IN THE SUPREME COURT OF FLORIDA

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

Appellants,

v.

LAWTON CHILES, et al.,

Appellees.
_____/

Case No. 85,375

Appeal from the Second Judicial Circuit Court
In and For Leon County, Florida
On Certification From the First District Court of Appeal

INITIAL BRIEF OF THE COALITION FOR ADEQUACY AND SCHOOL FUNDING, INC. et al.

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III. PRELIMINARY STATEMENT

Appellants in this appeal, plaintiffs below, are the Coalition for Adequacy and Fairness in School Funding, Inc., a Florida non-profit corporation, eleven Florida public school students and their parents and guardians, Mary Heather Alderman, Roy Alderman, Mary Alderman, Clayton Archey, Hope Archey, Judy Archey, Steven Aranaga, Cheryl Aranaga, Cassie Black, Jerry Black, Kimberly Christensen, Lee Christensen, Gwen Christensen, Chancellor Donald, Nettie Donald, Ashley Fils-Aime, Daniel Fils-Aime, Eugenie Fils-Aime, Jason Garcia, Annie Garcia, Travis Hunter, Glenn Hunter, Kimberly Register, and Paula Register, twenty-three citizens and taxpayers of the State of Florida who are also members of various school boards in this state, Samuel S. Agner, Jr., Glenn Barrington, Brenda H. Carlton, Dwight Crews, Ruthann Derrico, James R. Edwards, Glenn Hunter, Carol Kurdell, Frank J. Lagotic, William L. Marine, Jr., Yvonne T. McKitrick, Janice K. Mee, Joe E. Newsome, Peter Pollard, Sam Rampello, Doris Ross Reddick, Marion S. Rodgers, Linda Sutherland, James H. Townsend, Paula Veible, Odis D. Whiddon, Andrea Whiteley and Donald V. Wiggins, and forty-five Florida School Boards from the following counties: Alachua, Baker, Bay, Bradford, Brevard, Calhoun, Charlotte, Citrus, Clay, Columbia, Dixie, Escambia, Flagler, Franklin, Gadsden, Gulf, Hamilton, Hardee, Hernando, Highlands, Hillsborough, Indian River, Jackson, Jefferson, Lafayette, Lee, Leon, Liberty, Madison, Manatee, Marion, Nassau, Orange, Osceola, Pasco, Polk, Putnam, St. Johns, Santa Rosa, Sarasota, Sumter, Taylor, Volusia, Wakulla, and Washington.

These individuals and entities will collectively be referred to as "plaintiffs."

Appellees in this appeal, defendants below, are Lawton Chiles, as Governor of the State of Florida and Presiding Officer of the State Board of Education; Douglas L. Jamerson, as Commissioner of Education of the State of Florida; The 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. These individuals and entities will collectively be referred to as "defendants."[1]

The record on appeal will be cited as "R.___." The transcript of the hearing conducted by the trial court on January 13, 1995 on defendants' motions to dismiss will be cited as "Tr.___."

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[1] As is discussed in the Statement of Case and Facts, although technically an appellee, the Governor has not appeared in this case.

IV. STATEMENT OF THE CASE AND FACTS

Plaintiffs filed their original complaint in this action in the Circuit Court for the Second Judicial Circuit on April 22, 1994. R. 1-36. On August 30, 1994, plaintiffs filed their amended and restated complaint (hereinafter "complaint") naming Lawton Chiles, as Governor of the State of Florida and Presiding Officer of the State Board of Education, Douglas L. Jamerson, as Commissioner of Education, The State Board of Education, Pat Thomas, as President of the Florida Senate, and Bolley L. Johnson, as Speaker of the Florida House of Representatives, as defendants. R. 142-78. In sum, plaintiffs' complaint alleges that the right to an adequate education is a fundamental right of the citizens of Florida under the Florida Constitution and that defendants have violated, and are continuing to violate, plaintiffs' rights by failing to make adequate provision for public education. Id.

More specifically, plaintiffs' complaint alleges that defendants have violated their constitutional rights in, among others, the following ways: providing a state funding mechanism which is inadequate to allow students to gain proficiency in the English language and which deploys resources in a manner that exacerbates the deprivations of social and economic conditions; imposing on local school districts burdensome and unnecessary administrative requirements which only indirectly relate to the provision of educational services; failing to make adequate provision for students who have special educational needs; prohibiting local school districts from raising sufficient

additional revenue to provide adequate educational opportunities; failing to make adequate provision for compensating personnel; and failing to provide adequate funding for necessary improvements to educational physical plant and other necessary capital projects. R. 160-70.

As a result of these shortcomings, plaintiffs' complaint alleges that Florida's system of public schools has been rendered inadequate in, among others, the following respects: many students in every school district fail to achieve sufficient oral and written communication skills to enable them to function in greater society; Florida public schools have experienced an unusually and abnormally high rate of student dropouts and many students who do graduate have failed to adequately learn basic skills; an inordinately large number of students who graduate from Florida's public schools who subsequently attend institutions of higher learning are required to spend great portions of their higher education in remedial courses; foreign-born students do not learn proficiency in the English language; and qualified teachers leave the system because of inadequate resources and conditions not conducive to the educational process. R. 170-73.

The primary relief sought by plaintiffs' one count declaratory judgment complaint is a declaration that the right to an adequate education is fundamental under the Florida Constitution, that the state is constitutionally obligated to provide adequate resources to provide a uniform system of free public schools, and that defendants have failed to make such provision. R. 174.

With consent of plaintiffs, the Governor did not appear below and has not filed a response to the complaint. The Florida Legislature, through the President of the Florida Senate and the Speaker of the Florida House of Representatives, and the State Board of Education and the Commissioner of Education filed motions to dismiss the complaint. R. 189-206; 207-18. Argument was heard on these motions on January 13, 1995 before the Honorable Ralph E. Smith. On January 31, 1995, Judge Smith entered an order granting defendants' motions to dismiss with prejudice finding, inter alia, that: the court lacks subject matter jurisdiction on the basis of separation of powers, plaintiffs' complaint involves a non-justiciable political question, education is not a fundamental right under the Florida Constitution, declaratory relief is not available because plaintiffs simply seek an advisory opinion, certain plaintiffs do not have standing and those who do have standing have no rights which were alleged to be violated, and the court lacks subject matter jurisdiction because improper defendants have been joined. R. 304-11.

Plaintiffs filed a timely notice of appeal of the January 31, 1995 order to the First District Court of Appeal. R. 407-13; 414-26. On March 8, 1995, all parties filed a joint suggestion that the Court of Appeal certify this case to be one of great public importance which required immediate resolution by this court. The Court of Appeal agreed and by order dated March 13, 1995 certified the appeal to this court. This court accepted jurisdiction by order dated March 29, 1995.

V. SUMMARY OF ARGUMENT

The trial court erred in dismissing the complaint and refusing to consider plaintiffs' claims on the merits. The trial court's ruling violates numerous aspects of Florida law. The order should be reversed and the case remanded for further proceedings.

The trial court has subject matter jurisdiction over this case. Pursuant to the clear language of Article IX, Section 1 of the Florida Constitution, education is a fundamental right in this state. This has been recognized both by decisions of this court which have recognized the critical, "basic" nature of education in our state and, at least implicitly, by the legislature which has passed laws requiring mandatory school attendance for children between the ages of six and sixteen. Plaintiffs have alleged their constitutional right to an adequate education is being violated; it is the function of the judiciary to adjudicate this claim.

For relief, plaintiffs seek only a declaration that education is a fundamental right and that defendants are failing in their obligation to provide an adequate education to the school children of this state. Plaintiffs are confident that when such a declaration is issued, the defendants will discharge their responsibilities appropriately. Thus, plaintiffs are not asking the court to usurp the legislature's authority to appropriate funds but simply for the court to exercise its judicial authority to prevent any further violation of plaintiffs' rights.

Nor are plaintiffs asking this court to make a political decision by elevating one of several competing legislative

interests for special consideration. To the contrary, plaintiffs merely ask the court to recognize and respect the decision made when the Florida Constitution was ratified that education is a fundamental right. It is the right to an adequate education which, with few others, is specifically enumerated in our Constitution. Other legislative interests, while legitimate, do not rise to the constitutional level as does education.

Although cases from other states quite obviously interpret the different education provisions found in their respective state constitutions, the overwhelming majority of these cases make clear that the type of issues cited by the trial court in dismissing the complaint - - separation of powers, political question, etc. - - are not an impediment to the judiciary's consideration of the merits of plaintiffs' claim. The courts of our sister states have recognized that the judiciary must not abdicate its role to protect the right of children to an education and have almost uniformly considered claims like those raised by plaintiffs on the merits. This court should similarly agree that plaintiffs' claims are worthy of consideration.

Finally, the proper parties are represented in this case. Plaintiffs, school children and parents, school board members, forty-five school boards, and the Coalition for Adequacy and Fairness in School Funding, Inc., all have standing. Each constituent group of plaintiffs has a vital interest in education and is affected by the continuing lack of adequate educational opportunities in this state. Defendants are those individuals and

entities who control education at the state level by having authority to enact statutes or rules and policies which impact every local school district. With the exception of the Governor, all have taken an actual, present, adverse, and antagonistic position to plaintiffs in this lawsuit. Each was properly joined as a defendant and should be required to respond on the merits in further proceedings below.

VI. ARGUMENT: THE TRIAL COURT ERRED IN DISMISSING THE COMPLAINT.

A. THE APPROPRIATE DEFENDANTS HAVE BEEN JOINED IN THIS CASE.

Although many issues raised by the trial court's order merit discussion, plaintiffs will begin with the most basic issue - - who the proper defendants are in this case. Named as defendants in the amended and restated complaint are the Governor in his capacities as Governor and Presiding Officer of the State Board of Education, the Commissioner of Education, the State Board of Education, the President of the Florida Senate, and the Speaker of the Florida House of Representatives. In determining the proper parties to sue in this action, plaintiffs have attempted to heed this court's blunt warning in Florida Dep't of Educ. v. Glasser, 622 So. 2d 944 (Fla. 1993), to join "all persons who have an actual, present, adverse, and antagonistic interest in the subject matter." Id. at 948 (citations omitted).

Although several defendants took the position in the trial court that they had no authority over the subject of this litigation, it is clear that each (with the exception of the Governor who, with consent of plaintiffs, did not file a response in the trial court) has taken a present, adverse, and antagonistic position to that espoused by plaintiffs. While certain defendants such as the State Board of Education and the Commissioner of Education cannot themselves pass legislation, they can promulgate rules and policies and it is clear these defendants play a vital role in the state's education system. Certainly, they are as involved, and as responsible for, the issues involved in this case

as was the Department of Education which this court held should have been a party in Glasser.

In its order, the trial court recited that plaintiffs "conceded" they stated no cause of action against any defendants other than the President of the Senate and Speaker of the House. R. 304. This is not correct. Although at hearing counsel for plaintiffs indicated some indifference to whether the Governor and Commissioner of Education remained parties, counsel clearly stated plaintiffs' continuing belief that those individuals are necessary parties based on this court's opinion in Glasser. Tr. 51.

The trial court also ruled that plaintiffs had failed to allege a jurisdictional basis for a claim against the President of the Senate, Speaker of the House, or their respective houses of the legislature. R. 309. This ruling apparently arose from the trial court's articulated concern that the legislature was not subject to suit. Tr. 73-4. This concern is not justified, however, and, consequently, the court's ruling was in error.

Cases in which the legislature, one of its constituent bodies, or individual legislative leaders have appeared as plaintiff, defendant, or amicus are legion. See, e.g., Department of Revenue v. Kuhnlein, 646 So. 2d 717, 726 (Fla. 1994), petition for cert. filed, 63 U.S.L.W. 3660 (Feb. 27, 1995)(No. 1443)(Florida Legislature, amicus); Locke v. Hawkes, 595 So. 2d 32, 34 (Fla. 1992)(Florida House of Representatives, petitioner); Chiles v. Children A, B, C, D, E, and F, 589 So. 2d 260, 262 (Fla. 1991)(Speaker of the Florida House of Representatives and Chairman

of the Committee on Appropriations of the Florida House of Representatives, amici); Florida House of Representatives v. Martinez, 555 So. 2d 839 (Fla. 1990)(Florida House of Representatives, petitioner); Dade County Classroom Teachers Ass'n Inc. v. The Legislature, 269 So. 2d 684, 685 (Fla. 1974)(the Legislature of the State of Florida, defendant). Moreover, the Rules adopted by the Florida House of Representatives pursuant to Article III, Section 4(e) of the Florida Constitution provide that the Speaker may "initiate, defend, intervene in, or otherwise participate in any suit on behalf of the House, a Committee of the House, a Member of the House...." Rule 2.4, Florida House of Representative Rules. Thus, it appears well settled by rule and caselaw that the proper defendants have been joined in this case.

Of course, it is not plaintiffs' intent to sue any particular individual or entity unnecessarily. Plaintiffs simply desire to comply with this court's decision in Glasser and have all of the proper parties before the court so that full relief can be granted. If the trial court believed a proper party had not been joined, it should have permitted plaintiffs to amend to add that party. Similarly, if this court does not agree with plaintiffs that the proper parties have been joined, plaintiffs respectfully request the court to tell them who should be named as a defendant so that those parties can be joined.

B. THE TRIAL COURT HAS SUBJECT MATTER JURISDICTION TO DETERMINE WHETHER DEFENDANTS ARE MEETING THEIR CONSTITUTIONAL OBLIGATION TO PROVIDE AN ADEQUATE EDUCATION TO FLORIDA'S PUBLIC SCHOOL CHILDREN.

The trial court's order dismissing the complaint with prejudice raises and commingles numerous legal concepts in support of its conclusion that the court lacks subject matter jurisdiction to hear this case. Whether couched under the rubrics of separation of powers, standing, or "political" question, the court's order has one theme adopted almost verbatim from defendants' argument - -that the courts of the State of Florida lack the requisite competence to determine the issues raised by this case. Indeed, before the trial court, defendants exerted much energy in their successful effort to convince the court that it should not consider this case on the merits because it would be difficult and time-consuming or, in the court's phrase, "judicially unmanageable." R. 305.

The time commitment required of a court and the complexity of the issues presented have never been, and must never be allowed to become, factors considered by the judiciary in determining whether to even consider a case. See, e.g., Rose v. Palm Beach County, 361 So. 2d 135, 137 (Fla. 1978)(judiciary may not abdicate its responsibility and defer to legislative or administrative arrangements). Courts do not measure subject matter jurisdiction against a yardstick of complexity. If these factors were considered, the very schools we now discuss might still be racially segregated, for it was only with difficult, persistent, and courageous intervention by the judiciary that many elected officials of another generation were compelled to follow the

commands of our Constitution for equal education. Plaintiffs here merely seek a similar opportunity to vindicate their constitutional rights to adequate education. As is fully explained below, the trial court was wrong to deprive plaintiffs of that opportunity. Accordingly, the order dismissing the complaint should be reversed and the case remanded for consideration on the merits.

1. EDUCATION IS A FUNDAMENTAL RIGHT IN FLORIDA.

> "The right to education is basic in a democracy. Without it, neither the student nor the state has a future."

Plaintiffs could not state their case more clearly or succinctly. Plaintiffs cannot take credit for these insightful comments, however. Rather, the quote comes directly from this court's decision in Glasser delivered a scant two years ago. Glasser, 622 So. 2d at 948. Yet despite this recent, clear articulation of the "basic," fundamental nature of education under the constitution of our state, both the defendants and the trial court continue to deny that the school-age children of Florida have a constitutional right to a minimally adequate education. Although it is remarkable to plaintiffs that their elected representatives, particularly the Commissioner of Education and the State Board of Education, would even question that an adequate education is a necessary and required foundation for the performance of the essential obligations of citizenship, this is precisely the position defendants have adopted. Having thus been rejected by defendants, the school children of this state must once again turn

to the judiciary to vindicate and protect their constitutional rights.

Article IX, Section 1 of the Florida Constitution provides:

> Adequate provision shall be made by law for a uniform system of free public schools...

The trial court, employing "generally accepted principles of grammar," found that the phrase "adequate provision" modifies "uniform system." R. 305-06. From this assumption, the trial court, adopting the argument of defendants, concluded that Article IX, Section 1 merely requires the legislature to ensure that education is uniform among the counties and that this constitutional mandate has nothing whatsoever to do with the appropriation of funds. R. 306. This construction is contrary to the plain language of Article IX, Section 1, caselaw from this court and others regarding the fundamental nature of education, and simple common sense. Article IX, Section 1, without adjectives and adverbs, reads simply: provision shall be made for schools. The obvious has been overlooked.

Pursuant to the trial court's interpretation of Article IX, Section 1, the legislature need only guarantee that educational opportunities among the various counties is "uniform." Because no particular level of funding is required, presumably under the trial court's construction of Article IX, Section 1, <u>any</u> level of funding would be constitutional as long as it is "uniformly" applied throughout the state. One dollar per student per year would certainly be "uniform" but there would be no "schools" for students

to attend. Of course, the guarantee of uniform inadequacy is no guarantee at all. Thankfully, and not surprisingly, Florida's constitution requires considerably more.

The flaw in the trial court's construction of Article IX, Section 1 is that it ignores the term "adequate." Contrary to the ruling below, it is not enough for the legislature merely to provide a uniform system of schools. The constitution instead explicitly requires that the provision made for schools be "adequate." "Adequate" is defined as "enough or good enough for what is required or needed; sufficient; suitable." Webster's New World Dictionary, 16, (3rd College Ed. 1988). Thus, Florida's school children have the constitutional right to be provided with a uniform system of schools which is sufficient to provide them with a needed education. Plaintiffs have alleged that the education being provided to them and the school children in their charge falls far short of this mark. Plaintiffs are entitled to the opportunity, denied by the trial court, to prove their allegations at trial.[2]

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[2] Plaintiffs' amended and restated complaint contains specific allegations concerning the failure to provide an adequate education including the failure to provide adequate programs to permit students to gain proficiency in the English language, ¶74(A); the failure to adequately provide for the greater educational needs of economically deprived students, ¶74(B); the failure to adequately provide for special programs for gifted, disabled and mentally handicapped students, ¶74(E); the failure to adequately provide for educational programs in districts having high poverty rates and low tax bases, ¶74(I); the failure to adequately provide for capital outlay needs, ¶74(J); and the failure to eliminate non-educational and quasi-educational burdens that render plaintiff school districts unable to perform their constitutional duties, ¶74(E). R. 160-170.

Caselaw from this court fully supports plaintiffs' reading of Article IX, Section 1. As stated above, the court in Glasser recognized education to be a "basic" right. Glasser, 622 So. 2d at 948. The primary dictionary definition of "basic" is "of, at, or forming a base; fundamental; essential." Webster's New World Dictionary, 115, (3rd College Ed. 1988)(emphasis added).

Moreover, the court was not writing on an entirely empty slate in Glasser. Some fifteen years earlier in Scavella v. School Bd. of Dade County, 363 So. 2d 1095 (Fla. 1978), this court, in the context of discussing the providing of an education for physically handicapped students, stated "that such a right [to a free education] exists cannot be disputed even though there are no Florida cases holding such." Id. at 1098. Plaintiffs have alleged that the development of special programs for disabled and mentally handicapped students is impaired by inadequate funding and unduly burdensome administrative requirements. R. 164. It is alleged that this violates not only Article IX, Section 1 but also Article I, Section 2 of the Florida Constitution which provides that "no person shall be deprived of any right because of race, religion or physical handicap." (emphasis added).

Similarly, in St. Johns County v. Northeast Florida Builders Ass'n, Inc., 583 So. 2d 635 (Fla. 1991), Justice Grimes, speaking for a unanimous court held: "The Florida Constitution only requires that a system be provided that gives every student an equal chance to achieve basic educational goals prescribed by the legislature." Id. at 641. Thus, while acknowledging school

programs throughout the state need not be identical, the court very clearly recognized that all Florida school children have a constitutional right to receive the opportunity to achieve certain basic, fundamental educational goals.[3]

The fundamental nature of education in Florida is underscored by statutory law requiring mandatory school attendance and authorizing the criminal prosecution of parents who fail to comply. See Sections 232.01, 232.19, Florida Statutes. It is difficult to understand how the state, acting through defendants, can compel Florida's children from the ages of 6 to 16 to be physically present at school for 180 days a year for 10 years under threat of criminal sanction yet simultaneously disavow any obligation to provide at least some minimum, adequate level of educational opportunities so that those children may attend schools that actually serve their intended purpose.[4]

It is more than ironic that when defendants deny that Florida's school children have the fundamental constitutional right

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[3] This court's recognition of the fundamental nature of education under the state's constitution is entirely consistent with the sentiments expressed by the United States Supreme Court over 40 years ago in its seminal decision in Brown v. Board of Educ., 347 U.S. 483, 493, 74 S.Ct. 686, 691, 98 L.Ed. 873, 880 (1954), in which it recognized "[t]oday, education is perhaps the most important function of State and local governments."

[4] It must be remembered that at least as far as funding for education is concerned, if anything is to be done, it must be done by the legislature. See Glasser. Moreover, even if the legislature turned greater financial control over to local districts as many justices on the Glasser court urged it to consider, the 10 mill property tax cap limit in the constitution, see Article VII, Section 9(b), will soon be reached so that school districts will again be powerless to raise additional revenue.

to an education, another group of Floridians whose presence is required by the state in a particular place for a particular length of time - - those individuals incarcerated in Florida's penal system - - enjoy constitutionally protected access to educational facilities such as libraries. Although grounded in different constitutional provisions than those at issue here, it is now beyond dispute that felons and other prisoners enjoy the constitutional right to access to adequate libraries for their legal edification. See, e.g., Bounds v. Smith, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed. 2d 72 (1977); Straub v. Monge, 815 F.2d 1467 (11th Cir. 1987), cert. denied, 484 U.S. 946, 108 S.Ct. 336, 98 L.Ed. 2d 363 (1987). It is equally clear that prisoners have the constitutional right not to be housed in facilities which are overcrowded or unsafe. Graham v. Vann, 394 So. 2d 180 (Fla. 1st DCA 1983); see also Hutto v. Finney, 437 U.S. 678, 98 S.Ct. 2565, 57 L.Ed 2d 522 (1978). Yet under the constitutional interpretation advanced by defendants and accepted by the trial court, the children of this state enjoy no similar constitutional right to adequate educational opportunities or safe, uncrowded, and adequate educational facilities.

It is difficult to imagine that the framers of our Constitution, or the electors who voted to approve it, intended that Florida's prisoners would enjoy a greater constitutional right of access to safe, uncrowded, and adequate educational facilities than Florida's children. Understandably, this state's constitution does not support such an anomalous result. An inadequate school in

every county may be uniform but it does not meet either the needs of our children or the command of our Constitution. When this court said that "education is basic," it certainly meant adequate education. Accordingly, this court should, once again and forever, declare what is stated in Article IX, Section 1 - - that an adequate education, "basic in a democracy," is a fundamental right to be enjoyed by all the school-age children of this state.

2. THE DOCTRINES OF SEPARATION OF POWERS AND "POLITICAL" QUESTION DO NOT PRECLUDE THE JUDICIARY FROM DETERMINING WHETHER PLAINTIFFS' CONSTITUTIONAL RIGHT TO AN ADEQUATE EDUCATION HAS BEEN VIOLATED.

In its order dismissing plaintiffs' complaint, the trial court concluded that "[i]n order to grant the requested relief, the Court would necessarily have to usurp or intrude upon the appropriation power which the Florida Constitution reserves exclusively to the Legislature and specifically excludes the Judicial Branch." R. 306. The trial court additionally determined that adjudicating plaintiffs' claims was beyond its power because the claims presented a "non-justiciable political question." Id. The order shows that the trial court misapprehended both the claims raised and relief requested by plaintiffs, and the court's own power and obligation to consider them. Because the trial court does have the authority to hear these claims and, upon a proper showing, to grant the relief requested, the order dismissing the claims should be reversed and the case remanded for trial.

The starting point of the separation of powers analysis must be with plaintiffs' complaint. The complaint is in one count for

declaratory judgment and the remedy prayed for is solely declaratory in nature. In sum, plaintiffs have asked the court to:

(1) Declare that the right to an adequate education is fundamental under the Florida Constitution and that the state is constitutionally obligated to provide adequate funds for a uniform system of free public schools;

(2) Declare that defendants have failed to make adequate provision for a uniform system of free public schools;

(3) Retain jurisdiction until defendants have complied with their obligations under the Constitution;

(4) Require defendants to keep plaintiffs and the court informed of all actions taken to comply with their constitutional obligations and for the court to schedule further hearings as may be required;

(5) Award plaintiffs fees and costs; and

(6) Grant other such relief as may be just and equitable.

R. 154-75.

Consistent with several decisions of this court such as Dade County Classroom Teachers' Ass'n, Inc. v. The Legislature, 269 So. 2d 684 (Fla. 1974), plaintiffs seek only declaratory relief in the firm belief that if the judiciary declares the current level of provision for public education, financially and otherwise, to be inadequate, defendants will honor their constitutional obligations to increase appropriations and/or otherwise provide for education without further judicial intervention. In so doing, plaintiffs have intentionally declined to request mandatory injunctive relief to order or compel the legislature to do any particular act. Thus, plaintiffs have not asked the court to usurp the legislative appropriation power but simply to declare that defendants'

constitutional obligations have not been met. See Locke 595 So. 2d at 36 (one of the primary judicial functions of supreme court is to interpret constitutional provisions; separation of powers not violated when a provision construed in a manner that adversely affects either the executive or legislative branch); Slay v. Department of Revenue, 317 So. 2d 744, 746 (Fla. 1975)(courts have inherent equitable power to provide relief if law does not clearly provide a remedy).

Any discussion about the jurisdiction of Florida's circuit courts must begin with the recognition that "[i]n this state, circuit courts are superior courts of general jurisdiction, and nothing is intended to be outside their jurisdiction except that which clearly and specially appears so to be." English v. McCrary, 348 So. 2d 293, 297 (Fla. 1977). While this broad grant of jurisdiction is, of course, subject to the doctrine of separation of powers, "one of the exceptions to the separation of powers doctrine is in the area of constitutionally guaranteed or protected rights." Dade County Classroom Teachers' Ass'n, Inc., 269 So. 2d at 686. See also Chiles, 589 So. 2d at 265 (exception to legislative autonomy over appropriation of funds exists where constitution controls to the contrary), quoting State ex rel. Kurz v. Lee, 121 Fla. 360, 384, 163 So. 859, 868 (1935).

As this court has recognized:

> [P]reference for legislative treatment cannot shackle the courts when legally protected interests are at stake. As people seek to vindicate their constitutional rights, the courts have no alternative but to respond. Legislative inaction cannot serve to close the

> doors of the courtrooms of this state to its citizens who assert cognizable constitutional rights.

Satz v. Perlmutter, 379 So. 2d 359, 360 (Fla. 1980). See also Article I, §21, Fla. Const. (access to courts). Here, plaintiffs have alleged their constitutional right to an adequate education has been abridged. The doctrine of separation of powers, therefore, does not prohibit the court from determining whether plaintiffs' constitutional rights have been infringed.

Thus, plaintiffs are not asking the court to usurp the legislature's authority to appropriate funds. Rather, plaintiffs seek a declaration from the court telling defendants they have not complied with Article IX, Section 1 and giving them an opportunity to correct that fact. The remedy requested by plaintiffs is well within the court's discretion and jurisdiction and is, in fact, patterned after relief previously granted by this court in several analogous situations.

Dade County Classroom Teachers' Ass'n, Inc. v. The Legislature involved a petition for mandamus filed by the teachers' association to compel the legislature to enact standards regulating the right of public employees to collectively bargain as guaranteed by Article I, Section 6 of the Florida Constitution. The legislature had taken no action to enact legislation on that subject following the court's decision in Dade County Classroom Teachers' Ass'n v. Ryan, 225 So. 2d 903 (Fla. 1969) which guaranteed to public employees the right to collectively bargain the terms and

conditions of their employment. While recognizing the general doctrine of separation of powers, the court observed:

> When the people have spoken through their organic law concerning their basic rights, it is primarily the duty of the legislative body to provide the ways and means of enforcing such rights; however, in the absence of appropriate legislative action, it is the responsibility of the courts to do so.

Dade County Classroom Teachers' Ass'n, Inc., 269 So. 2d at 686 (emphasis added).

Leaving no doubt with respect to the power of the judiciary to take such action as may be necessary to protect the constitutional rights of public employees notwithstanding the doctrine of separation of powers, the court concluded:

> The Legislature, having thus entered the field, we have confidence that within a reasonable time it will extend its time and study into this field and, therefore, judicial implementation of the rights in question would be premature at this time. If not, this Court will, in an appropriate case, have no choice but to fashion such guidelines by judicial decree in such manner as may seem to the Court best adapted to meet the requirements of the Constitution and comply with our responsibility.

Id. at 688 (emphasis added).

More recently, this court has once again been required to vindicate individuals' rights and inform the legislature that certain constitutional guarantees were going unmet. In In re Order On Prosecution of Criminal Appeals by the Tenth Judicial Circuit Public Defender, 561 So. 2d 1130 (Fla. 1990), this court confronted the situation in which numerous criminal appeals in the Second District remained unprosecuted because of a lack of resources in

the Public Defender's office. The court held that because the indigent, incarcerated prisoners constitutional rights were being violated, the "situation demands immediate resolution." Id. at 1138. To solve this problem the court opined that the legislature should "appropriate sufficient funds so that private counsel may be appointed to brief and pursue these appeals forthwith." Id. at 1138-39. Though the court stopped short of actually ordering the legislature to appropriate those funds, the court strongly cautioned the legislature that:

> If sufficient funds are not appropriated within 60 days from the filing of this opinion, and counsel hired and appearances filed within 120 days of the filing of this opinion, the courts of this state with appropriate jurisdiction will entertain motions for writs of habeas corpus from those indigent plaintiffs whose appellate briefs are delinquent 60 days or more, and upon finding merit to those petitions, will order the immediate release pending appeal of indigent convicted felons who are otherwise bondable.

Id. at 1139.

Thus, in both Dade County Teachers' Ass'n, Inc. and In Re Order on Prosecution of Criminal Appeals, the court found that individuals' constitutional rights were being violated by the non-action of the legislature and did not hesitate to so rule.[5] Although in both cases the court quite appropriately deferred, in the first instance, to the legislature to correct the

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[5] In fact, this court has continued to monitor the Legislature's behavior with respect to funding the Office of the Public Defender. See In re Certification of Conflict in Motions to Withdraw Filed by Public Defender of the Tenth Judicial Circuit, 636 So. 2d 18 (Fla. 1994).

constitutional violations, it is clear that had the legislature chosen to continue not to act, the court was prepared to assert its authority and fulfill its obligation to insure compliance with the constitution. This is so notwithstanding that compliance might have required the legislature to appropriate additional funds.[6]

Plaintiffs seek similar relief here. As in Dade County Classroom Teachers' Ass'n, Inc. and In Re Order on Prosecution of Criminal Appeals, plaintiffs allege that their constitutional rights are being violated. For relief, plaintiffs seek only a declaration that adequate provision has not been made for the present system of free public education in a variety of fiscal and non-fiscal respects. Plaintiffs simply ask the court to determine their rights have been violated and then, as in the above-cited cases, direct the defendants, in the first instance, to attempt to fashion a system which will comply with Article IX, Section 1. As was this court in Dade County Classroom Teachers' Ass'n, Inc., plaintiffs are confident that, when confronted with a judicial determination that they have heretofore failed in their duty, defendants can and will remedy the wrong. Separation of powers, therefore, is not an impediment to the recognition and enforcement of plaintiffs' constitutional rights.

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[6] The fact that a court's ruling might necessitate a legislative body to appropriate funds has never, standing alone, prevented the judiciary from prohibiting the violation of an individual's constitutional rights. Certainly the court's vindication of the right of an individual to counsel, for prisoners to have adequate medical care and living conditions, and the remedy of busing to achieve an end to segregation all involve the expenditure of great sums of money and are, unquestionably, within the power of the judiciary.

Nor does this case present a non-justiciable political question; instead, this case is simply about enforcing a constitutional mandate too long ignored, a mandate designed to protect and educate Florida's most precious natural resource, its school children. Plaintiffs are not asking this court to inject itself into political issues or to make value judgments by advocating for one of competing legislative interests. To the contrary, plaintiffs ask this court to respect and enforce the value judgment previously made by the electors of this state when they ratified a constitution which, while making no explicit reference to other necessary governmental services like building roads or prisons or providing health and rehabilitative services, did expressly establish the right to an adequate education. It is the right to an adequate education, along with a few other rights specifically enumerated, which the citizens of this state have chosen to make paramount. The court should not countenance defendants' attempt to read the word "adequate" out of Article IX, Section 1.

Once the right to an education is recognized, plaintiffs are supremely confident that the branch of government which routinely defines and elucidates such abstract constitutional guarantees as "due process," "equal protection," and "cruel and unusual punishment" will have no difficulty, upon presentation of appropriate proof, in defining and quantifying what represents an "adequate" education. Thus, enforcing the constitutional right to an adequate education is not a political function but a consummate

judicial one, particularly given that it is the rights of minors which are most directly and immediately affected. See, e.g., Department of Health & Rehabilitative Services v. Hollis, 439 So. 2d 947, 949 (Fla. 1st DCA 1983)(a court of chancery has inherent jurisdiction and right to control and protect infants and enjoys broad discretion in making orders protecting their welfare).

C. PLAINTIFFS HAVE PROPERLY SOUGHT DECLARATORY RELIEF.

As was discussed in subsection B above, the primary relief requested by plaintiffs is for the court to declare that the right to an adequate education is fundamental under the Florida Constitution and that defendants have not met their obligation to secure that right to plaintiffs, and to retain jurisdiction until defendants have complied with the constitutional mandate. This type of declaratory relief is appropriate in this case and does not constitute an advisory opinion as held by the trial court.

"The purpose of declaratory relief is 'to afford relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations' and thus the declaratory judgment statute is to be construed liberally." Chiles, 589 So. 2d at 263 quoting §86.101, Fla. Stat. Further, "[t]his Court has upheld a grant of declaratory relief when the cause involved the public interest and the settlement of controversies in the operation of central governmental functions and in the disbursement of public funds." Id.

The general guidelines for declaratory judgment actions are long settled:

> Before any proceeding for declaratory relief should be entertained it should be clearly made to appear that there is a bona fide, actual, present practical need for the declaration; the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; that some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts; that there is some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law; that the antagonistic and adverse interests are all before the court by proper process or class representation and that the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity.

Kuhnlein, 646 So. 2d at 721 quoting May v. Holley, 59 So. 2d 636, 639 (Fla. 1952) reaffirmed by, Martinez v. Scanlan, 582 So. 2d 1167, 1170 (Fla. 1991).

The record shows that plaintiffs' claim clearly meets the elements needed for consideration of their declaratory judgment action. As in Chiles, this case involves the settlement of a public controversy in the operation of one of, if not the, central governmental function - - the provision of education for the school children of this state. There is an actual, present need for a declaration and the declaration deals with an ascertained set of facts: plaintiffs have alleged that their right to an adequate education is presently being violated by the defendants. Moreover it is clear that defendants have taken a present, adverse and antagonistic interest as they deny not only that plaintiffs' right to an adequate education is being violated but the very fact that plaintiffs have such a right at all. Finally, the relief requested

is not sought out of idle curiosity; to the contrary, plaintiffs, most particularly the students, have a vital and continuing interest in attempting to require defendants to provide them with adequate educational opportunities. Thus, plaintiffs' claim that their constitutional rights are currently being violated is ripe for declaratory relief.

Plaintiffs' request for declaratory judgment is fully consistent with several recent decisions of this court. In Chiles, the court accepted jurisdiction over a complaint for declaratory relief by children seeking to declare that certain provisions of a statutory scheme establishing budget reduction procedures were unconstitutional. Chiles, 589 So. 2d at 263. In Martinez, the court accepted jurisdiction to resolve a dispute between various groups and the Governor over the validity of workers' compensation laws. Martinez, 582 So. 2d at 1170. In Branca v. City of Miramar, 634 So. 2d 604 (Fla. 1994), the court permitted a city to seek declaratory relief to attack the constitutionality of its own pension plan ordinance. Similarly, in Kuhnlein, the court granted declaratory relief in an action brought by residents who alleged that their rights under the commerce clause were being infringed by an illegal impact fee. Kuhnlein, 646 So. 2d at 717. In holding that standing existed for the plaintiffs to bring their action for declaratory judgment, the Kuhnlein court specifically noted that "the present case does involve an actual controversy that is directly affecting, or can directly affect, the lives of many Florida residents." Id.

Plaintiffs have likewise alleged that the lives of millions of Florida school children are currently being directly and adversely affected by the failure of defendants to provide them with an adequate education. Just as declaratory relief was appropriate in Kuhnlein and the other cases cited above, plaintiffs should be permitted to proceed to trial on their claim and, if their claim is proven, they are entitled to declaratory relief.

D. PLAINTIFFS HAVE STANDING TO PROSECUTE THIS CASE.

Plaintiffs are composed of a number of different individuals and entities who share a vital interest in education in this state and who are each, in varying ways and to varying degrees, adversely affected by defendants' failure to provide an adequate education for all Florida school children. The plaintiffs who are most directly and most seriously damaged are the eleven public school students from counties as wide-ranging and diverse as Columbia, Hillsborough, Gadsden, and Dade who have brought suit. Joining these students as plaintiffs are their parents and guardians who sue in that capacity and as taxpayers of the counties in which they reside. Also included among the plaintiffs are twenty-three individuals, who sue as citizens and taxpayers of this state and as members of various school boards from around the state, and forty-five school boards. The final plaintiff is the Coalition for Adequacy and Fairness in School Funding, Inc., (Coalition), a Florida non-profit corporation organized for the primary purpose of promoting the improvement of educational standards and performance in the State of Florida. The Coalition's members include parents

of children attending Florida public schools, educators, Florida school districts, and other persons and entities interested in improving the quality of public education in this state. R. 146.

In its order dismissing plaintiffs' complaint, the trial court found that neither the school boards nor the Coalition are "persons" under Florida law (and thus presumably have no standing) and that although the students and their parents are natural persons (who presumably do have standing), they have alleged no facts which show they have been deprived of any right. R. 308. No mention is made in the lower court's order with respect to the standing of the twenty-three individuals who sue individually and as school board members. It is thus impossible to know whether the court silently concluded these individuals had standing or simply forgot about them. As will be discussed in turn below, each constituent group of plaintiffs has standing to prosecute this case. See Kuhnlein, 646 So. 2d at 720 (doctrine of standing not employed in Florida in the rigid sense it is in the federal system).

There appears to be no dispute that the eleven public school student plaintiffs and their parents have standing. These students have alleged that they are suffering a continuing injury as a result of not being provided with an adequate education. In addition to the standing conferred as parents and guardians of the students, the parents also have standing as taxpayers challenging the validity of the legislature's exercise of its spending power. See Chiles, 589 So. 2d at 263 n.5.

The individual school board members also have standing based on their status as taxpayers. In Department of Educ. v. Lewis, 416 So. 2d 455 (Fla. 1982), a complaint was filed by the Department of Education, State Board of Education and Commissioner of Education Ralph Turlington seeking a declaratory judgment that a portion of the 1981 General Appropriations Act was unconstitutional. The defendants, Comptroller Gerald Lewis and Secretary of State George Firestone, questioned the standing of the plaintiffs. The trial court declined to dismiss the plaintiffs and upheld the validity of the relevant portion of the Appropriations Act. Id. at 458. On certification to this court, the court held that the Department of Education, State Board of Education and Commissioner of Education, in his official capacity, had no standing because they lacked a sufficiently substantial interest or special injury to allow the circuit court to hear the challenge. However, the court also ruled that Commissioner Turlington did have standing as an ordinary citizen and taxpayer, and the court proceeded to review the case on its merits. Id.

The First District Court of Appeal reached a similar conclusion in Jones v. Department of Revenue, 523 So. 2d 1211 (Fla. 1st DCA 1988). Jones was the property appraiser for Escambia County who brought an action challenging the methodology employed by the Department of Revenue in determining the county's estimated level of assessment. His challenge to the constitutionality of the particular statute was based upon an assertion that it involved an improper delegation of legislative authority. No claim was made by

Jones that he was prevented from performing his official duties. Id. at 1212-13. The district court specifically held:

> Nevertheless, we find that, although appellant did not have standing to challenge the constitutionality of the statute in his official capacity as a property appraiser, he did have standing in his individual capacity as a citizen and taxpayer. The general rule is that a taxpayer of a state or county has standing to bring an action against the proper public officials to restrain the unlawful exercise of the state's or county's taxing or spending authority only on a showing of special injury to such taxpayer that is distinct from that sustained by every other taxpayer in the taxing unit. 55 Fla.Jur.2d Taxpayers' Actions, §6 (1984); Paul v. Blake, 376 So. 2d 256 (Fla. 3d DCA 1979). However, an exception to this rule recognizes that a taxpayer may institute such a suit without a showing of special damage if he attacks the exercise of the public body's taxing or spending authority on the ground that it exceeds specific limitations imposed on its taxing or spending power by the United States Constitution or the Florida Constitution. Department of Administration v. Horne, 269 So. 2d 659 (Fla. 1972); Brown v. Firestone, 382 So. 2d 654 (Fla. 1980); and Department of Educ. v. Lewis, 416 So. 2d 455 (Fla. 1982). Appellant mounted such a constitutional attack in this case and therefore had standing in his individual capacity to challenge the statute.

Id. at 1214 (footnote omitted). The individual school board members similarly have standing in this case.

Plaintiff school boards also have standing to challenge the ongoing constitutional violation which renders them unable to adequately discharge their constitutional and statutory responsibilities. The complaint alleges numerous examples of the inability of public school districts to provide adequate educational opportunities for students. See, e.g., ¶75(A)-(H).

R. 170-73. In addition, plaintiffs have specifically alleged in paragraph 76 of the complaint that "...school districts and educational professionals are deprived of the ability to carry out their constitutional and statutory responsibilities to provide adequate educational services for their students...." R. 173.

The responsibility for the operation and control of the state system of free public education is plainly vested in district school boards. See Sections 230.01, 230.03(2), Florida Statutes. Moreover, among the general powers of a district school board expressly enumerated in Section 230.22, Florida Statutes, is the power to bring suit:

> (4) CONTRACT, SUE, AND BE SUED. -- The school board shall constitute the contracting agent for the district school system. It may, when acting as a body, make contracts, also sue and be sued in the name of the school board; provided, that in any suit, a change in personnel of the school board shall not abate the suit, which shall proceed as if such change had not taken place.

The rule of law applicable to the case at bar was articulated in Reid v. Kirk, 257 So. 2d 3 (Fla. 1972) which involved a declaratory action by the Palm Beach County Tax Assessor against the Department of Revenue relating to his obligations under directives of the Department relating to assessment of grazing land. The Department moved to dismiss the complaint on several grounds including lack of standing. Quashing the decision of the district court, this court ruled that the tax assessor did have standing under the rule that standing is allowed "when a public

official is willing to perform his duties, but is prevented from doing so by others." Id. at 4.

Several years later, the School Board of Escambia County and its individual members filed a declaratory action seeking to have an item in the General Appropriations Act declared unconstitutional. On direct appeal, this court affirmed the finding of the circuit court that the plaintiffs had standing. Gindl v. Department of Educ., 396 So. 2d 1105, 1106 (Fla. 1979).

The most recent example of the right of a district school board to seek a declaratory judgment involving the constitutional validity of a statute involving funding for public education is Florida Dep't of Educ. v. Glasser, 622 So. 2d 944 (Fla. 1993). Although, as is discussed in more detail in subsection A above, this court took the opportunity in Glasser to address the "procedural aspects" of the case - - most particularly who should have been named as defendants - - nowhere did the court ever question the standing of the plaintiff school board. Id. at 948. Quite to the contrary, although rejecting the legal theory advanced by the School Board of Sarasota County, many Justices of this court found it "commendable" that the School Board would attempt to raise additional revenues in order to improve its schools. Glasser, 622 So. 2d at 949 (Barkett, C.J., concurring); Id. (Grimes, J., concurring); Id. at 951 (Harding, J., concurring). Indeed, Chief Justice Barkett, joined by Justices Shaw and Harding specifically articulated their "hope that school districts now direct their efforts toward adequate state funding for all the educational needs

of all our children." Id. at 949 (Barkett, C.J., concurring). The forty-five plaintiff school boards have taken that suggestion. They have standing to prosecute this action.

Finally, there is ample authority to support the standing of plaintiff, Coalition, a Florida nonprofit corporation organized for the purpose of promoting the improvement of educational standards and performance in the state of Florida. Section 617.0302(2), Florida Statutes, provides:

> Every corporation not for profit organized under this act, unless otherwise provided in its articles of incorporation or bylaws, shall have power to:
>
> * * *
>
> (2) Sue and be sued and appear and defend in all actions and proceedings in its corporate name to the same extent as a natural person.

The question of whether a corporation is a "citizen" or a "resident" has long been settled in Florida. In re Advisory Opinion to the Governor, 243 So. 2d 573 (Fla. 1971), contains an exhaustive review of the circumstances under which a corporation has standing to initiate legal proceedings. In its advisory opinion, the court specifically addressed the issue of whether corporations are "residents" or "citizens," and summarized its holding as follows:

> In the light of the history of and the circumstances under which constitutional provision in question was adopted, and the fact that, except for the privileges and immunities clauses of the Fourteenth Amendment and Section 2, Article 4, of the federal constitution, it is held almost without exception that a corporation is a citizen or resident within the meaning of statutes

> applicable thereto, we can conclude only that the framers and adopters of the provision here involved intended in 1924, and again in 1930, and again in 1968, that the "residents or citizens of the state" referred to therein included artificial as well as natural persons, and that corporations as well as natural persons are entitled to the protection of Section 5, Article VII, Constitution of Florida (1968) as aforementioned.

Id. at 581.

This court again confirmed the standing of a corporation to file a civil action for injunctive and monetary relief in Florida Wildlife Federation v. State Dep't of Environmental Regulation, 390 So. 2d 64 (Fla. 1980), in which the court stated:

> As a final comment, we address the question of whether the federation is a proper plaintiff. During oral argument, the Court questioned whether the federation, a nonprofit corporation, was a "citizen" within the meaning of section 403.412(2)(a). Section 617.021, Florida Statutes (1979), states that nonprofit corporations have the power to sue and be sued to the same extent as natural persons. Additionally, most courts which have considered the question have concluded that corporations are citizens. See In re Advisory Opinion to Governor, 243 So. 2d 573 (Fla. 1971)(discussing the holdings from numerous jurisdictions). We agree with the Fourth District Court of Appeal that, by enacting section 403.412, the legislature has declared the protection of the environment to be a collective responsibility and that to treat corporations a citizens is consistent with that declaration.

Id. at 68 (footnote omitted). See also Orange County Audubon Society, Inc. v. Hold, 276 So. 2d 542 (Fla. 4th DCA 1973)(Audubon Society was a "citizen" who had standing to bring action against Board of County Commissioners).

The standing of associations and non-profit corporations to initiate civil actions involving the interests of public school students and their parents has likewise long been recognized in federal courts. See, e.g., Jacksonville Branch, NAACP V. Duval County School Bd., 883 F.2d 945 (11th Cir. 1989)(as plaintiff in desegregation of Duval County schools); United States v. Yonkers Bd. of Educ., 624 F.Supp. 1276, 1288 (S.D.N.Y 1985)(as intervenors), aff'd, 837 F.2d 1181 (2d Cir. 1987), cert. denied, 486 U.S. 1055, 108 S.Ct. 2821, 100 L.Ed. 2d 922 (1988). Accordingly, the Coalition and all plaintiffs have standing to bring this action.

E. THE DECISIONS OF COURTS IN OTHER STATES ON RELATED ISSUES SUPPORT A DETERMINATION THAT PLAINTIFFS HAVE STATED A CAUSE OF ACTION

Although the determination of this appeal depends ultimately on this court's construction of the Florida Constitution, the court need not decide this case in a vacuum. The courts of many of Florida's sister states have already faced the issues of the constitutional right to adequate educational opportunities and the enforceability of that right against a governmental apparatus that fails to perform its constitutional duty.

The same objections that have been advanced against judicial consideration of the claims in this case have been raised, and rejected, in virtually all non-Florida cases. Examination of the decisions from other jurisdictions discloses that they invariably apply principles of interpretation that are consonant with those enunciated by this court to reach the unvarying conclusion that

each state's constitution provides a judicially enforceable guaranty of some basic level of state provision for educational opportunity. While the plaintiffs in these cases have not always been successful on the merits, they have in all cases been afforded a right to be heard and have demonstrated that the education provisions of their respective constitutions created a judicially cognizable and enforceable right to have adequate provision made for at least basic educational opportunity.

To hold that a judicially enforceable right exists is, of course, to reject objections based on separation of powers, political question, or justiciability. Ultimately the thrust of each of these doctrines is that in cases to which they apply, the courts are not given the power of decision and the right to finally determine the issue resides with some other agency. It is not plaintiffs' purpose here to review these doctrines of judicial incapacity; they have been addressed in detail in subsection B above. It is rather to assure the Court that it need not navigate in uncharted waters regarding any issue in this appeal. Although the issue that dominates discussion is that of separation of powers/political question/justiciability, it is also the case that every ground for dismissal relied on by the trial court has been the subject of discussion and analysis in the constitutional education decisions of other states and has been found wanting.

Historically there have been two distinct, and analytically independent, arguments in school funding litigation -- those based on requirements imposed by the education clause or article in a

state's constitution and those based on the general federal or state constitutional guaranties of equal protection and due process. Although plaintiffs have stated claims under both theories in the complaint, plaintiffs place primary reliance on their allegation that defendants have failed to make adequate provision for a uniform system of free public schools as required by Article IX, Section 1 of Florida's Constitution. Stated another way, plaintiffs allege that Article IX of Florida's Constitution creates a right in favor of Florida's school children, enforceable in the courts, to receive at least a basic level of educational opportunity, and a correlative duty on the part of the state to provide that opportunity.

Such claims have been asserted in sixteen states with widely varying constitutional language. Without exception, the courts in these states have held that the education clauses or articles of their state constitutions created rights in favor of public school children, enforceable against the states, to receive at least a basic level of educational opportunity. Moreover, these courts have explicitly rejected objections that judicial inquiry into the provision made for education violates the separation of powers/political question/justiciability doctrines. In twelve of the sixteen cases the courts held, based on either full trials or stipulated facts, that the states had failed to comply with their constitutional duty to provide adequate basic educational opportunities, and entered or affirmed declaratory judgments and/or

injunctions against the relevant state officers and agencies.[7] In three cases the courts reversed dismissals of the complaints and remanded for hearings on whether the states had provided adequate levels of education as required by their constitutions.[8] In the remaining case the court held, on a full factual record, that the state was meeting its constitutional obligation to provide an adequate level of education for all.[9]

It is noteworthy that this unanimity of opinion in our sister states has been achieved despite wide variations in the wording of the relevant constitutional provisions. The Alabama Constitution requires the legislature to "establish, organize, and maintain a

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[7] Alabama Coalition for Equity, Inc. v. Hunt (Ala. Cir. Ct., Montg. Cty., 1993), included as Appendix to Opinion of the Justices, 624 So. 2d 107 (Ala. 1993); Roosevelt Elementary School Dist. v. Bishop, 179 Ariz. 233, 877 P.2d 806 (1994); Rose v. Council for Better Educ., Inc., 790 S.W.2d 186 (Ky. 1989); McDuffy v. Secretary of Educ., 415 Mass. 545, 615 N.E.2d 516 (1993); Helena Elementary School Dist. v. State, 236 Mont. 44, 769 P.2d 684 (1989), opinion amended by, 236 Mont. 44, 784 P.2d 412 (1990); Robinson v. Cahill, 62 N.J. 473, 303 A.2d 273 (1973), cert. denied, 414 U.S. 976, 94 S.Ct. 292, 38 L.Ed 2d 219 (1973); Bismarck Public School Dist. v. State, 511 N.W.2d 247 (N.D. 1994); City of Pawtucket v. Sundlun, No. 91-8644, (R.I. 1994); Tennessee Small School Systems v. McWherter, 851 S.W.2d 139 (Tenn. 1993); Carrollton-Farmers Branch Indep. School District v. Edgewood Indep. School, 826 S.W.2d 489 (Tex. 1992); Seattle School Dist. v. State, 90 Wash. 2d 476, 585 P.2d 71 (1978); Washakie County School Dist. v. Herschler, 606 P.2d 310 (Wyo. 1980), cert. denied sub nom., Hot Springs County School Dist. v. Washakie County School Dist., 449 U.S. 824, 101 S.Ct. 86, 66 L.Ed. 2d 28 (1980).

[8] Idaho Schools for Equal Educational Opportunity v. Evans, 123 Idaho 573, 850 P.2d 724 (1993); Claremont School Dist. v. Governor, 138 N.H. 183, 635 A.2d 1375 (1993); Pauley v. Kelly, 162 W. Va. 672, 255 S.E.2d 859 (1979).

[9] Cincinnati Bd. of Educ. v. Walter, 58 Ohio St. 2d 368, 390 N.E.2d 813 (1979), cert. denied, 444 U.S. 1015, 100 S.Ct. 665, 62 L.Ed. 2d 644 (1980)

liberal system of public schools throughout the state . . . ." Ala. Const. art. XIV, § 256. The Arizona legislature must "enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system . . . ." Ariz. Const. art. XI, § 1. Kentucky must provide an "efficient system of common schools throughout the state." Ky. Const. § 183. The constitutions of Massachusetts and New Hampshire require those states "to cherish the interests of literature and the sciences, and all seminaries [and] public schools . . . ." Mass. Const. pt. II-C5, § 2; N.H. Const. Part II, art. 83. Montana must "provide a basic system of free quality public elementary and secondary schools". Mont. Const. art. X. New Jersey is required to provide a "thorough and efficient system" of free public schools. N.J. Const. art. VIII, § 4. The North Dakota Constitution requires the legislature to "make provision for the establishment and maintenance of a system of public schools [and to] provide for a uniform system of free public schools throughout the state . . . ." N.D. Const. art. VIII, § 1. The Rhode Island legislature must simply "promote public schools." R.I. Const. art. XII. The Tennessee Constitution requires the legislature to "provide for the maintenance, support and eligibility standards of a system of free public schools." Tenn. Const. art. XI, § 12. Texas is required "to establish and make suitable provision for the support and maintenance of an efficient system of public free schools." Tex. Const. art. VII, § 1. Perhaps the most emphatic statement is in Washington's Constitution, which declares that it is the "paramount

duty of the state to make ample provision for the education of all children residing within its borders." Wash. Const. art. IX, § 1. The West Virginia Constitution requires the legislature to "provide, by general law, for a thorough and efficient system of free schools." W. Va. Const. art. XII, § 1. Wyoming must "provide for the establishment and maintenance of a complete and uniform system of public instruction . . . ." Wyo. Const art. VII, § 1.

It would serve no useful purpose to attempt to analyze these varying constitutional provisions for semantic content in order to arrange them along a scale of relative strength. In some constitutions the term "duty" is used explicitly; in most, it is not. All, however, employ the mandatory "shall." Adjectives such as "thorough," "adequate," "efficient," "liberal," and "suitable" are used interchangeably; some constitutions eschew the use of adjectives. What is important is that in every case in which a state's constitutional provision for education has been invoked as the source of an enforceable right to a basic level of quality educational opportunity, the courts have upheld the existence of such a right against the claim that its recognition and enforcement would constitute a forbidden intrusion into the legislative domain.

The arguments advanced by the defendants in this case, and accepted by the trial court, have not been accepted in even one other state as a ground for avoiding judicial review of the state's compliance with its constitutional duty. The reasons given by the courts for their uniform rejection of claims of legislative supremacy in this area are essentially the same in every case and

are fully consonant with Florida principles of interpretation. They are perhaps best summarized in the words of the Supreme Court of Kentucky:

> The ultimate issue is whether the system of common schools in the Commonwealth established by the General Assembly, with respect to the mandate of Section 183, is in compliance with the constitution. Specifically, we are asked -- based solely on the evidence in the record before us -- if the present system of common schools in Kentucky is "efficient" in the constitutional sense. It is our sworn duty, to decide such questions when they are before us by applying the constitution. The duty of the judiciary in Kentucky was so determined when the citizens of Kentucky enacted the social compact called the Constitution and in it provided for the existence of a third equal branch of government, the judiciary.
>
> The issue before us -- the constitutionality of the system of statutes that created the common schools -- is the only issue. To avoid deciding the case because of "legislative discretion," "legislative function," etc. would be a denigration of our own constitutional duty. To allow the General Assembly (or, in point of fact, the Executive) to decide whether its actions are constitutional is literally unthinkable.
>
> We believe that what these several cases cited as controlling by appellants mean is that great weight should be given to the decision of the General Assembly. We believe they mean that the presumption of constitutionality is substantial. We believe that they mean that legislative discretion -- in this specific matter of common schools -- is to be given great weight and, we do so in this decision. We do not question the wisdom of the General Assembly's decision, only its failure to comply with its constitutional mandate. In so doing, we give deference and weight to the General Assembly's enactments; however, we find them constitutionally deficient.
>
> The judiciary has the ultimate power, and the duty, to apply, interpret, define, construe

> all words, phrases, sentences and sections of the Kentucky Constitution as necessitated by the controversies before it. It is solely the function of the judiciary to so do. This duty must be exercised even when such action serves as a check on the activities of another branch of government or when the court's view of the constitution is contrary to that of other branches, or even that of the public.

Rose v. Council for Better Educ., Inc., 790 S.W.2d 186, 209 (Ky. 1989)(emphasis in original)

Equal protection arguments in education litigation have met a mixed reception. Arguments based on the equal protection clause of the Fourteenth Amendment to the United States Constitution were rebuffed in San Antonio School District v. Rodriguez, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed. 2d 16 (1973), in which the Supreme Court held that education was not a "fundamental interest" entitled to have the "strict scrutiny" test applied because the right to education was neither explicitly nor implicitly guaranteed by the terms of that Constitution, which nowhere mentions education.[10] However, state courts have felt free to construe comparable provisions of their constitutions, which expressly address education, as giving education a constitutionally protected status, thus requiring education claims to be considered under the "strict scrutiny" standard. Serrano v. Priest, 18 Cal. 3d 728, 557 P.2d 929 (1977), cert. denied sub nom., Clowes v. Serrano, 432 U.S. 907,

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[10] The above statement of the holding of Rodriguez has been brought into question by Papasan v. Allain, 478 U.S. 265, 106 S.Ct. 2932, 92 L.Ed. 2d 209 (1986), which stated that "this Court has not yet definitively settled the questions whether a minimally adequate education is a fundamental right and whether a statute alleged to discriminatorily infringe that right should be accorded heightened equal protection review." 478 U.S. at 285.

97 S.Ct. 2951, 53 L.Ed. 2d 1079 (1977); Dupree v. Alma School Dist., 279 Ark. 340, 651 S.W.2d 90 (1983); Horton v. Meskill, 172 Conn. 615, 376 A.2d 359 (1977); Committee for Educational Equality v. Missouri, (Cir. Ct. Mo. 1993), appeal dism., 878 S.W.2d 446 (Mo. 1994). The courts in these cases upheld challenges to state educational funding systems based on state constitutional equal protection grounds, unaccompanied by any claim based on the education clauses of the state constitutions.

Equal protection arguments based on state constitutional provisions have also been upheld in a number of other cases (most of those cited in footnotes 7-9) in conjunction with claims under state education clauses. However, equal protection arguments standing alone have not generally been favored. Plaintiffs have found decisions in fifteen states rejecting equal protection claims that were not accompanied by any claim based on the education provision of a state's constitution. In all of these cases involving pure equal protection or "uniformity" claims, the courts held that an allegation of disparity in funding between property-rich and property-poor school districts did not state a cognizable claim of denial of equal protection under the state constitution, absent an allegation that the funding disparity resulted in a denial of basic educational opportunities to at least some students within the state.[11]

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[11] Lujan v. Colorado State Bd. of Educ., 649 P.2d 1005 (Col. 1982); McDaniel v. Thomas, 248 Ga. 632, 285 S.E.2d 156 (1981); People ex rel. Jones v. Adams, 40 Ill. App. 3d 189, 350 N.E.2d 767 (1976); Hornbeck v. Somerset County Bd. of Educ., 295 Md. 597, 458 A.2d 758 (1983); East Jackson Public Schools v. State,

It is important to note that the limitation reflected in the underlined language above is expressly included in the holding of every one of the cases cited in footnote 11. Indeed, in several opinions the courts suggested that the plaintiffs amend their complaints to allege that some students were being denied basic educational opportunity. There is not a single state court outside Florida that has held that a claim of disparities in educational funding within a state based on or correlating with relative wealth, which has resulted in the denial to at least some school children within the state of basic educational opportunities, fails to state a judicially cognizable claim for relief.

Although the primary thrust of the complaint in this case is directed to the requirement of the education article of the Florida Constitution that the legislature make "[a]dequate provision . . . for a uniform system of free public schools," plaintiffs have pled an equal protection claim which is not limited to funding disparities per se. The complaint specifically alleges that substantial numbers of students in property-poor districts, as well as substantial numbers of students throughout the state who have

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133 Mich.App. 132, 348 N.W.2d 303 (1984); Skeen v. State, 505 N.W.2d 299 (Minn. 1993); Gould v. Orr, 244 Neb. 163, 506 N.W.2d 349 (1993); Reform Educational Financing Inequities Today v. Cuomo, 199 A.D.2d 488, 606 N.Y.S.2d 44 (N.Y.App.Div. 1993); Britt v. North Carolina State Bd. of Educ., 86 N.C. App. 282, 357 S.E.2d 432 (1987), rev. denied, 320 N.C. 790, 361 S.E.2d 71 (1988); Fair School Finance Council of Oklahoma, Inc. v. State, 746 P.2d 1135 (Okla. 1987); Coalition for Equitable School Funding, Inc. v. State, 311 Or. 300, 811 P.2d 116 (1991); Danson v. Casey, 484 Pa. 415, 399 A.2d 360 (1979); Richland County v. Campbell, 294 S.C. 346, 364 S.E.2d 470 (1988); Scott v. Commonwealth of Virginia, 247 Va. 379, 443 S.E.2d 138 (1994); Kukor v. Grover, 148 Wis. 2d 469, 436 N.W.2d 568 (1988).

physical or mental disabilities, language barriers, or other handicaps, are in fact being deprived of even the most basic tools of education. With the exception of the trial court in this case, every court that has ever considered such an allegation has held that it states a valid claim that must be determined on its facts.

To acknowledge that the issues raised by plaintiffs in this case are judicially reviewable is not, of course, to say that they are necessarily easy to decide. In the context of the factual records before them, the courts in the cases cited above have had to determine the standards under which such a claim is to be judged, and to define the minimum constitutionally acceptable level or standard of educational opportunity. However, these are not issues that face the court on this appeal which deals solely with plaintiffs' right to be heard on their claim. Although plaintiffs believe that the efforts of courts in other states in this regard will be of assistance at a later stage of this litigation, they need not be addressed here. Plaintiffs have alleged, specifically and in detail, that in part because of the system of funding of public schools and in part because of other factors, a substantial number of Florida public school students, identifiable both by geography and by physical, mental, or other handicap or disability, are being denied even the most basic tools of education, in some cases even the opportunity to learn to read, write, and speak the English language. Every state court which has been faced with such an allegation has held that it states a judicially cognizable claim for relief that must be decided on its facts.

The standing issues raised in this case have also been much-litigated in other states. The standing of school districts has been challenged, on grounds essentially identical to those asserted by defendants here, in eleven states; their standing was upheld in eight.[12] One court held that school districts lacked standing but allowed the case to proceed on the basis of other plaintiffs who did,[13] and two declined to consider the question in light of the acknowledged standing of other plaintiffs.[14] Plaintiffs will not address at length the reasoning of these decisions since the standing of school districts to participate as plaintiffs in litigation challenging the adequacy of the state's provision for education has not been an obstacle to a determination of the merits of the claim in any case.

The propriety of naming the houses of the legislature, or their chief officers, as defendants has also been addressed.

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[12] Idaho Schools for Equal Educational Opportunity v. Evans, 123 Idaho 573, 850 P.2d 724 (1993); Rose v. Council for Better Educ., Inc., 790 S.W.2d 186 (Ky. 1989); Committee for Educational Equality v. Missouri, (1993), appeal. dism., 878 S.W.2d 446 (Mo. 1994); Claremont School Dist. v. Governor, 138 N.H. 183, 635 A.2d 1375 (1993); Board of Educ. v. Nyquist, 453 N.Y.S.2d 643, 439 N.E.2d. 359 (1982), appeal dism., 459 U.S. 1158, 103 S.Ct. 775, 74 L.Ed 2d 986 (1983); City of Pawtucket v. Sundlun, No. 91-8644 (R.I. 1994); Seattle School Dist. v. State, 585 P.2d 71 (Wash. 1978); Washakie County School Dist. v. Herschler, 606 P.2d 310 (Wyo. 1980), cert. denied sub nom., Hot Springs County School Dist. v. Washakie County School Dist., 449 U.S. 824, 101 S.Ct. 86, 66 L.Ed. 2d (1980).

[13] East Jackson Pacific Schools v. State, 133 Mich. App. 132, 348 N.W.2d 303 (1984).

[14] Bismarck Public School Dist. v. State, 511 N.W.2d 247 (N.D. 1994); Cincinnati Bd. of Educ. v. Walter, 58 Ohio St. 2d 368, 390 N.E.2d 813 (1979), cert. denied, 444 U.S. 1015, 100 S.Ct. 665, 62 L.Ed. 2d 644 (1980).

Although the issue has not arisen often, it was faced directly in Rose v. Council for Better Educ., Inc., 790 S.W. 2d 186 (Ky. 1989) and Pauley v. Kelly, 162 W. Va. 672, 255 S.E. 2d 859 (1979). Rose upheld the inclusion of the legislative houses as defendants, and the naming of the legislative leaders as representative parties; Pauley directed that, on remand for trial on the merits, the Speaker of the House of Delegates and the President of the Senate of West Virginia be added as parties defendant. Those decisions are self-evidently correct. The legislature is a proper party in an action challenging the validity of a legislative act or a series of legislative acts, and the chief officer of each house is a proper representative party.

Plaintiffs have found no authority outside Florida directly addressing the notion that a judgment declaring that the state has failed to perform its constitutional duty to provide at least basic educational opportunity to all Florida schoolchildren, without an accompanying order detailing what the legislature must do to perform its duty in the future, would be a mere advisory opinion. The limited relief requested by plaintiffs in this case is identical to the relief requested and received by the plaintiffs in every case in which it has been determined that the state has violated its constitutional duty. In none of these cases has a court given the legislature a blueprint, detailed or otherwise, of what it must do in order to meet its constitutional obligations. Indeed, it is in recognition of the proper application of the separation of powers/political question/justiciability doctrine

that the courts have refrained from doing so. It is not the function of a court to tell the legislature how it must do its job; it is only the function of a court to tell the legislature that it has failed, if indeed it has, to do what the constitution requires of it. As the Supreme Court of Kentucky put it in Rose:

> Our job is to determine the constitutional validity of the system of common schools within the meaning of the Kentucky Constitution, Section 183. We have done so. We have declared the system of common schools to be unconstitutional. It is now up to the General Assembly to re-create, and re-establish a system of common schools within this state which will be in compliance with the Constitution. We have no doubt they will proceed with their duty.

Rose, 790 S.W. 2d at 214.

It is in a spirit of deference to true legislative prerogatives that plaintiffs have limited their prayer for relief to the entry of a declaratory judgment. Like the Supreme Court of Kentucky and the courts of all of the growing number of states that have reached the point of directing relief in cases of this nature, plaintiffs believe that when the Florida Legislature is finally forced to confront its past failure to perform its constitutional duty, it will do what is necessary to correct it.

VI. CONCLUSION

Based on the foregoing argument and authorities, appellants respectfully request the court to reverse the order dismissing appellants' complaint and to remand the case for consideration on the merits.

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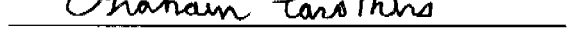

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VIII. CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was sent by U.S. Mail on this 12th day of May, 1995, to:

See Exhibit "A"

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Appendix

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA

COALITION FOR ADEQUACY AND FAIRNESS IN SCHOOL FUNDING, INC., ET. AL.,

Plaintiffs,

vs. CASE NO. 94-1906

LAWTON CHILES, ET AL.,

Defendants.

_____/

ORDER DISMISSING AMENDED AND RESTATED COMPLAINT WITH PREJUDICE

This cause came on for hearing on January 13, 1995, on motions by various defendants to dismiss the Amended and Restated Complaint. At such hearing the Plaintiffs conceded that no cause of action was stated against any Defendant other than PAT THOMAS, as President of the Florida Senate, and BOLLEY L. JOHNSON, as Speaker of the Florida House of Representatives, and stipulated to a dismissal of such claims. The Court, having heard the arguments of counsel and being duly advised in the premises,

FINDS AND DECIDES that the Motion to Dismiss filed by PAT THOMAS and BOLLEY L. JOHNSON should be granted and the claims against them should be dismissed for the reasons set forth hereinafter.

1. The Amended and Restated Complaint (hereinafter "the complaint") attempts to state a claim for declaratory and other relief predicated upon a judicial determination that the Legislature's statewide funding level for education is constitutionally "inadequate." Plaintiffs ask the Court to "[d]eclare that the right to an adequate education

is a fundamental right under the Constitution of Florida and that the State of Florida is constitutionally obligated to provide adequate funds for a uniform system of free public schools." Complaint at 33. Plaintiffs rely on Article IX, Section 1, of the Florida Constitution to support this claim. Plaintiffs ask the Court to declare that the Legislature has failed to make adequate provision for a uniform system of free public schools; to retain jurisdiction until the legislature complies with their obligation under the law; and to monitor and evaluate further acts of the Legislature.

The Court finds that it lacks jurisdiction to grant the relief which Plaintiffs seek. Plaintiffs do not allege that any specific provision of the Education Code or other state law violates any constitutional provision. Instead they assert the judicially unmanageable claim that the entire system is holistically defective and underfunded. In order to grant the requested relief, the Court would necessarily have to usurp or intrude upon the appropriation power which the Florida Constitution reserves exclusively to the Legislature and specifically excludes from the Judicial Branch. Art. II, § 3; Art. III, §§ 1, 9; Art. V, § 14, Fla. Const. Moreover, such a claim presents a non-justiciable political question which is beyond the judicial power granted by Article V of the Florida Constitution.

Article IX, Section 1, states that "[a]dequate provision shall be made by law for a uniform system of free public schools." Under generally accepted principles of grammar, the term "adequate provision" in that clause refers to and modifies the phrase "for a uniform system." That grammatical usage in the clause is consistent with the role assigned by the Constitution to the Legislature with respect to education. Article IX, Section 1, requires the Legislature only to make "adequate provision" by law "for a uniform system of free public

schools." It is the Legislature's constitutional duty to see that the educational system is uniform from county to county.

The phrase "adequate provision" textually modifies only that constitutional legislative duty to provide a "uniform system." "Adequate provision" cannot refer abstractly to "adequate" funding, as the Plaintiffs contend. There is no textually demonstrable guidance in Article IX, Section 1, by which the courts may decide, *a priori,* whether a given overall level of state funds is "adequate," in the abstract. Nor does the term "funding" even appear in Article IX, Section 1.

While the courts are competent to decide whether or not the Legislature's distribution of state funds to complement local education expenditures results in the required "*uniform system,*" the courts cannot decide whether the Legislature's appropriation of funds is adequate in the abstract, divorced from the required uniformity. To decide such an abstract question of "adequate" funding, the courts would necessarily be required to subjectively evaluate the Legislature's value judgments as to the spending priorities to be assigned to the state's many needs, education being one among them.[1] In short, the Court would have to usurp and oversee the appropriations power, either directly or indirectly, in order to grant the relief sought by Plaintiffs. While Plaintiffs assert that they do not ask the Court to compel the Legislature to appropriate any specific sum, but merely to declare that the present funding level is constitutionally inadequate, what they seek would nevertheless require the Court to pass upon those legislative value judgments which translate into

[1]The determination of these value judgments has become even more difficult in light of the 1994 constitutional amendment imposing a cap on annual state revenue collections. Art. VII, § 1(e), Fla. Const.

appropriations decisions. And, if the Court were to declare present funding levels "inadequate," presumably the Plaintiffs would expect the Court to evaluate, and either affirm or set aside, future appropriations decisions, unless the Plaintiffs are seeking merely an advisory opinion from the Court. The Court cannot give an advisory opinion, *May v. Holley,* 59 So.2d 636 (Fla. 1952). Accordingly, the Court declines to interpret Article IX, Section 1, of the Florida Constitution as Plaintiffs urge. That clause must be read *in pari materia* with the rest of the Constitution. The Court declines to read it in a manner which allows the judiciary to usurp the exercise of the appropriations power allocated exclusively to the Legislature under our Constitution. Because Plaintiffs do not ask the Court to review the constitutionality of any specific legislative enactment, the separation of powers provision of the Florida Constitution, Article II, Section 3, clearly prevents this court from granting the relief sought by Plaintiffs.

2. If Plaintiffs contend, independent of the foregoing, that the Defendants have failed to distribute funds to meet the obligation under Article IX, Section 1, of a "uniform" system, then their complaint falls short. It alleges no facts showing a substantial inequality of education funding between school districts. *Gindl v. Department of Education,* 396 So.2d 1105, 1106 (Fla. 1981); *St. Johns County v. Northeast Fla. Builders Ass'n, Inc.,* 583 So.2d 635 (Fla. 1991).

3. Plaintiffs' claims under Article I, Section 9, of the Florida Constitution likewise fall short. The plaintiff Coalition and the school boards are not "persons" protected under Article I, Section 9. The plaintiff school children, while being persons protected under that article, allege no facts showing that the funding formula, as enacted by the

Legislature, is not rationally related to either the charge of providing a uniform system of free public education, or to the general health, safety and welfare of Florida citizens, or both. Despite Plaintiffs' claims to the contrary, the Court declines to conclude that the Florida Constitution creates a "fundamental" right to a particular level of educational funding. Moreover, Plaintiffs allege no facts showing discrimination against a suspect class (such as on the basis of race or religion) which would justify reviewing the Legislature's education policy decisions under a strict scrutiny test.

4. Plaintiffs fail to state a cause of action under Article I, Section 2, of the Florida Constitution. The plaintiff school boards and the Coalition for Adequacy and Fairness in School Funding, Inc. are not "natural persons" within the meaning of that clause. *Florida Real Estate Comm'n v. McGregor,* 336 So.2d 1156, 1160 n.5 (Fla. 1976); *Faircloth v. Mr. Boston Distiller Corp.,* 245 So.2d 240, 249-50 (Fla. 1970) (Drew, J., concurring), *receded from on other grounds; National Distributing Co. v. Office of Comptroller,* 523 So.2d 156 (Fla. 1988). While the plaintiff school children and parents of school children are natural persons, they allege no facts showing that they have been deprived of any right guaranteed them by law because of race, religion or physical handicap; nor any facts showing that they are in a class treated differently from other classes without rational relationship to legitimate state goals. *Cf., Florida High School Activities Ass'n v. Thomas,* 434 So.2d 306 (Fla. 1983); *see also Lite v. State,* 617 So.2d 1058 (Fla. 1993).

5. Plaintiffs fail to state a claim under Article IX, Section 6, of the Florida Constitution. That constitutional section provides only that "[t]he income derived from the state school fund shall . . . . be appropriated . . . . only to the support and maintenance of

free public schools." The complaint does not allege facts showing that the Legislature has appropriated the income of that trust fund for any purpose other than the support and maintenance of free public schools.

6. Plaintiffs fail to state a claim under Article X, Section 15, of the Florida Constitution. That section of the Constitution merely provides appropriation power to the Legislature, without limitation on that authority. As the Court noted in *Carroll v. Firestone,* 497 So.2d 1204, 1206 (Fla. 1986):

> The [ballot] summary [for Article X, § 15] makes clear that the amendment authorizes state lotteries and that the revenues from such lotteries, subject to legislative override, will go to the State Education Lotteries Trust Fund. That is the chief purpose of the amendment and is all that the statute requires. It is true, as appellants/petitioners urge, that the legislature may choose not to authorize lotteries, not appropriate the proceeds to educational uses, and even to divert the proceeds to other uses. However, those questions go to the wisdom of adopting the amendment and it is for the proponents and opponents to make the case for adopting or rejecting the amendment in the public forum.

Nothing in that clause constitutionally requires that lottery funds shall always be appropriated exclusively for the purposes of educational funding or for educational "enhancement" funding. Instead, as the Florida Supreme Court held, the Legislature has full discretion to determine the ultimate disposition of lottery proceeds.

7. Plaintiffs fail to allege a sufficient basis for this court to assume jurisdiction over this case for declaratory and other relief. Plaintiffs fail to allege a jurisdictional basis for a claim against Pat Thomas, as President of the Florida Senate, or Bolley L. Johnson, as Speaker of the House, or the respective houses of the Legislature over which they preside. Plaintiffs allege as a conclusion that the President and the Speaker "are authorized by law to appear on behalf of" the Senate and the House, respectively; but, they fail to allege

any statutory basis for such conclusion. "To appear on behalf of" the two houses of the Legislature is not alleged to have, nor does it have, any particular legal significance and such allegation is not sufficient to satisfy minimal jurisdictional requirements. The complaint states no jurisdictional basis for any claim against either house of the Legislature.

Neither the President nor the Speaker have any authority to bind their respective houses of the Legislature in a civil action of this nature, nor are they authorized to sue or be sued on behalf of either house. Pursuant to Article III, Section 2, of the Florida Constitution, the President and the Speaker are merely the permanent presiding officers of their respective houses of the Legislature. Plaintiffs have failed to allege any legal basis for a suit for declaratory judgment against either house of the Legislature, nor have they alleged any facts to show the jurisdiction of this court over the subject matter of this action or over the Legislature of the State of Florida. The failure of the President or Speaker to raise these issues is of no consequence because their inaction or "waiver" cannot confer this court with jurisdiction where it would otherwise not exist. Their failure to raise these issues cannot, thereby, vest them with power over these important political issues which they do not otherwise possess under the law of this state. Even if the President and the Speaker wanted this Court to assume jurisdiction over these political issues and ultimately decide when the Legislature has adequately fulfilled their constitutional obligation, their desires do not authorize this Court to do so and further supports this Court's deference to the doctrine of separation of powers.

Accordingly it is **ORDERED, ADJUDGED and DECREED:**

1. Defendants' Motions to Dismiss are GRANTED.

2. The Amended and Restated Complaint is DISMISSED WITH PREJUDICE.

DONE AND ORDERED at Tallahassee, Leon County, Florida this 31st day of January, 1995.

L. Ralph Smith, Circuit Judge

copies to: Counsel of record