O/A 8-24-95

IN THE SUPREME COURT OF FLORIDA

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

Appellants,

v.

Case No. 85,375

LAWTON CHILES, et al.,

Appellees.

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

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

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III. PRELIMINARY STATEMENT

Continuing the convention adopted in the initial brief, all appellants will be referred to as "plaintiffs" and appellees will collectively be referred to as "defendants."

Unless otherwise specifically stated, plaintiffs' citation to "answer brief" will be to the brief filed by the President of the Florida Senate and Speaker of the Florida House of Representatives which has been adopted in the brief of the Commissioner of Education and the State Board of Education.

IV. ARGUMENT: THE TRIAL COURT'S DISMISSAL OF PLAINTIFFS' COMPLAINT WAS ERRONEOUS AND SHOULD BE REVERSED.

A. THIS COURT SHOULD DIRECT THE TRIAL COURT TO ADJUDICATE PLAINTIFFS' CLAIMS ON THE MERITS AND DETERMINE WHETHER PLAINTIFFS' CONSTITUTIONAL RIGHTS HAVE BEEN VIOLATED.

Defendants begin their answer brief by positing that the "real" issue before the court is "who decides the amount of funding for public education." Answer Brief at 4. Two pages later, defendants choose to restate the "dispositive" issue as "whether the judiciary would violate the doctrine of separation of powers in granting plaintiffs the relief requested." Answer Brief at 6. Defendants then seek to completely recast the relief requested by plaintiffs in an effort to support their argument that granting relief would require the court to make specific appropriations decisions for the legislature.[1]

From these mistaken premises defendants assert that the court will violate the principle of separation of powers if plaintiffs are permitted to proceed with the prosecution of this case. Defendants have badly misstated the relief requested by plaintiffs and entirely missed the point. The true issue in this case is much more basic than defendants would have the court believe. The issue in this appeal is whether the judiciary will agree to adjudicate claims brought by and on behalf of Florida's public school children

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[1] In their haste to dispose of this case without being required to address the merits, defendants go so far as to argue that even if the court is not being asked to set a specific level of funding, it should nevertheless dismiss the case because plaintiffs might make such a request in the future. Answer Brief at 15 n.12. Defendants' argument is, at best, premature and, at worst, a rather heavy-handed attempt to place themselves above any form of judicial review.

alleging that their right to an adequate education, guaranteed by the Florida Constitution, is being violated by the actions, and inaction, of defendants. To hear such claims is not merely within the court's discretion but is its very reason for existence.

At least since the time of Chief Justice John Marshall's opinion in Marbury v. Madison, 5 U.S. 137, 1 Cranch 137, 2 L.Ed 60 (1803), it has been recognized that one of the primary functions of the judiciary is to review and interpret statutory and constitutional law. This court has consistently agreed, recently stating:

> [a]s the supreme court of the judicial branch, one of our primary judicial functions is to interpret statutes and constitutional provisions. In carrying out this function, we find that we do not violate the separation of powers doctrine when we construe a statute in a manner that adversely affects either the executive or the legislative branch.

Locke v. Hawkes, 595 So. 2d 32, 36 (Fla. 1992).

In this case plaintiffs ask the court to review the organic legal document of this state, the Florida Constitution, to define the nature and extent of their rights and to determine whether the rights conferred upon them by that compact have been withheld by defendants. This determination neither intrudes upon the province of a coequal branch of government nor requires the judiciary to make value judgments among competing political programs. Instead, it simply asks the judiciary to do what only it can do, to enforce

a constitutional mandate and vindicate the rights of individuals which are being infringed by the government.[2]

Indeed, this is precisely the procedure outlined and, at least implicitly, approved in the article written by counsel for the Commissioner of Education which is cited in defendants' answer brief. In that article, Ms. Staros recognized that:

> Finally, if the Florida Supreme Court uses the "plain meaning" method of analysis in any future adequacy/quality suit it will have to define what level of duty is imposed on the legislature by the provision "adequate provision shall be made by law for a uniform system of free public schools." The court will then examine the language of this provision to determine whether it imposes a specific standard or quality. The court will then need to address whether Florida's school system meets that standard and, if not, whether it is because of the school finance system. ...

Barbara J. Staros, School Finance Litigation in Florida: A Historical Analysis, 23 Stetson L. Rev. 497, 519 (1994). Tellingly, and correctly, it was not suggested in Ms. Staros' article that such a determination by this court would violate the principle of separation of powers. Defendants' separation of powers argument should be rejected. See Dade County Classroom Teachers Ass'n v. The Legislature, 269 So. 2d 684, 686 (Fla.

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[2] While the level of appropriations may be a stick in the bundle of rights which encompass plaintiffs' right to an adequate education, plaintiffs do not ask the court to review the particular mechanism by which the state seeks to furnish an education, just the inadequate result which is achieved. Certainly, the power to appropriate is no more under review here than it is in numerous cases in which the court quite properly and regularly adjudicates the constitutional rights of individuals such as in the prison overcrowding and school desegregation contexts.

1974)(the area of constitutionally protected rights is an exception to the doctrine of separation of powers).

B. PLAINTIFFS PROPERLY SEEK LEGITIMATE DECLARATORY RELIEF, NOT AN ADVISORY OPINION.

This court has explicitly held that a declaratory judgment is "available to any affected party for the purpose of obtaining a declaration of rights, status, or other equitable or legal relations arising out of a public obligation." North Shore Bank v. Town of Surfside, 72 So. 2d 659, 661 (Fla. 1954). The standard for obtaining such a declaration is well-settled and not in dispute. See May v. Holley, 58 So. 2d 636, 639 (Fla. 1952); Initial Brief at 26; Answer Brief at 15-16. As plaintiffs detailed in their initial brief, the elements for declaratory relief are all present in this case. See Initial Brief at 26-27.

In contrast, defendants assert that plaintiffs have failed to meet three of the May elements thereby precluding declaratory relief and reducing plaintiffs' complaint to one for an advisory opinion. See Answer Brief at 17. Defendants first argue that because no demand has been made that any particular law be declared unconstitutional, there is no bona fide, actual, practical need for a declaration to be issued. Instead, plaintiffs have alleged that they have a constitutional right which has been, and continues to be, violated by defendants. Thus they have a current and very real, practical need for relief.[3]

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[3] One would assume, for example, that if an individual were incarcerated for a lengthy period of time with no charges pending the defendants would not suggest he was not entitled to relief notwithstanding the fact that he did not demand money or that any

Second, defendants argue that because no specific legislation is being challenged there is not a present, ascertained or ascertainable state of facts upon which to predicate relief. Again, defendants are seriously mistaken. The present, ascertainable state of facts which plaintiffs are prepared to prove at trial are those conditions which currently exist in public schools throughout the State of Florida. The conditions are ascertainable and not difficult to determine.[4] It will then, of course, be up to the circuit court on remand to determine whether that state of facts renders Florida's educational system constitutionally adequate or inadequate.

Finally, defendants belittle plaintiffs' claims by arguing that plaintiffs merely seek legal advice. With all due respect to this court and to defendants, plaintiffs do not seek advice, they seek relief to halt the ongoing violation of their constitutional rights. Plaintiffs have raised claims they take most seriously, claims that they are being deprived of the adequate education guaranteed to them by the Florida Constitution. Plaintiffs should

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particular statute be declared unconstitutional. Likewise, plaintiffs need not make such a demand to be entitled to declaratory relief.

[4] Defendants, in fact, include a number of such "facts" in their brief in an attempt to show the adequacy of Florida's public education system. See Answer Brief at 5 n.6 & 10. These "facts" are clearly outside the record and should not be considered by the court at this stage of the proceedings. Defendants should be given the opportunity to present these arguments at the appropriate time on remand when plaintiffs will have a similar opportunity to show the inadequacy of the present system.

be given, and are entitled to, an adjudication on the merits of their claims.

C. THE RIGHT TO AN ADEQUATE EDUCATION IS GUARANTEED BY THE FLORIDA CONSTITUTION.

In the introductory paragraphs of the argument section of their brief, defendants profess agreement with plaintiffs' position that education is basic to our society and necessary for our children. Despite this enlightened declaration, defendants then continue by arguing that, although education is basic and necessary, the state government has absolutely no obligation to provide an education to Florida's children except to insure statewide educational uniformity. Consequently, defendants do not attempt to refute, and apparently would embrace, plaintiffs' restatement of defendants' position that any level of funding - - even one dollar per year per student - - would be constitutional as long as no student in the state received two dollars. Leaving the wisdom of such a position aside, uniformity is not the sole requirement of our constitution.

Plaintiffs have previously discussed, and will not repeat here, the overwhelming support for their position that education is a fundamental right under Florida's Constitution. See Initial Brief at 11-17. Suffice it to say that both this court and the legislature have consistently recognized the fundamental nature of the right to education, both before and after the adoption of the 1968 Constitution. For example, in Taylor v. Board of Public Instruction of Lafayette County, 26 So. 2d 180 (Fla. 1946), this court recognized:

> An adequate public school program not only contemplates [athletic fields, gymnasiums, bus sheds, and teachers' homes], but also contemplates physical and mental examinations of all children attending the public schools under such regulations as may be prescribed by the State Board of Education and State Board of Health. ...
>
> An adequate public school program now contemplates the development of skills that flow from the head, the hand, the heart. It must offer training in the laws of health, sanitation, dietetics, and recreation, in addition to subjects that are cultural. Expenditures for facilities that aid these purposes may be lawfully made from the public school funds.

Id. at 181. Again, as recently as two years ago, this court recognized that "the right to education is basic in a democracy." Florida Dep't. of Educ. v. Glasser, 622 So. 2d 944, 948 (Fla. 1993).

Similarly, in enacting statutes governing the provision of public education in this state, the legislature, even after the enactment of the 1968 Constitution, has consistently recognized the fundamental nature of education under the laws and constitution of this state. Section 228.002, Florida Statutes (1993), states:

> The purpose of the Florida School code is for the establishment, maintenance and support of public education in the state and the provisions thereof shall be liberally construed to the end that its objects may be effected. ...

(emphasis added).

Section 228.01, Florida Statutes (1993), provides:

> It is the purpose of the state plan for public education to ensure the establishment of a state system of schools, courses, classes, institutions,

> and services adequate to meet the educational needs of all citizens of the state.

(emphasis added).

Similarly, Section 228.04, Florida Statutes (1993), states:

> As required by §1, Art. IX of the Constitution, this state system of public education shall include the uniform system of free public schools as established and which shall be liberally maintained.

(emphasis added).[5]

Finally, Section 236.012, Florida Statutes (1993), provides:

> The intent of the Legislature is: (1) To guarantee to each student in the Florida public educational system the availability of programs and services appropriate to his educational needs which are substantially equal to those available to any similar student notwithstanding geographic differences and varying local economic factors. ...

(emphasis added).[6]

Thus, it is clear that simple uniformity in educational opportunity is not all that is required under Florida's Constitution. Rather, Florida's school children have been granted the right to receive an adequate education. Plaintiffs should be given the opportunity to litigate whether that right has, in fact, been conferred.

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[5] Sections 228.002, 228.01 and 228.04, Florida Statutes, were all reenacted after the adoption of the 1968 Florida Constitution. See Chapter 72-221, Laws of Florida.

[6] Section 236.012, Florida Statutes, was reenacted after the adoption of the 1968 Florida Constitution. See Chapter 72-458, Laws of Florida.

D. ALL PLAINTIFFS AND DEFENDANTS ARE PROPERLY JOINED IN THIS CASE.

The plaintiffs in this action include eleven Florida public school children and their parents and guardians. No one, trial court or defendants, has ever disputed that they have standing to prosecute this case. See Chiles v. Children A, B, C, D, E, and F, 589 So. 2d 260, 263 n.5 (Fla. 1991).[7] As defendants have not questioned the standing of the children, neither have they disputed the standing of the Coalition for Adequacy and Fairness in School Funding, Inc., a Florida nonprofit corporation. Defendants' standing arguments, even if fully accepted by this court, therefore, merely eliminate certain categories of plaintiffs; they do not dispose of the case.

Although the trial court never ruled on the standing of individual school board member plaintiffs, defendants argue that neither these individuals nor the school boards themselves have standing as plaintiffs. For the reasons set forth at pages 30 to 34 of plaintiffs' initial brief, defendants' standing argument is

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[7] As the court held in Chiles:

> This Court has long held that a citizen and taxpayer can challenge the constitutional validity of an exercise of the legislature's taxing and spending power without having to demonstrate a special injury. The budget reductions ordered pursuant to section 216.221, Florida Statutes (1989), go to the very heart of the legislature's taxing and spending power, and thus the children have standing to invoke this constitutional challenge.

Chiles, 589 So. 2d at 263 n.5 (citations omitted).

wrong. Indeed, a very case relied upon by defendants, Paul v. Blake, 376 So. 2d 256 (Fla. 3rd DCA 1979), recognizes that:

> It has long been recognized that in a representative democracy the public's representative in government should ordinarily be relied on to institute the appropriate legal proceedings to prevent the unlawful exercise of the state or counties taxing and spending power.

Id. at 259. Accordingly, all plaintiffs have standing to prosecute this case.

Similarly, plaintiffs believe all defendants have been properly joined. As the answer brief of the President of the Senate and the Speaker of the House candidly acknowledges, the Florida Senate and Florida House of Representatives, acting through the President and Speaker, are proper parties. With respect to the joinder of the Commissioner of Education and the State Board of Education, as detailed in their initial brief, plaintiffs joined these defendants because they were regarded as indispensable parties pursuant to this court's decision in Glasser. Moreover, both the Commissioner and State Board of Education have significant policy making and rule making responsibilities. Of course, should the court determine that neither the Commissioner nor State Board of Education are proper defendants, plaintiffs are prepared to proceed with litigating their claims against the remaining defendants.

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

In their attempt to persuade this Court to chart a course opposite to that followed by all of its sister courts that have addressed the issue, defendants mischaracterize the holdings of the non-Florida school cases, urging that they stand for the proposition that a "uniform" school system can never be constitutionally inadequate, and because Florida's school system is "uniform," no claim that it is constitutionally inadequate can be entertained. Stated another way, defendants read these decisions as holding that the education clauses of those states' constitutions provide no enforceable right to a minimally adequate level of educational opportunity unless there is an egregiously inequitable distribution of whatever educational resources are provided.

These decisions cannot be fairly read as even suggesting such a proposition. The courts of sixteen states have ruled expressly on claims that the education clauses of their constitutions guarantee a judicially enforceable minimum level of educational opportunity irrespective of distributional inequities. All sixteen have held specifically that their constitutions do confer such a right.[8] In a number of these cases the plaintiffs also made separate and distinct equal protection claims, many of which were also sustained. However, in no decision is there any connection

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[8] See cases cited in footnotes 7-9 at page 39 of plaintiffs' Initial Brief.

between the two claims. Rather, in those cases in which both education clause claims and equal protection claims were sustained, they were invariably held to be distinct and alternative grounds for relief; neither is dependent on the other in any way.

Defendants also argue that the Florida constitutional language -- "adequate provision shall be made by law for a uniform system of free public schools" -- is a so-called "weak" provision for education which cannot be compared with the constitutions of the states whose courts have held that there exists an enforceable right to minimally adequate levels of educational opportunity. This argument relies entirely on an abstract academic classification of the various state constitutional education provisions on a four-point scale from I (very weak) to IV (very strong). According to the article cited,[9] the constitutions of Category I states impose no duty on the state other than to create a system of public schools. Category II constitutions impose at least some minimal duties on the state having to do with educational quality, uniformity, or both. Category III constitutions impose an affirmative duty on the states to provide some level of quality educational opportunity, and Category IV constitutions affirm that provision for education is the highest duty of the state. The author of that article, Mr. Thro, classifies Florida as a Category II state, which defendants

[9] William E. Thro, To Render Them Safe: The Analysis of State Constitutional Provisions in Public School Finance Reform Litigation, 75 Va. L. Rev. 1639 (1989).

interpret as meaning that Florida's Constitution imposes no requirement other than uniformity.[10]

Plaintiffs stated in the Initial Brief that it would serve no useful purpose to attempt to categorize the language used in the education clauses of the constitutions of those states whose courts have ruled on whether their constitutions create an enforceable right to an adequate level of educational opportunity; plaintiffs quoted the pertinent provisions of the constitutions of those states to indicate the variety of language used. Initial Brief at 39-41. If defendants' theory of classification corresponded with reality, one would expect to find these decisions coming exclusively, or at least predominantly, from the courts of category III and IV states. Examination of the decisions, however, shows the opposite; there is absolutely no correlation between the category in which the author of the defendants' scheme places the Constitution of a given state, and the response of that state's courts to claims of constitutionally inadequate provision for education. Of the sixteen cases in which state courts have considered (and unanimously upheld) such claims, two were in category I ("no duty") states (Arizona, Alabama), nine in category II ("minimal duty") states (Idaho, Kentucky, Montana, New Jersey, North Dakota, Ohio, Tennessee, Texas, West Virginia), three in

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[10] According to this classification scheme, Florida was a category IV ("paramount duty") state until 1968, when education was demoted to a constitutionally insignificant status. Are defendants seriously arguing that education has become <u>less</u> important in Florida in recent times or that the drafters of the 1968 Constitution intended it to be so?

category III ("substantial duty") states (Massachusetts, Rhode Island, Wyoming), and only two from category IV ("paramount duty") states (New Hampshire, Washington). Even more significant is the fact that there is not a single state in the entire United States, regardless of the language of its Constitution, whose courts have held, as defendants here contend, that a claim of constitutionally inadequate provision for educational opportunity is not judicially cognizable.

Defendants are urging this Court to travel a lonely road that its counterparts in other states have consistently avoided. They have an obligation to the Court to be more forthright in describing its landmarks.

V. CONCLUSION

Based upon the foregoing authorities and argument and the authorities and argument contained within plaintiffs' initial brief, plaintiffs respectfully request the court to reverse the order dismissing their complaint and to remand this case for consideration on the merits.

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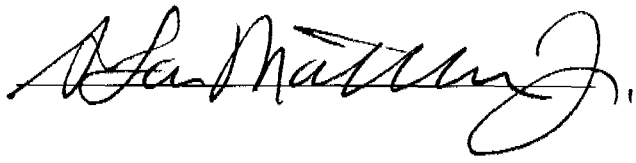
VIII. CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was sent by U.S. Mail on this 14 day of July, 1995, to:

See Exhibit "A"



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