

IN THE SUPREME COURT
OF FLORIDA

COALITION FOR ADEQUACY AND FAIRNESS IN)
SCHOOL FUNDING, INC., *et al.*,)

Appellants,)

versus)

LAWTON CHILES, *et al.*,)

Appellees.)
_____)

Case No. 85, 375

ON APPEAL FROM THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

BRIEF OF *AMICI CURIAE*
ON BEHALF OF N.A.A.C.P., *et al.*,
PROPOSED PLAINTIFFS-INTERVENORS

MARY M. GUNDRUM
ALICE K. NELSON
JODI SIEGEL

Southern Legal Counsel, Inc.
1229 N.W. 12th Avenue
Gainesville, FL 32601-4113
(904) 955-2144

ATTORNEYS FOR *AMICI CURIAE*

TABLE OF CONTENTS

TABLE OF CITATIONS	ii
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	1
STATEMENT OF <i>AMICI</i> FACTS	4
A. Conditions	4
B. Achievement	6
ARGUMENT	9
I. THE FLORIDA CONSTITUTION MUST BE CONSTRUED AS ESTABLISHING A MINIMUM THRESHOLD OF ADEQUACY	9
A. The Florida Constitution Recognizes the Importance of an Adequate Education	9
B. In Florida’s Constitutional History, the Importance of an Adequate Education to Florida’s Children and to the State is Recognized ...	11
C. Legislation Implementing Constitutional Mandate Suggests that Education Must Be Adequate and Appropriate to the Educational Needs of Florida’s Children	17
D. Florida Caselaw Requires an Adequate Education As Important to Enlightened Citizenship	19
E. Other States Have Found a Right to an Adequate Education By Construing Their Language To Require Minimum Qualitative Standards	21
1. Adequacy Requires Minimum Qualitative Standards	21
2. Minimum Standards: Definitions of Adequacy	24
3. Intent of Constitution is to Prepare Children for Citizenship and Work	26
4. An Adequate Education for Poor Children Requires that the State Meet Their Educational Needs	27
II. EDUCATION IS A FUNDAMENTAL RIGHT UNDER FLORIDA’S CONSTITUTION	29
A. Education is Explicitly Guaranteed By Florida’s Constitution	29
B. The Exercise of Florida’s Other Constitutional Rights Depends on Education	34
CONCLUSION	38
CERTIFICATE OF SERVICE	40

TABLE OF CITATIONS

CASES

Abbott v. Burke, 575 A.2d 359 (N.J. 1990) 22-24, 26-29, 36

Alabama Coalition for Equity, Inc. v. Hunt, (Cir. Ct., Mont. Co., Ala. 1993),
cited in appendix to *Opinion of the Justices*, 624 So. 2d 107
(Ala. 1993) 10, 21, 22, 25

Bismarck Public Sch. Dist. 1 v. State, 511 N.W.2d 247 (N.D. 1994) 24, 30, 31

Brown v. Board of Educ., 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954) 33

Cason v. Baskin, 155 Fla. 198, 20 So. 2d 243 (Fla. 1944) 35

Coalition for Equitable Sch. Fund v. State, 811 P.2d 116 (Ore. 1991) 25

Cousins v. Wigoda, 419 U.S. 477, 95 S.Ct. 541, 42 L.Ed.2d 595 (1975) 35

Division of Pari-Mutuel Wagering v. Winfield, 477 So. 2d 544 (Fla. 1985) 29

Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391 (Tex. 1989) 17

Gibson v. Florida Legislative Investigation Comm., 372 U.S. 359, 83 S.Ct. 889,
9 L.Ed.2d 929 (1963) 35

Greater Loretta Improvement Assoc. v. State, 234 So. 2d 665 (Fla. 1970) 17

Grissom v. Dade County, 293 So. 2d 59 (Fla. 1974) 34

Helena Elementary Sch. Dist. No. 1 v. State, 769 P.2d 684 (Mont. 1990) 23

Hornbeck v. Somerset County Bd. of Educ., 458 A.2d 758 (Md. 1983) 25

Horton v. Meskill, 376 A.2d 359 (Conn. 1977) 31, 33

In Re Board of Public Instr. of Alachua County, 160 Fla. 490, 35 So. 2d 579
(Fla. 1948) 19, 20

In Re T.W., 551 So. 2d 1186 (Fla. 1989) 29

Kukor v. Grover, 436 N.W.2d 568 (Wis. 1989) 26, 30, 31

<i>Marsh v. Chambers</i> , 463 U.S. 783, 103 S.Ct. 3330, 77 L.Ed.2d 1019 (1983)	28
<i>McDuffy v. Secretary of the Exec. Office of Educ., et al.</i> , 615 N.E.2d 516 (Mass. 1993)	1, 2, 21, 25, 26, 28
<i>Moore v. East Cleveland</i> , 431 U.S. 494, 97 S.Ct. 1932, 52 L.Ed. 531 (1977)	36
<i>Olsen v. State</i> , 554 P.2d 139 (Ore. 1976)	26
<i>Palko v. Connecticut</i> , 302 U.S. 319, 58 S.Ct. 149, 82 L.Ed. 288 (1937)	36, 37
<i>Pauley v. Kelly</i> , 255 S.E.2d 859 (W. Va. 1984)	22, 24, 31
<i>Plyler v. Doe</i> , 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed. 786 (1982)	33
<i>PruneYard Shopping Ctr. v. Robins</i> , 447 U.S. 74, 100 S.Ct. 2035, 64 L.Ed.2d 741 (1980)	29
<i>Reynolds v. Sims</i> , 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed. 506 (1964)	37
<i>Riley v. Sweat</i> , 110 Fla. 362, 149 So. 48 (1933)	35
<i>Roosevelt Elem. Sch. Dist. v. Bishop</i> , 877 P.2d 806 (Ariz. 1994)	27
<i>Rose v. Council for Better Educ., Inc.</i> , 790 S.W.2d 186 (Ky. 1989)	11, 21-25, 30-32
<i>San Antonio Sch. Dist. v. Rodriguez</i> , 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed. 16 (1973)	25, 29, 31, 34
<i>Scavella v. School Bd. of Dade County</i> , 363 So. 2d 1095 (Fla. 1978)	20, 21, 28
<i>Schreiner v. McKenzie Tank Liner and Risk Mgmt. Services</i> , 408 So. 2d 711 (Fla. 1st DCA 1982)	35
<i>Scott v. Commonwealth of Va.</i> , 443 S.E.2d 138 (Va. 1994)	30
<i>Seattle Sch. Dist. No. 1 v. State</i> , 585 P.2d 71 (Wash. 1978)	11, 22, 26, 28, 30, 31
<i>Serrano v. Priest</i> , 487 P.2d 1241 (Cal. 1971)	32
<i>Serrano v. Priest</i> , 557 P.2d 929 (Cal. 1976) (en banc), cert. denied, 432 U.S. 907 (1977)	31
<i>Shofstal v. Hollins</i> , 515 P.2d 590 (Ariz. 1973)	30

<i>Skeen v. State</i> , 505 N.W.2d 299 (Minn. 1993)	30, 31
<i>St. John's County v. Northeast Fla. Builders' Ass'n, Inc.</i> , 583 So. 2d 635 (Fla. 1991)	11, 20
<i>State ex rel. Clark v. Henderson</i> , 137 Fla. 666, 188 So. 351 (1939)	19
<i>State v. Buckner</i> , 472 So. 2d 1228 (Fla. 2d DCA 1985)	32
<i>State v. Kurz</i> , 121 Fla. 360, 163 So. 859 (Fla. 1935)	15
<i>Taylor v. Board of Publ. Instr. of Lafayette County</i> , 157 Fla. 422, 26 So. 2d 180 (1946)	20
<i>Tennessee Small Sch. Systems v. McWherter</i> , 851 S.W.2d 139 (Tenn. 1993)	11, 24
<i>Washakie County Sch. Dist. v. Herschler</i> , 606 P.2d 310 (Wyo.), <i>cert. denied</i> <i>sub. nom. Hot Springs County Sch. Dist. No. 1 v. Washakie County</i> <i>Sch. Dist. No. 1</i> , 449 U.S. 824 (1980)	31
<i>Wisconsin v. Yoder</i> , 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972)	30, 37
<i>Yick Wo v. Hopkins</i> , 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220 (1886)	37

FLORIDA CONSTITUTION

Art. VIII, Fla. Const. (1868)	14
Article I, Fla. Const. (1968)	34, 35
Article IV, Fla. Const. (1968)	10, 30
Article IX, Fla. Const. (1968)	<i>passim</i>
Article VII, Fla. Const. (1968)	10
Article X, Fla. Const. (1968)	10
Article XII, Fla. Const. (1968)	10

FLORIDA STATUTES

Acts of Fla., Ch. I, 686 (1869)	14
§ 228.01, Fla. Stat. (1993)	18
§ 228.04, Fla. Stat. (1993)	17
§ 228.041(1), Fla. Stat. (1994)	18
§ 229.011, Fla. Stat. (1993)	18
§ 235.002(1), Fla. Stat. (1993)	18
§ 236.012(1), Fla. Stat. (1993)	18
§ 236.02, Fla. Stat. (1994)	18
§ 236.1228, Fla. Stat. (1993)	8

SECONDARY MATERIALS

Bailey, Thomas D., Florida's Education Program (State Dep't of Educ., Tallahassee 1961)	12, 13
Black's Law Dictionary (4th ed. 1968)	10, 11
Case, C. Thurston, Dept. of Public Instruction, Report of the Superintendent of Public Instruction on the Organization of the Dep't of Public Instruction, The Historical Bureau and the Cabinet of Natural History of the State. (Tallahassee, Fla., Jan. 9, 1869)	15
Cochran, Thomas E., History of Public-School Education in Florida (State Dep't of Educ., Tallahassee, Fl., Bulletin No. 1, 1921)	16
D'Alemberte, Talbot, Commentary, 26A Fla. Stat. Ann. 363 (1970)	16
Draft of Proposed 1968 Const. submitted by Legis. to voters for ratification at the Gen. Election of Nov. 5, 1968, prepared by Legislative Reference Bureau (on file at Fla. St. Univ., Storzier Library, in the Fla. Collection)	16

Grimm, Richard, The Establishment of Basis For A State System of Education
In Florida With Emphasis Upon the Contributions of Selected Personalities,
1845-1868 (1969) (unpublished Ph.D. dissertation, Fla. State Univ. College of Educ.) 12-14

Journal of Proceedings of Const. Convention, State of Fla. (1885) 15

Perick, Rowland H., Memoirs of Florida (Southern Historical Ass'n,
Atlanta Ga., 1902) 16

STATEMENT OF THE CASE

Plaintiffs in this case are school districts, an association, and some parents and children. Among other claims, they requested that the court declare that there is a fundamental right to education and the right to obtain an adequate education under Florida's constitution. Defendants are the Governor, the Legislature, the State Board of Education and the Commissioner of Education. Plaintiffs' complaint was dismissed by the lower court on various grounds including failure to state a claim under the education clause.

Amici are thirty-eight low income and minority children and four prominent civil rights groups who represent their interests. The groups are the National Association for the Advancement of Colored People, the League of United Latin American Citizens, the Haitian Refugee Center and the Spanish American League Against Discrimination. *Amici* moved to intervene in the lower court. Their motion to intervene was not heard prior to the lower court's dismissal of this action.

SUMMARY OF ARGUMENT

In a recent decision striking down Massachusetts' school finance scheme, the state's highest court approvingly quotes Horace Mann,

[i]t seems clear that the minimum [required] of this education can never be less than such as is sufficient to qualify each citizen for the civil and social duties he will be called to discharge.

McDuffy v. Secretary of the Exec. Office of Educ., et al., 615 N.E.2d 516, 554 (Mass. 1993).

The Florida Constitution must be construed as establishing a minimum threshold of adequacy for the children of the State; to rule otherwise would run counter to the concerns expressed by the constitutional history of the State, would make a mockery of this Court's

expression of the importance of education, would belie the assumptions that have been made by the Legislature that the State's schools must deliver an adequate education, and would be totally contrary to common sense. There must be a floor below which this State cannot descend and that floor must be to make available those resources which "qualify each citizen for the civil and social duties he will be called upon to discharge." *Id.*

Amici are children and representatives of children who attend schools under conditions where not even the barest minima are being met. If given the opportunity by this Court, these children will establish that the vast majority of children in schools attended primarily by poor children are not acquiring the skills needed to even minimally participate as citizens in the Florida in which they will reside in the twenty-first century. They allege that they can establish that the knowledge base is available to overcome this situation,¹ that reasonable allocation of resources and other changes can accomplish this goal, and that given this state of affairs, the State is violating its constitutional obligation to provide a minimally adequate education. A ruling that there is a minimum below which the State cannot go would allow these children the opportunity to seek a remedy allowing them to become constructive participants in the society to which they were born.

The relief these children seek is a constitutionally adequate education. *Amici* (proposed Intervenor below) asked the lower court to declare that it is their fundamental right to obtain such an education, and that Florida has failed to provide it. They further sought to compel defendants to establish an effective plan that will ensure that they receive a constitutionally

¹ It is not the contention of *Amici* that the State must or can guarantee that each child acquire the needed skills but rather that it violates minimum standards of adequacy when vast numbers of educable children are not being provided an education that meets minimum standards.

adequate education, to assure resources sufficient to provide it, and to create a system to ensure that the plan will be implemented.

In short, *Amici* argue in Section I that Florida's constitution mandates the adequate provision of an education which affords equal and adequate opportunities to all of Florida's children. This right is based on the words of the education clause of Florida's constitution, Florida's constitutional history, legislative assumptions about education, and Florida case law. Additionally, despite differences in the adjectives used in their education clauses, courts from many states have interpreted their education clauses to require a certain absolute minimum substantive level of education which must be adequate to prepare a child for citizenship and for work in today's society. Most importantly for *Amici*, some courts have defined equal educational opportunity to mean that disadvantaged children are entitled to whatever it takes to permit them to contribute in today's society and to compete in today's marketplace with children of greater means. *Amici* ask this Court to declare that Florida's children are entitled to a constitutionally adequate education.

Further, Section II argues that each child in the State has the fundamental right to an adequate education. This right is premised not only upon the importance of education as an express mandate in part of Florida's constitution, but also on the close relationship between education and such constitutional values as the rights to freely speak, vote, petition the government, enlighten one's representatives, and earn one's livelihood. *Amici* ask this Court to reverse the lower court's dismissal of the plaintiffs' complaint and to declare that education is a fundamental right in Florida.

STATEMENT OF AMICI FACTS

Preliminary facts stated in Intervenor's complaint and set forth here² establish that thousands of Florida children are not being prepared for participation in the civic and economic life of the State. These children attend schools with high numbers of other low income children (more than 50% of students) and with disproportionately high numbers of minority children.

A. Conditions

Amici are harmed by attending schools which are often decrepit, rundown and in need of repair. Some attend schools which lack sufficient bathrooms and water fountains. Others must go to schools which have poorly lit hallways, broken or missing lockers, peeling paint, inadequate plumbing, and decrepit library shelves that do not get replaced until termites eat through the shelves and books. These schools provide unsuitable and unsound educational environments.

Many of *Amici's* urban schools are overcrowded and rely upon 15-20 portable trailer classrooms per school to provide learning space. Unlike schools that undergo renovations, or newly constructed schools which receive funds in addition to renovation or construction costs for instructional equipment, schools that rely upon portables to meet space needs receive no such additional funding. Some portables lack equipment such as computers, TV's, VCR's or tape recorders. Some schools are so overcrowded with portables that there is no room for play fields. Many of these schools have inadequate gyms and bleachers. Many schools have no room to accommodate all students for entire school functions.

² The facts described in this Statement of *Amici* Facts are some of those alleged in Intervenor's Complaint. The decision to dismiss the plaintiffs' Complaint did not address these allegations since the lower court never ruled on *Amici's* Motion to Intervene.

Many *Amici* children attend schools which have totally inadequate media centers. The shelves in some schools' libraries are two-thirds empty of books. Many media centers have outdated library books that are so old they cannot be coded by computers for indexing. Some schools need to remove as many as one-third to three-fourths of their volumes because the books are so outdated and educationally irrelevant, and yet the schools have nothing with which to replace them. Some *Amici* children must rely solely upon their school libraries as there are no community libraries to which students can go and they cannot afford to buy their own books. Thus, these children have no ability to compensate for the inadequate library and lack of access to reading materials. Some schools have insufficient media equipment, overheads, tape recorders, video equipment and computer software.

Amici children attend schools with insufficient basic school supplies, textbooks, instructional equipment and materials. Globes and maps are out of date or inadequately supplied. *Amicus* are denied adequate science laboratories. Some schools attended by *Amici* have insufficient computers per student. Often, teachers are not trained to effectively use computers.

In many of *Amici's* schools, there is high teacher turnover. In some individual schools, for example, more than one-third of the teachers have less than three years experience. These schools suffer the loss of experienced teachers to other areas with less concentrations of low-income students. In these schools, few (1/3 to 1/4) have teachers with post-graduate degrees.

In one district, a comparison illustrates a pattern of using schools attended by low income and minority children as training grounds for inexperienced teachers. At Immokalee High School in Collier County, attended by migrant workers' children, half of the teachers had a maximum of three years experience and only one-third of them have post graduate degrees. This contrasts

with Barron Collier High School in Naples in which only approximately one-fourth (27%) of the teachers had less than three years experience and 60% had post-graduate degrees.

Florida has the largest number of students per school of any state. Seventy-seven schools in Florida enroll more than 2,000 students and 20% of Florida's schools house more than 1,000. Many *Amici* children attend these schools which have an impersonal, factory-like atmosphere not conducive to effective education. Such large schools often contribute to discipline problems, especially in high schools.

B. Achievement

Amici are poor children who attend Florida public schools comprised of disproportionately high numbers of poor children. At their schools, a majority of students, sometimes more than three-fourths of them, cannot read, write or do basic math at their grade level. These schools produce a majority of students whose academic achievements are so minimal as to prevent them from becoming active citizens, participating effectively in the political process, or competing in the marketplace with peers from other schools. There can be no dispute that an adequate education is not being provided in schools where three-fourths of the children are in the nation's lowest quartile on the most minimal achievement tests.

Children attending these schools fear that they will graduate without the ability to read or write, will be less likely to be able to obtain meaningful employment, and will be inadequately prepared to enter or succeed in community colleges and universities. These children appropriately fear that they will be inadequately prepared to read and understand a ballot measure, to write a letter to their legislative representative, or to speak out at a town meeting.

These students are denied meaningful participation in society as a result of the denial of their right to an adequate education.

That these fears are realistic is supported by such outcome measures as achievement scores. Indeed, achievement tests are designed to show mastery of basic skills, and essentially measure the minimum level of learning needed to go on to more difficult subjects. The abysmal achievement levels of the schools attended by *Amici* reveal that students are so far from any measure of an adequate education as to be unable to master even basic, minimum skills.

Elementary schools attended by children represented by *Amici* groups are among the lowest in achievement scores as measured by their ranking on national tests. There are 275 elementary schools in Florida in which 40% or more of the children tested at that school scored in the bottom quartile nationally in reading or math, or most often in both. These schools have very high concentrations of low income children. In half of these schools, more than three-fourths of the students are from poor families.

Achievement scores at schools of the named *Amici* children are much worse. For example, Julie Cheri is 5 years old and is in kindergarten at Toussaint L'Ouverture Elementary School in Miami. Her family is Haitian and low income. In her school, 84% of the students tested scored in the nation's bottom quartile in reading; 71% in math. More than 96% percent of her classmates are low income and more than 92% are Black.

Norris Coney is 8 years old and in the second grade at Poinciana Park Elementary School in Miami. His family is African American and low income. In his school, 82% of the students tested scored in the nation's bottom quartile in reading; 77% in math. No students at this school

are in the top quartile in either reading or math. More than 92% of the students are low income. Almost 97% of the students are African American.

Marchello Wilbon is 8 years old and is in the third grade at Glade View Elementary School in Belle Glade, Palm Beach County. Marchello's family is African American and low income. In his school, 68% of the students tested scored at or below the 25th percentile in reading and 57% in math. 81% of the students are low income. 89% of the students at Glade View are Black and 10% are Hispanic.

High schools attended by *Amici* reflect a similar pattern. Over 40% of the students in 42 public high schools in Florida are in the bottom quartile on achievement tests in math or reading, and usually in both. More than half of these schools have more than 80% minority students.

Amici attend or are likely to attend schools with disturbingly high drop-out rates. As a state, Florida has a very high drop-out rate. In fact, it is one of the worst in the nation.

The State legislature has set standards relating to graduation and drop-out rates: by 1992, the graduation rate was to be 85% and the dropout rate no higher than 4%. § 236.1228, Fla. Stat. (1993). However, for the year 1991-92, the state graduation rate was 78%. Twenty-one districts had below 75%, including Dade, Orange and Palm Beach Counties. Some districts, like Gadsden, Putnam and Levy, had below 62% graduation rate. One hundred twenty-six high schools had dropout rates higher than 4%, and 52 were higher than 6%.

Amici attend schools which fail to equip them for college. In schools with high concentrations of poor children, there also are disproportionately high numbers of minority students. Minority students are disproportionately denied the ability to advance to college level reading, writing or math. Only 57% of Blacks and 61% of Latinos are ready for college math,

compared with 78% of whites. For college reading and writing readiness, the disparities are even greater: approximately 59% of Blacks and 67% of Latinos, compared with 88% of whites.

Readiness for college statistics at certain schools attended by *Amici* are so extremely poor as to clearly demonstrate illegal deprivations. For example, only 26% of Blacks are ready for college reading at Edison High School in Miami and less than a third are ready for college math. About a third of Blacks attending Jackson High School are ready for college writing.

ARGUMENT

I. THE FLORIDA CONSTITUTION MUST BE CONSTRUED AS ESTABLISHING A MINIMUM THRESHOLD OF ADEQUACY

A. The Florida Constitution Recognizes the Importance of an Adequate Education

Article IX, Section 1 of the Florida Constitution (1968) 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.

The constitution sets forth an elaborate scheme establishing the Legislature's express duty to create and adequately provide for a uniform system of education, the mechanism to supervise and operate the system and a means for funding it. All of Article IX is dedicated to requiring a free public education for Florida's children. It provides for a system of public education (§1), supervision by a state board of education (§2), terms of state board members (§3), creation of school districts and school boards (§4), district superintendents (§5) and a state school fund (§6). Additionally, public education is an important part of at least four other articles in the

constitution.³ These detailed provisions of the constitution setting forth the parameters of the State's duty reflect a recognition of the importance of education to the State and its children.

The language of Article IX, §1 is not aspirational, nor is it a mere grant of power. Instead, it creates an affirmative, express mandate that the State adequately provide for the education of the State's children by means of a uniform system which offers equal and adequate opportunities to all children. Thus, the State has the duty to provide, and the State's children have the right to receive, an adequate education.

The language used in Article IX, §1 supports requiring a threshold of adequacy to achieve basic goals. "Adequate" is defined in Black's dictionary as "sufficient, proportionate, equally efficient; equal to what is required." Black's Law Dictionary 61 (4th ed. 1968).⁴ Similarly, the Alabama court found that "adequately" connotes sufficiency for a purpose or requirement, i.e., adequate to enable children to meet qualitative standards.⁵ *Alabama Coalition for Equity, Inc. v. Hunt*, (Cir. Ct., Mont. Co., Ala. 1993), cited in appendix to *Opinion of the Justices*, 624 So. 2d 107, 126 (Ala. 1993) (cited hereinafter as "*Hunt*"). Black's defines "provide" to mean "to make, procure, furnish for future use, prepare..." Black's Law Dictionary 1388 (4th ed. 1968). In Washington state, the court defined "provide" to mean "preparation,

³ Article XII provides for the Commissioner of Education and school superintendents (§§ 4 & 5), State Board of Education, capital outlay and taxes (§ 9). Article VII describes the local taxing authority of school districts (§ 9), a mechanism for pledging credit (§ 10) and for local bond financing (§ 12). Article X discusses financing education with lottery funds. Article IV places the Commissioner of Education in the state's cabinet and describes his/her duties (§ 4), election, term and qualifications (§ 5).

⁴ The 1968 edition is used to show the common meaning of words used at the time of drafting the 1968 constitution. Definitions in the current edition are substantially the same.

⁵ See also *infra* § I(E) for other states' discussions of the meaning of "adequacy."

measures taken beforehand; for the supply of wants; measures taken for a future exigency." *Seattle Sch. Dist. No. 1 v. State*, 585 P.2d 71, 93 (Wash. 1978). The dictionary definition of "uniform" is "conforming to one rule, mode or unvarying standard; not different at different times of places." Black's Law Dictionary 1700 (4th ed. 1968). Thus, the court in Kentucky found that "uniform" means something approximating equal--here equal educational opportunities. "Each child ... must be provided with an equal opportunity to have an adequate education" regardless of economic status. *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 211 (Ky. 1989). "Uniform" also connotes giving each student an equal chance to achieve basic educational goals. *St. John's County v. Northeast Fla. Builders' Ass'n, Inc.*, 583 So. 2d 635, 641 (Fla. 1991).⁶ Thus, the language of Article IX must be construed to mean that the State must furnish sufficient resources to enable children to meet minimum qualitative standards in a system that affords them an equal opportunity to achieve basic educational goals.

B. In Florida's Constitutional History, the Importance of an Adequate Education to Florida's Children and to the State is Recognized

Public education dates back to 1822 when Florida was organized as a territory. At that time, sections of land in each township were reserved for the maintenance of primary schools. However, for ten years there were no schools except for a few conducted by Spanish missions. Shortly after Florida became a state, a series of news articles in 1846 outlined the rationale and

⁶ The dictionary defines education broadly to mean that it comprehends not merely the instruction received at school or college but the whole course of training, moral, intellectual and physical. Black's Law Dictionary 604 (4th ed. 1968). Thus, the court in Tennessee defined "education" as "the act or process of imparting or acquiring general knowledge, developing the powers of reasoning and judgment, and generally of preparing oneself or others intellectually for a mature life." *Tennessee Small Sch. Systems v. McWhorter*, 851 S.W.2d 139, 150 (Tenn. 1993).

framework for establishing a state system of schools suited to the needs of a developing democratic state and specifically identified the relationship of education to government, the importance of schooling in a democracy and the importance of the accessibility of education to all youth. *See generally* Grimm, Richard, *The Establishment of Basis For A State System of Education In Florida With Emphasis Upon the Contributions of Selected Personalities, 1845-1868*, at 2-3 (1969) (unpublished Ph.D. dissertation, Fla. State Univ. College of Educ.) ("Grimm"). Shortly thereafter, Owen M. Avery, Chair of the Florida Senate Committee on Schools and Colleges in 1847-48, insisted that when Florida entered the Union in 1845, the lands that had been reserved to the townships be sold and the proceeds consolidated into a state school fund. He marshalled facts to show that if the lands remained under township control, education would be unequal because of an unjust distribution of funds. He believed that equality was essential to a democratic form of government so that "each child receive his share" of the fund. 1848 Fl. Sen. J., at 27-66, as quoted in Grimm, at 5. *See also generally* Bailey, Thomas D., *Florida's Education Program*, at 9-10 (State Dep't of Educ., Tallahassee 1961) ("Bailey").

By the 1850s, education had come to be recognized for the important role it played in Florida's development. An early and influential voice regarding the importance of an adequate education for all children was David S. Walker, who tirelessly organized schools into a state system of common schools for whites in the period of 1850-1859; at that time he was Register of Public Lands for Florida and ex officio Superintendent of Schools. While he was Governor of Florida during the Presidential Plan for Reconstruction, 1866-1868, he recommended to the General Assembly a bill which provided for a State System of Common Schools for Freedmen, which was passed into law. Grimm, at 97-98.

Walker's special concern was the children of indigent parents, the underprivileged of his time. Grimm, at 78. In his report to the Governor in 1854, Walker stated his unbounded faith in public education:

...under our free government nothing whatever can be of more vital importance than the general education of the people, since upon their intelligence and virtue depends the very existence of our institutions.

At this period in the world, particularly, it is important that our children should be educated. Intelligence, like wealth, is a comparative thing. A man who would have passed as intelligent in the dark ages might be considered very stupid now, and when we consider the great attention that is being paid to education at this time throughout Christendom, we must feel that our children will be compelled to blush for our neglect of them, unless we afford them better means of instruction that we have hitherto done. Our posterity cannot reproach us with any more crying sin than of having neglected their minds...In a free country "Knowledge is Power," and I will add, where the child has been properly educated, knowledge is virtue and wealth also.

1854 Fl. Sen. J. (appendix), at 1-19, as quoted in Grimm, at 78-79 (emphasis added).

By 1866, the State began to assume its responsibility to create an education system. On January 8, 1866, Walker, now governor, appeared before the General Assembly to present a bill which established a state system of public education for blacks. It was passed into law. Although it taxed Freedmen and established a segregated system, it at least began the march toward public responsibility to educate all children. Grimm, at 97-99. Thus, it is generally recognized that Florida's universal public school system originated with the Constitution of 1868. *See, e.g.,* Bailey, at 9-10; Grimm, at 23-24.

It was against the backdrop of failed relations between Florida and the Federal Government and the failure of President Johnson's plans for reconstruction that radical

reconstruction became a fact in the South. Grimm, at 99. After vigorous debates, on February 25, 1868, a constitution was adopted, which was approved by Federal authorities and adopted by some 60% of Florida voters. Grimm, at 100.

The Convention of 1868 adopted the following education clauses:

It is the paramount duty of the State to make ample provision for the education of all the children residing within its borders, without distinction or preference. Art. VIII, §1.

and

The Legislature shall provide a uniform system of common schools...and shall provide for the liberal maintenance of the same. *Id.*, §2.

The Legislature in fulfilling its constitutional duty enacted the School Law of 1869. This law provided for a free education for all children between the ages of 6-21 and established a system comprised of state and county boards, and which created curricula and teacher qualifications. Acts of Fla., Ch. I, 686 (1869).

The importance of an adequate education for Florida's general well-being was recognized by the Superintendent of Public Instruction in 1869:

[t]he state, by laying hold on the hand of the poor and ignorant child, can prepare him for a life of usefulness and respectability. The men of vast wealth in America are, with very few exceptions, those who were born in poverty; and the highest offices of the nation are filled with those who started in the face at the public school. A State can never know how much it loses in the undeveloped talent of its neglected children. If properly trained they may become the chief pillars of her strength. But there can be no assured peace, no guarantee of security to private rights and interests, no pledge of continued prosperity, nor perpetuity to popular government, where the constituencies on which it rests are left to settle down into permanent ignorance and unmitigated depravity, as these must do unless the strong arm of the State goes down to their rescue.

Case, C. Thurston, Dept. of Public Instruction, Report of the Superintendent of Public Instruction on the Organization of the Dep't of Public Instruction, The Historical Bureau and the Cabinet of Natural History of the State (Tallahassee, Fla., Jan. 9, 1869) (emphasis added).⁷

In 1868-1885, there were significant challenges to the establishment of a sound educational system in Florida. There were structural difficulties in terms of school administration and inadequate funding. A constitutional convention was convened in June 1885 to form a new constitution. The continued importance of education to an enlightened citizenry was expressed by the Honorable Samuel Pasco, President of the 1885 Convention, when in his opening remarks he said the time was "auspicious" for revision as:

passions engendered by the late war have cooled;...the people have become accustomed to their new political realities; those to whom the right of suffrage was extended by the reconstruction acts are learning to discharge the duties of citizenship with judgment and intelligence; [and] the importance of educational progress was never more generally realized.

Journal of Proceedings of Const. Convention, State of Fla., at 9 (1885) (emphasis added).

The Convention undertook to resolve some of these structural problems. Yet the basic promises of Article VIII, §2 of the 1868 constitution were repeated verbatim in the 1885 constitution and were passed without debate. Although §1 was omitted, the principal change from 1868 was to enhance the financial support of education.⁸ The new constitution provided

⁷ Courts may examine the contemporaneous construction or interpretation of the Constitution by affected officials of the state and responsible departments of state government charged with the duty of observing it. *State v. Kurz*, 121 Fla. 360, 369, 163 So. 859, 862 (Fla. 1935).

⁸ Although the Journal of the Proceedings of the Constitutional Convention are available, they are of little help as they do not recite either committee reports or debate. Hence, the reasons for constitutional provisions must be gleaned from secondary materials. Despite diligent search, no explanation has been found to explain the removal of §1 of the 1868 constitution from the

specifically for a permanent state school fund and a school tax. This effort was an attempt to shield the educational institutions of the day from legislative whim. *See* Cochran, Thomas E., *History of Public-School Education in Florida*, at 81-83 (State Dep't of Educ., Tallahassee, Fl., Bulletin No. 1, 1921). *See also* Rerick, Rowland H., *Memoirs of Florida*, at 359 (Southern Historical Ass'n, Atlanta Ga., 1902).

Although there was some minor rewording in the 1968 constitution,⁹ the framers continued the promise of an adequate education for all children:

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.

The Legislative Reference Bureau compared the provisions of 1968 with the provisions of 1885 as "requiring adequate provision for free public schools as in present Sec. 1, Art. XII." Draft of Proposed 1968 Const. submitted by Legis. to voters for ratification at the Gen. Election of Nov. 5, 1968, prepared by Legislative Reference Bureau (on file at Fla. St. Univ., Storzier Library, in the Fla. Collection) (emphasis added). *Accord D'Alemberte*, Talbot, Commentary, 26A Fla. Stat. Ann. 363 (1970) ("this section ... is basically a restatement of Article XII, Section 1 of the Constitution of 1885 with the additional provision for the establishment of higher learning and other programs of public education").

1885 constitution.

⁹ The word "liberal" before "maintenance" was deleted and a new section regarding institutions of higher learning was added. However, the word "adequate" was added to modify "provision." Additionally, the phrase "other public programs that the needs of the people may require" was added.

Florida's constitutional history reflects a long historical commitment to the creation of an educational system that develops the talents of all Florida's children. There is repeated acknowledgement of the importance of progress in education. The history also recognizes society's, its institution's and democratic government's dependence on education. The minor changes in constitutional provisions do nothing to diminish this commitment to the importance of education to the State and to its children.

C. Legislation Implementing Constitutional Mandate Suggests that Education Must Be Adequate and Appropriate to the Educational Needs of Florida's Children

Legislative implementation of the constitutional provisions can be a relevant factor in examining the meaning of constitutional terms. *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 394-96 (Tex. 1989).¹⁰ See *Greater Loretta Improvement Assoc. v. State*, 234 So. 2d 665 (Fla. 1970) (legislative construction of constitution is persuasive). Several passages from the Education Code suggest that the Florida Legislature understood that educational offerings must be adequate, that they must be appropriate to educational needs, and that it is the State's task to liberally maintain a uniform system of public schools.¹¹ For example:

¹⁰ In defining "efficient" as including "uniform," the court looked not only to constitutional history but also to the Legislature's understanding of the term. In Texas, legislators spoke of "equal educational advantages for all," and of "each student" having access to "programs and services.. that are substantially equal to those available to any similar student, notwithstanding varying economic factors." *Id.* at 397.

¹¹ Although defendants have argued below that Florida's constitutional guarantee has been reduced in strength by revisions in 1968 which deleted the word "liberal" before "maintenance," the Legislature in its official proclamations about education has indicated otherwise. § 228.04, Fla. Stat. (1993), continues to require that the state system "shall include the uniform system of free public schools as established and which shall be liberally maintained" (emphasis added).

The responsibility for establishing such minimum standards and regulations as shall tend to assure efficient operation of all schools and adequate educational opportunities for all children is retained by the State.

§ 229.011, Fla. Stat. (1993) (emphasis added). Also:

Each district which participates in the state appropriations for the Florida Education Finance Program shall provide evidence of its effort to maintain an adequate school program throughout the district.

Id. § 236.02 (1994) (emphasis added). Thus, the Legislature assumed that the State's schools must deliver adequate educational opportunities and school programs. It also assumed that schools, courses, classes, and services be adequate to meet the educational needs of the State's children.¹²

With regard to financing, the legislative intent was "to guarantee . . . the availability of programs and services appropriate to [each student's] educational needs which are substantially equal to those available to any similar student notwithstanding geographic differences and varying local economic factors." *Id.* § 236.012(1) (1993) (emphasis added). Similarly, the schools and educational environments in which Florida children study must be appropriate to their needs.¹³

¹² The declared "purpose of the state plan for public education [is] to insure the establishment of a state system of schools, courses, classes, institutions, and services adequate to meet the educational needs of all citizens of the state." *Id.* § 228.01 (emphasis added).

¹³ Regarding facilities, the Legislature's intent was "[t]o provide . . . the availability of an educational environment appropriate to [each student's] educational needs which is substantially equal to that available to any similar student, notwithstanding geographic differences and varying local economic factors." *Id.* § 235.002(1) (emphasis added). Additionally, Article IX, §1 requires the State to provide "other public education programs that the needs of the people may require." Children are among the State's "people" and their needs too must be met. Further, the Legislature defines the state "system" of public education to include, *inter alia*, public schools, and other educational services as may be provided by the Constitution and laws of this state. *Id.* § 228.041(1) (1994). "Other educational services" is defined to include "health services and such

Florida's statutory scheme thus appears to interpret the constitution as requiring adequate educational opportunities, including schools, programs, services, courses and classes. The Legislature has guaranteed that programs, services and facilities will be tailored to the educational needs of each child. Further, the Legislature seems to understand that the constitution requires an adequate education by means of a uniform system.

D. Florida Caselaw Requires an Adequate Education As Important to Enlightened Citizenship

Florida's courts have long recognized the importance of education and its vital link to democracy. In *State ex rel. Clark v. Henderson*, 137 Fla. 666, 672, 188 So. 351, 354 (1939) (emphasis added), a tax was upheld because it was levied to support the establishment and liberal maintenance of a "uniform system to promote education and good citizenship." "The purpose intended to be accomplished in establishing and liberally maintaining a uniform system of public free schools, is to advance and maintain proper standards of enlightened citizenship." 137 Fla. at 668, 188 So. at 353 (emphasis added).

Further, in *In Re Board of Public Instr. of Alachua County*, 160 Fla. 490, 35 So. 2d 579 (Fla. 1948), a decision upholding the purchase of land for a recreational camp, this Court discussed the term "adequate" in the context of an education statute. The Court found in the 1940's that:

special services and functions as may be authorized by law ... and as are considered necessary to improve, promote and protect the adequacy and efficiency of the state system of public education." *Id.* Thus, public schools which are part of the state system will have needs for "educational programs" that will make the system more adequate and efficient. Among those programs are those requested by *Amici* to help the poorest of the State's children to compete with others for jobs.

An adequate public school program is no longer limited to exploiting the three R's and acquiring such facilities as are necessary to do so. It contemplates the mental, manual and other skills that may not derive from academic training...training the character and emotions is just as important as training the mind if the product is to be a well balanced citizen."

...
What we are concerned with is a system to cope with this machine age that we are in danger of becoming victims of if we do not become its masters.

...
We have also learned that while skill in the three R's was adequate for a rural democracy when the nearest neighbor was three miles away and it was sometimes three hundred yards from the front door to the front gate, but that is entirely inadequate for an urban democracy where you speak to your neighbor through the window and sometimes live with a flock of them under the same roof. A democracy in which we cultivate our farms with machines, travel by automobile, send our mail by airplane and flip a gadget to warm the house, start breakfast and relieve much of the day's drudgery. Such is the social era that the public school program must prepare the citizen for.

160 Fla. at 492-95, 35 So. 2d at 579-81 (emphasis added). *Accord Taylor v. Board of Publ. Instr. of Lafayette County*, 157 Fla. 422, 424, 26 So. 2d 180, 181 (1946) (emphasis added) ("An adequate public school program now contemplates the development of skills that flow from the head, the hand, the heart. It must offer training in the laws of health, sanitation, dietetics, and recreation, in addition to subjects that are cultural.").

In addition to these cases, which began to define what sort of education was "adequate" for their times, two later cases articulate an individualized entitlement to education. In *Scavella v. School Bd. of Dade County*, 363 So. 2d 1095 (Fla. 1978), an exceptional student education case based on the state equal protection clause, this Court found that the State had an obligation to provide an adequate education for all children, including those with disabilities. *Id.* at 1099. And in *St. John's County*, 583 So. 2d at 641, this Court decided that the State's obligation was

to give to each child an equal opportunity to acquire a basic education based on Art. IX, § 1. Like *Scavella*, this case found that the right to education was a personal right, flowing to the direct benefit of each individual child.

These cases planted the seeds of all of the critical elements of an adequacy claim: the importance of education to good citizenship, the breadth of the meaning of an adequate education in modern times, the evolving meaning of the constitution, and the right to an adequate education belonging to each individual child.

E. Other States Have Found a Right to an Adequate Education By Construing Their Language To Require Minimum Qualitative Standards

1. Adequacy Requires Minimum Qualitative Standards

One could have equal opportunities which offer virtually no opportunity at all. The "adequacy" question, therefore, is less about whether opportunities are equal than about whether there is a substantive content requirement inherent in a state's education clause. *Hunt*, 624 So. 2d at 151. This concept of adequacy, then, rests on a constitutional guarantee of a minimum standard of education. Adequacy connotes sufficiency for a purpose or requirement; inadequacy is a failure to meet the standards or achieve the purposes of education as mandated by the Constitution. *Id.* at 126.

Courts have interpreted their education articles to demand a certain absolute minimum level of education, *i.e.*, adequacy. The highest courts in several states overturned their school financing schemes, based at least in part on a theory that the specific substantive level of education required by the education clause in their constitutions was not met. *McDuffy v. Secretary of the Exec. Office of Educ., et al.*, 615 N.E.2d 516, 554 (Mass. 1993) (adopting *Rose's*

capacities defining adequacy); *Rose*, 790 S.W.2d at 211, 213 (every child must be provided with an equal opportunity to have an adequate education with the goal of developing certain capacities);¹⁴ *Abbott v. Burke*, 575 A.2d 359, 368, 369 (N.J. 1990) (citations omitted) ("thorough and efficient" is not a "constitutional mandate governing expenditures per pupil, equal or otherwise, but a requirement of a specific substantive level of education . . . that all must attain" and "a thorough and efficient education requires a level of educational opportunity, a minimum level that will equip the student to become a citizen and a competitor in the labor market."); *Pauley v. Kelly*, 255 S.E.2d 859, 878 (W. Va. 1984) ("Thorough and Efficient Clause" requires development of certain high quality educational standards"); *Seattle*, 585 P.2d at 94 (constitutional duty "embraces broad educational opportunities needed in the contemporary setting to equip our children for their role as citizens and as potential competitors in today's market as well as in the marketplace of ideas"); *Hunt*, 624 So. 2d at 154-55 (also adopting *Rose's* capacities and holding that schoolchildren have the right to "quality education that is generous in its provision and that meets minimum standards of adequacy").

Courts have based their interpretations of adequacy, or minimum threshold content requirement, on the plain meaning of education clause terms, on the testimony of experts, on their or other state court's interpretations of the meaning of the terms, and on the purpose of the education provision in their constitution. Thus, the Alabama court implied a requirement of adequacy despite the fact that its education clause did not use that term; it used "liberal system." *Hunt*, 624 So. 2d at 152. Similarly, there is no reference to "uniform" in Alabama's education clause, yet a "uniform" requirement was implied from the word "system" of public schools.

¹⁴ See *infra* note 18.

Additionally, the Kentucky court analyzed the purpose of its education clause and, based on definitions from educational experts, inferred that "efficient" means "unitary, uniform, adequate and properly managed." *Rose*, 790 S.W.2d at 211, 212-13. Finally, the New Jersey court reasoned that although the state "never defined 'in some discernible way, the educational obligation,' 'the content of the constitutionally mandated educational opportunity'; it was 'an unstated standard.'" *Abbott*, 575 A.2d at 368 (citation omitted) (emphasis added). Thus, state courts have interpreted their one- or two-word constitutional provisions to have the meaning intended by the spirit of those constitutions.

Florida's constitution demands no less. It requires: "Adequate provision shall be made by law for a uniform system of free public schools." Art. IX, §1. As in other states, it is a mandate to adequately provide for a system in which each child shall be offered an equal opportunity to an adequate education. "Uniform" must mean equal educational opportunity. *See supra* § I(A). As described below, the *Abbott* court found that equal educational opportunity for disadvantaged children requires more than the provision of the same educational services as other children because low income children have greater needs. *See infra* § I(E)4. Further, Florida's constitution, unlike cases cited above in which an adequacy requirement was inferred, expressly requires the State to make its provision of an education to each child adequate. "Adequate provision" includes, but is not limited to, adequate dollars.¹⁵ The State also provides programs,

¹⁵ A failure to adequately fund the state's education system can mean a failure to adequately provide a minimal level of quality. The court in Montana said "as a result of failure to adequately fund the Foundation Program, . . . the State has failed to provide a system of quality public education granting to each student the equality of education opportunity guaranteed under [the constitution]." *Helena Elementary Sch. Dist. No. 1 v. State*, 769 P.2d 684, 690 (Mont. 1990).

services, courses, curriculum standards, etc. These, too, must meet a minimum level below which educational offerings may not fall. This Court, like those in other states, must reject any argument that the constitution means nothing more than an equally inferior opportunity for all of our children.¹⁶

2. Minimum Standards: Definitions of Adequacy

Supreme courts in other states have articulated the important features of a constitutionally adequate education by setting forth minimum acceptable standards. Kentucky and West Virginia courts have defined their constitutionally required educational standard in terms of output measures--areas in which capacities must be acquired by each student. The West Virginia court defined a thorough and efficient system as one which "develop[s] as best the state of education expertise allows, the minds, bodies and social morality of its charges to prepare them for useful and happy occupations, recreation and citizenship, and does so economically." *Pauley*, 255 S.E.2d at 877. The court then listed eight specific categories in which a child must develop

¹⁶ *Rose*, 790 S.W.2d at 211 (rejecting definition which would result in "uniformly deplorable conditions"); *Abbott*, 575 A.2d at 386 (cannot consign poorer children to inferior education on theory they cannot afford a better one or that they would not benefit from one); *Tennessee*, 851 S.W.2d at 156 (lowest common denominator is not meaning of education clause); *Bismarck Public Sch. Dist. 1 v. State*, 511 N.W.2d 247, 254 (N.D. 1994) (defendants concede that uniformly inadequate education would not satisfy constitution).

her/his capacity.¹⁷ The Kentucky court defined its mandate in terms of seven general output goals that must be provided for each child to have an adequate education.¹⁸

Even federal and state courts that deny a right to equal education acknowledge the right to a minimum standard of (or adequate) education.¹⁹

¹⁷ "Legally recognized elements in this definition are development in every child to his or her capacity of 1) literacy; 2) ability to add, subtract, multiply and divide numbers; 3) knowledge of government to the extent that the child will be equipped as a citizen to make informed choices among persons and issues that affect his own governance; 4) self-knowledge and knowledge of his or her total environment to allow the child to intelligently choose life work--to know his or her options; 5) work-training and advanced academic training as the child may intelligently choose; 6) recreational pursuits; 7) interests in all creative arts, such as music, theater, literature, and the visual arts; 8) social ethics, both behavioral and abstract, to facilitate compatibility with others in this society." *Id.*

¹⁸ "[A]n efficient system of education must have as its goal to provide each and every child with at least the seven following capacities: (i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic, social and political systems to enable the student to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (v) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market." *Rose*, 790 S.W.2d at 212. Massachusetts and Alabama have adopted these standards. *McDuffy*, 615 N.E.2d at 554; *Hunt*, 624 So. 2d at 155, 166.

¹⁹ The Supreme Court in *San Antonio Sch. Dist. v. Rodriguez*, 411 U.S. 1, 36-37, 93 S.Ct. 1278, 36 L.Ed. 16 (1973), has reasoned that "[e]ven if it were conceded that some identifiable quantum of education is ... constitutionally protected," plaintiffs there were unable to show that the finance scheme "fail[ed] to provide each child with an opportunity to acquire the basic minimal skills necessary for the enjoyment of the rights of speech and of full participation in the political process." And in *Hornbeck v. Somerset County Bd. of Educ.*, 458 A.2d 758, 780 (Md. 1983), because plaintiffs did not argue that "the school in any district failed to provide an adequate education measured by contemporary educational standards," the court was not forced to define a minimum standard, thus tacitly recognized that such a standard exists. *Id.* See also *Coalition for Equitable Sch. Fund v. State*, 811 P.2d 116, 126 (Ore. 1991) ("it is clear that a floor or minimum educational program may be implied by the term 'uniform and general' in context

3. Intent of Constitution is to Prepare Children for Citizenship and Work

Courts have repeatedly recognized that the most important aid in interpreting their constitution's education requirement is the spirit behind the requirement, *i.e.*, the importance of education to society. In *Abbott*, the court defined a constitutionally sufficient education as "one that will equip all the students of this state to perform their roles as citizens and competitors in the same society." 575 A.2d at 410.

In Massachusetts, the court held that Kentucky's guidelines "accord with our Constitution's emphasis on educating our children to become free citizens on whom the Commonwealth may rely to meet its needs and to further its interests." *McDuffy*, 615 N.E.2d at 555. The court found that "this duty is designed not only to serve the interests of the children, but more fundamentally, to prepare them to participate as free citizens of a free State" and to meet its needs. *Id.* at 548. *Accord Seattle*, 585 P.2d at 93-94 (state's constitutional duty "embraces broad educational opportunities needed in the contemporary setting to equip our children for their role as citizens and as potential competitors in today's market as well as in the market place of ideas").

In Florida, the constitutional history and caselaw support the same interpretation of the intent of this State's education clause.

of a constitutional duty to assure an adequate education"); *Kukor v. Grover*, 436 N.W.2d 568, 580 (Wis. 1989) (while there might be some level of education that is a constitutional prerequisite, claim before court focused on spending disparities rather than deprivation); *Olsen v. State*, 554 P.2d 139, 148 (Ore. 1976) (rejecting challenge that state education clause mandated equal spending, but stating that constitutional provision is satisfied if the state "provides for a minimum of educational opportunities in the district").

4. An Adequate Education for Poor Children Requires that the State Meet Their Educational Needs

New Jersey has defined equal educational opportunity in terms of educational needs holding that certain poorer urban school districts did not provide a constitutional education as required by the state constitution's education provision. *Abbott*, 575 A.2d at 363. The court noted that students in poorer urban districts were unable to participate fully as citizens and workers in society, or to achieve any level of equality in society. *Id.* at 408. Without an effective education, these poor students were likely to remain isolated in deteriorating cities. *Id.* The educational deficiencies of these districts had an impact not only on the students, but on the social, cultural and economic fabric of the state. *Id.* Failure to correct them would likely lead to despair, bitterness and hostility on the part of the minority, under-educated poor. *Id.* at 412. To provide a constitutional education, the State must ensure that the special disadvantages of these students are addressed so that they receive an education equally effective to that provided their more affluent peers. *Id.* at 408.

The *Abbott* court found that "in order to achieve the constitutional standard for the student from these poorer urban districts--the ability to function in that society entered by their relatively advantaged peers--the totality of the districts' educational offering must contain elements over and above those found in the affluent suburban district." *Id.* at 402.²⁰ The court found that the constitutional issue was that if, after comparing the education received by children in poor districts with children in rich districts, "it appears that the disadvantaged children will not be able

²⁰ See also *Roosevelt Elem. Sch. Dist. v. Bishop*, 877 P.2d 806, 816 (Ariz. 1994) ("We emphasize that a general and uniform school system does not require perfect equality or identity. For example, a system that acknowledges special needs would not run afoul of the uniformity clause.").

to compete in, and contribute to, the society entered by the relatively advantaged children," *id.*, then "something more must be added to the regular education in order to achieve the command of the Constitution." *Id.* at 403. ²¹ Thus, the court found that a "different approach to education is required if these districts and their students are to succeed." *Id.* at 400. "[T]here is solid agreement on the basic proposition that conventional education is totally inadequate to address the special problems of the urban poor. Something quite different is needed, something that deals not only with reading, writing, and arithmetic, but with the environment that shapes these students' lives and determines their educational needs." *Id.*

Florida has also recognized that greater needs sometimes require greater expenditures. In *Scavella*, 363 So. 2d at 1099, this Court found that Florida's constitution established a right to free public education. The Court upheld a statute which required greater expenditures for students with disabilities if greater expenditures were required by their particular conditions. A school board policy which capped the amount to be spent on a handicapped student's contract with a private institution was upheld if the amount was sufficient to give the students "their right to an adequate opportunity to receive free education." *Id.*

²¹ A constitution must be capable of changing with the times. It is not intended to be a static document but a living one with current effectiveness. *Marsh v. Chambers*, 463 U.S. 783, 816, 103 S.Ct. 3330, 77 L.Ed.2d 1019 (1983). "We must interpret the constitution in accordance with the demands of modern society or it will be in constant danger of becoming atrophied and, in fact, may even lose its original meaning." *Seattle*, 585 P.2d at 94. The Massachusetts court also noted that the content of the duty to educate will evolve with time. *McDuffy*, 615 N.E.2d at 555. Similarly, in New Jersey, the court found that what is thorough and efficient is "a continually changing concept," "a growing and evolving concept." *Abbott*, 575 A.2d at 367. So, too, must this Court's interpretation of what is meant by "adequate provision" in a system which provides "uniform" or equal educational opportunities to all children. In schools with large percentages of low income children, the needs of the times require that more resources to allow disadvantaged children to take their place in society and in the market place.

The needs of the children of Florida are as profound and disturbing as those of the urban poor of New Jersey. Florida's poor are clustered in schools within very large, countywide districts. In poor urban neighborhoods and in rural settings, these students attend schools with very high majorities of low income and minority students. In those schools, like in New Jersey's urban schools, an astounding number of poor students fail to achieve on nationally normed achievement tests. The court in New Jersey found that the failure rate on such "minimal test[s], the depth of that failure, testifies eloquently not just about their inadequate performance, but about their need." *Abbott*, 575 A.2d at 400. Indeed, it also testifies to the system's failure to meet that need.

II. EDUCATION IS A FUNDAMENTAL RIGHT UNDER FLORIDA'S CONSTITUTION

A. Education is Explicitly Guaranteed By Florida's Constitution

It is undisputed that states may provide greater protections for individual rights than the federal Constitution. *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 81, 100 S.Ct. 2035, 64 L.Ed.2d 741 (1980); accord *Division of Pari-Mutuel Wagering v. Winfield*, 477 So. 2d 544 (Fla. 1985). Indeed, in *In Re T.W.*, 551 So. 2d 1186, 1192 (Fla. 1989), this Court interpreted Florida's Constitution as providing greater protection of privacy interests than the federal Constitution.

Although the United States Supreme Court has not found that education is a fundamental right under the federal Constitution, its discussion of the method for determining fundamental rights is instructive. The Court teaches that the "key to discovering whether education is 'fundamental' ... lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution." *Rodriguez*, 411 U.S. at 33. Since education is not mentioned

in the Constitution, much less guaranteed, the Supreme Court declined to find that education was a federal constitutional right.

By sharp contrast to the federal Constitution, almost all state constitutions expressly require the states to provide for education. Indeed, the state's provision of education is at "the very apex of the function of a State." *Wisconsin v. Yoder*, 406 U.S. 205, 213, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972). No other state function is so uniformly recognized as an essential element of our society's well-being.

Thus, the explicit guarantees to education in Florida's Constitution support finding a fundamental right to education. As indicated, education is the subject of an entire Article in the state Constitution, Art. IX, and is mentioned in at least four other Articles. *See supra* § I(A). Indeed, the Commissioner of Education is a constitutional officer who sits on the cabinet. Art. IV, §4. Further, the State's obligation is stated in mandatory terms -- adequate provision shall be made for public education as the needs of the people require.

Five state supreme courts have found that education is a fundamental right in education cases striking down the states' finance schemes.²² In these cases, each court understood that its own constitution, rather than the federal courts' interpretation of the Fourteenth Amendment

²² Four of these cases found a fundamental right in the context of analyzing plaintiffs' equal protection claims. The other case, *Rose*, never reached the equal protection claim and found a fundamental right solely in the context of analyzing the education clause claim. *See also Seattle*, 585 P.2d at 91-92. Similarly, this Court can find education is a fundamental right relying solely on the education clause claim. Several other cases found education to be a fundamental right under equal protection analysis, but upheld the challenged finance schemes under various rationales, some because no adequacy claim was made. *Scott v. Commonwealth of Va.*, 443 S.E.2d 138, 142 (Va. 1994); *Skeen v. State*, 505 N.W.2d 299 (Minn. 1993); *Kukor*, 436 N.W.2d at 580; *Shofstal v. Hollins*, 515 P.2d 590, 592 (Ariz. 1973); *see also Bismarck*, 511 N.W.2d at 256 (court unable to declare finance scheme unconstitutional because four jurists required to do so; yet opinion affirmed trial court's declaration of unconstitutionality).

on education, governed. *Rose*, 790 S.W.2d at 201, 206, 212; *Washakie County Sch. Dist. v. Herschler*, 606 P.2d 310, 333 (Wyo.), *cert. denied sub. nom. Hot Springs County Sch. Dist. No. 1 v. Washakie County Sch. Dist. No. 1*, 449 U.S. 824 (1980); *Pauley*, 255 S.E.2d at 864, 878; *Horton v. Meskill*, 376 A.2d 359, 371-73 (Conn. 1977); *Serrano v. Priest*, 557 P.2d 929 (Cal. 1976) (en banc), *cert. denied*, 432 U.S. 907 (1977) ("*Serrano II*"). Each court relied heavily on the presence of an express mandate in its own state's education clause in determining that a fundamental right existed. See *Pauley*, 255 S.E.2d at 878 ("mandatory requirement [in the constitution] of a thorough and efficient system of free schools ... demonstrates that education is a fundamental constitutional right in this State"); *Washakie*, 606 P.2d at 333 (relied almost exclusively upon the mandate of the constitution's language in the education clause); *Horton*, 376 A.2d at 373-74 (fundamental right because of mandate); *Serrano II*, 557 P.2d at 952 (fundamental right because of mandate and importance to exercise of other fundamental rights);²³ *Seattle*, 585 P.2d at 91 ("declaration of the State's social, economic and educational duty as distinguished from a mere policy or moral obligation"). These states' constitutions have varying formulations of the educational mandate,²⁴ but more important than the specific language was the fact that education was an express mandate, as opposed to a simple grant of power or a moral obligation.

Also important was the purpose for the educational mandate. For example, the Kentucky court found that a "child's right to an adequate education is a fundamental one" because the

²³ *Horton* and *Serrano* applied the *Rodriguez* test, which requires the right be to be expressed or implicit in the Constitution, and easily found that education was a fundamental right under the state constitution because the right was expressed in each state's education clause.

²⁴ Several courts which found that education is a fundamental right have the term "uniform" in their education clause. *Skeen*, 505 N.W.2d at 302 ("general & uniform"); *Kukor*, 436 N.W.2d at 574 ("nearly uniform"); see *Bismarck*, 511 N.W.2d at 247 ("uniform").

education clause was a constitutional mandate, *Rose*, 790 S.W.2d at 201, 205-06, and because education was essential to the welfare of the citizens of the state.²⁵ Thus, the court's conclusion was not based on the particular wording of the education clause (in that case, "efficient system of common schools"), but on the importance of education as the basis for the "prosperity of a free people," for the development of "patriotism," and for a child's understanding of "government." *Id.* Similarly, the California Supreme Court reasoned that the distinctive and priceless function of education in our society warrants treating it as a fundamental interest. The court found that education was essential to maintain free enterprise and democracy and to allow all students to compete successfully in the marketplace, despite their disadvantaged background. Additionally, education was considered to be the bright hope for entry of the poor and oppressed into the mainstream of American society. The court further noted that the importance of education is the basis for it being compulsory.²⁶ *Serrano v. Priest*, 487 P.2d 1241, 1258-59 (Cal. 1971) (*Serrano I*).

Similarly, the concurring judge in the Connecticut case said the right was fundamental because: "education is the very essence and foundation of a civilized culture: it is the cohesive element that binds the fabric of society together. In a real sense, it is as necessary to a civilized society as food and shelter are to an individual. It is our fundamental legacy to the youth of our

²⁵ Additionally, in analyzing the history of the education provision, the court found that the framers attached great importance to education, emphasizing that education was essential to the welfare of the citizens of the state and that it should be regarded as a fundamental right in the state. *Rose*, 790 S.W.2d at 206.

²⁶ The compulsory attendance laws in Florida have been upheld based on the State's interest in the welfare of its children, including the provision of a basic education. *State v. Buckner*, 472 So. 2d 1228 (Fla. 2d DCA 1985). These compulsory requirements clearly involve infringement of liberty interests, but have been upheld because education is seen as a critical state function.

state to enable them to acquire knowledge and possess the ability to reason: for it is the ability to reason that separates man from all other forms of life." *Horton*, 376 A.2d at 377.

Probably the most eloquent expression of the importance of education is found in *Brown v. Board of Educ.*, 347 U.S. 483, 493, 74 S.Ct. 686, 98 L.Ed. 873 (1954), which protected the rights of minority children to an equal education:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

More recently, in *Plyler v. Doe*, 457 U.S. 202, 221, 102 S.Ct. 2382, 72 L.Ed. 786 (1982), which affirmed the rights of undocumented children to attend school, the Court again summarized its long held view of the importance of education in American society throughout history:

Both the importance of education in maintaining our basic institutions and the lasting impact of its deprivation on the life of the child, mark ... the acquisition of knowledge as matters of supreme importance. We have recognized the public schools as a most vital civic institution for the preservation of a democratic system of government, and as the primary vehicle for transmitting the values on which our society rests. ... In addition, education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of our society. We cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the

values and skills upon which our social order rests. (citations omitted).

Clearly, then, education is a fundamental right in Florida based on the explicit guarantee in the Florida Constitution as well as on the importance of education to Florida's citizens.

B. The Exercise of Florida's Other Constitutional Rights Depends on Education

In his dissenting opinion in *Rodriguez*, Justice Marshall set forth the test that had previously been used for determining fundamental rights. After examining the text of the Constitution, Justice Marshall instructs that the next "task in every case should be to determine the extent to which constitutionally guaranteed rights are dependent on interests not mentioned in the Constitution." *Rodriguez*, 411 U.S. at 102 (Marshall, J., dissenting). Under this test, even when interests are not explicitly mentioned in the Constitution, they may still be fundamental, e.g., the rights to travel, procreate, and vote in state elections. The closer the nexus between the specific constitutional guarantee (right to vote, right to speak) and the interest in the case (education), the more fundamental the right. *Id.* at 102-03.²⁷

²⁷ The Florida Supreme Court used a similar analysis in deciding that the fundamental right to have children through adoption "is so basic as to be inseparable from the rights to 'enjoy and defend life and liberty, (and) to pursue happiness, ... ' Florida Constitution, Article I, §2 F.S.A. (1968)," and therefore the State may not deny access to the courts to protect that right solely because of indigency. *Grissom v. Dade County*, 293 So. 2d 59, 62 (Fla. 1974).

Education is key to effectively exercising the fundamental rights in Florida's Declaration of Rights,²⁸ such as the rights to speech, assemble, instruct one's representatives, petition the government, work and be rewarded for industry. Art I, §§ 2, 4, 5 & 6.

Education is essential to the exercise of these rights in the same manner as the constitution's basic rights are essential to the pursuit of happiness and liberty. Art. I, § 2. This Court has interpreted liberty, an Art. I, § 2 right, to mean "that a person may be free in the enjoyment of his faculties; to be unhindered in the use of them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to freely pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper and necessary and essential." *Riley v. Sweat*, 110 Fla. 362, 365, 149 So. 48, 50 (1933) (emphasis added). Similarly, the right of free association for the advancement of beliefs and ideas is an inseparable part of liberty. *Cousins v. Wigoda*, 419 U.S. 477, 95 S.Ct. 541, 42 L.Ed.2d 595 (1975); *Gibson v. Florida Legislative Investigation Comm.*, 372 U.S. 359, 83 S.Ct. 889, 9 L.Ed.2d 929 (1963).

In interpreting their own constitutional provisions, several state supreme courts have tied education to two similar key rights, the right to become an effective citizen and the right to work

²⁸ The Declaration states that the enumerated rights are "among" the inalienable rights of natural persons in Florida, such as the right to "enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry and to acquire, possess and protect property." Art. I, § 2. Further, the constitution notes that the enunciation "of certain rights shall not be construed to deny or impair others retained by the people." Art. I, § 1. For example, prior to Florida's express provision of a right of privacy (Art. I, § 23), privacy was found to be embodied in the right to life, liberty and the pursuit of happiness. *Cason v. Baskin*, 155 Fla. 198, 213, 20 So. 2d 243, 250 (Fla. 1944). Analogously, while the equal protection clause specifies race, religion and handicap as suspect, these are not necessarily the complete list of suspect classes. *Schreiner v. McKenzie Tank Liner and Risk Mgmt. Services*, 408 So. 2d 711, 717 (Fla. 1st DCA 1982).

in order to become a productive member of society. For example, New Jersey interpreted "thorough and efficient" to mean:

more than teaching the skills needed to compete in the labor market, as critically important as that may be. It means being able to fulfill one's role as a citizen, a role that encompasses far more than merely registering to vote. It means the ability to participate fully in society, in the life of one's community, the ability to appreciate music, art, and literature, and the ability to share all of that with friends.

...
the constitutional standards requir[e] an education that will enable the urban poor to compete in the marketplace, to take their fair share of leadership and professional positions.

Abbott, 575 A.2d at 397, 412.

Education is thus key to preserving a democratic system and is vital to any concept of ordered liberty. Education is necessary to understand how government works, to stir interest in public issues and to prepare an informed electorate. It is also essential to carry out the rights to vote, assemble with others and press one's point of view, enlighten one's representatives, and petition the government. In today's economy, education also forms the critical basis for the skills and knowledge essential to entering the work force.

Federal courts have defined fundamental rights as those fundamental liberties which "qualify for heightened judicial protection" such that "neither liberty nor justice would exist if [they] were sacrificed," or as those "implicit in the concept of ordered liberty," or those liberties that are "deeply rooted in this Nation's history and tradition." *Palko v. Connecticut*, 302 U.S. 319, 325-26, 58 S.Ct. 149, 82 L.Ed. 288 (1937); *Moore v. East Cleveland*, 431 U.S. 494, 503, 97 S.Ct. 1932, 52 L.Ed. 531 (1977).

The right to vote is one such fundamental right that is dependent on an educated citizenry. From the very beginning of our nation, education was considered essential to the existence of a democracy. Thomas Jefferson thought education so important that he called education "a bulwark of a free people against tyranny." *Yoder*, 406 U.S. at 225. He believed that "education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence." *Id.* at 221. Thus, education is essential to the effective exercise of the right to vote which has been regarded as a "fundamental matter in a free and democratic society" because it is "preservative of other basic civil and political rights." *Reynolds v. Sims*, 377 U.S. 533, 562, 84 S.Ct. 1362, 12 L.Ed. 506 (1964); *see also Yick Wo v. Hopkins*, 118 U.S. 356, 370, 6 S.Ct. 1064, 30 L.Ed. 220 (1886).

Of freedom of speech, the Supreme Court has pronounced that "it is the matrix, the indispensable condition, of nearly every other form of freedom." *Palko*, 302 U.S. at 326. It includes "liberty of the mind as well as liberty of action." *Id.* There is a core connection between speech and education. The right to speak is meaningless unless the speaker is capable of articulating thoughts intelligently and persuasively. Further, the "marketplace of ideas" is an empty forum for those lacking basic communication tools. Likewise, the right to receive information becomes little more than a hollow privilege when the recipient has not been taught to read, assimilate and utilize available knowledge. Education directly affects the ability of a child to exercise her/his rights to speech both as a source and as a receiver of information and ideas, whatever interests s/he may pursue in life.

In sum, under this test which focuses on the nexus between a particular interest or value (education) and fundamental rights (*e.g.*, right to speak, to vote), the Florida constitution meets

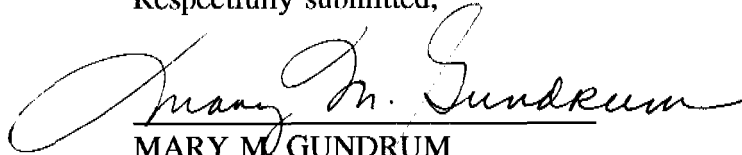
the test. Education is critical to the free and effective exercise of other fundamental rights which, in turn, are key to the concept of ordered liberty and citizenship. Unlike other services and benefits provided by the State, education is unique because it bears such a peculiarly close relationship to other rights and liberties accorded protection under the Florida Constitution. The connection between education and other state constitutional guarantees like the rights to speak freely, assemble, petition the government, instruct one's representatives, and be rewarded for one's industry is so close that these constitutionally guaranteed rights are dependent upon education. Consequently, each child's right to an adequate education is fundamental in Florida.

CONCLUSION

The children of Florida are entitled to an education which prepares them for their role as citizens and potential competitors in today's market and in the marketplace of ideas. The vast majority of children in schools attended primarily by poor children are not acquiring the skills needed to even minimally prepare them for these roles. Florida's constitutional language, history, caselaw, and legislative expressions require the State to furnish sufficient resources to meet minimum qualitative standards in a system that affords children an equal opportunity to achieve these educational goals. Further, an adequate education for Florida's poorest children requires additional resources to meet their needs. Also, the right to an adequate education is a fundamental right in Florida because it is expressly mandated in the constitution and because education is critical to the free and effective exercise of other fundamental rights. For all of the foregoing reasons, *Amici* ask this Court to reverse the lower court's dismissal of the action for failure to state a claim and to allow plaintiffs and *Amici* to prove their claims. *Amici* also ask

that this Court to declare education a fundamental right in Florida and declare that the State's children are entitled to an adequate education.

Respectfully submitted,



MARY M. GUNDRUM

Fla. Bar No. 937339

ALICE K. NELSON

Fla. Bar No. 211771

JODI SIEGEL

Fla. Bar No. 511617

Southern Legal Counsel, Inc.

1229 NW 12th Avenue

Gainesville, FL 32601-4113

(904) 955-2144

PETER ROOS

Calif. Bar No. 41228

Multicultural Education,

Training and Advocacy, Inc.

524 Union Street

San Francisco, CA 94133

(motion for foreign attorney pending)

JOHN RATLIFF

Fla. Bar No. 402559

CHRISTINA A. ZAWISZA

Fla. Bar No. 241725

Children First

Legal Services of Greater Miami, Inc.

3000 Biscayne Blvd., Suite 500

Miami, FL 33137

PACE McCONKIE

Lawyer's Committee for Civil

Rights Under Law

1450 G. Street, N.W.

Suite 400

Washington, DC 20005

(motion for foreign attorney pending)

ANN PICCARD
Fla. Bar No. 525677
GALE PINKSTON
Fla. Bar No. 836036
Bay Area Legal Services, Inc.
700 Twiggs Street, Suite 800
Tampa, FL 33602-4079

DEBORAH WEISSMAN
Fla. Bar No. 849235
Legal Services of North Carolina
Station Square
224 S. Dawson St.
P.O. Box 26087
Raleigh, NC 27611-6087

LISA CARMONA
Fla. Bar No. 843490
Florida Rural Legal Services
5700 Lake Worth Road, Ste. 212
Lake Worth, FL 33463

WAYNE L. THOMAS
Fla. Bar No. 139505
Carlton, Fields, Ward,
Emmanuel, Smith & Cutler
P.O. Box 3239
Tampa, FL 33601

ATTORNEYS FOR *AMICI*

OF COUNSEL:
STEFAN ROSENZWEIG
Fla. Bar No. 815187
Public Advocates, Inc.
1535 Mission St.
San Francisco, CA 94103

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. mail this 13th day of May, 1995, to:

T. TERRELL SESSUMS
CLAUDE H. TISON, JR.
Macfarlane Ausley Ferguson & McMullen
P.O. Box 1531
Tampa, Fl 33601

C. GRAHAM CAROTHERS
P.O. Box 391
Tallahassee, FL 32302-0391

RAYMOND EHRLICH
Holland & Knight
50 N. Laura St., Suite 3900
Jacksonville, FL 32202

A. LAMAR MATTHEWS, JR.
Matthews, Hutton & Eastmoore
P.O. Box 49377
Sarasota, FL 34230-6377

FRANK P. SCRUGGS, II
Steel Hector & Davis
200 S. Biscayne Blvd., Suite 4100
Miami, FL 33131-2310

Attorneys for Plaintiffs

BARBARA J. STAROS
General Counsel
Department of Education
The Capitol, PL 08
Tallahassee, FL 32399-0400
Attorney for Commissioner of Education

HARRY F. CHILES and JOSEPH C. MELLICHAMP II
Office of Attorney General
The Capitol
Tallahassee, FL 32399-1050
Attorneys for Governor and State Board of Education

DANIEL C. BROWN
Katz, Kutter, Haigler, Alderman, Marks & Bryant, P.A.
Highpoint Center, Ste. 1200
106 East College Avenue
Tallahassee, FL 32301
Attorneys for Speaker, Florida House of Representatives

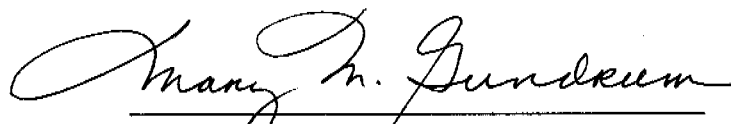
GERALD B. CURINGTON
Deputy General Counsel
B. ELAINE NEW
General Counsel
Florida House of Representatives
320 The Capitol
Tallahassee, FL 32399-1100
Attorneys for the Speaker of the House of Representatives
and the Florida House of Representatives

ROBERT L. SHEVIN
Stroock & Stroock & Lavan
3300 First Union Financial Center
200 South Biscayne Blvd.
Miami, FL 33131-2385
Attorneys for Speaker, Florida House of Representatives

D. STEPHEN KAHN
The Capitol
Room 408
Tallahassee, FL 32399-1100
Attorney for President of the Florida Senate

DEBORAH J. KEARNEY
J. HARDIN PETERSON, JR.
Executive Office of the Governor
The Capitol - Room 209
Tallahassee, FL 32399-0001
General Counsel for Governor Lawton Chiles

Attorneys for Defendants


ATTORNEYS FOR AMICI