IN THE SUPREME COURT OF FLORIDA

THE FLORIDA SENATE, and TONI JENNINGS, in her official capacity as a Member of and as the President of the Florida Senate and as a citizen and taxpayer of the State of Florida,

Petitioners,

v. Case No. 95,960

KATHERINE HARRIS, in her official capacity as Secretary of the State of Florida, and ROBERT MILLIGAN, in his official capacity as Comptroller of the State of Florida,

Respondents / Counterrespondents,

and

JEB BUSH, in his official capacity as Governor of the State of Florida, and as a citizen and taxpayer of the State of Florida,

Intervenor-Respondent / Counterpetitioner.
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THE FLORIDA SENATE'S ANSWER TO GOVERNOR BUSH'S COUNTERPETITION FOR WRIT OF MANDAMUS

The Florida Senate and Toni Jennings, in her official capacity as a member of and as the President of the Florida Senate, and as a citizen and taxpayer of the State of Florida, in the alternative, answer Governor Bush's Counterpetition and

deny that the proviso language in Item 117C changes or amends the statutory (FEFP) formula found in section 236.081, Florida Statutes, for allocating funds to school districts.

The Governor first argues that the statutory scheme contemplates funding extended school year programs according to the FEFP formula, "but in the disputed proviso language . . . the Legislature used a different formula. . . ."

The only "statutory scheme" to which the Governor refers is the sentence in section 236.081(1)(o), Florida Statutes, (extended school year program) which reads: "Districts may apply to the Commissioner of Education for funds to be used in planning and implementing an extended school year program." This sentence clearly anticipates a grant process (the words "districts may apply . . . "). The next sentence, which directs the Department of Education to ". . . recommend to the Legislature the policies necessary for full implementation . . . " also supports the conclusion that the Legislature intended that a grant process be used for initial implementation of an extended school year. There is nothing unique about use of a grant process for either a pilot program or for a statewide program that is to be phased in over a period of years. A grant process allows districts to choose to participate or not to participate. All districts had an equal chance to choose extended school year implementation. Unlike certain components of the

funding formula, extended school year funds are not an entitlement. **In short, the proviso for Item 117C merely provides funds to implement the authority provided in section 236.081(1)(o), Florida Statutes, and is wholly consistent with that section of statute.** Having determined that an extended year is beneficial as a result of the pilot at Frontier Elementary, Item 117C is a logical next step, i.e., a phased implementation over time for schools that wish to participate.

The statute does not contemplate any particular funding method; it is silent regarding how funds shall be allocated. To suggest that a funding method is clear by virtue of the fact that authorization for funding is provided in section 236.081, Florida Statutes, is not correct. The funding formula contains many elements; some of which are referenced in the statutes (e.g., the sparsity supplement and the declining enrollment adjustment) and others that are not specified in section 236.081, Florida Statutes, (e.g., safe schools and the disparity compression adjustment). It is commonplace for components of the funding formula to use allocation methods that are not principally based on the student enrollment of the district.

Section 236.081, Florida Statutes, clearly anticipates the desire of the Legislature annually to make changes in the funding formula. The first

sentence of section 236.081, Florida Statutes, says "If the annual allocation from the Florida Education Finance Program to each district for operation of schools is not determined in the annual appropriations act or the substantive bill implementing the annual appropriations act, it shall be determined as follows:"

Grant programs that provide funds for which districts must apply are not commonly included in the FEFP formula (e.g., school choice or reading programs funds). If the Legislature had done whatever the Governor suggests it should have done to "track" the FEFP formula, what would the Legislature have done differently? The FEFP formula allocates funds based on the weighted enrollment of districts. So does the Legislature's extended year formula. The FEFP formula provides a basic funding amount for each student and adjusts that amount based on the cost of living of each district. So does the Legislature's extended year formula. The Legislature could have amended current statutes to change the definition of a full-time-equivalent student to allow each student participating in an extended school year to be counted for funding purposes as more than a 1.0 full-time-equivalent student. Along with that, the Legislature could have amended districts' enrollment projections for the budget year to include projections of these additional FTE students. The Legislature chose not to do so because it made the extended year a grant program only for districts that

choose to implement it, and participation was not known with certainty at the time the Legislature considered provisions of the funding formula. Neither did the Legislature have any way to know how districts would choose to implement the extended school year. Would they begin the year earlier? Would they push back the end of the year? Would they do both?

The Legislature enacted these grant funds so as not to affect other formula entitlement amounts, such as hold harmless and disparity compression calculations. It is not uncommon for the Legislature to exempt certain components or categorical programs from the calculation of other components. For example, preschool funds were classified as a major categorical program and were included in the hold harmless and compression adjustment calculations for many years, but they are no longer included in those calculations. For other formula components, such as declining enrollment or sparsity supplement calculations, inclusion of projected "extended school year FTE" in the formula would have made no difference. **It must be concluded that if the Legislature had done as the Governor suggested, the end result would have been much the same as the Legislature stipulated in proviso for Item 117C.**

The Governor then argues that the proviso is invalid because it "only purports to fund 15 days of operation, not 30."

The only model the Legislature had to follow was Frontier Elementary in Pinellas County. In that case, the school chose to add the additional instructional time to the end of the school year; half the additional time occurs in June and the other half occurs in July. Because the state's fiscal year ends in June, the Legislature's 1999-2000 budget would provide funding for only half of the extended time for any school that adopted a calendar similar to that of Frontier Elementary. Therefore, the operations grants formula provided funds for an additional 1/6 of the school year and divided that amount in half. The only case in which that might adversely affect a school would be in a case in which they started the extended year in August 1999 and completed it in June 2000. Because of the substantial preparation required to generate support from parents, students and teachers, the Legislature determined it unlikely that a school could begin the extended year as early as August 1999. However, the Legislature also authorized districts to use funds allocated for Class Size Reduction/Supplemental Instruction (a $523.5 million categorical program) in order to supplement its allocation of extended year funds. A school that chose to begin the extended year in August 1999 could have used those funds to supplement a quick-start, extended school year allocation.

Next, the Governor argues that ". . . the proviso formula uses the wrong measure of districts' FEFP allocation . . . it leaves out additional funding components that are included in the FEFP as a matter of course."

The extended year formula is based on the **base** FEFP amount (weighted enrollment multiplied times the base student allocation and by the district cost differential). The Governor acknowledges that the only difference between base FEFP and total FEFP funds is the difference between 98 percent and 100 percent. The Legislature chose the base FEFP amount for a specific reason. The Legislature reasoned that the cost of extending the school year by 1/6 is not necessarily associated with 1/6 increase in cost. For example, if a school has a summer school program, the school has already budgeted for electricity and custodial and other costs of maintaining a physical plant. District overhead costs, such as the salary of district staff are likewise budgeted for a full year regardless of the length of the instructional year for students. Therefore, it is not necessarily true that each day's extension will cost an additional 1/180.

Next, the Governor argues that the proviso unconstitutionally alters the FEFP formula by authorizing the Commissioner of Education to reduce the 2000-2001 FEFP allocation of a school district with participating schools that fail to file a report of student performance data.

The Legislature established numerous restrictions and qualifications regarding the use of extended school year funds. One of these was the requirement that schools must use student performance data to measure the extent to which an extended school year is associated with increased student performance. In particular, the Legislature required schools to compare student performance gains in 180-day schools with student performance gains in 210-day schools. **This requirement was established as a condition for entitlement to funds for operation of an extended school year**. Because, by definition, evaluation of the extended school year program could only occur following its implementation, the Legislature could not establish such an evaluation as a prior condition for receipt of funds for operation of an extended year. Rather, the Legislature required schools that fail to undertake such an evaluation to return to the state all funds they received for extended year operation. The Legislature provided for that refund by requiring the Commissioner of Education to deduct from each non-reporting school's 2000-2001 FEFP entitlement the amount of its 1999-2000 allocation of extended school year operational funds.

The Legislature did not require that a school demonstrate any particular outcome as a result of this evaluation; a school's entitlement to funds for the operation of an extended school year is not dependent upon a finding that student

performance in an extended school year is higher than the student performance in a 180-day school. Rather, the Legislature merely required that each school should be willing to compare the performance of schools with different calendars so that the Legislature would have empirical data to assist its deliberation regarding the wisdom of statewide implementation of an extended school year at some future date.

Finally, in any event, the Senate draws this Court's attention back to its opinion in *Department of Education v. School Board of Collier County*, 394 So.2d 1010 (Fla. 1981). That case involved a provision in the 1978-79 Appropriations Act guaranteeing a minimum increase of 7.25 percent in school funding in all school districts except those having a millage value per student of more than 20 percent over the statewide average. This Court again restated the *Brown* rule that an appropriations bill must not change or amend existing law on a subject other than appropriations, but held that the *Brown* rule would be subject to an exception: where an enhancement was a <u>supplement</u> to the FEFP allocations. In *Collier County* this Court determined that enhancements are not amendments to the formula, and that it was within the constitutional authority of the Legislature to provide <u>additional</u> funds over and above the FEFP formula, in the General Appropriations Bill.

The Collier County School Board contended that the "hold harmless" provision had been amended by the 7.25 percent guaranteed increase contained in the General Appropriations Act, although the Legislature could not have reduced the amount the (plaintiff) counties would have received under the hold harmless provision. As noted, this Court held that the Legislature could provide a specific amount of additional money for specifically identified school districts without amending the formula, and clearly here Line Item 117C, the extended school year program, did exactly that.

Accordingly, the Senate respectfully asks this Court to conclude that the proviso language in Item 117C does not change or amend the statutory (FEFP) formula found in section 236.081, Florida Statutes, for allocating state funds to school districts.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the Senate's Answer to Governor Bush's Counterpetition for Writ of Mandamus has been furnished by hand delivery to counsel listed below, this 12th day of August 1999:

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