CASE NO. 95-960

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.

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

Respondents.

Issuance of Writ of Mandamus to Respondents

AMICUS CURIAE BRIEF OF THE FLORIDA SCHOOL BOARDS ASSOCIATION IN SUPPORT OF PETITIONERS

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INTRODUCTION

Pursuant to Florida Rule of Appellate Procedure Rule 9.370, the Florida School

Boards Association, Inc. (FSBA) respectfully submits this amicus curiae brief in support of the Petitioners, THE FLORIDA SENATE and TONI JENNINGS, in her official capacity as a Member of and as President of The Florida Senate and as a citizen and taxpayer of the State of Florida. Counsel for the Petitioners and the Respondents have consented to the participation of FSBA as Amicus Curiae in this matter.

STATEMENT OF INTEREST

FSBA is a not-for-profit association representing the statewide interests of school boards. FSBA appears as amicus curiae in this action to represent the interest of school boards, who are responsible for providing a uniform, efficient, safe, secure, and high quality system of free public schools that allow students to obtain a high quality education, as mandated by the Constitution of the State of Florida. Increased legislative demands on local school boards require raising standards, enhancing safe, secure, and disciplined classroom learning environments, supporting teachers, reinforcing high academic expectations, rewarding success and promptly identifying failures.

FSBA has a particular interest in defending all funding appropriated to provide for opportunities for the public school children to achieve the high standards of the State of Florida. Thus, FSBA seeks issuance of a Writ of Mandamus, requiring the Secretary of State to expunge the Governor's veto of all of Line Item 117C, except

its final paragraph, Senate Bill 2500 (Chapter 99-226, Laws of Florida), General Appropriations Act (hereinafter, "the GAA"), enacted by the legislature for Fiscal Year 1999-2000 from the official records of the State; and requiring the Comptroller to ensure that this expunction is reflected in the financial operations of the state.

This brief is submitted in support of the position of the Petitioners, 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 this brief the Petitioners, THE FLORIDA SENATE, et al., will be referred to as President Jennings. The Respondent, KATHERINE HARRIS, will be referred to as Secretary Harris, and ROBERT MILLIGAN, will be referred to as Comptroller Milligan.

STATEMENT OF THE CASE AND FACTS

Amicus Curiae adopts the statement of the Case and Facts presented in the brief by Petitioner, 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 of the State of Florida.

SUMMARY OF THE ARGUMENT

The Constitution of the State of Florida gives the legislature the responsibility

to establish the public education goals for the state and provide for adequate funds to meet these goals. This Fiscal Year, 1999-2000, the legislature has provided a variety of resources to assist school boards in achieving these higher expectations. In particular, $40,000,000 has been appropriated in Line Item 117C, in the GAA. (Ch. 99-226, Laws of Florida) This appropriation provides funds for schools that choose to extend the length of the academic year, for the purpose of improving student achievement. Two hundred and thirty-four schools have voiced an interest to participate and have initiated the process.

The Governor's partial veto of Line Item 117C usurps the power of the legislature, arbitrarily reduces the amount of funds available to these schools, and eliminates sections of proviso that directly indicate the legislative intent that funds from Specific Appropriations 117C are to be used by 234 identified schools for planning and operations of the extended school year pilot. The veto has caused uncertainty and confusion in the extended year program.

It is a well-established fact that the longer students are on task, the more they can achieve. Florida's public schools have attempted, in the past, to offer additional days of learning in a summer school format for some students but because of its cost these attempts have been curtailed. Extending the school year for all public school children would benefit all students. This opportunity would be very costly if offered to all children.

The majority of the 234 identified schools have been designated as "D" and "F" schools, as required by the legislature. The students in these schools need the funds in the extended school year program to meet the high standards set by the State of Florida. The full appropriation and the original proviso language in Line Item 117C give the State of Florida the opportunity to test the extended year program. Of greater importance, however, is that the full appropriation in Line Item 117C gives the 234 identified schools the opportunity to improve.

ARGUMENT

THE EXECUTIVE VETO OF THE 1999 GENERAL APPROPRIATIONS ACT, SECTION 1 - EDUCATION, LINE ITEM 117C, USURPS THE POWER OF THE LEGISLATURE, CONTRADICTS LEGISLATIVE INTENT AND HARMS THE PUBLIC SCHOOL CHILDREN OF THE STATE OF FLORIDA

I. The Constitution of the State of Florida declares that education is a fundamental value and that it is a paramount duty of the state to make adequate provision by law for a uniform, efficient, safe, secure, and high quality system of free public schools.

On November 3, 1998, voters of Florida overwhelmingly approved an amendment to Article IX, Section 1 of the Florida Constitution which states:

> The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that needs of the people may require. (Amended language emphasized)

The intent of the amendment, although it has not yet been interpreted by this Court, clarifies that education of Florida's children is a fundamental value to the people of this State. The new language attempts to clarify the meaning of adequate funding. It provides that the legislature, by law, shall adequately fund a system of free public schools that will offer the children of the State of Florida a uniform, efficient, safe, secure, and high quality system of free public schools. This funding would give each child in Florida the opportunity to obtain a high quality education. Justice Overton best expresses the importance of education, in Coalition for Adequacy and Fairness in School Funding, Inc., et al., V. Chiles, 680 So.2d 400 (Fla. 1996) ("Coalition for Adequacy") where he states that our constitution recognizes that ". . . education is absolutely essential to a free society under our governmental structure." Id. at 953.

In addition to the Constitutional mandate described above, this Court in many instances has recognized the expertise and the responsibility of the legislature in setting educational guidelines and making adequate funding provisions for these guidelines as required by the Florida Constitution. In Coalition for Adequacy, this Court concludes that the Florida Constitution had vested the legislature with enormous discretion to determine what provisions to make that would be adequate to provide for a uniform, efficient, safe, secure, and high quality system of free public schools. Id. at 952.

The separation of powers was the main concern this Court had in arriving at the conclusion in Coalition for Adequacy. A similar situation arises in the present case. This case involves the Governor's intent to usurp the legislature's power to appropriate funds for education. The judiciary as well as the Governor must defer to the wisdom of those who have carefully evaluated and studied the social, economic, and political ramifications of this complex issue. Article II, section 3 of the Florida Constitution expressly sets forth the separation of powers' doctrine:

> The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

Article III, section 8(a) of the Constitution of Florida recognizes that the governor plays a part in approving all laws passed by the legislature as is shown by the case and facts presented by the Petitioner's brief in the present case. The amicus curia adopts Petitioner's facts and case presented in the brief and will not add to these facts but to acknowledge the governor's limited powers as it relates in particular to the 1999 GAA, Section 1, Line Item 117C, at issue in this case. (Ch. 99-226, Laws of Florida)

This Court in Florida Department of Education V. Glasser, 622 So 2d 944 (Fla. 1993), agreed that the legislature should be the one to initially give meaning to the phrase "a uniform system of free public schools." Id. at 947. Justice Kogan's concurring opinion in Glasser, explains that uniformity is a complicated question

"involving the special expertise of the Legislature, its staff, its advisers on public finance, and the Department of Education." Id. at 951. In Coalition for Adequacy this Court addresses the responsibility of the legislature when it agrees with the trial court's order in this case, which stated:

> 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 judgements** as to the spending priorities to be assigned to the state's many needs, education being one of them.
> (Emphasis added) Id. at 404.

This Court has clarified the legislature's responsibility to establish and fund the public education goals of the State numerous times in the past. This Court is now being asked again to exercise its jurisdiction to resolve a fundamental constitutional dispute between the powers of the legislative and executive branches of Florida's government. The governor's veto is clearly unconstitutional.

II. The Florida Legislature has responded to the requirements of Article IX, section 1, of the Constitution of Florida by enacting Line Item 117C, of the 1999 General Appropriations Act for the benefit of the children in the public schools of Florida.

A. The extended year program, while not a new concept, was specifically funded by the Florida Legislature to provide an additional opportunity for public school children to receive a high quality education.

The Florida Legislature has allowed school districts to extend the school year

in the past in limited degrees. School districts have been allowed to use funds within the Florida Education Finance Program (FEFP) for summer school for students K-12. (§ 236.081, Fla. Stat.) This summer school program accommodated students who needed to make up course work for credit to enable them to graduate, as well as those who wanted to advance academically. At first, five or six school districts participated. The larger school districts with the greatest need offered a summer school program for academic advancement. As the advantages became apparent, more school districts began to offer this extended year/summer school opportunity for academic advancement to their students. Yet this happened conversely, when the availabilities of general revenue funds were beginning to diminish in the early 1990's. In the 1995 General Appropriations Act, the Summer School K-8 portion of the FEFP was taken out and funded separately as a categorical program. (Ch. 95-418, Laws of Florida) This program had been funded at $80,000,000. The funding for this program has remained the same since 1995. This year the line item funding was eliminated by the Florida Legislature.

The 1999 Legislature focused on education as their priority. It passed sweeping changes in public education. It raised standards, graded public schools "A" to "F" based on the performance of students in those schools on the Florida Comprehensive Achievement Test (FCAT), eliminated social promotion, and placed more serious accountability demands on school districts. (Chapter 99-398, Laws of

Florida) These changes are expensive, but needed ones. In an effort to assist in the funding of these educational programs, the legislature appropriated in excess of $1 billion. The majority of these dollars are earmarked to meet the higher expectations set by the legislature.

In the GAA, Line Item 110, the funds in the K-8 Summer School categorical program were rolled into a new categorical program, Class Size Reduction/Supplemental Instruction. (Ch. 99-226, Laws of Florida) In addition, the regular summer school funds that had remained in the FEFP and were being used by school districts for summer remediation programs were also rolled into the new categorical program. The new categorical program is funded at $527,036,284. It is the legislature's intent to provide flexible resources to schools for supplemental academic instruction to help students gain at least a year of knowledge for each year in school and to help students not to be left behind. Local school districts may use the funds in the new categorical program to provide other types of supplemental academic instruction, after school, before school or week end classes, as well as, modified curriculum, reading instruction, and others solely for the purpose of remediation. This consolidation of funds eliminates the school districts' discretion to offer summer programs for academic advancement. As a result, the 1999 Legislature funded the extended year program.

B. The extended year categorical program funded in Line Item 117C of the GAA clearly gives 234 public schools an opportunity to provide an academic

enrichment program or additional remedial work to best meet the needs of the students.

The Florida Legislature enacted the GAA by unanimous vote of each house. The specific appropriation of $39,500,000 and proviso language provides an opportunity to public schools that choose to extend the academic year for students from 180 to 210 days. In Line Item 117C, section 1, Education, of the GAA, the proviso language creates a formula for the distribution of funds for both planning and operations of the extended year and guidelines for school districts and schools to participate. (Ch. 99-226, Laws of Florida)

The process used by the Florida Senate for selecting schools started early during the 1999 Legislative Session when the Florida Senate asked the Department of Education to poll the public schools that would be interested in participating. (Memorandum on Survey Regarding Extending the School Year, Florida Department of Education, February 3, 1999) Two hundred and thirty-four public schools responded. (Survey for Extended School Year, Florida Department of Education, February 11, 1999) The intent of limiting the extended year program to only those schools that wanted to participate was due to limited funds available and to allow only those schools with a specific need and desire to explore the extended year concept to participate.

The Governor's veto attempts to reduce a $39,500,000 appropriation by $16,140,000. (Line Item Veto for SB 2500, Office of the Governor, Tallahassee, FL;

May 27, 1999) The vetoed proviso attempts to eliminate the requirement that the funds appropriated in Line Item 117C be used exclusively for the 234 public schools that volunteered to participate and the remaining language opens the Extended Year Program to all 3,586 public schools. (Florida Department of Education, Education Information Department, 325 W. Gaines, Tallahassee, FL 32399-0400; August 1999) The 234 public schools that originally volunteered have begun to plan for implementation of this program. School districts have begun to prepare to meet the requirements of Proviso which requires them to have documents submitted by August 1, 1999.

The vetoed appropriation leaves only $23,360,000 in Line Item 117C. It is unlikely that this amount can cover the entire extended year needs of the state's 3,586 public schools, even if it is only used for planning. (Florida Department of Education, Education Information Department, 325 W. Gaines, Tallahassee, FL 32399-0400; August 1999) With more serious implications, however, the partial veto of Line Item 117C encroaches on the intent of the legislature and impedes the opportunity of the children of Florida to receive a high quality public education. The veto has caused uncertainty and confusion in the extended school year program.

The majority of the 234 schools have been designated as "D" and "F" schools, as required by the new legislation, HB 751. (Chapter 99-398, Laws of Florida) The students in these schools need the funds in the extended school year program to meet

the high standards of the State of Florida. It is a well-established fact that the longer students are on task, the more they can achieve. Examples cited of this fact have been of the successes of the students in Europe and Japan, who attend year round school. (What's Wrong With American Secondary Schools?, Dr. Sam Houston, University of North Carolina - adapted from John Bishop) In Dr. Houston's study, he analyzed the educational programs in 21 different countries. One of his findings was that foreign countries have more student-teacher contact days than the United States. For example, Japan offers their students 243 student-teacher contact days and Germany offers 240 days, while the United States offers a mere 180 days. (What's Wrong With American Secondary Schools?, Dr. Sam Houston, University of North Carolina - adapted from John Bishop) Florida's public schools have attempted in the past to offer additional days of learning in a summer school format for some students but because of its cost these attempts have been curtailed. Extending the school year for all public school children would benefit all students. This opportunity would be very costly if offered to all children. The cost to operate the Florida educational system for one day (including teachers' salaries) is $60 million. (Florida Department of Education, "Rough Calculations", Mr. Link Jarret, 325 W. Gaines St., Tallahassee, FL 32399-0400; 1998-99) The full appropriation and the original proviso language in Line Item 117C gives the State of Florida the opportunity to test the extended year program in Florida. Of greater importance, however, the full appropriation in Line

Item 117C gives the these 234 schools the opportunity to improve.

CONCLUSION

The Governor's partial veto in Line Item 117C usurps the power of the legislature, arbitrarily reduces the amount of funds available to these schools, opens the categorical program to all the schools in Florida, and eliminates sections of proviso that directly indicate the legislative intent that funds from Specific Appropriations 117C are to be used by the 234 schools already identified for the planning and operations of the extended school year pilot.

FSBA joins the Petitioners, THE FLORIDA SENATE, and TONI JENNINGS, in her capacity as a Member of and as the President of the Florida Senate and as a citizen and taxpayer of the State of Florida, requests that this Court issue a Writ of Mandamus to KATHERINE HARRIS, in her capacity as Secretary of State of the State of Florida, directing her to reinstate the vetoed portions of the initial seven paragraphs of proviso following Line Item 117C of the GAA (Ch. 99-226, Laws of Florida), increasing the amount of such line item to $39,500,000, and expunging the unconstitutional veto identified in Section I of this amicus curiae; and to ROBERT MILLIGAN, in his official capacity as Comptroller of the State of Florida, directing him to ensure that this expunction and reinstatement are reflected in the financial operations of the state.

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of August, 1999, a true and correct copy of the foregoing **AMICUS CURIAE BRIEF** was mailed by depositing same in the U.S. Mail, postage prepaid, to Counsel for Petitioners: Mr. Stephen Kahn, General Counsel, Office of the President, The Florida Senate, 404 South Monroe St., Tallahassee, FL, 32399-1300, and to Counsel for Respondents: Ms. Debbie Kearney,

General Counsel, Department of State, Plaza Level 02, The Capitol, Tallahassee, FL, 32300-0250 and Mr. Robert Beitler, Deputy General Counsel, Office of the Comptroller, Plaza Level 09, The Capitol, Tallahassee, FL, 32399-0350.

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Tatjana L. Martinez