), Const.

Appellees, individually and as members of the School Board of Sarasota County (school board) filed an action for declaratory judgment against the Sarasota County tax collector. The trial court, in addition to declaring the above-referenced sections unconstitutional, directed the tax collector to collect and remit to the school board taxes assessed against the nonvoted discretionary millage as set by the school board. The issue presented here is whether a school district has constitutional authority to levy such taxes in the absence of enabling legislation. We answer this query in the negative for the reasons hereinafter expressed.

Statutes are presumed to be constitutional and courts must construe them in harmony with the constitution if it is reasonable to do so. *Holley v. Adams*, 238 So. 2d 401, 404 (Fla. 1970). We find that in this instance the constitution and relevant statutes can coact. Our analysis begins with the Florida Constitution. Article VII, in relevant part, provides:

> Section 9. Local taxes.—
>
> (a) Counties, school districts, and municipalities *shall*, and special districts may, *be authorized by law* to levy ad valorem taxes . . . for their respective purposes . . . .
>
> (b) Ad valorem taxes, exclusive of taxes levied for the payment of bonds and taxes levied for periods not longer than two years when authorized by vote of electors who are the owners of freeholds therein not wholly exempt from taxation, shall not be levied in excess of the following millages[:] . . . for all school purposes, ten mills . . . .

(Emphasis added.)

We attribute to the words "shall . . . be authorized by law" their plain meaning: legislative authorization is required to trigger this provision; it is not self-executing. *See* 1 *The Oxford English Dictionary* 798-99 (2d ed. 1989) (authorize: "To give legal force to; to make legally valid. To endow with authority"). Had the framers of the 1968 Florida Constitution intended a self-executing grant of power, they could have chosen self-executing language. Our present constitution contains numerous examples of such phrases: "The seat of government shall be the City of Tallahassee, in Leon County . . . ." Art. II, § 2, Fla. Const. "The supreme executive power shall be vested in a governor." Art. IV, § 1(a), Fla. Const. "The judicial power shall be vested in a supreme court, district courts of appeal, circuit courts and county courts." Art. V, § 1, Fla. Const. Had the framers intended to authorize school districts to levy ad valorem taxes, they could have said simply: "School districts are authorized to levy ad valorem taxes."

Our conclusion that the constitutional provision at issue requires legislative enactment is strengthened by the commentary to the 1968 constitutional revision: "The language [of section 9(a)], mandatory in tone, does contemplate a legislative act for they 'shall be authorized by law' to levy ad valorem taxes." 26A Fla. Stat. Ann. 143 (1970) (commentary by Talbot "Sandy" D'Alemberte). The school board nevertheless argues that the word "shall" gives the school district full authorization to levy taxes without the necessity of an enactment. This argument fails to give meaning to the accompanying words "be authorized by law," and for this reason is rejected.

Article IX, section 4(b) of the Florida Constitution provides:

> The school board shall . . . determine the rate of school district taxes within the limits prescribed herein.

The school board urges and the district court concluded that "within the limits prescribed herein" refers only to the ten-mill cap set out in article VII, section 9(b). We disagree. Such a restrictive reading of article IX again fails to give meaning to the words "be authorized by law" contained in subsection 9(a) of article VII and effectively reads them out of the constitution.

Counsel for the school board, at oral argument, introduced the position that if enabling legislation is required to empower school districts to levy ad valorem taxes, then section 236.25, Florida Statutes (1989), provides the necessary legislation. This is the very legislation declared unconstitutional by the district court at the urging of the school board. It makes no sense to regard this section as, at the same time, both enabling and unconstitutional. More importantly, nothing in section 236.25 authorizes the school board to levy taxes other than those specified by the Legislature.

The school board invites us to define "a uniform system of free public schools,"[2] arguing that *St. Johns County v. Northeast Florida Builders Association, Inc.*, 583 So. 2d 635, 641 (Fla. 1991), interprets the constitution as merely requiring a "floor" of educational opportunity and thus the counties are empowered to put into place their own "ceilings." We decline the invitation and leave it to the Legislature, in the first instance, to give content to this constitutional mandate. We may be required in some future case to determine whether the Legislature has provided "a uniform system," but we are not required to do so in the instant case, nor were we required to do so in *St. Johns*.

The trial court additionally determined that the legislation at issue violates article III, sections 6 and 12[3] of the Florida Constitution.[4] We briefly address these issues. Section 236.25 was amended by chapter 88-557, section 19, Laws of Florida to provide in relevant part that: "The Legislature shall prescribe annually in the appropriations act the maximum amount of millage a district may levy." An examination of chapter 88-557 convinces us that it presents no article III, section 6 or 12 violation. Chapter 88-557 is not an appropriations act, though it refers to the general appropriations act and conforms certain statutes to that act. Nor does chapter 88-557 amend section 236.25 by reference to its title only but, quite the opposite and in full compliance with section 6, it amends by setting out in full the section amended and the amending language.

We furthermore reject the argument that item 509 of the 1991 appropriations act violated article III, section 6. Since item 509 neither revised nor amended section 236.25, the prohibition against amendment by reference to title only is inapplicable.

We also reject the argument that item 509 violates section 12 of the constitution. This Court, in *Brown v. Firestone*, 382 So. 2d 654, 663-64 (Fla. 1980), determined that although an appropriations bill must not change or amend existing law on subjects other than appropriations, this does not foreclose a general appropriations bill from making allocations of state funds for a previously authorized purpose in amounts different from those previously allocated. We read item 509 as doing nothing more than allocating funds for a previously authorized purpose in an amount different from that previously allocated. This we have held not to be a violation of section 12 of the Florida Constitution. We further

observed in *Brown* that a qualification or restriction in an appropriations act will pass constitutional muster if it directly and rationally relates to the purpose of the appropriation. *Id.* at 664. It is clear, applying these principles to the instant case, that the challenged language[5] is directly and rationally related to the overall purpose of the act.

We at last address the procedural aspects of this case. The school board filed its action for declaratory judgment against the tax collector of Sarasota County, without naming as a party the Department of Education or any other state agency. The board and tax collector stipulated to an expedited hearing to be held the next day, and at the same time notified the Attorney General of the next-day hearing by electronic facsimile transmission. The Attorney General's motion for dismissal, based on the board's failure to name the real party in interest, and his motion for postponement were denied. We hold that the Department of Education should have been named as a party to the trial court proceedings. "Trial by surprise" in cases of statewide importance is bad public policy and will not be condoned. We have said that before any proceeding for declaratory relief is entertained all persons who have an "actual, present, adverse, and antagonistic interest in the subject matter" should be before the court. *May v. Holley*, 59 So. 2d 636, 639 (Fla. 1952); *see also Retail Liquor Dealers Ass'n v. Dade County*, 100 So. 2d 76 (Fla. 3d DCA 1958). The tax collector in the instant case had no interest antagonistic to the school district's interest and, in fact, made little or no attempt to defend the legislation at issue here.

The right to education is basic in a democracy. Without it, neither the student nor the state has a future. Our legislature annually implements a complicated formula[6] to fund this basic right. We find that the legislation at issue here, which is part of the overall funding formula, is in harmony with the Florida Constitution. Accordingly, we reverse the district court and remand for proceedings consistent with this opinion.

It is so ordered. (OVERTON and McDONALD, JJ., concur. BARKETT, C.J., concurs with an opinion, in which SHAW and HARDING, JJ., concur. GRIMES, J., concurs with an opinion, in which HARDING, J., concurs. KOGAN, J., concurs specially with an opinion. HARDING, J., concurs with an opinion, in which OVERTON, J., concurs.)

(BARKETT, C.J., concurring.) It is indeed commendable that a community recognizes the educational deficits that result from large class size; reduced support personnel; diminished availability of textbooks, library books, computers, and instructional materials; not to mention a lack of cultural and other enhancement programs. Nor can a community be faulted for attempting to raise the funds necessary to improve educational opportunities for its school children "in the face of draconian state budget cuts." Appellee's Answer Brief at 9.

However, as noted by the majority, the method attempted by Appellees is not a constitutional means of solving the problem. The language of Article VII, section 9(a) of the Florida Constitution must be given its plain and ordinary meaning. This court has no authority to "read out" the words "be authorized by law." We must assume that the framers chose those words for some reason.

I also concur with the majority that this case does not directly present for resolution the meaning of "a uniform system of free public schools." Art. IX, § 1, Fla. Const. Nor, for that matter, does it present the question of what constitutes "adequate provision" for that system of free public schools. *Id.*

I would hope that school districts now direct their efforts toward assuring adequate state funding for all the educational needs of all our children. (SHAW and HARDING, JJ., concur.)

(GRIMES, J., concurring.) I do not profess to have superior knowledge of this subject, but it strikes me as commendable if a county, through its elected representatives, chooses to impose additional taxes upon itself in order to improve its schools. However, I cannot escape the fact that article VII, section 9 of our constitution contemplates legislative authority for school boards to levy ad valorem taxes, and I do not believe the pertinent language can be fairly construed to mean that the Legislature must authorize a levy up to the ten-mill cap. (HARDING, J., concurs.)

(KOGAN, J., specially concurring.) I do not read the language of article VII, section 9 as being so definite as the majority holds. That language draws a clear distinction between school districts that *shall* be authorized to levy ad valorem taxes and special districts that merely *may* be so authorized. Given the obvious contradistinction of the words "shall" and "may," I find it reasonably questionable whether the framers intended both of these words to be given the exact same permissive connotation, as the majority ascribes. To my mind the contrasting of these two words in the same sentence at least implies that "shall" means something apart from "may." Thus, the provision is ambiguous, not definite, and judicial construction is necessary. *See Florida League of Cities v. Smith*, 607 So. 2d 397 (Fla. 1992).

I do not dissent here, however, because I believe the ambiguity is resolved by resort to other provisions of the constitution. The first clause of article IX, section 1 of the Florida Constitution requires a uniform school system to be provided *by law*.[7] This "uniformity clause" manifestly gives authority to the Legislature to take steps necessary to ensure uniformity; and I believe the courts should show deference to that determination so long as it reasonably may promote the objectives underlying article IX, section 1. Here, the statute in question undoubtedly is a part of the legislative effort to ensure uniformity, and I cannot say it is unquestionably unreasonable. Whether the statute is an overly harsh enforcement of the Legislature's authority is another matter altogether, but one that I believe constitutes a political question beyond the power of any court to decide.

I join Justice Harding in suggesting that the Legislature reconsider this issue. In so saying, I am mindful that there may be sound public policy considerations underlying the millage cap at issue here. Some have argued, for example, that local governments that increase their millage to the ten-mill constitutional cap later may be unable to produce sufficient additional property tax revenues to meet future required local efforts. This especially may be true in light of the voters' decision last November to limit the future property tax assessments of a large percentage of the state's homesteads. *See Florida League of Cities*. Thus, sound management of maximum local millage rates may be needed to avert a crisis in educational financing, either local or general, at some point in time. Only the Legislature can provide the necessary management, and it should be given deference on the question.

However, as an abstract constitutional principle divorced from any public finance concerns, I am not at all troubled by allowing the voters of a school district to tax themselves an additional amount to enhance local educational programs. Nor do I believe such a decision violates the uniformity clause, at least on the present record and within certain broad limits. The uniformity clause is not and never was intended to require that each school district be a mirror image of every other one. Such a goal is clearly impossible on a practical level, and the constitution should not be read to require an impossibility.

Moreover, Florida law now is clear that the uniformity clause will not be construed as tightly restrictive, but merely as establishing a larger framework in which a broad degree of variation is possible. As Justice Grimes noted in a scholarly analysis in 1991, variance from county to county is permissible so long as no district suffers a disadvantage in the basic educational opportunities available to its students, as compared to the basic educational opportunities available to students of other Florida districts. *St. Johns County v. Northeast Florida Builders Ass'n, Inc.*, 583 So. 2d 635 (Fla. 1991); *see School Board v. State*, 353 So. 2d 834 (Fla. 1977); *Penn v. Pensacola-Escambia Governmental Center Auth.*, 311 So. 2d 97 (Fla. 1975). Every justice of the present Court joined in Justice Grimes' analysis, which clearly would allow school districts to provide educational enhancements that may be unavailable in other districts.[8]

For example, the mere fact that one district cannot afford to provide Latin or painting classes, but another can, does not create a lack of uniformity. However, the inability of one district to

pay for any instruction whatsoever in mathematics or language and writing skills would constitute a lack of uniformity if any other district is not similarly disadvantaged. The Legislature cannot allow students in one district to be deprived of basic educational opportunities while students in other districts do not suffer the same. Art. IX, § 1, Fla. Const.; *St. Johns*.

There is a vast grey area lying between the two extremes of my hypothetical here; and in this grey area it is necessarily the Legislature's prerogative to operate according to its own policies. "Uniformity" is a complicated question[9] involving the special expertise of the Legislature, its staff, its advisers on public finance, and the Department of Education. To a substantial degree the Legislature's field of action already is severely limited on one side by constitutional restrictions on the state's tax base,[10] and on the other side by the requirement of uniformity.

A time may yet come when these competing legal restraints cannot be reconciled in at least some counties without substantially altering the present taxing system, which itself may require a constitutional amendment the voters might reject. If the Legislature believes it must restrict local millage rates to delay the approach of that day, then I cannot in good conscience call the action unreasonable. As a general rule the courts should not second-guess the Legislature and its agencies' expertise in this field except in egregious cases.

Reasonable persons may differ over the wisdom of the Legislature's actions here. Accordingly, the presumption favoring the Legislature's actions must prevail, and I concur in the general thrust of the majority opinion and its result. Yet I also would encourage the Legislature to consider whether the restraints imposed here genuinely serve a fiscal purpose or merely stymie educational enhancements the constitution does not forbid. If the latter, nothing but the Legislature's own will justifies the prohibition of which Sarasota County complains.

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[1]Section 236.25(1), Florida Statutes (1989), provides:

> In addition to the required local effort millage levy, each school board may levy a nonvoted current operating discretionary millage. The Legislature shall prescribe annually in the appropriations act the maximum amount of millage a district may levy. The millage rate prescribed shall exceed zero mills but shall not exceed the lesser of 1.6 mills or 25 percent of the millage which is required pursuant to s. 236.081(4) . . . .

[2]Article IX, section 1 of the Florida Constitution provides: "Adequate provision shall be made by law for a uniform system of free public schools . . . ."

[3]Article III, section 6 in relevant part provides:

> No law shall be revised or amended by reference to its title only.

Section 12 provides:

> Laws making appropriations for salaries of public officers and other current expenses of the state shall contain provisions on no other subject.

[4]The district court found it unnecessary to address this issue, in view of its determination that the legislation was unconstitutional.

[5]"The maximum nonvoted discretionary millage which may be levied pursuant to the provisions of s. 236.25(1), Florida Statutes, by district school boards in 1991-92 shall be 0.510 mills." Ch. 91-193, § 1, item 509, at 1692, Laws of Fla.

[6]*See* §§ 236.081, 236.25, Fla. Stat. (1991). *See generally id.*, ch. 236.

[7]The provision states:

> Adequate provision shall be made by law for a uniform system of free public schools and for the establishment, maintenance and operation of institutions of higher learning and other public education programs that the needs of the people may require.

Art. IX, § 1, Fla. Const.

[8]North Carolina, which has a highly similar constitutional "uniformity" provision, has reached essentially the same conclusion. *Britt v. North Carolina Bd. of Educ.*, 357 S.E.2d 432 (N.C. App.), *aff'd mem.*, 361 S.E.2d 71 (N.C. 1987). I also emphasize that, although the constitution requires a uniform system of free public schools, it stops short of declaring public education to be a fundamental right.

[9]The courts clearly are poorly equipped to deal with the finer nuances of providing for uniformity. Costs of providing an education vary widely throughout the state, for example. Even with cost-of-living adjustments, a fair comparison is difficult due to the considerable geographical, demographical, climatic, historical, and cultural differences of Florida's sixty-seven counties. Of necessity the Legislature must be given substantial leeway in determining how uniformity will be achieved; and the courts will intervene only where the Legislature clearly has failed to fulfill the constitution's mandate.

[10]There is the existing ten-mill constitutional cap on property taxes, the new constitutional limit on homestead assessments, and Florida's heavy reliance on tax sources subject to unpredictable fluctuations, such as the sales tax. A more predictable personal income tax is prohibited by Florida's Constitution.

(HARDING, J., concurring.) I concur with Chief Justice Barkett and Justice Grimes that it is commendable for counties to want to impose additional taxes to improve schools and education. However, I would go further and encourage the Legislature to consider, if it has not done so, the wisdom of passing enabling legislation to permit those counties which wish to impose taxes for the betterment of education to do so. (OVERTON, J., concurs.)

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