

DA 8-28-95

047

IN THE SUPREME COURT OF FLORIDA

FILED
SID J. WHITE
JUN 19 1995
CLERK, SUPREME COURT
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Chief Deputy Clerk

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

Appellants

vs.

CASE NO. 85,375

LAWTON CHILES, Governor of the State
of Florida and Presiding Officer of
the State Board of Education;
DOUGLAS JAMERSON, Commissioner of
Education of the State of Florida;
STATE BOARD OF EDUCATION, a public
Florida corporation; **PAT THOMAS**,
as President of the Florida Senate;
and **BOLLEY L. JOHNSON**, as Speaker of
the Florida House of Representatives,

Appellees.

**ANSWER BRIEF OF APPELLEES COMMISSIONER OF EDUCATION
AND THE STATE BOARD OF EDUCATION**

*see substitution
JB*

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TABLE OF CONTENTS

	<u>PAGE(S)</u>
TABLE OF CASES.....	ii
TABLE OF AUTHORITIES.....	ii
PRELIMINARY STATEMENT.....	iv
STATEMENT OF THE CASE.....	1
SUMMARY OF ARGUMENT.....	1
ARGUMENT.....	3
POINT I -- THE TRIAL COURT CORRECTLY HELD THAT TO GRANT PLAINTIFFS RELIEF WOULD UNCONSTITUTIONALLY VIOLATE THE SEPARATION OF POWERS DOCTRINE.....	6
POINT II -- PLAINTIFFS IMPROPERLY SEEK AN ADVISORY OPINION.....	6
POINT III -- ARTICLE IX, SECTION I, ONLY MANDATES A "UNIFORM SYSTEM OF FREE PUBLIC SCHOOLS," NOT AN ENTITLEMENT TO A PARTICULAR LEVEL OF FUNDING....	6
POINT IV -- DECISIONS FROM OTHER STATES ARE INAPPOSITE..	6
POINT V -- THE INDIVIDUAL SCHOOL BOARD MEMBERS DO NOT HAVE TAXPAYER STANDING.....	6
POINT VI -- THE SCHOOL BOARDS LACK STANDING TO BRING THIS SUIT IN THEIR OFFICIAL CAPACITIES.....	6
POINT VII -- THE PROPER PARTY STATUS OF THE EXECUTIVE BRANCH DEFENDANTS.....	6
CONCLUSION.....	12
CERTIFICATE OF SERVICE.....	13

TABLE OF CASES

<u>CASE</u>	<u>PAGE(S)</u>
<u>Florida Department of Education v. Glasser,</u> 622 So. 2d 944 (Fla. 1993).....	1,2,5,7,10,11
<u>Gindl v. Department of Education,</u> 396 So. 2d 1105 (Fla. 1979).....	2
<u>Penn v. Pensacola-Escambia</u> <u>Governmental Center Authority,</u> 311 So. 2d 97 (Fla. 1973).....	2
<u>Retail Liquor Dealers Ass'n. v.</u> <u>Dade County,</u> 100 So. 2d 76 (Fla. 3d DCA 1958).....	10
<u>St. Johns County v. Northeast Fla.</u> <u>Builders Ass'n, Inc.,</u> 583 So. 2d 635 (Fla. 1991).....	2
<u>School Board of Escambia County v. State,</u> 353 So. 2d 834 (Fla. 1977).....	2

TABLE OF AUTHORITIES

<u>AUTHORITY</u>	<u>PAGE(S)</u>
 <u>FLORIDA CONSTITUTION</u>	
Article IX, section 1, Fla. Const.	i,6
 <u>FLORIDA STATUTES</u>	
Title XVI, Education.....	4,7
Chs. 228-239, Fla. Stat.....	7
Ch. 216, Fla. Stat.....	12

TABLE OF AUTHORITIES
(continued)

<u>AUTHORITY</u>	<u>PAGE(S)</u>
 <u>FLORIDA STATUTES</u>	
Ch. 228, Fla. Stat.....	4
Ch. 229, Fla. Stat.....	4
Ch. 230, Fla. Stat.....	4
Ch. 232, Fla. Stat.....	4
Ch. 233, Fla. Stat.....	4
Ch. 234, Fla. Stat.....	4
Ch. 235, Fla. Stat.....	4
Ch. 236, Fla. Stat.....	5
Ch. 237, Fla. Stat.....	5
Ch. 238, Fla. Stat.....	5
Ch. 239, Fla. Stat.....	5
Section 229.053(2)(e), Fla. Stat.....	12
Section 229.512(10), Fla. Stat.....	11
Section 236.081, Fla. Stat. (1991).....	7
Section 236.25, Fla. Stat. (1991).....	7
Section 236.25(1), Fla. Stat.....	7
 <u>LAWS OF FLORIDA</u>	
Ch. 91-193, §1, item 509, Laws of Fla.....	7
Ch. 94-357, Laws of Fla.....	3,7

PRELIMINARY STATEMENT

The Court below was the Second Judicial Circuit Court in and for Leon County, Florida. It will be referred to in the Answer Brief as "the trial court".

When the original complaint was filed in the trial court, Douglas Jamerson was the Commissioner of Education. Frank T. Brogan is now the Commissioner of Education.

References to the Record on Appeal will be prefixed with the letter R, followed by the appropriate page numbers, e.g. R-1-36. References to the transcript of the January 13, 1995, Hearing will be prefixed with the letters TR, followed by the appropriate page numbers, e.g. TR-1-95.

STATEMENT OF THE CASE

The Commissioner of Education and the State Board of Education accept and adopt the Statement of the Case set forth in the Appellee's, President of the Florida Senate and Speaker of the Florida House of Representatives, Answer Brief filed in this case.

SUMMARY OF ARGUMENT

The trial court correctly dismissed the Amended and Restated Complaint. (R-304-311). Further, the Order dismissing the Amended and Restated Complaint stated:

At such hearing the Plaintiffs conceded that no cause of action was stated against any Defendant other than PAT THOMAS, as President of the Senate, and BOLLEY L. JOHNSON, as Speaker of the House of Representatives, and stipulated to a dismissal of such claims.

(R-304).

This is an appropriations case. The interests of the other Defendants herein are substantially different from the interests of the original Defendant in the Florida Department of Education v. Glasser, 622 So. 2d 944 (Fla. 1993), (hereinafter "Glasser"). The Glasser trial court ruling involved the declaration of unconstitutionality of laws in a case where local officials sued local officials. The danger of the validity of state programs being dependent upon local officials suing non-interested local officials does not exist here, as it did in Glasser. This case does not involve a constitutional challenge to any particular statute; there is no actual present, adverse and antagonistic interest between the Plaintiffs and these Defendants; and this case seeks relief that cannot be granted as to the Commissioner

of Education and State Board of Education -- they cannot appropriate funds. Plaintiffs' Amended and Restated Complaint is devoid of any allegations that these officials either failed to perform their constitutional mandatory duties as Commissioner and the State of Board of Education or failed to exercise due care in the performance of their duties in those roles.

ARGUMENT

This case is an appropriations case. This case is not about whether the state should properly educate our children. The Commissioner of Education and the members of the State Board of Education do not dispute the importance of education to our society, and continually try to improve the education of Florida's schoolchildren.

The Plaintiffs correctly conceded at the hearing in this case that they had not stated a cause of action against the Executive Branch Defendants.

In their Amended and Restated Complaint, the Plaintiffs asked the trial court to declare that the Defendants "have failed to make adequate provision for a uniform system of free public schools in Florida, and thereby have failed to discharge their constitutional responsibilities." Amended and Restated Complaint, Prayer for Relief, paragraph 2. (R-174). They also asked the trial court to review all "newly enacted laws, including future General Appropriations Acts and Implementing Provisions relating to funds for free public schools and to schedule such further hearings as may be required to monitor and evaluate such legislation and appropriations." Amended and Restated Complaint, Prayer for Relief, paragraph 2.¹ (R-174).

¹ This action is brought against the backdrop of a long line of unsuccessful challenges to Florida's school funding. See, Florida Department of Education v. Glasser, 622 So. 2d 944 (Fla. 1993); St. Johns County v. Northeast Fla. Builders Ass'n, Inc., 583 So. 2d 635 (Fla. 1991); Gindl v. Department of Education, 396 So. 2d 1105 (Fla. 1979); School Board of Escambia County v. State, 353 So. 2d 834 (Fla. 1977); Penn v. Pensacola-Escambia Governmental Center Authority, 311 So. 2d 97 (Fla. 1973).

This case is about who makes the tough political decisions on limited tax dollars among competing interests. These tough political decisions must be answered by the legislative branch of government. The legislative process necessarily involves the special expertise of the Legislature's staff, its advisors on public finances, the Department of Education, together with input from the public and the education community as a whole. The legislative process is equipped to mediate among the many competing public needs in this state and to determine the appropriate and achievable level of funding for each need, including education.

The Plaintiffs attempt to cloak what they allege in their Amended and Restated Complaint. Considering the Amended and Restated Complaint as written, rather than as depicted in the brief, the heart of this case is the allegation that the "total of such appropriated funds [Ch. 94-357, General Appropriations Act] is constitutionally inadequate." Paragraph 75(H), Amended and Restated Complaint. (R-172-173).

The Legislature has made adequate provision by law for a uniform system of free public schools, with the passage of the following statutory chapters: Title XVI, Education, including: Ch. 228, Fla. Stat., (Public Education: General Provisions); Ch. 229, Fla. Stat., (Functions of State Educational Agencies); Ch. 230, Fla. Stat., (District School System); Ch. 232, Fla. Stat., (Compulsory School Attendance; Child Welfare); Ch. 233, Fla. Stat., (Courses of Study and Instructional Aids); Ch. 234, Fla. Stat., (Transportation of School Children); Ch. 235, Fla. Stat.,

(Educational Facilities); Ch. 236, Fla. Stat., (Finance and Taxation, Schools); Ch. 237, Fla. Stat., (Financial Accounts and Expenditures); Ch. 238, Fla. Stat., (Retirement System for School Teacher); and, Ch. 239, Fla. Stat., (Vocational, Adult and Community Education).

As Justice Kogan stated in his concurring opinion in

Glasser:

The first clause of article IX, section 1 of the Florida Constitution requires a uniform school system to be provided by law. This 'uniformity clause' manifestly gives authority to the Legislature to take steps 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.

Glasser, 622 So. 2d at 949-950, (e.s., footnote omitted).

These Defendants respectfully suggest that this Court should show the same deference in this case to the political question involved.

POINTS I- VI

The Commissioner of Education and the State Board of Education adopt and incorporate by reference the following points set forth in the Answer Brief filed by the President of the Florida Senate and Speaker of the Florida House of Representatives in this case:

POINT I

THE TRIAL COURT CORRECTLY HELD THAT TO GRANT PLAINTIFFS RELIEF WOULD UNCONSTITUTIONALLY VIOLATE THE SEPARATION OF POWERS DOCTRINE.

POINT II

PLAINTIFFS IMPROPERLY SEEK AN ADVISORY OPINION.

POINT III

ARTICLE IX, SECTION I, ONLY MANDATES A "UNIFORM SYSTEM OF FREE PUBLIC SCHOOLS," NOT AN ENTITLEMENT TO A PARTICULAR LEVEL OF FUNDING.

POINT IV

DECISIONS FROM OTHER STATES ARE INAPPOSITE.

POINT V

THE INDIVIDUAL SCHOOL BOARD MEMBERS DO NOT HAVE TAXPAYER STANDING.

POINT VI

THE SCHOOL BOARDS LACK STANDING TO BRING THIS SUIT IN THEIR OFFICIAL CAPACITIES.

POINT VII

THE PROPER PARTY STATUS OF THE EXECUTIVE BRANCH DEFENDANTS

Plaintiff's Initial Brief asserts that the appropriate Defendants have been joined in this case. They acknowledge that the State Board of Education and Commissioner of Education cannot themselves pass legislation, but assert they can promulgate rules

and policies and play a vital role in the state's education system. (Initial Brief at 7.) These Defendants concur that they play a vital role in the state's education system. However, the fact that these Defendants cannot pass legislation and more importantly, cannot appropriate funds, is key to this case.

The Commissioner of Education and State Board of Education are mindful of the Court's admonition to the Glasser Plaintiffs for their failure to name the Department of Education or any other state agency in that case. 622 So. 2d at 948. However, Glasser involved a constitutional challenge to § 236.25(1), Fla. Stat., and Ch. 91-193, §1, item 509, Laws of Fla. 622 So. 2d at 946. The complaint in this case is substantially different from the complaint in Glasser.

Plaintiffs herein do not directly plead that the 1994 General Appropriations Act (Ch. 94-357, Laws of Fla.) is unconstitutional. Nor do they plead that the public education provisions in Title XVI (Chs. 228-239, Fla. Stat.) are unconstitutional in toto. Nor did they plead that any specific statutory provision is unconstitutional. Instead, as the lower tribunal noted, "they assert the judicially unmanageable claim that the entire system is holistically defective and underfunded." Order Dismissing Amended and Restated Complaint with Prejudice (Order) p. 2. (R-305). Against this backdrop, Plaintiffs make no representations as to what statutory provisions they are contesting. Unlike Glasser, in which a specific part of the overall funding formula was at issue,² there

² See, §§ 236.081, 236.25, Fla. Stat. (1991).

are no specific challenges in this case, "it all has to do with funding." (TR-71, statement by the trial court).

The following discussion took place between the trial court and the attorneys arguing for the Plaintiffs. This discussion sets forth the trial court's and the Plaintiffs' concerns:

THE COURT: Well, let me stop you. Have you alleged in this complaint that the Commissioner of Education, by enacting that rule that it violated its statutory obligation or its constitutional obligation, you're asking this court to declare that administrative rule invalid?

MR. TISON: If Your Honor --

THE COURT: Be set aside?

MR. TISON: I don't believe there is a specific allegation that the Commissioner has in a particular act as Commissioner specifically violated any duty. What we have alleged is that the system of free public education, for which the Commissioner has constitutional responsibility and for which the Board has a constitutional responsibility and for which the Governor and the Legislature have constitutional responsibility, is broke, is not working. It is our understanding that we are required to join as defendants all of those officers, and I mentioned Glasser earlier, as indicating this. We believe that we are required to join as defendants all of those constitutional officers who are charged with the responsibility of maintaining and creating the system of education.

THE COURT: Well, that's the only reason --

MR. TISON: That's the only reason they are there, is because it is part of their official duties under the Constitution to maintain the system. We understand them to be necessary parties under Glasser. Now, if the Court doesn't affect the overall course of this case in any respect, because there are other defendants.

THE COURT: Well, if you don't allege anything that they have done that's in violation of the law and if you want the Court to correct it, I

don't see how they should be in the lawsuit.

MR. TISON: Well, it may be that some of them ought to be plaintiffs, but that's another question altogether; but at this point, as I say, the Governor hasn't asked for anything, so that's premature.

THE COURT: Well, I doubt if anybody in the whole lawsuit doesn't want to provide a good education for people of the State of Florida.

MR. TISON: Well, certainly --

THE COURT: I don't see any allegation of an antagonistic interest anywhere in this lawsuit.
(e.s.)

(TR-46-48).

* * *

THE COURT: Well, I am looking at the sentence and the clause that precedes that in paragraph E on page 23. It says, "The defendants have imposed on the local school districts burdensome administrative and service requirements that are often only indirectly related to the provision of educational services without providing adequate funding to meet such requirements, but would result in local schools and forced it to divert funds."

It all has to do with funding, as I see it.

MR. SESSUMS: It does. You can either remove unnecessary requirements and remove the need for funding, or if they are necessary requirements, there is an obligation, we believe, to make sure that proper funding is provided.

THE COURT: Well, I think if you are going to state a cause of action against them, you need to tell us what administrative rules you think are unlawful and ask the Court to declare them to be invalid and unlawful. I think those defendants ought to be dismissed from this action.

MR. SESSUMS: The Governor and the State Board of Education?

THE COURT: Absolutely.

MR. SESSUMS: We have no great problem with that.
You raised a second question about the Legislature
being a part of it. (e.s.)

(TR-71-72). Based upon this discussion, the trial court
correctly stated:

At such hearing the Plaintiffs conceded that
no cause of action was stated against any
Defendant other than PAT THOMAS, as President
of the Senate, and BOLLEY L. JOHNSON, as
Speaker of the House of Representatives, and
stipulated to a dismissal of such claims.

Order at p. 1. (R-304).

The interests of the other Defendants herein are
substantially different from the interests of the original
Defendant in the Glasser case. In Glasser, the school board
initially sued only the Tax Collector, a non-interested local
official, "without naming the Department of Education or any
other state agency." 622 So. 2d at 948. Thus, the Glasser trial
court ruling involved the declaration of unconstitutionality of
laws in a case where local officials sued local officials.³ The
Glasser Court was concerned that "trial by surprise" in cases of
statewide importance is bad public policy.⁴ Glasser at 948. In
contrast, the danger of the validity of state programs being
dependent upon local officials suing non-interested local
officials does not exist here, as it did in Glasser, because
other state defendants were named herein.

³ This was also the case in Retail Liquor Dealers Ass'n. v. Dade
County, 100 So. 2d 76 (Fla. 3d DCA 1958), cited in Glasser, 622
So. 2d at 948.

⁴ This comment by the Court followed a discussion of the method
and timing of the notice of hearing to the State Defendants.
Notice is not an issue in this case.

The Glasser Court noted that all persons who have an actual present adverse and antagonistic interest should be before the court. Glasser at 948. However, in the discussion concerning the Executive Branch Defendants with Plaintiffs counsel, the trial court below stated that it failed to see any allegation of an antagonistic interest anywhere in this lawsuit. (TR-48).

Thus, the differences between Glasser and this case are three: This case does not involve a constitutional challenge to any particular statute; there is no actual present, adverse and antagonistic interest between the Plaintiffs and these Defendants; and in this case, Plaintiffs seek relief that cannot be granted as to the Commissioner of Education and State Board of Education -- they cannot appropriate funds.

The Prayer for Relief seeks in part that the trial court declare that the Defendants, individually and collectively, have failed to make adequate provision for a uniform system of free public schools and thereby have failed to discharge their constitutional responsibilities. Paragraph 75(H), Amended and Restated Complaint. (R-172-173).

Plaintiffs have not alleged that the Commissioner of Education failed to submit to the State Board of Education, expenditures for the State Board of Education, the Commissioner of Education, and all of the boards, institutions, agencies and services under the general supervision of the State Board of Education (§ 229.512(10), Fla. Stat.); nor have the Plaintiffs alleged that the State Board of Education failed to adopt and transmit to the Governor estimates of such expenditures

(§ 229.053(2)(e), Fla. Stat.); nor have Plaintiffs alleged that the Governor failed to submit a recommended budget to Legislature (Ch. 216, Fla. Stat.).


The Defendants Commissioner of Education and the State Board of Education, consisting of the Governor and each of the six elected Cabinet Officials, have been sued in their official capacities. Plaintiffs' Amended and Restated Complaint is devoid of any allegations that these officials either failed to perform their constitutional mandatory duties as Commissioner and the State of Board of Education or failed to exercise due care in the performance of their duties in those roles.

CONCLUSION

Based upon the reasons set forth in Points I-VI of the Answer Brief filed by Defendants President of the Florida Senate and Speaker of the Florida House of Representatives, and the foregoing arguments and authorities, the Order Dismissing the Amended and Restated Complaint with Prejudice, should be affirmed.

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 U.S. Mail to those persons listed on Attachment "A", this 19th day of June, 1995.



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