IN THE SUPREME COURT OF FLORIDA
Case No. SC 18-67

CITIZENS FOR STRONG SCHOOLS, INC.; et al., Petitioners,	)	
vs.	)	L.T. Case Nos. 1D16-2862; 1D10-6285; 09-CA-4534
FLORIDA STATE BOARD OF EDUCATION; et al., Respondents,	)	
and	)	
CELESTE JOHNSON; et al., Intervenors/Respondents.	)	

PETITIONERS' AMENDED APPENDIX

ON INITIAL BRIEF FOR THE FLORIDA SUPREME COURT

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IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

CASE NO. 1D16-2862

CITIZENS FOR STRONG SCHOOLS, INC., FUND EDUCATION NOW, INC., EUNICE BARNUM, JANIYAH WILLIAMS, JACQUE WILLIAMS, SHEILA ANDREWS, ROSE NOGUERAS, and ALFREDO NOGUERAS,

Appellants,

v.

FLORIDA STATE BOARD OF EDUCATION; ANDY GARDINER, in his official capacity as the Florida Senate President; STEVE CRISAFULLI, in his official capacity as the Florida Speaker of the House of Representatives; and PAM STEWART, in her official capacity as Florida Commissioner of Education,

Appellees,

and

CELESTE JOHNSON; DEAUNDRICE KITCHEN; KENIA PALACIOS; MARGOT LOGAN; KAREN TOLBERT; and MARIAN KLINGER,

Intervenors/Appellees.

_____/

Opinion filed December 13, 2017.

An appeal from the Circuit Court for Leon County.
George S. Reynolds, Judge.

Jodi Siegel and Kirsten Anderson of Southern Legal Counsel, Inc., Gainesville; Timothy McLendon, Gainesville; Deborah Cupples, Gainesville; Eric J. Lindstrom of Egan, Lev & Siwica, P.A., Gainesville; Neil Chonin, Gainesville, for Appellants.

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B.L. THOMAS, C.J.

Eight years ago, Appellants initiated a legal challenge to Florida's public school system, asserting that the State's entire K-12 public education system – which includes 67 school districts, approximately 2.7 million students, 170,000 teachers, 150,000 staff members, and 4,000 schools – is in violation of the Florida Constitution. Appellants sued the Florida State Board of Education, the President of the Florida Senate, the Speaker of the Florida House of Representatives and the Florida Commissioner of Education seeking a declaration that the State violated its "paramount duty" to provide a "uniform, efficient . . . and high quality system of free public schools that allows students to obtain a high quality education," as required by Article IX, section 1(a) of the Florida Constitution. Appellants sought declaratory and supplemental relief below, including: a demand that the State submit a remedial plan for the alleged constitutional deficiencies; a demand that relevant studies be conducted for necessary actions; and that the trial court retain jurisdiction to provide any further appropriate legal relief.

We affirm the trial court's ruling denying relief on the basis that Appellants' arguments regarding the State's duty to make adequate provision for an efficient and high quality education raise political questions not subject to judicial review, because the relevant constitutional text does not contain judicially discoverable standards by which a court can decide whether the State has complied with organic law. Furthermore, the strict separation of powers embedded in Florida's organic law requires judicial deference to the legislative and executive branches to adopt and execute educational policies those branches deem necessary and appropriate to enable students to obtain a "high quality" education, as directed by the Florida Constitution. There is no language or authority in Article IX, section 1(a) that would empower judges to order the enactment of educational policies regarding teaching methods and accountability, the appropriate funding of public schools, the proper allowance of charter schools and school choice, the best methods of student accountability and school accountability, and related funding priorities.

The most effective manner in which to teach students science, mathematics, history, language, culture, classics, economics, trade skills, poetry, literature and civic virtue have been debated since at least the time of ancient Greece. Brilliant philosophers, thinkers, writers, poets and teachers over the past twenty-five centuries have dedicated their talents to identifying the best means of providing a proper education to help each child reach his or her highest potential in a just

society. In a republican form of government founded on democratic rule, it must be the elected representatives and executives who make the difficult and profound decisions regarding how our children are to be educated. Absent specific and clear direction to the contrary in the supreme organic law, which does not exist in Article IX, section 1(a) of the Florida Constitution, we uphold the trial court's correct ruling that such decisions are not subject to judicial oversight or interference.

We also affirm the trial court's ruling rejecting Appellant's arguments challenging the State's constitutional compliance with its duty to provide a "uniform" education. We agree that the John M. McKay Scholarship Program for Students with Disabilities – which affects only 30,000 students and does not materially impact the K-12 public school system – provides a benefit to help disabled students obtain a high quality education. Thus, the McKay Scholarship Program does not violate Article IX, section 1(a) of the Florida Constitution.

Background and Procedural History

In 2009, Appellants filed suit challenging the State's education policies as invalid under Article IX, section 1(a) of the Florida Constitution. Appellees moved to dismiss, asserting in part that the allegations raised political questions not subject to judicial review, and the motion was denied. Appellees then sought a writ of prohibition in this court, asserting that the claims were not justiciable, as

they raised political questions. Sitting en banc, this court voted 7-1-7 to deny the petition for writ of prohibition and allowed the litigation to continue in the trial court. *Haridopolos v. Citizens for Strong Schools Inc.,* 81 So. 3d 465, 467 (Fla. 1st DCA 2011) (en banc). The en banc court certified as an issue of great public importance the following question:

> Does Article IX, section 1(a), Florida Constitution, set forth judicially ascertainable standards that can be used to determine the adequacy, efficiency, safety, security, and high quality of public education on a statewide basis, so as to permit a court to decide claims for declaratory judgment (and supplemental relief) alleging noncompliance with Article IX, section 1(a) of the Florida Constitution?

Id. at 473. The dissenting judges would have granted the writ, based on the separation of powers requirement of Article II, section 3 of the Florida Constitution and the political question doctrine. *Id.* at 480-81 (Roberts, J., dissenting). The Florida Supreme Court declined to accept jurisdiction to consider the certified question. *Haridopolos v. Citizens for Strong Schools Inc.,* 103 So. 3d 140 (Fla. 2012) (unpublished table decision).

Appellants then filed a second amended complaint, alleging that the State's legislative and executive branches had violated their "paramount duty" to provide a "uniform, efficient . . . and high quality system of free public schools that allows students to obtain a high quality education" under Article IX, section 1(a), in several respects: (1) the State failed to make "adequate provision" for a system of

free public schools, because the overall level of funding for education is deficient; (2) the State failed to administer a "uniform" system of education, because two school choice programs, the Florida Tax Credit Scholarship Program and the John M. McKay Scholarship Program for Students with Disabilities (the McKay Scholarship Program), divert public funds to private schools not subject to the same requirements as public schools;[1] (3) the State failed to provide an "efficient" education system, because the accountability methods utilized by the State are ineffective and because charter schools are mismanaged; (4) the State failed to provide a "high quality" education system because schools provide insufficient services and coursework and have an insufficient number of highly qualified teachers and support staff; and (5) the public school system did not allow students to obtain a high quality education, based on various assessments.[2]

After extensive pre-trial discovery, a four-week bench trial was conducted by the successor circuit judge, in which more than forty witnesses testified and over 5,300 exhibits were submitted. The court made comprehensive findings on a

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[1] The trial court allowed six parents interested in the Florida Tax Credit Scholarship Program and the McKay Scholarship Program to intervene in the proceedings. The trial court later granted their motion for judgment on the pleadings as to the Florida Tax Credit Scholarship Program, finding that Appellants lacked standing to challenge that program.

[2] The second amended complaint also added a claim relating to the State's pre-kindergarten program. The trial court severed that claim, and it is not at issue in this appeal.

broad range of subjects, including: the structure of Florida's education system; the various policies and programs implemented by the State to achieve its educational goals; the funding allocated for these programs; and student performance – overall and by various demographics – under state and national assessments and other measures. Ultimately, however, the trial court found all of the issues raised by Appellants regarding educational adequacy, efficiency, and quality were properly considered "political questions best resolved in the political arena," as the organic law did not provide judicially manageable standards by which to measure the State's actions in enacting and implementing educational policies, as the dissenting judges on this court concluded in 2011.[3]

The trial court nevertheless addressed Appellants' arguments on the merits, concluding that the State had made significant efforts and advances in education, leading to sustained improvement on outcomes for Florida students:

> [T]he State has made education a top priority both in terms of implementation of research-based education policies and reforms, as well as education funding. The State has an accountability and assessment system that is rated among the best in the nation . . . . The State has also adopted rigorous teacher certification, training and

[3] As to "safe" and "secure," the trial court ruled that these terms are subject to judicially manageable standards, but that Appellants had withdrawn any challenge to the safety or security of the public school system before trial. The court found that these issues were nonetheless tried with regard to the adequacy of funding to meet repair and maintenance needs, but that the evidence submitted did not demonstrate insufficient funding for these needs. As we hold that the overarching question of adequacy is not justiciable, we do not opine on the trial court's conclusion in this regard.

> evaluation standards, resulting in over 94% of courses being taught by teachers who are 'highly qualified' under federal standards.

In addition, the court found that in the last two decades, "K-12 education has been the single largest component of the state general revenue budget. . . . [E]ducation funding has outpaced inflation." The court further found that Florida's high school graduation rate has dramatically improved, "with more students of all racial, ethnic and socioeconomic backgrounds graduating than ever before," and that "Florida students have substantially improved their performance on the National Assessment of Education Progress . . . a testing program required by federal and state law [and] . . . Florida is now among the highest scoring states in the nation." The trial court thus ruled that Appellants had failed to demonstrate beyond a reasonable doubt that the State's education policies and funding were not rationally related to fulfilling its constitutional duty under Article IX, section 1(a) of the Florida Constitution. As to Appellants' challenge to the McKay Scholarship Program, the court concluded the evidence did not support their allegations that the program violated the uniformity requirements of Article IX, section 1(a).

Analysis

Appellants argue that the issues raised do not present a political question, and additionally, that the trial court applied the wrong standard to determine whether the State had complied with Article IX, section 1(a) of the Florida Constitution. Thus, Appellants would have the judicial branch determine:

1) Whether the other two branches of state government have made adequate provision for the public school system; (2) whether the system is uniform, efficient, and of high quality; and (3) whether the system allows students to obtain a high quality education. We agree with the trial court that the terms "adequate," "efficient," and "high quality" as used in Article IX, section 1(a) lack judicially discoverable or manageable standards that would allow for meaningful judicial interpretation, and that an attempt to evaluate the political branches' compliance with the organic law would constitute a violation of Florida's strict requirement of the separation of powers. We therefore affirm the trial court's determination that these issues are non-justiciable, as discussed below.

The concept of a political question as nonjusticiable was comprehensively defined by the United States Supreme Court in *Baker v. Carr,* 369 U.S. 186 (1962), and adopted in *Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles,* 680 So. 2d 400, 408 (Fla. 1996). In *Baker,* the United States Supreme Court discussed the political-question doctrine at length, including its jurisprudential foundation, logic, and analysis: "We have said that 'In determining whether a question falls within (the political question) category, the appropriateness under our system of government of attributing *finality* to the action of the political departments and also the *lack of satisfactory criteria* for a judicial determination are *dominant considerations.*'" 369 U.S. at 211 (emphasis added)

(quoting *Coleman v. Miller*, 307 U.S. 433, 454-455 (1939)). There could be no more relevant standard applicable here than the importance of finality, in a case consuming almost a decade of litigation and demonstrating the lack of finality inherent in an attempt to litigate such a complex political dispute. The demand for finality in complex public-policy questions is obvious, as legislative and executive decisions involving billions of dollars and multiple demographic, fiscal and logistical factors must be promptly implemented and then consistently reevaluated. Such a process is clearly not compatible with extensive civil litigation that consumes years in the court system, unlike political decisions, which in Florida are made in an annual 60-day legislative session, during and after which the governor can veto or acquiesce in those decisions and then execute them in the next fiscal year. Finality is inextricably intertwined with the perspective that such profound questions – such as those involved in adopting and executing education policies for millions of K-12 students – must necessarily be performed exclusively within the political branches, which by their nature are far more responsive and prompt to address the needs of parents and students than the courts could ever be.

The second "dominant consideration" cited by the United States Supreme Court in deciding whether a case involves an inherently political question is the "lack of satisfactory criteria." *Id.* This is linked to finality, because the lack of specificity in an operative legal text lends itself to endless litigation over the

meaning of subjective and undefined phrases that might function to give guidance to political decision makers as laudable goals, but cannot guide judges in deciding whether a state or local government has in fact complied with the text. Without "satisfactory criteria" to channel discretion in judicial rulings, litigation involving a subjective advisory guideline invites arbitrary and capricious judicial actions which improperly invade the spheres of action of the political branches.

In *Baker,* the Supreme Court provided various "formulations" to be used in deciding whether a case raised a political question not subject to judicial review, stating that "each has one or more elements which identify it as essentially a function of the *separation of powers.*" *Id.* at 217 (emphasis added). As analyzed below, Florida requires a strict separation of powers under Article II, section 3 of its organic law. The Court then repeated its view that the lack of objectively ascertainable standards was "prominent" in finding a legal claim to be nonjusticiable, but the court also ruled that "a textually demonstrable constitutional commitment of the issue to a coordinate political department" would constitute strong evidence that the issue was not to be decided by the courts, but instead by another branch of government. *Id.*

In *Coalition*, a case involving the previous iteration of Article IX, section 1, the Florida Supreme Court addressed arguments similar to those raised here, that "the State has failed to provide its students [the] fundamental right" of an adequate

education." 680 So. 2d at 402. In support of their argument, the plaintiffs alleged that students were not receiving adequate programs "to permit them to gain proficiency in the English language," that poor students were "not receiving adequate education for their greater educational needs," that special-needs students and gifted students were "not receiving adequate special programs," that students in "property-poor counties" were not receiving "an adequate education," that the legislature had not provided adequate capital outlay funds for schools, and that local school districts were "unable to perform their constitutional duties because of the legislative imposition of noneducational and quasi-educational burdens." *Id.* In essence, the supreme court faced a blanket challenge to the adequacy of the education system under a prior version of Article IX, section 1.[4] *Id.* at 406.

Applying the criteria in *Baker*, the supreme court determined that "adequacy" was a non-justiciable political question, because the phrase "by law" suggested the issue was committed to the legislature and because – unlike "uniform" – "'adequacy' simply does not have such straightforward content." *Id.* at 408. While the supreme court declined to hold that an adequacy challenge to the education system could *never* succeed, it concluded that the *Coalition* plaintiffs

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[4] At the time of the *Coalition* decision, Article IX, section 1, stated: "Adequate provision shall be made by law for a uniform system of free public schools and for the establishment, maintenance and operation of institutions of higher learning and other public education programs that the needs of the people may require." Art. IX, § 1, Fla. Const. (1996).

failed to demonstrate any manageable standards that could be applied without "a substantial risk of judicial intrusion into the powers and responsibilities assigned to the legislature." *Id.*

Following that decision, the 1997-1998 Constitution Revision Commission proposed, and the voters adopted, an amendment to the education provision, which now 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 . . . .

Art. IX, §1(a), Fla. Const.

We agree with the trial court that the terms "efficient" and "high quality" are no more susceptible to judicial interpretation than "adequate" was under the prior version of the education provision, and to define these terms would require "an initial policy determination of a kind clearly for nonjudicial discretion." *Baker*, 369 U.S. at 217; *see also Coalition*, 670 So. 2d at 408. Our conclusion is further supported by Florida's strict separation of powers doctrine and by the language of the amended constitutional article itself, which continues to commit the duty to achieve these aspirational goals to the legislative and executive branches of government.

Turning first to the separation of powers, the Florida Constitution imposes a

"strict" separation of powers requirement that applies just as vigorously to the judicial branch as it does to the other two branches of government. *State v. Cotton,* 769 So. 2d 345 (Fla. 2000). In *Cotton,* the supreme court rejected the argument that the Prison Releasee Reoffender Punishment Act violated the separation of powers provision of Article II, section 3 of the Florida Constitution, holding that because substantive sentencing laws and prosecutorial discretion were vested in the legislative and executive branches respectively, the law imposing mandatory sentences based solely on prosecutorial discretion did not interfere with judicial power. *Id.* at 349-54. In explaining its rationale, the supreme court disagreed with the single dissenting opinion, which relied on New Jersey law that permitted judicial oversight of the executive function of prosecutorial discretion. *Id.* at 352-54. In rejecting the dissenting opinion's view, the majority in *Cotton* noted that Florida's organic law imposes a "strict" separation of powers between the branches of government:

> This Court, on the other hand, in construing the Florida Constitution, has traditionally applied a strict separation of powers doctrine. *Cf. Avatar Dev. Corp. v. State,* 723 So. 2d 199, 201 (Fla. 1998) (recognizing, in the context of a nondelegation analysis, that "[a]rticle II, section 3 declares a *strict separation of the three branches of government* and that: "No person belonging to one branch shall exercise any powers appertaining to either of the other two branches"(emphasis supplied)). In applying a strict separation of powers doctrine (as the Florida Constitution requires), rather than a doctrine effecting the "dispersal of decisional responsibility in the exercise of

> each power" (as the New Jersey constitution apparently requires), this Court is compelled to reach a different result. If we were to apply the New Jersey "dispersal of decisional responsibility" concept here, we would be deviating from well-established principles of Florida law, *which would have impact far beyond matters relating to prosecutorial decisions.*

Id. at 353-54 (second emphasis added) (quoting *State v. Lagares*, 601 A.2d 698 (1992)).

A strict separation of powers supports the foundation and logic of the political-question doctrine, in that Florida's organic law does not permit a "dispersal of decisional responsibility" which would allow the courts to dictate educational policy choices and their implementation to the other two branches of government, absent specific authorization by law. *Id.* Absent explicit constitutional authority to the contrary, the legislative and executive branches possess exclusive jurisdiction in such matters, as the legislative branch has sole power to appropriate and enact substantive policy, and the executive branch has the sole power to faithfully execute the substantive policies and budgetary appropriations enacted by the legislative branch. The judiciary cannot dictate the manner of executing legislative policies or appropriations in any particular way. *See* Art. II, § 3, Fla. Const. ("No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."); Art. V, § 14(d), Fla. Const. ("The judiciary shall have no power to fix

appropriations.").

To agree with Appellants would entangle courts in the details and execution of educational policies and related appropriations, involving millions of students and billions of dollars, in an arena in which the courts possess no special competence or specific constitutional authority. Further, the drafters of Article IX, section 1(a) declined to allocate such a role to the judiciary. Quite the opposite, the language of Article IX, section 1(a) assigns such matters to the legislative branch, stating that "adequate provision shall be made *by law*." Art. IX, § 1(a), Fla. Const. (emphasis added). The fact that this language remains in the education amendment after *Coalition* demonstrates that the constitution continues to commit education policy determinations to the legislative and executive branches. *See Coalition*, 670 So. 2d at 408.

Further, as the trial court recognized here, the lack of any definitive consensus regarding education policies and programs demonstrates the political nature of Appellants' assertions. While "adequate," "efficient," and "high quality" represent worthy *political* aspirations, they fail to provide the courts with sufficiently objective criteria by which to measure the performance of our co-equal governmental branches. Rather, it is the political branches that must give meaning to these terms in accordance with the policy views of their constituents. For these reasons, Appellants failed to demonstrate any meaningful standards under which

the courts could find that the State has violated its constitutional duties regarding the adequacy, efficiency and quality of the public school system.[5]

Looking to a similar case in another state, we agree with the conclusion of the Pennsylvania Supreme Court that it would be contrary to the very essence of our constitution's educational aspirations for the courts to "'bind future Legislatures . . . to a present judicial view'" of adequacy, efficiency, and quality. *Marrero ex rel. Tabalas v. Commonwealth of Penn.*, 739 A.2d 110, 112 (1999) (quoting *Danson v. Casey*, 399 A.2d 360, 366-67 (1979)); *see also Bonner ex rel. Bonner v. Daniels*, 907 N.E.2d 516, 522 (Ind. 2009) (denying declaratory relief because the determination of quality "is delegated to . . . sound legislative discretion"). And although we recognize that courts in other states have sometimes purported to define "adequate," "efficient," "high quality," and similar terms in response to challenges to their own public school systems, *see, e.g.*, *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, 990 A.2d 206 (2010)

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[5] As to the trial court's additional finding that, even if the issue is not a political question assigned solely to the political branches, Appellants failed to meet their burden to prove "beyond a reasonable doubt that the State's education policies and funding system were not rationally related to the provision '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," Appellants contend the trial court applied an overly stringent standard. Appellants urge this court to hold that a lower burden of proof and standard for evaluating the constitutionality of the State's actions should apply in this case and in all cases challenging the State's compliance with its obligations under Article IX of the Florida Constitution. We decline to do so, based on our holding that these claims are not justiciable.

(concluding the state did not provide "suitable" educational opportunities); *Columbia Falls Elementary School District No. 6 v. State*, 109 P.3d 257 (Mont. 2005) (holding that funding for education was inadequate and that determination of "quality" education was justiciable, but deferring to state legislature to provide threshold definition of "quality"); *Rose v. Council for Better Education, Inc.*, 790 S.W.2d 186 (Ky. 1989) (concluding that the legislative branch failed to comply with the constitutional requirement of providing an "efficient system of common schools"), we respectfully disagree with those decisions as insufficiently deferential to the fundamental principle of separation of powers imposed on Florida's judiciary and the practical reality that educational policies and goals must evolve to meet ever changing public conditions, which is precisely why only the legislative and executive branches are assigned such power. The New Jersey Supreme Court, for example, while concluding that the legislature failed to comply with its constitutional requirement of a "thorough and efficient" system of free public schools, observed that "what a thorough and efficient education consists of *is a continually changing concept*." *Abbot v. Burke*, 575 A.2d 359, 367 (N.J. 1990) (emphasis added). That court further acknowledged the "radical interference with the legislative power" involved in determining that the educational system provided in New Jersey was constitutionally deficient. *Id.* at 376. As noted by our supreme court in *Cotton,* Florida law is much more protective of the separation of

powers principle than is New Jersey law. Like the Florida Supreme Court noted in *Coalition*, although "the views of other courts are always helpful, we conclude that the dispute here must be resolved on the basis of Florida constitutional law[.]" 680 So. 2d at 404-05.

With respect to a "uniform" system of public schools, Appellants alleged in their second amended complaint that two of Florida's school choice programs, the Florida Tax Credit Scholarship Program and the McKay Scholarship Program, violate this requirement. Unlike the terms adequate, efficient and high quality, the Florida Supreme Court has interpreted the term "uniform" under Article IX in the context of school choice programs. *See Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006). As Appellants properly concede, however, the trial court's ruling that they lack standing to challenge the Florida Tax Credit Scholarship Program is controlled by this court's opinion in *McCall v. Scott*, 199 So. 3d 359 (Fla. 1st DCA 2016) (holding that appellant parents and teachers lacked taxpayer standing to challenge the Florida Tax Credit Scholarship Program, because it did not violate a specific limitation on the legislature's taxing and spending power, nor did it involve a disbursement from the public treasury). Therefore, the sole uniformity claim on appeal relates to the McKay Scholarship Program.

Appellants argue that the McKay Scholarship Program violates Article IX, because it diverts public funds to private schools, which are not subject to the same

standards and oversight as public schools. They rely on *Holmes,* in which the Florida Supreme Court held that another school choice program, the Opportunity Scholarship Program, violated the constitutional requirement that education be provided through a uniform system of public schools. *Holmes*, 919 So. 2d at 413. However, in disapproving the Opportunity Scholarship Program, which allowed *any* student attending a failing school to use a scholarship provided by the State to attend a private school, the *Holmes* court expressly disavowed that its decision would necessarily impact other more specialized educational programs, even if those programs used public funds to pay for a private school education:

> We reject the suggestion by the State and amici that other publicly funded educational and welfare programs would necessarily be affected by our decision. Other educational programs, such as the program for exceptional students at issue in *Scavella [v. School Board of Dade County*, 363 So. 2d 1095 (Fla. 1978)], are structurally different from the [Opportunity Scholarship Program], which provides a systematic private school alternative to the public school system mandated by our constitution.

919 So. 2d at 412.

Here, like the program at issue in *Scavella*, the McKay Scholarship Program is a specialized scholarship limited to students with disabilities. *See* § 1002.39(2), Fla. Stat. (outlining eligibility requirements for the McKay Scholarship Program); *Scavella*, 363 So. 2d 1098 (describing a program through which exceptional students used public funds to attend private schools). The trial court correctly recognized that this opportunity for students with disabilities involved only

approximately 30,000 of the total 2.7 million students in the public schools, and only a fraction of the statewide K-12 public school budget, such that it could not be reasonably argued that the McKay Scholarship Program had a "material affect" on the public K-12 education system. Rather, as the trial court observed, "evidence was presented that [this] school-choice program[] [is] reasonably likely to improve the quality and efficiency of the entire system."

The McKay Scholarship Program offers a beneficial option for disabled students to help ensure they can have a "high quality" education. As the trial court recognized, "research has shown that the McKay program has a positive effect on the public schools, both in terms of lessening the incentive to over-identify students and by increasing the quality of services of the students with disabilities in the public schools." It is difficult to perceive how a modestly sized program designed to provide parents of disabled children with more educational opportunities to ensure access to a high quality education could possibly violate the text or spirit of a constitutional requirement of a uniform system of free public schools.

Conclusion

Thus, we affirm the trial court's ruling that Appellants' claims must be rejected, as those claims either raise political questions not subject to judicial review or were correctly rejected on the merits.

AFFIRMED.

WINOKUR, J., CONCURS; WOLF, J., SPECIALLY CONCURRING WITH OPINION.

WOLF, J., specially concurring.

In Haridopolos v. Citizens for Strong Schools, Inc., 81 So. 3d 465 (Fla. 1st DCA 2011) (en banc), eight judges (a majority of the court) determined that article IX, section 1 of the Florida Constitution did not contain adequate standards by which the judiciary could measure whether the Legislature complied with the terms of the constitutional provision. In my concurring opinion, I agreed with the majority that the [illegible] to be remanded to the trial court. However, I agreed with the seven dissenting judges that the amendment lacked measureable standards and stated:

> Clearly, it was the intent of the Constitutional Revision Commission [illegible] amendment to article IX, section 1 of the Florida [illegible] the decision in Coalition, 680 So. 2d 400, by adding language to further elucidate the public's desires concerning the public education system. Unfortunately, this language still did not provide measurable goals by which the court could judge legislative performance and enforce the provision in any particular manner. This [illegible] similar to Advisory Opinion to the Governor - 1996 Amendment 5 (Everglades), 706 So. 2d 278, 279 - 82 (Fla. 1997), where the public expressed its strong desire that polluters be "primarily responsible" for cleaning up the Everglades, yet the court held the amendment was not self-executing. Similarly, the public's desires here are not sufficiently definite to allow for enforcement without some measurable standards.

Haridopolos, 81 So. 3d at 474 (Wolf, J., concurring) (emphasis added).

The trial in this case demonstrated that without measureable standards, there is no way that a trial court can assess whether the Legislature has complied with article IX, section 1 of the Florida Constitution. Both sides presented numerous

statistics to support their position, with each side taking different views about which statistical categories best measured compliance with the amendment. The trial court did an admirable job of sorting through the mountain of evidence presented to it. The bottom line is that without measureable standards, the plaintiffs cannot demonstrate that the Legislature has violated constitutional standards.

As I expressed in my original concurring opinion in this case, a litigant may have a cause of action to require the Legislature to implement article IX, section 1 through the adoption of reasonable measurable standards to gauge compliance. The plaintiffs in this case chose not to pursue that remedy. I, therefore, concur.

232 So.3d 1163
District Court of Appeal of Florida,
First District.

CITIZENS FOR STRONG SCHOOLS, INC., Fund Education Now, Inc., Eunice Barnum, Janiyah Williams, Jacque Williams, Sheila Andrews, Rose Nogueras, and Alfredo Nogueras, Appellants,
v.
FLORIDA STATE BOARD OF EDUCATION; Andy Gardiner, in his official capacity as the Florida Senate President; Steve Crisafulli, in his official capacity as the Florida Speaker of the House of Representatives; and Pam Stewart, in her official capacity as Florida Commissioner of Education, Appellees,
and
Celeste Johnson; Deaundrice Kitchen; Kenia Palacios; Margot Logan; Karen Tolbert; and Marian Klinger, Intervenors/Appellees.
CASE NO. 1D16-2862

Opinion filed December 13, 2017

Synopsis
Background: Advocacy groups brought action against State Board of Education and various state officials seeking declaration that Board violated its paramount duty to provide uniform, efficient, and high quality system of free public schools, as required by Florida Constitution. Following bench trial, the Circuit Court, Leon County, George S. Reynolds, J., ruled in favor of defendants. Advocacy groups appealed.

Holdings: The District Court of Appeal, B.L. Thomas, C.J., held that:

[1] questions presented by advocacy groups raised political questions not subject to judicial review, and

[2] program providing scholarships to allow students with disabilities to attend private school did not violate Florida's constitutional requirement of a uniform system of free public schools.

Affirmed.

Wolf, J., filed specially concurring opinion.

West Headnotes (9)

[1] Constitutional Law
Education
Constitutional Law
Education

The strict separation of powers embedded in Florida's organic law requires judicial deference to the legislative and executive branches to adopt and execute educational policies those branches deem necessary and appropriate to enable students to obtain a high quality education, as directed by the Florida Constitution. Fla. Const. art. 9, § 1(a).

Cases that cite this headnote

[2] Education
Right to instruction in general
Education
Judicial supervision in general

Absent specific and clear direction to the contrary in the supreme organic law, which does not exist in the section of the Florida Constitution guaranteeing a quality education, the difficult and profound decisions regarding how children are to be educated are not subject to judicial oversight or interference. Fla. Const. art. 9, § 1(a).

Cases that cite this headnote

[3] Constitutional Law
Political Questions

Questions presented by advocacy groups, of whether legislative and executive branches of state government made adequate provision for public school system, whether system was uniform, efficient, and of high quality, and whether system allowed students to obtain high quality education, raised political questions not subject to judicial review, in their action seeking declaration that State Board of Education violated its paramount duty to provide uniform, efficient, and high quality system of free public schools, as required by Florida Constitution, since terms "adequate," "efficient," and "high quality" lacked judicially discoverable or manageable standards that would allow for meaningful judicial interpretation, and an attempt to evaluate the political branches' compliance with the organic law would constitute violation of Florida's strict requirement of the separation of powers. Fla. Const. art. 2, § 3; Fla. Const. art. 9, § 1(a).

1 Cases that cite this headnote

[4] Constitutional Law
↪Nature and scope in general
Constitutional Law
↪Nature and scope in general
Constitutional Law
↪Nature and scope in general

The Florida Constitution imposes a strict separation of powers requirement that applies just as vigorously to the judicial branch as it does to the other two branches of government. Fla. Const. art. 2, § 3.

1 Cases that cite this headnote

[5] Constitutional Law
↪Political Questions

A strict separation of powers supports the foundation and logic of the political-question doctrine, in that Florida's organic law does not permit a dispersal of decisional responsibility which would allow the courts to dictate educational policy choices and their implementation to the other two branches of government, absent specific authorization by law. Fla. Const. art. 2, § 3.

1 Cases that cite this headnote

[6] Constitutional Law
↪Education
Constitutional Law
↪Education

Absent explicit constitutional authority to the contrary, and pursuant to the separation of powers doctrine, the legislative and executive branches possess exclusive jurisdiction in educational policy choices and their implementation, as the legislative branch has sole power to appropriate and enact substantive policy, and the executive branch has the sole power to faithfully execute the substantive policies and budgetary appropriations enacted by the legislative branch. Fla. Const. art. 2, § 3.

Cases that cite this headnote

[7] Constitutional Law
↪Taxation and public finance
States
↪Purposes of expenditures in general

Pursuant to the separation powers provision of the Florida Constitution, and the provision stating that the judiciary shall have no power to fix appropriations, the judiciary cannot dictate the manner of executing legislative policies or appropriations in any particular way. Fla. Const. art. 2, § 3; Fla. Const. art. 5, § 14(d).

Cases that cite this headnote

[8] Municipal Corporations
Constructive notice, and facts putting on inquiry

Advocacy groups lacked standing to challenge Florida Tax Credit Scholarship Program, as violative of guarantee in Florida Constitution of uniform schools; Program did not violate a specific limitation on legislature's taxing and spending power, nor did it involve disbursement from public treasury. Fla. Const. art. 9, § 1(a).

Cases that cite this headnote

[9] Education
Public Aid

Program providing scholarships to allow students with disabilities to attend private school did not violate Florida's constitutional requirement of a uniform system of free public schools, where program was a specialized scholarship, only applied to 30,000 of total 2.7 million students in public school, and only made up fraction of statewide public school budget. Fla. Const. art. 9, § 1(a).

Cases that cite this headnote

*1164 An appeal from the Circuit Court for Leon County. George S. Reynolds, Judge.

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Opinion

B.L. THOMAS, C.J.

*1165 Eight years ago, Appellants initiated a legal challenge to Florida's public school system, asserting that the State's entire K–12 public education system—which includes 67 school districts, approximately 2.7 million students, 170,000 teachers, 150,000 staff members, and 4,000 schools—is in violation of the Florida Constitution. Appellants sued the Florida State Board of Education, the President of the Florida Senate, the Speaker of the Florida House of Representatives and the Florida Commissioner of Education seeking a declaration that the State violated its "paramount duty" to provide a "uniform, efficient ... and high quality system of free public schools that allows students to obtain a high quality education," as required by Article IX, section 1(a) of the Florida Constitution. Appellants sought declaratory and supplemental relief below, including: a demand that the State submit a remedial plan for the alleged constitutional deficiencies; a demand that relevant studies be conducted for necessary actions; and that the trial court retain jurisdiction to provide any further appropriate legal relief.

[1]We affirm the trial court's ruling denying relief on the basis that Appellants' arguments regarding the State's duty to make adequate provision for an efficient and high quality education raise political questions not subject to judicial review, because the relevant constitutional text does not contain judicially discoverable standards by which a court can decide whether the State has complied with organic law. Furthermore, the strict separation *1166 of powers embedded in Florida's organic law requires judicial deference to the legislative and executive branches to adopt and execute educational policies those branches deem necessary and appropriate to enable students to obtain a "high quality" education, as directed by the Florida Constitution. There is no language or authority in Article IX, section 1(a) that would empower judges to order the enactment of educational policies regarding teaching methods and accountability, the appropriate funding of public schools, the proper allowance of charter schools and school choice, the best methods of student accountability and school accountability, and related funding priorities.

[2]The most effective manner in which to teach students science, mathematics, history, language, culture, classics, economics, trade skills, poetry, literature and civic virtue have been debated since at least the time of ancient Greece. Brilliant philosophers, thinkers, writers, poets and teachers over the past twenty-five centuries have dedicated their talents to identifying the best means of providing a proper education to help each child reach his or her highest potential in a just society. In a republican form of government founded on democratic rule, it must be the elected representatives and executives who make the difficult and profound decisions regarding how our children are to be educated. Absent specific and clear direction to the contrary in the supreme organic law, which does not exist in Article IX, section 1(a) of the Florida Constitution, we uphold the trial court's correct ruling that such decisions are not subject to judicial oversight or interference.

We also affirm the trial court's ruling rejecting Appellant's arguments challenging the State's constitutional compliance with its duty to provide a "uniform" education. We agree that the John M. McKay Scholarship Program for Students with Disabilities—which affects only 30,000 students and does not materially impact the K–12 public school system—provides a benefit to help disabled students obtain a high quality education. Thus, the McKay Scholarship Program does not violate Article IX, section 1(a) of the Florida Constitution.

Background and Procedural History

In 2009, Appellants filed suit challenging the State's education policies as invalid under Article IX, section 1(a) of the Florida Constitution. Appellees moved to dismiss, asserting in part that the allegations raised political questions not subject to judicial review, and the motion was denied. Appellees then sought a writ of prohibition in this court, asserting that the claims were not justiciable, as they raised political questions. Sitting en banc, this court voted 7–1–7 to deny the petition for writ of prohibition and allowed the litigation to continue in the trial court. *Haridopolos v. Citizens for Strong Schools Inc.*, 81 So.3d 465, 467 (Fla. 1st DCA 2011) (en banc). The en banc court certified as an issue of great public importance the following question:

> Does Article IX, section 1(a), Florida Constitution, set forth judicially ascertainable standards that can be used to determine the adequacy, efficiency, safety, security, and high quality of public education on a statewide basis, so as to permit a court to decide claims for declaratory judgment (and supplemental relief) alleging noncompliance with Article IX, section 1(a) of the Florida Constitution?

Id. at 473. The dissenting judges would have granted the writ, based on the separation of powers requirement of Article II, section 3 of the Florida Constitution and the political question doctrine. *Id.*

at 480–81 (Roberts, J., dissenting). The Florida Supreme Court declined to accept jurisdiction *1167 to consider the certified question. *Haridopolos v. Citizens for Strong Schools Inc.*, 103 So.3d 140 (Fla. 2012) (unpublished table decision).

Appellants then filed a second amended complaint, alleging that the State's legislative and executive branches had violated their "paramount duty" to provide a "uniform, efficient ... and high quality system of free public schools that allows students to obtain a high quality education" under Article IX, section 1(a), in several respects: (1) the State failed to make "adequate provision" for a system of free public schools, because the overall level of funding for education is deficient; (2) the State failed to administer a "uniform" system of education, because two school choice programs, the Florida Tax Credit Scholarship Program and the John M. McKay Scholarship Program for Students with Disabilities (the McKay Scholarship Program), divert public funds to private schools not subject to the same requirements as public schools;[1] (3) the State failed to provide an "efficient" education system, because the accountability methods utilized by the State are ineffective and because charter schools are mismanaged; (4) the State failed to provide a "high quality" education system because schools provide insufficient services and coursework and have an insufficient number of highly qualified teachers and support staff; and (5) the public school system did not allow students to obtain a high quality education, based on various assessments.[2]

After extensive pre-trial discovery, a four-week bench trial was conducted by the successor circuit judge, in which more than forty witnesses testified and over 5,300 exhibits were submitted. The court made comprehensive findings on a broad range of subjects, including: the structure of Florida's education system; the various policies and programs implemented by the State to achieve its educational goals; the funding allocated for these programs; and student performance—overall and by various demographics—under state and national assessments and other measures. Ultimately, however, the trial court found all of the issues raised by Appellants regarding educational adequacy, efficiency, and quality were properly considered "political questions best resolved in the political arena," as the organic law did not provide judicially manageable standards by which to measure the State's actions in enacting and implementing educational policies, as the dissenting judges on this court concluded in 2011.[3]

The trial court nevertheless addressed Appellants' arguments on the merits, concluding that the State had made significant efforts and advances in education, leading to sustained improvement on outcomes for Florida students:

> *1168 [T]he State has made education a top priority both in terms of implementation of research-based education policies and reforms, as well as education funding. The State has an accountability and assessment system that is rated among the best in the nation .... The State has also adopted rigorous teacher certification, training and evaluation standards, resulting in over 94% of courses being taught by teachers who are 'highly qualified' under federal standards.

In addition, the court found that in the last two decades, "K–12 education has been the single largest component of the state general revenue budget. ... [E]ducation funding has outpaced inflation." The court further found that Florida's high school graduation rate has dramatically improved, "with more students of all racial, ethnic and socioeconomic backgrounds graduating than ever before," and that "Florida students have substantially improved their performance on the National Assessment of Education Progress ... a testing program required by federal and state law [and] ... Florida is now among the highest scoring states in the nation." The trial court thus ruled that Appellants had failed to demonstrate beyond a reasonable doubt that the State's education policies and funding were not rationally related to fulfilling its constitutional duty under Article IX, section 1(a) of the Florida Constitution. As to Appellants' challenge to the McKay Scholarship Program, the court concluded the evidence did not support their allegations that the program violated the uniformity requirements of Article IX, section 1(a).

Analysis

[3]Appellants argue that the issues raised do not present a political question, and additionally, that the trial court applied the wrong standard to determine whether the State had complied with Article IX, section 1(a) of the Florida Constitution. Thus, Appellants would have the judicial branch determine: 1) Whether the other two branches of state government have made adequate provision for the public school system; (2) whether the system is uniform, efficient, and of high quality; and (3) whether the system allows students to obtain a high quality education. We agree with the trial court that the terms "adequate," "efficient," and "high quality" as used in Article IX, section 1(a) lack judicially discoverable or manageable standards that would allow for meaningful judicial interpretation, and that an attempt to evaluate the political branches' compliance with the organic law would constitute a violation of Florida's strict requirement of the separation of powers. We therefore affirm the trial court's determination that these issues are non-justiciable, as discussed below.

The concept of a political question as nonjusticiable was comprehensively defined by the United States Supreme Court in *Baker v. Carr*, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962), and adopted in *Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles*, 680 So.2d 400, 408 (Fla. 1996). In *Baker*, the United States Supreme Court discussed the political-question doctrine at length, including its jurisprudential foundation, logic, and analysis: "We have said that 'In determining whether a question falls within (the political question) category, the appropriateness under our system of government of attributing *finality* to the action of the political departments and also the *lack of satisfactory criteria* for a judicial determination are *dominant considerations*.' " 369 U.S. at 211, 82 S.Ct. 691 (emphasis added) (quoting *Coleman v. Miller*, 307 U.S. 433, 454–455, 59 S.Ct. 972, 83 L.Ed. 1385 (1939)). There could be no more relevant standard applicable here than the importance of finality, in a case consuming almost a decade of litigation and demonstrating *1169 the lack of finality inherent in an attempt to litigate such a complex political dispute. The demand for finality in complex public-policy questions is obvious, as legislative and executive decisions involving billions of dollars and multiple demographic, fiscal and logistical factors must be promptly implemented and then consistently reevaluated. Such a process is clearly not compatible with extensive civil litigation that consumes years in the court system, unlike political decisions, which in Florida are made in an annual 60–day legislative session, during and after which the governor can veto or acquiesce in those decisions and then execute them in the next fiscal year. Finality is inextricably intertwined with the perspective that such profound questions—such as those involved in adopting and executing education policies for millions of K–12 students—must necessarily be performed exclusively within the political branches, which by their nature are far more responsive and prompt to address the needs of parents and students than the courts could ever be.

The second "dominant consideration" cited by the United States Supreme Court in deciding whether a case involves an inherently political question is the "lack of satisfactory criteria." *Id.* This is linked to finality, because the lack of specificity in an operative legal text lends itself to endless litigation over the meaning of subjective and undefined phrases that might function to give guidance to political decision makers as laudable goals, but cannot guide judges in deciding whether a state or local government has in fact complied with the text. Without "satisfactory criteria" to channel discretion in judicial rulings, litigation involving a subjective advisory guideline invites arbitrary and capricious judicial actions which improperly invade the spheres of action of the political branches.

In *Baker*, the Supreme Court provided various "formulations" to be used in deciding whether a case raised a political question not subject to judicial review, stating that "each has one or more elements which identify it as essentially a function of the *separation of powers*." *Id.* at 217, 82 S.Ct. 691 (emphasis added). As analyzed below, Florida requires a strict separation of powers under Article II, section 3 of its organic law. The Court then repeated its view that the lack of objectively ascertainable standards was "prominent" in finding a legal claim to be nonjusticiable, but the court also ruled that "a textually demonstrable constitutional commitment of the issue to a coordinate political department" would constitute strong evidence that the issue was not to be decided by the courts, but instead by another branch of government. *Id.*

In *Coalition*, a case involving the previous iteration of Article IX, section 1, the Florida Supreme Court addressed arguments similar to those raised here, that "the State has failed to provide its students [the] fundamental right" of an adequate education." 680 So.2d at 402. In support of their argument, the plaintiffs alleged that students were not receiving adequate programs "to permit them to gain proficiency in the English language," that poor students were "not receiving adequate education for their greater educational needs," that special-needs students and gifted students were "not receiving adequate special programs," that students in "property-poor counties" were not receiving "an adequate education," that the legislature had not provided adequate capital outlay funds for schools, and that local school districts were "unable to perform their constitutional duties because of the legislative imposition of noneducational and quasi-educational burdens." *Id.* In essence, the supreme court faced a blanket challenge to the adequacy *1170 of the education system under a prior version of Article IX, section 1.[3] *Id.* at 406.

Applying the criteria in *Baker*, the supreme court determined that "adequacy" was a non-justiciable political question, because the phrase "by law" suggested the issue was committed to the legislature and because—unlike "uniform"—" 'adequacy' simply does not have such straightforward content." *Id.* at 408. While the supreme court declined to hold that an adequacy challenge to the education system could *never* succeed, it concluded that the *Coalition* plaintiffs failed to demonstrate any manageable standards that could be applied without "a substantial risk of judicial intrusion into the powers and responsibilities assigned to the legislature." *Id.*

Following that decision, the 1997–1998 Constitution Revision Commission proposed, and the voters adopted, an amendment to the education provision, which now 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 ....

Art. IX, § 1(a), Fla. Const.

We agree with the trial court that the terms "efficient" and "high quality" are no more susceptible to judicial interpretation than "adequate" was under the prior version of the education provision, and to define these terms would require "an initial policy determination of a kind clearly for nonjudicial discretion." *Baker*, 369 U.S. at 217, 82 S.Ct. 691; *see also Coalition*, 680 So.2d at 408. Our conclusion is further supported by Florida's strict separation of powers doctrine and by the language of the amended constitutional article itself, which continues to commit the duty to achieve these aspirational goals to the legislative and executive branches of government.

[4]Turning first to the separation of powers, the Florida Constitution imposes a "strict" separation of powers requirement that applies just as vigorously to the judicial branch as it does to the other two branches of government. *State v. Cotton*, 769 So.2d 345 (Fla. 2000). In *Cotton*, the supreme court rejected the argument that the Prison Releasee Reoffender Punishment Act violated the separation of powers provision of Article II, section 3 of the Florida Constitution, holding that because substantive sentencing laws and prosecutorial discretion were vested in the legislative and executive branches respectively, the law imposing mandatory sentences based solely on prosecutorial discretion did not interfere with judicial power. *Id.* at 349–54. In explaining its rationale, the supreme court disagreed with the single dissenting opinion, which relied on New Jersey law that permitted judicial oversight of the executive function of prosecutorial discretion. *Id.* at 352–54. In rejecting the dissenting opinion's view, the majority in *Cotton* noted that Florida's organic law imposes a "strict" separation of powers between the branches of government:

This Court, on the other hand, in construing the Florida Constitution, has traditionally applied a strict separation of powers doctrine. *Cf.* *1171 *Avatar Dev. Corp. v. State*, 723 So.2d 199, 201 (Fla. 1998) (recognizing, in the context of a nondelegation

analysis, that "[a]rticle II, section 3 declares a *strict separation of the three branches of government* and that: "No person belonging to one branch shall exercise any powers appertaining to either of the other two branches"(emphasis supplied)). In applying a strict separation of powers doctrine (as the Florida Constitution requires), rather than a doctrine effecting the "dispersal of decisional responsibility in the exercise of each power" (as the New Jersey constitution apparently requires), this Court is compelled to reach a different result. If we were to apply the New Jersey "dispersal of decisional responsibility" concept here, we would be deviating from well-established principles of Florida law, *which would have impact far beyond matters relating to prosecutorial decisions.*

Id. at 353–54 (second emphasis added) (quoting *State v. Lagares*, 127 N.J. 20, 601 A.2d 698 (1992)).

[5] [6] [7]A strict separation of powers supports the foundation and logic of the political-question doctrine, in that Florida's organic law does not permit a "dispersal of decisional responsibility" which would allow the courts to dictate educational policy choices and their implementation to the other two branches of government, absent specific authorization by law. *Id.* Absent explicit constitutional authority to the contrary, the legislative and executive branches possess exclusive jurisdiction in such matters, as the legislative branch has sole power to appropriate and enact substantive policy, and the executive branch has the sole power to faithfully execute the substantive policies and budgetary appropriations enacted by the legislative branch. The judiciary cannot dictate the manner of executing legislative policies or appropriations in any particular way. *See* Art. II, § 3, Fla. Const. ("No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."); Art. V, § 14(d), Fla. Const. ("The judiciary shall have no power to fix appropriations.").

To agree with Appellants would entangle courts in the details and execution of educational policies and related appropriations, involving millions of students and billions of dollars, in an arena in which the courts possess no special competence or specific constitutional authority. Further, the drafters of Article IX, section 1(a) declined to allocate such a role to the judiciary. Quite the opposite, the language of Article IX, section 1(a) assigns such matters to the legislative branch, stating that "adequate provision shall be made *by law*." Art. IX, § 1(a), Fla. Const. (emphasis added). The fact that this language remains in the education amendment after *Coalition* demonstrates that the constitution continues to commit education policy determinations to the legislative and executive branches. *See Coalition*, 680 So.2d at 408.

Further, as the trial court recognized here, the lack of any definitive consensus regarding education policies and programs demonstrates the political nature of Appellants' assertions. While "adequate," "efficient," and "high quality" represent worthy *political* aspirations, they fail to provide the courts with sufficiently objective criteria by which to measure the performance of our co-equal governmental branches. Rather, it is the political branches that must give meaning to these terms in accordance with the policy views of their constituents. For these reasons, Appellants failed to demonstrate any meaningful standards under which the courts could find that the State has violated its constitutional duties regarding the *1172 adequacy, efficiency and quality of the public school system.[5]

Looking to a similar case in another state, we agree with the conclusion of the Pennsylvania Supreme Court that it would be contrary to the very essence of our constitution's educational aspirations for the courts to " 'bind future Legislatures ... to a present judicial view' " of adequacy, efficiency, and quality. *Marrero ex rel. Tabalas v. Commonwealth of Penn.*, 559 Pa. 14, 739 A.2d 110, 112 (1999) (quoting *Danson v. Casey*, 484 Pa. 415, 399 A.2d 360, 366–67 (1979)); *see also Bonner ex rel. Bonner v. Daniels*, 907 N.E.2d 516, 522 (Ind. 2009) (denying declaratory relief because the determination of quality "is delegated to ... sound legislative discretion"). And although we recognize that courts in other states have sometimes purported to define "adequate," "efficient," "high quality," and similar terms in response to challenges to their own public school systems, *see, e.g.*, *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell*, 295 Conn. 240, 990 A.2d 206 (2010) (concluding the state did not provide "suitable" educational opportunities); *Columbia Falls Elementary School*

District No. 6 v. State, 326 Mont. 304, 109 P.3d 257 (2005) (holding that funding for education was inadequate and that determination of "quality" education was justiciable, but deferring to state legislature to provide threshold definition of "quality"); *Rose v. Council for Better Education, Inc.*, 790 S.W.2d 186 (Ky. 1989) (concluding that the legislative branch failed to comply with the constitutional requirement of providing an "efficient system of common schools"), we respectfully disagree with those decisions as insufficiently deferential to the fundamental principle of separation of powers imposed on Florida's judiciary and the practical reality that educational policies and goals must evolve to meet ever changing public conditions, which is precisely why only the legislative and executive branches are assigned such power. The New Jersey Supreme Court, for example, while concluding that the legislature failed to comply with its constitutional requirement of a "thorough and efficient" system of free public schools, observed that "what a thorough and efficient education consists of *is a continually changing concept*." *Abbott v. Burke*, 119 N.J. 287, 575 A.2d 359, 367 (1990) (emphasis added). That court further acknowledged the "radical interference with the legislative power" involved in determining that the educational system provided in New Jersey was constitutionally deficient. *Id.* at 376. As noted by our supreme court in *Cotton*, Florida law is much more protective of the separation of powers principle than is New Jersey law. Like the Florida Supreme Court noted in *Coalition*, although "the views of other courts are always helpful, we conclude that the dispute here must be resolved on the basis of Florida constitutional law[.]" 680 So.2d at 404–05.

[8] *1173 With respect to a "uniform" system of public schools, Appellants alleged in their second amended complaint that two of Florida's school choice programs, the Florida Tax Credit Scholarship Program and the McKay Scholarship Program, violate this requirement. Unlike the terms adequate, efficient and high quality, the Florida Supreme Court has interpreted the term "uniform" under Article IX in the context of school choice programs. *See Bush v. Holmes*, 919 So.2d 392 (Fla. 2006). As Appellants properly concede, however, the trial court's ruling that they lack standing to challenge the Florida Tax Credit Scholarship Program is controlled by this court's opinion in *McCall v. Scott*, 199 So.3d 359 (Fla. 1st DCA 2016) (holding that appellant parents and teachers lacked taxpayer standing to challenge the Florida Tax Credit Scholarship Program, because it did not violate a specific limitation on the legislature's taxing and spending power, nor did it involve a disbursement from the public treasury). Therefore, the sole uniformity claim on appeal relates to the McKay Scholarship Program.

[9]Appellants argue that the McKay Scholarship Program violates Article IX, because it diverts public funds to private schools, which are not subject to the same standards and oversight as public schools. They rely on *Holmes*, in which the Florida Supreme Court held that another school choice program, the Opportunity Scholarship Program, violated the constitutional requirement that education be provided through a uniform system of public schools. *Holmes*, 919 So.2d at 413. However, in disapproving the Opportunity Scholarship Program, which allowed *any* student attending a failing school to use a scholarship provided by the State to attend a private school, the *Holmes* court expressly disavowed that its decision would necessarily impact other more specialized educational programs, even if those programs used public funds to pay for a private school education:

> We reject the suggestion by the State and amici that other publicly funded educational and welfare programs would necessarily be affected by our decision. Other educational programs, such as the program for exceptional students at issue in *Scavella [v. School Board of Dade County*, 363 So.2d 1095 (Fla. 1978)], are structurally different from the [Opportunity Scholarship Program], which provides a systematic private school alternative to the public school system mandated by our constitution.

919 So.2d at 412.

Here, like the program at issue in *Scavella*, the McKay Scholarship Program is a specialized scholarship limited to students with disabilities. *See* § 1002.39(2), Fla. Stat. (outlining eligibility requirements for the McKay Scholarship Program); *Scavella*, 363 So.2d at 1098 (describing a program through which exceptional students used public funds to attend private schools). The trial court

correctly recognized that this opportunity for students with disabilities involved only approximately 30,000 of the total 2.7 million students in the public schools, and only a fraction of the statewide K–12 public school budget, such that it could not be reasonably argued that the McKay Scholarship Program had a "material affect" on the public K–12 education system. Rather, as the trial court observed, "evidence was presented that [this] school-choice program[ ] [is] reasonably likely to improve the quality and efficiency of the entire system."

The McKay Scholarship Program offers a beneficial option for disabled students to help ensure they can have a "high quality" education. As the trial court recognized, "research has shown that the McKay program has a positive effect on the public schools, both in terms of lessening the *1174 incentive to over-identify students and by increasing the quality of services of the students with disabilities in the public schools." It is difficult to perceive how a modestly sized program designed to provide parents of disabled children with more educational opportunities to ensure access to a high quality education could possibly violate the text or spirit of a constitutional requirement of a uniform system of free public schools.

Conclusion

Thus, we affirm the trial court's ruling that Appellants' claims must be rejected, as those claims either raise political questions not subject to judicial review or were correctly rejected on the merits.

AFFIRMED.

WINOKUR, J., CONCURS; WOLF, J., SPECIALLY CONCURRING WITH OPINION.

WOLF, J., specially concurring.

In Haridopolos v. Citizens for Strong Schools, Inc., 81 So.3d 465 (Fla. 1st DCA 2011) (en banc), eight judges (a majority of the court) determined that article IX, section 1 of the Florida Constitution did not contain adequate standards by which the judiciary could measure whether the Legislature complied with the terms of the constitutional provision. In my concurring opinion, I agreed with the majority that the case needed to be remanded to the trial court. However, I agreed with the seven dissenting judges that the amendment lacked measureable standards and stated:

> Clearly, it was the intent of the Constitutional Revision Commission that drafted the 1998 amendment to article IX, section 1 of the Florida Constitution to address the decision in Coalition, 680 So.2d 400, by adding language to further elucidate the public's desires concerning the public education system. Unfortunately, this language still did not provide measurable goals by which the court could judge legislative performance and enforce the provision in any particular manner. This case is similar to Advisory Opinion to the Governor—1996 Amendment 5 (Everglades), 706 So.2d 278, 279–82 (Fla. 1997), where the public expressed its strong desire that polluters be "primarily responsible" for cleaning up the Everglades, yet the court held the amendment was not self-executing. Similarly, the public's desires here are not sufficiently definite to allow for enforcement without some measurable standards.

Haridopolos, 81 So.3d at 474 (Wolf, J., concurring) (emphasis added).

The trial in this case demonstrated that without measureable standards, there is no way that a trial court can assess whether the Legislature has complied with article IX, section 1 of the Florida Constitution. Both sides presented numerous statistics to support their position, with each side taking different views about which statistical categories best measured compliance with the amendment. The trial court did an admirable job of sorting through the mountain of evidence presented to it. The bottom line is that without measureable standards, the plaintiffs cannot demonstrate that the Legislature has violated constitutional standards.

As I expressed in my original concurring opinion in this case, a litigant may have a cause of action to require the Legislature to implement article IX, section 1 through the adoption of reasonable measurable standards to gauge compliance. The plaintiffs in this case chose not to pursue that remedy. I, therefore, concur.

All Citations

232 So.3d 1163, 351 Ed. Law Rep. 658, 42 Fla. L. Weekly D2640

Footnotes

1 The trial court allowed six parents interested in the Florida Tax Credit Scholarship Program and the McKay Scholarship Program to intervene in the proceedings. The trial court later granted their motion for judgment on the pleadings as to the Florida Tax Credit Scholarship Program, finding that Appellants lacked standing to challenge that program.

2 The second amended complaint also added a claim relating to the State's pre-kindergarten program. The trial court severed that claim, and it is not at issue in this appeal.

3 As to "safe" and "secure," the trial court ruled that these terms are subject to judicially manageable standards, but that Appellants had withdrawn any challenge to the safety or security of the public school system before trial. The court found that these issues were nonetheless tried with regard to the adequacy of funding to meet repair and maintenance needs, but that the evidence submitted did not demonstrate insufficient funding for these needs. As we hold that the overarching question of adequacy is not justiciable, we do not opine on the trial court's conclusion in this regard.

4 At the time of the *Coalition* decision, Article IX, section 1, stated: "Adequate provision shall be made by law for a uniform system of free public schools and for the establishment, maintenance and operation of institutions of higher learning and other public education programs that the needs of the people may require." Art. IX, § 1, Fla. Const. (1996).

5 As to the trial court's additional finding that, even if the issue is not a political question assigned solely to the political branches, Appellants failed to meet their burden to prove "beyond a reasonable doubt that the State's education policies and funding system were not rationally related to the provision '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," Appellants contend the trial court applied an overly stringent standard. Appellants urge this court to hold that a lower burden of proof and standard for evaluating the constitutionality of the State's actions should apply in this case and in all cases challenging the State's compliance with its obligations under Article IX of the Florida Constitution. We decline to do so, based on our holding that these claims are not justiciable.

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

CITIZENS FOR STRONG SCHOOLS, INC.;
FUND EDUCATION NOW;
EUNICE BARNUM;
JANIYAH WILLIAMS;
JACQUE WILLIAMS;
SHEILA ANDREWS;
ROSE NOGUERAS; and
ALFREDO NOGUERAS;

Plaintiffs,

vs. Case No. 09-CA-4534

FLORIDA STATE BOARD OF EDUCATION;
ANDY GARDINER, in his official capacity as the
Florida Senate President;
STEVE CRISAFULLI, in his official capacity as
the Florida Speaker of the House of Representatives;
and PAM STEWART, in her official capacity
as Florida Commissioner of Education;

Defendants.

and

CELESTE JOHNSON; DEAUNDRICE KITCHEN;
KENIA PALACIOS; MARGOT LOGAN;
KAREN TOLBERT; and MARIAN KLINGER;

Intervenors/Defendants
_____/

FINAL JUDGMENT

"The foundation of every state is the education of its youth." Diogenes

The word **educate** comes from the Latin word educare which means "to bring up, rear," related to educere "to lead out" from ducere "to lead." Encarta World English Dictionary, 1999

OR BK: 4931 PG: 863

"Next in importance to Freedom and Justice is Education, without which neither Freedom nor Justice can be permanently maintained." James A. Garfield

STRUCTURE OF THE TRIAL COURT'S OPINION

This opinion begins with a section addressing the Procedural Background, a Summary of Opinion and the Conclusions of Law. *The Findings of Fact have been moved to an Appendix* and it follows the Outline form of the proposed Final Judgment submitted by the Defendants. The reasons for utilizing the outline form in the Appendix is due to the extensive number of findings made by the Court, as well as, to facilitate a reader's ability to find a particular factual subject area addressed by the opinion.

PROCEDURAL BACKGROUND

In this action originally filed in 2009, Plaintiffs Citizens for Strong Schools, Inc., Fund Education Now, Inc., and several individual Plaintiffs allege that the State "is breaching its constitutional duty to provide a uniform, efficient, safe, secure and high quality system of free public schools that allows students to obtain a high quality education, as required by Article IX, Section 1(a) of the Florida Constitution." Plaintiffs seek declaratory and supplemental relief requiring Defendants to "fulfill their constitutional duties under Article IX."

The State moved to dismiss the action on several grounds, including that Plaintiffs' claim raised non-justiciable political questions. Circuit Judge Jackie Fulford denied the State's motion. The State subsequently petitioned the First District Court of Appeal for a writ of prohibition. In 2012, the First DCA, in a 7–1–7 decision, denied the State's petition but certified the following question to the Florida Supreme Court: "Does Article IX, section 1(a), Florida Constitution, set

forth judicially ascertainable standards that can be used to determine the adequacy, efficiency, safety, security, and high quality of public education on a statewide basis, so as to permit a court to decide claims for declaratory judgment (and supplemental relief) alleging noncompliance with Article IX, section 1(a) of the Florida Constitution?" *Haridopolos v. Citizens for Strong Schs., Inc.*, 81 So. 3d 465, 473 (Fla. 1st DCA 2011) (plurality opinion). The Supreme Court declined to answer the question on petition for review. *Haridopolos v. Citizens for Strong Schs., Inc.*, No. SC12-216, 103 So.3d 140 (Fla. Sept. 11, 2012) (unpublished table decision).

Plaintiffs subsequently filed a second amended complaint, which included additional allegations in support of their Article IX claim and added a claim challenging the constitutionality of the State's pre-kindergarten program. This Court severed the pre-kindergarten claim. The parties engaged in substantial fact and expert discovery for approximately two-and -a-half years. The Court permitted six individuals to intervene in the case. The intervenors include parents who are interested in the Florida Tax Credit ("FTC") program and the John M. McKay Scholarship Program for Students with Disabilities (the "McKay Program")—programs that Plaintiffs alleged were part of their Article IX challenge. On December 17, 2015, the Court granted Intervenors' motion for judgment on the pleadings with respect to the FTC program, finding that Plaintiffs lacked standing to assert any claim because the FTC program does not involve the appropriation of public funds and Plaintiffs could not show any special injury. On December 18, 2015, the Court denied Plaintiffs' motion for partial summary judgment as to their challenges to the FTC program (for lack of standing) and to the McKay Program, finding that Plaintiffs had not asserted a specific claim for relief with respect to either program.

The Court held a non-jury trial that began on March 14, 2016, and was completed on April 8, 2016. The Court requested that the parties submit proposed findings of fact, and conclusions of law and final judgment by April 25, 2016, which was later extended to April 27, 2016.

OPINION

At the outset the Court would like to thank the attorneys for their professional presentation of the evidence. At times, the trial felt like a debate on National Public Radio. It was interesting to hear all of the different components that go into a complicated, but understandable funding system for education in the State of Florida. The Court is convinced that all sides believe firmly in the benefits to Florida's children of a high quality educational system. While this opinion is adverse to the position advocated by the Plaintiffs it is not meant in any way to be a criticism of their attorney's zeal and desire to assist those for whom all of Florida's lawyers took an oath to defend.[1]

Florida's system of education is structurally complicated, primarily by the fact that each County has its own school board which is allowed, pursuant to the Constitution, to set policy and establish certain standards within their respective districts. This is not meant as a criticism, but simply as an observation as to why there is variability in schools from one county to the next. Even among school systems with equivalent funding it is easy to find variations in how the local districts allocate their resources.

Understandably, there is a great deal of interest by people in the amount of funds that should be dedicated to education. The Plaintiffs have filed their complaint because they believe

[1] Florida Bar, Oath of Admission – "I will never reject, from any consideration personal to myself the cause of the defenseless or oppressed . . . ." So help me God.

that the Defendants (the Legislature and the Department of Education) have failed to live up to the constitutional requirements set forth in Article IX of the Florida Constitution. Plaintiff's Second Amended Complaint was broad in its scope and the number of issues raised were extensive.

The factual allegations set forth in Plaintiff's Second Amended Complaint (sections I – VII) totaled 209 paragraphs. Section VII relating to a "High Quality Pre-Kindergarten Learning Opportunity or Delivered an Early Childhood Development and Education Program According to Professionally Accepted Standards " was severed from the main complaint.[2] The remaining 200 paragraphs were divided into 18 introductory paragraphs regarding the jurisdiction of the Court and the parties and 182 paragraphs relating to the substantive factual allegations supporting the complaint. The 182 paragraphs containing substantive factual allegations are then subdivided into six major subdivisions. The remaining six major subdivisions of the Plaintiff's Second Amended Complaint are:

I. "The State Has a Constitutional Duty to Provide a Uniform, Efficient, Secure and High Quality System of Free Public Schools." – Paragraphs 19 through 26.

II. "The State Has Breached Its Paramount Duty to Make 'Adequate Provision' For a System of Free Public Schools." – Paragraphs 27 through 46.

III. "The State Has Failed to Provide a 'Uniform' System of Free Public Schools." - Paragraphs 47 through 110.

IV. "The State Has Failed to Provide an 'Efficient' System of Free Public Schools." - Paragraphs 111 through 148.

[2] See Amended Order of Severance and Denial of Motion to Dismiss filed January 27, 2015.

V. "The State Has Failed to Provide a 'High Quality' System of Free Public Schools" - paragraphs 149 through 174.

VI. "The Public School System Does Not Allow Students to Obtain a High Quality Education." - Paragraphs 175 through 200.

As explained in the Findings of Fact (which are attached as an Appendix) and the Conclusions of Law which are set forth below, the Court finds that the evidence presented by the Plaintiffs did not rise to the level necessary to sustain the legal and factual allegations made in their Second Amended Complaint. In this regard, the Court concludes that Plaintiffs had the burden of establishing beyond a reasonable doubt that the State's education policies and funding system were not rationally related to the provision "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." Plaintiffs have not satisfied this standard.

The weight of the evidence shows that the State has made education a top priority both in terms of implementation of research-based education policies and reforms, as well as education funding. The State has an accountability and assessment system that is rated among the best in the nation, resulting in more "A" graded schools over time. The State has also adopted rigorous teacher certification, training and evaluation standards, resulting in over 94% of courses being taught by teachers who are "highly qualified" under federal standards.

Findings by this Court must be weighed and viewed with the recognition that there is variability between Florida's sixty-seven county school districts. The variation in local school districts becomes obvious with only a cursory look. However, the real issue set forth in Plaintiff's Amended Complaint was how the Department of Education and the Legislature were addressing constitutional mandates of Article IX, not how the local county school districts

themselves were using the State appropriated funds. Findings by this Court should not be treated as a finding that there are not debatable disputes as to: (1) whether or not the State could do more; or how resources should be allocated at the local level. For example, the Defendants requested the Court to make a factual finding that "Ample instructional resources, including technology are available." While this may generally be true, it is certainly not true for every school district or for every school. Additionally, this type of finding points out another difficulty. The Defendants would argue that adequate money is provided to the local school boards for technology, and if they choose to not fully fund local technology needs then that is a matter that involves entities that are not parties to this lawsuit. With that thought in mind, this Court will proceed in making the findings necessary for the adjudication of the issues, established by the pleadings of the parties and the evidence presented, as to the funds appropriated and allocated by the Defendants.

With respect to funding, the evidence indicates that over the past twenty years, K–12 education has been the single largest component of the state general revenue budget. Even during the recent, severe economic downturn, the State ensured that education funding was less impacted than other government services and functions. In the current school year, the State funds education at the highest level in Florida history. Since the 1997–98 school year, education funding has outpaced inflation. The State has made efforts to equalize its funding and considers education costs for different student programs and cost-of-living differences across the state. It also is significant that the State has provided sufficient funding for schools to meet the class size requirements set forth in Article IX.

The Court finds, based on the evidence presented, that there is not a constitutional level lack of resources available in Florida schools. That doesn't mean that everything is perfect, it

simply means that there is not a constitutional level crisis sufficient to warrant judicial intervention. The primary thrust of the Plaintiff's complaint is that there is a crisis and it involves a significant number of Florida's children. Plaintiffs' allege the crisis is caused by the State of Florida's inadequate funding of education in violation of Art. IX. of the State Constitution. Plaintiffs, time and time again, directed the Court's attention to the plight of those students who come to school with less than the necessary social skills and basic educational understandings necessary to achieve success. It was the bottom 25% of students that Plaintiffs spent a great deal of their time addressing, irrespective of whether they were attending an "F" rated school and or an "A" rated school. The goal of trying to provide every child with the skills necessary to succeed is laudable and surely, it is the aspiration of all those who teach and understand the importance of education for all Florida's children. The achievement of such a goal was argued by the parties. The Plaintiffs asserted that more resources were clearly needed to address the problems they identified in their complaint, while the Defendants argued that more efficient use of the resources currently provided was the most cost effective solution. Defendants pointed to schools similarly situated in terms of resources available, minority students, and economically disadvantaged students to show that success, as measured by student performance, was accomplishable without additional resources. In other words, the reason some similarly situated schools do better than other similarly situated schools is not due to resources, but rather due to better teacher efficiency as it relates to student performance on state educational standards.

It became clear that the evidence was focusing on Plaintiffs' "need for more resources" argument on the one hand and Defendants' "demand for greater efficiency" argument on the other. Each side believes the evidence supported their respective positions. This equation is an

ancient one and finds its genesis in the natural tensions between labor and management. However, the burden of proof rested upon the Plaintiffs not the Defendants.

The State has chosen to hold schools accountable by: (1) requiring subject matter content standards; and (2) utilizing standardized tests to measure student performance in the mastery and comprehension of the content standards. The Court has found this to be a rational process. However, the Court would be remiss if it did not at least address the Plaintiffs' concern regarding "constantly changing content standards." Plaintiffs' argued that, -what seems like constantly changing content standards- leaves teachers in a state of flux. The State argues it only changes the standards after input from teachers and after sufficient notice has been given. However, it would seem that even in a fast changing world basic content standards for K-12 students would remain relatively stable over time. While the Court's findings support the State's educational policy in this area it has to be noted that the complaints of constantly changing content standards are not entirely without merit.

Overall, the evidence indicates that schools are staffed with "highly qualified" teachers—i.e., teachers that are certified and teaching in the areas in which they are certified. The evidence also indicates that, based on evaluations conducted by school district personnel, approximately 98% of teachers have been rated as "effective" or "highly effective" by their supervisors. Schools across the state provide students with a wide array of curricular offerings, including Advanced Placement and International Baccalaureate courses, career and technical education leading to industry certification, dual enrollment opportunities, virtual education, specialized magnet schools, and other school choice options. Instructional resources, including technology, are available. The weight of the evidence indicates that school facilities are safe and secure and in compliance with relevant codes and standards. All high schools in the state and many school

districts as a whole meet accreditation standards of an independent accrediting agency. School districts in the state generally have strong financial ratings and reserves, and the ability to raise substantial additional revenue if, with voter approval, local school boards and communities determine additional resources are important.

The Court acknowledges Plaintiffs' assertion that "many other factors beyond school influences" affect individual student performance. Not every child in school has the benefit of a caring parent(s), family cohesiveness, or early childhood educational experiences. There are a thousand differences in the individual aspects of each child's life. Some of those are really good, some not so good, some bad, and some really bad. The point is that all of this, the good and the bad fall upon the teachers in the classroom. Before a child can be taught in a classroom setting they must be socialized. Socialization and academic learning are the twin goals of education. Society has an interest in well behaved children, as well as, smart children. Unfortunately, not every child can or will take advantage of the opportunities offered to them while they are in school. Although the Legislature has established other programs and provided funding for social services in an effort to address children's needs outside the classroom, the Legislature has determined that "the State of Florida cannot be the guarantor of each individual student's success" in school. § 1000.03(5)(f), Fla. Stat.

The Court also recognizes that the level at which the State sets its standards and determines "cut scores" for proficiency levels goes to the heart of the education policymaking that is, under our Constitution, reserved to the executive and legislative branches of government. Accordingly, the Court finds that the most appropriate consideration of student performance under Article IX is to examine student performance over time and in context. In this regard, the Court finds that since the 1998–99 school year, the high school graduation rate has increased by

over 25 points, with more students of all racial, ethnic, and socioeconomic backgrounds graduating than ever before.

Since the 1990s, Florida students have substantially improved their performance on the National Assessment of Education Progress ("NAEP"), a testing program required by federal and state law. In many categories, Florida is now among the highest scoring states in the nation. For example, on the 2015 NAEP reading assessment for fourth grade students, Florida had the tenth-highest average student scores in the nation: its Hispanic/Latino students ranked first; its Black/African-American students ranked eighth; and its White students ranked ninth. Florida's students eligible for free-and-reduced-price lunch ranked first in the nation, outperforming similar economically disadvantaged students in all other states. During the same time that all students' scores were increasing, the State was among the most effective in narrowing achievement gaps among different groups of students, including being the only state in the nation to narrow the achievement gap between White and Black/African-American students in both reading and mathematics in the fourth and eighth grades. Achievement gaps are narrower in Florida than the nation as a whole.

Florida has also provided incentives to schools to offer more rigorous coursework, and that policy appears to be working. Florida ranks second in the nation in Advanced Placement ("AP") participation rates and third in the nation for performance on AP exams. Florida has eliminated the AP participation gap and the success gap for Hispanic/Latino students and Florida has significantly increased participation and success rates among low-income students.

The record also shows that Florida students have continually improved on state assessments and Florida has reduced achievement gaps over time, even as the state standards and assessments have become more rigorous. The first ten years of the administration of the

statewide standards assessment, the FCAT, show a continual upward trajectory in performance for all student subgroups. When the FCAT 2.0 and End-of-Course assessments ("EOCs"), new assessments tied to more rigorous standards, were introduced in 2011, the State increased performance-level standards, resulting in a decrease in the overall percentage of students performing at "satisfactory" levels, but this percentage gradually increased in the four years of the administration of the FCAT 2.0 and EOCs.

Taken as a whole, and considering trends over time and relevant comparisons, the Court concludes that student performance results are another indicator that the State's policies and funding decisions satisfy the rational-basis test, and that Plaintiffs have failed to prove otherwise. The Court does not adopt Plaintiffs' argument that since certain percentages of students have not yet reached proficiency levels on certain tests, there must be a violation of Article IX. Such a condition exists not only across the nation, but even in schools, school districts and states that are considered the "best" systems. Again, the constitutional language does not speak in terms of a guarantee of any particular level of student performance or of perfection; rather, Article IX refers to a "system" that "allows" students to obtain a high quality education.[3]

Furthermore, the Court concludes that Plaintiffs have failed to establish any causal relationship between any alleged low student performance and a lack of resources. Surprisingly, the evidence presented by the Defendants, which included national and state level statistical analyses, showed a lack of connection between the level of resources available in schools and student outcomes. While clearly, this presumes a minimum necessary amount of resources, in

[3] Section 1000.03(5)(f), Fla. Stat., makes clear that "the State of Florida cannot be the guarantor of each individual student's success. The goals of Florida's K-20 education system are not guarantees that each individual student will succeed or that each individual school will perform at the level indicated in the goals."

this context it obviously does not follow that "more is better." There was little evidence, if any, regarding the minimum amount of resources necessary to properly administer a school. There does not appear to be any studies that address the minimum resources needed for a school based on the number of students in the school. For example, one would think there would have been a model school project somewhere that addressed how many guidance counselors per 300 students, how many nurses per 300 students or how many media specialists per 300 students, etcetera, were needed. There was not.

Nor is there any guarantee that any remedy sought by Plaintiffs, namely cost studies leading to "more state money," would in any way affect outcomes in particular districts. The evidence presented did not establish that "cost studies" as described by Plaintiffs were inherently reliable and scientific. In other states "cost studies" have led to wide variations in estimates of what funding is allegedly "needed," with no credible record of producing results in improved student performance. The Defendants presented evidence that there is significant input from stakeholders, experts, policymakers, and the public at large in formulating education budget and appropriations decisions, and that several elements of the State's K–12 funding system consider costs and cost factors.

The Court also received evidence concerning the State's "Differentiated Accountability" system in which low performing ("D" and "F") local schools are subject to school improvement planning and monitoring by the State Board of Education.[4] The Court finds that this focus is on only a very small number of schools (primarily concentrated in one district) and that the State is in compliance with the statutory requirements. However, the Court must note that it was surprised at how long a school could remain in "F" status pursuant to the enactments of the

[4] *See* § 1008.33, Fla. Stat.

legislature. If there is one area that this Court was most concerned about based on the evidence heard, it is in the area of Differentiated Accountability. There can be little doubt that allowing a school to remain in F status for an extended period of time raises serious issues regarding the constitutional acceptance of such an event. While the Department of Education's hands may be tied by the legislation that it is required to follow, the Legislature is not similarly situated. To bring the matter to a point, I would raise the following question. How many people would want a judge deciding or presiding over their lawsuit in a Circuit that had been rated by the Supreme Court with an "F" as to judicial performance for many years? Similarly, parents do not want their children attending a school that continues to receive an "F" based on its performance rating. The evidence presented, while not rising to the level of a constitutional violation, should serve as a warning not to be complacent about a local districts failure to address long term "F" schools. This is especially true since the Defendants own evidence shows that an "F"s school can be turned around without additional resources being provided.

The Court also concludes that local school boards, pursuant to their constitutional responsibility to "operate, control and supervise" schools and to "determine the rate of school district taxes" in support of schools, are "part of the state system of public education" and play a very important role in delivering education in Florida. To the extent that Plaintiffs complain about particular levels of student performance or the availability of resources in particular schools, those are matters within the authority of local school boards. Generally, the State cannot be held liable for ineffective operational, control, and supervisory decisions at the local level.[5]

[5] Although, the court would be concerned about how long the Legislature would tolerate a local school boards ineffectual operation that involves the presence of long term "F" schools.

Plaintiffs also made a number of allegations about Florida's school choice programs, particularly charter schools, the Florida Tax Credit Scholarship ("FTC") Program, and the McKay Scholarship Program. The Court previously ruled that Plaintiffs lacked standing to assert a claim as to the FTC Program and that they did not plead a claim challenging the constitutionality of the McKay Program. The challenge to charter schools did not rise to the level of a constitutional violation. Nevertheless, the Court finds no negative effect on the uniformity or efficiency of the State system of public schools due to these choice programs, and indeed, evidence was presented that these school-choice programs are reasonably likely to improve the quality and efficiency of the entire system.

For these reasons, as well as those set forth in the detailed findings of fact and conclusions of law set forth below, the Court concludes that Plaintiffs have failed to establish the State has violated Article IX, Section 1(a) of the Florida Constitution.

FINDINGS OF FACT

(The Findings of Fact are attached as an Appendix due to the number of findings)

CONCLUSIONS OF LAW[6]

Justiciability

1. The justiciability issues in this case are subject to the Court's plenary review, and the Court has considered them based on the complete evidentiary record. Despite Judge

[6] Any "conclusion of law" that should more appropriately be characterized as a "finding of fact" shall be considered a finding of fact.

Fulford's preliminary ruling that Plaintiffs had "raised a justiciable question over which this Court has subject matter jurisdiction" (Order Den. Dismissal, Aug. 25, 2010), the First District Court of Appeal held in connection with the State's petition for a writ of prohibition that the justiciability issues in this case were still open questions. Indeed, the plurality opinion expressly noted "significant, but unsettled, questions about Florida's 'paramount duty' to provide 'for the education of all children residing within its borders,' Art. IX, § 1(a), Fla. Const." *Haridopolos*, 81 So. 3d at 466 (plurality opinion).

2. Given the Florida Supreme Court's decision not to address these justiciability questions at an earlier stage of this litigation, *see Haridopolos v. Citizens for Strong Schs., Inc.*, No. SC12-216, 103 So.3d 140 (Fla. Sept. 11, 2012) (unpublished table decision); there has not been a final appellate ruling on justiciability in this case. It would appear that neither the First DCA's plurality discussion of the standard for a writ of prohibition nor Judge Fulford's denial of the State's motion to dismiss is binding on this Court.[7] Procedurally, justiciability is almost always considered early in a challenged proceeding, as it was in this case. However, for reasons that are now obvious after four weeks of evidentiary presentation and post-trial time to reflect, this Court will, in the exercise of its discretion, again address the issue of justiciability.

3. As in *Coalition for Adequacy & Fairness in School Funding, Inc. v. Chiles*, 680 So. 2d 400 (Fla. 1996), Plaintiffs have "made a blanket assertion that the entire system is constitutionally inadequate." *Id.* at 406. And in that case, the Florida Supreme Court affirmed the complaint's dismissal because the plaintiffs had failed to identify "an appropriate standard

[7] The Court is mindful that as different assigned judges rotate through a case it is generally expected that they will not be procedurally disruptive by reviewing a predecessor judge's prior rulings except for good cause. I believe this case offers a good cause exception to the general rule, as justiciability can be a complex concept and the proper application of it is not always immediately clear. Additionally, any comments I made in this long record regarding justiciability should be governed by the written ruling herein.

for determining 'adequacy' that would not present a substantial risk of judicial intrusion into the powers and responsibilities assigned to the legislature, both generally (in determining appropriations) and specifically (in providing *by law* for an adequate and uniform system of education)." *Id.* at 408. However, as to the justiciability issue, the Court stopped ". . . . short of saying 'never.'" *Id* at 408. Additionally, Justice Overton gave an excellent example of why the judicial branch should never say never as to its responsibility related to education under the Florida Constitution. Justice Overton wrote:

> "For example, were a complaint to assert that a county in this state has a 30% illiteracy rate, I would suggest that such a complaint has at least stated a cause of action under our education provision. To say otherwise would have the effect of eliminating the education provision from our Constitution and relegating it to the position occupied by statutes." *Id* at 409.[8]

4. Since the *Coalition* decision, Article IX, Section 1(a) of the Florida Constitution has been amended twice. In 1998, voters approved the following amendment on Public Education of Children (new language in **bold**):

> **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 the needs of the people may require.

5. However, the amended language of Article IX, Section 1(a) does not provide standards that are any more judicially manageable than the abstract concept of "adequacy" was before the 1998 constitutional amendment. Applying the terms "efficient and high quality" to

[8] This case is not about a significant level of illiteracy.

Florida's system of public schools—which must be provided for *by law*—necessarily involves "political question[s] which [are] outside the scope of the judiciary's jurisdiction." *Coalition*, 680 So. 2d at 408.

6. As the Supreme Court held in the *Coalition* case, the constitutional requirement that "[a]dequate provision shall be made *by law* for a . . . system of free public schools," Art. IX, § 1(a), Fla. Const. (emphasis added), shows "that the constitution has committed the determination of 'adequacy' to the legislature." *Coalition*, 680 So. 2d at 408.

7. Article IX, Section 1(a) lacks "judicially discoverable and manageable standards for resolving" the political questions raised by Plaintiffs' adequacy claim. *Coalition*, 680 So. 2d at 408. The new adjectives introduced by the 1998 amendment—"efficient and high quality"—do not give judicially manageable content to the adequacy standard that was held non-justiciable in the *Coalition* case. Use of these types of terms has led courts in several other states to conclude that their judiciaries are ill-equipped to address adequacy challenges similar to the one that Plaintiffs assert here.[9]

8. Having considered the evidence presented at trial, the parties' briefs, and arguments of counsel, the Court concludes that there are not judicially manageable standards to

[9] *See, e.g.*, *Lewis E. v. Spagnolo*, 710 N.E.2d 798, 800, 803 (Ill. 1999) (holding that "questions relating to the quality of a public school education are for the legislature, not the courts, to decide" because "what constitutes a 'high quality' education [under state constitution] cannot be ascertained by any judicially discoverable or manageable standards and that the constitution provides no principled basis for a judicial definition of 'high quality'"); *Marrero ex rel. Tabalas v. Commonwealth*, 739 A.2d 110, 111, 114 (Pa. 1999) (rejecting adequacy challenge under state constitution requiring "thorough and efficient system of public education" because "[t]hese are matters which are exclusively within the purview of the [state legislature's] powers, and they are not subject to intervention by the judicial branch of our government"); *cf. Bonner ex rel. Bonner v. Daniels*, 907 N.E.2d 516, 522 (Ind. 2009) ("[T]he Education Clause of the Indiana Constitution does not impose upon government an affirmative duty to achieve any particular standard of resulting educational quality. This determination is delegated to the sound legislative discretion of the General Assembly. And in the absence of such a constitutional duty, there is no basis for the judiciary to evaluate whether it has been breached.").

determine whether the State has made adequate provision 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." The evidence shows that many of Florida's education policies and programs are subject to ongoing debate without any definitive consensus in the education community. They are political questions best resolved in the political arena. Given that the Court has conducted a four week trial of the issues raised by the parties the Court concludes that Plaintiffs have not shown that the State has failed "to make adequate provision . . . 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."[10]

9. However, it cannot be said that every education issue is debatable. The terms in Article IX relating to "safe" and "secure" are subject to judicially manageable standards. This Court believes that the terms "safe" and "secure" are different from the terms "efficient" and "high quality." Florida's trial courts deal with issues related to safety and security all day long. Allegations of unsafe or unsecure schools can be measured differently and more definitively than can terms like "efficient" and "high quality." However, while Plaintiffs generally withdrew any challenge to the safety or security of Florida's public-school system before trial, this issue was still tried on issues related to insufficient funds to meet repair and maintenance needs and school buildings "in need of serious repair."[11] This Court finds that, based on the evidence presented, that there was little or no evidence to show: there was inadequate funding for school maintenance; that school facilities are not structurally safe; and that school buildings are not in compliance with applicable codes and standards.

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[10] The terms "safe and secure" are discussed separately.

[11] *See* Pls.' Pre-Trial Mem. of Law filed 2/21/16 at page 21 n.18 ("Plaintiffs do not allege that the State has failed to provide a safe or secure system . . . ."). Also, 2d Compl.¶42.

Separation of Powers

10. Plaintiffs' claim also fails because of Florida's strict separation-of-powers doctrine, which provides that "[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches," Art. II, § 3, Fla. Const., and "no branch may encroach upon the powers of another," *Chiles v. Children A, B, C, D, E, & F*, 589 So. 2d 260, 264 (Fla. 1991).

11. Under Florida law, "statutes come clothed with a presumption of constitutionality and must be construed whenever possible to effect a constitutional outcome." *Pub. Def., 11th Judicial Circuit of Fla. v. State*, 115 So. 3d 261, 280 (Fla. 2013). "Should any doubt exist that an act is in violation of any constitutional provision, the presumption is in favor of constitutionality. To overcome the presumption, the invalidity must appear *beyond reasonable doubt*, for it must be assumed the legislature intended to enact a valid law." *Id.* (emphasis added) (internal alterations, citation, and quotation marks omitted).[12] As a result, "the state is not obligated to demonstrate the constitutionality of the legislation. The burden is instead upon the party challenging the legislation to negate every conceivable rational basis which might support it." *Agency for Health Care Admin. v. Hameroff*, 816 So. 2d 1145, 1149 (Fla. 1st DCA 2002).

12. Similar principles apply to executive agencies like the Defendant State Board of Education. "When a court interferes with an executive agency's discretion in spending its appropriate[d] funds, [the court] is encroaching on the powers of the agency. Judges may not direct an executive agency to spend its money in a particular way." *Office of State Attorney for*

[12] *Cf. Davis v. State*, 2011 S.D. 51, ¶ 17, 804 N.W.2d 618, 628 ("[P]laintiffs have the burden of persuading the Court beyond a reasonable doubt that the public school system fails to provide students with an education that gives them the opportunity to prepare for their future roles as citizens, participants in the political system, and competitors both economically and intellectually, and that this failure is related to an inadequate funding system.").

11th Judicial Circuit v. Polites, 904 So. 2d 527, 532 (Fla. 3d DCA 2005) (citations omitted). And "[a] trial court may not interfere with and does not have the authority to enter into the decision-making process which is delegated to a state agency." *Agency for Persons with Disabilities v. J.M.*, 924 So. 2d 1, 2 (Fla. 3d DCA 2005).

Cost studies/Remedial Plan

13. Articles III and IV of the Florida Constitution establish a structure that requires budgets and expenditures to be made with a view toward actual and anticipated revenues over the long run. Plaintiffs' suggestion that an "adequate" or "sufficient" level of state funding for public education can be judicially determined through stand-alone cost studies—without regard to anticipated revenues, expenditures, or competing priorities—is at odds with this constitutional structure. *Cf. Advisory Op. to the Att'y Gen. re Requirement for Adequate Public Educ. Funding*, 703 So. 2d 446, 450 (Fla. 1997) (striking proposed constitutional amendment to set minimum percentage of total appropriations for public-education funding, finding that "the proposed amendment does substantially affect more than one function of government and multiple provisions of the Constitution"). Neither the Florida Constitution nor any Florida statute requires the sort of cost study that Plaintiffs propose.

14. In addition, any cost studies would necessarily depend on a series of assumptions about which policies to pursue and which programs to prioritize, both within the realm of K-12 education and in other areas of state government. Aside from the lack of evidence that cost studies could produce scientifically reliable or valid estimates of "adequate" education funding, the Florida Constitution entrusts the underlying policy judgments to the executive and legislative branches through the budgeting and appropriations process. *Cf. Advisory Op. re Requirement for Adequate Public Educ. Funding*, 703 So. 2d at 449 (striking proposed constitutional amendment

that "would substantially alter the legislature's present discretion in making value choices as to appropriations among the various vital functions of State government, including not only education but also civil and criminal justice; public health, safety, and welfare; transportation; disaster relief; agricultural and environmental regulation; and the remaining array of State governmental services"). Under the circumstances of this case, judicial intervention in this process, as the Plaintiffs' request, would give to the judiciary, powers that the Constitution bestows on the other branches of government.

15. Even if the Court could order Defendants to conduct a cost study, Plaintiffs have not explained how the Court could rely on such a study to order further relief that would not itself violate the separation-of-powers doctrine. Plaintiffs have conceded that Florida courts cannot order the Legislature to appropriate additional funds for public education.[13] Hence, despite Plaintiffs' requests for "supplemental relief" and "implementing legislation,"[14] if a cost study recommended additional funding, the Court could not order the State to provide it.

16. With respect to Plaintiffs' request for "implementing legislation," the Court further notes that in the nearly 20 years since the 1998 amendment to Article IX, Section 1(a), the Legislature has enacted, and the Florida Department of Education has implemented, numerous reforms and refinements of Florida's K–12 public school system. This case does not fall within the hypothetical class of cases in which further legislation might be necessary to "enforce basic fundamental interests enumerated in the constitution . . . where there has been a clear showing that the Legislature has failed to address the public's will in a reasonable period of

[13] Tr. Vol. 26 at 3915:21–25.

[14] Tr. Vol. 26 at 3917:7–13; *see also* Pls.' Pre-Trial Mem. of Law 41 ("Plaintiffs request that this Court order the State to enact implementing legislation . . . ."); *id.* at 43 ("Supplemental relief 'is not limited to declaratory relief buy also includes all relief necessary, including money judgments.'" (quoting *Hill v. Palm Beach Polo, Inc.*, 805 So. 2d 1014, 1016 (Fla. 4th DCA 2001) (a case involving only private, *non-legislative* defendants)).

time." *Haridopolos*, 81 So. 3d at 475 (Wolf, J., concurring) (citing *Dade Cty. Classroom Teachers Ass'n v. Legislature*, 269 So. 2d 684, 688 (Fla.1972) (declining to order enactment of legislation to implement constitutional collective-bargaining right)).

17. In effect, Plaintiffs seek a declaratory judgment without a judicially manageable or enforceable remedy. Plaintiffs' counsel argued at trial that a cost study would be:

> "I think at that point, as we heard from Professor Rebell, it is a recommendation. It is out there for discussion. It's not a mandate. It's for discussion to start working and figuring out what it is we need to provide. And that discussion has never even taken place. So, again, it's a step--"[15]

It would be improper for the Court to make an advisory finding of "liability" without being able to order an appropriate remedy. *Cf. Dep't of Revenue v. Markham*, 396 So. 2d 1120, 1121 (Fla. 1981) ("Disagreement with a constitutional or statutory duty, or the means by which it is to be carried out, does not create a justiciable controversy or provide an occasion to give an advisory judicial opinion."), *partially superseded by statute on other grounds as stated in Crossings at Fleming Island Cmty. Dev. Dist. v. Echeverri*, 991 So. 2d 793, 802 (Fla. 2008); *Askew v. City of Ocala*, 348 So. 2d 308, 310 (Fla. 1977) ("It seems to us that respondents really seek judicial advice which is different from that advanced by the attorney general and the state attorney, or an injunctive restraint on the prosecutorial discretion of the state attorney. Neither is available under the guise of declaratory relief, and we hold that the complaint fails to state a cause of action."). Sustaining Plaintiffs' broad-brush challenge to Florida's system of free public schools would thus exceed the judiciary's authority and lead the courts into a quagmire by forcing them to second-guess legislative and executive policy judgments—many of which even Plaintiffs and their witnesses acknowledge are subject to ongoing debate. Most of the questions in this case,

[15] Tr. Vol. 37 at 5648:23—5649:4.

as framed and presented by Plaintiffs, are therefore not justiciable and are barred by the separation of powers doctrine.

Article IX requirements

18. Article IX addresses the State's responsibility to provide by law for a system of free public schools in two key respects. First, there must be a rational basis for the education policies adopted in furtherance of a *system* that is uniform, efficient, safe, secure, and high quality. Second, the system should *allow*—but is not required to guarantee—a high-quality education *to be delivered by local school districts*, which are constitutionally responsible for operating, controlling, and supervising all free public schools—and for levying taxes to support those schools—under Article IX, Section 4.

Rational Basis

19. As summarized in the factual findings (in the Appendix containing the Findings of Fact), the State has adopted rigorous academic standards and an accountability system, enhanced teacher quality, lowered class sizes, provided extensive choice options, made education funding a priority even during difficult economic conditions, and provided by law for a system in which student performance on multiple metrics has improved over time. Plaintiffs have not shown that Defendants' actions are irrational or unconstitutional beyond a reasonable doubt. The fact that the Legislature has enacted, and the Department has implemented legislation directed toward improved student achievement compels such a decision. To the extent that Plaintiffs propose a reasonableness standard, the Court concludes the Defendants' education policies as presented at trial are rationally related to the provision of a uniform, efficient, safe, secure, and high-quality system that allows students to obtain a high-quality education.

Allows Students to Obtain

20. Article IX, Section 1(a) also specifies that the way to "assure that children attending public schools obtain a high quality education" is for the Legislature to provide funding to meet the class-size requirements specified therein. The weight of the evidence shows that these class-size requirements—which are contained in Article IX's only *specific* funding provision—have been satisfied.

21. Plaintiffs also failed to prove a causal connection between the level of state funding, on one hand, and student performance or the overall quality of the public school system, on the other.[16]

22. Nor can the State be held liable for "the many other factors . . . beyond school influences" that Plaintiffs allege affect individual student performance.[17] Although the Legislature has established other programs and provided funding for social services in an effort to address children's needs outside the classroom, "the State of Florida cannot be the guarantor of each individual student's success" in school. § 1000.03(5)(f), Fla. Stat.

23. The Court is required to recognize the statutory pronouncement that "[t]he goals of Florida's K–20 education system are not guarantees that each individual student will succeed or that each individual school will perform at the level indicated in the goals." § 1000.03(5)(f), Fla. Stat.; *cf. Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746, 789 (Tex.

[16] In rejecting an adequacy challenge in South Dakota, the supreme court of that state similarly concluded that "the weakest link in the plaintiff's constitutional challenge is tying the funding to the results." *Davis v. State*, 2011 S.D. 51, ¶ 56, 804 N.W.2d 618, 639; *see also id.* at ¶ 67, 804 N.W.2d at 640 ("The testimony and evidence raises questions about the correlation between the level of funding and student achievement. On this record, the correlation between the school funding system and poor academic results is not readily apparent."); *id.* at ¶ 66, 804 N.W.2d at 640 ("A complex set of socioeconomic factors and experiences contributes to the achievement gap, and no other state has been able to eliminate the gap, including those spending nearly twice the average per pupil amount that South Dakota spends.").

[17] 2d Am. Compl. ¶ 120.

2005) (holding that "legislative policy statements . . . cannot be used to fault a public education system that is working to meet their stated goals merely because it has not yet succeeded in doing so"). Despite Plaintiffs' desire to hold Defendants liable for student performance on state assessments, even their counsel conceded that "[i]t is certainly within the legislative and executive authority to set the cut scores,"[18] which themselves reflect rational policy judgments about how to improve student performance over time. *Cf. Davis*, 2011 S.D. 51, ¶ 54 n.32, 804 N.W.2d at 636 n.32 ("[T]he Legislature may impose education standards beyond those required by the constitution."). And contrary to Plaintiffs' allegations, the credible evidence shows that in Florida—as in Texas, where the state supreme court rejected a similar adequacy challenge—"standardized test scores have steadily improved over time, even while tests and curriculum have been made more difficult," and "NAEP scores . . . show that public education in [Florida] has improved relative to the other states." *Neeley*, 176 S.W.3d at 789; *cf. id.* at 789–90 ("Having carefully reviewed the evidence and the [trial] court's findings, we cannot conclude that the Legislature has acted arbitrarily in structuring and funding the public education system . . . ."). Given the improvements over time in Florida's graduation rates, NAEP scores, and other indicators of student performance, the weight of credible evidence belies Plaintiffs' allegation that funding for Florida's public schools does not "allow students to obtain a high quality education" under Article IX, Section 1(a).(E.S.)

Local School Boards

24. Given the direct supervision, control, and taxing authority exercised by local school boards under Article IX, Section 4(b) of the Florida Constitution, the State cannot be held liable for potentially ineffective decisions made by local school districts in the exercise of their

[18] Tr. Vol. 38 at 5642:12–14.

own constitutional obligation to operate Florida's public schools. To the extent that Plaintiffs seek relief for decisions that Florida law entrusts to local school districts—including decisions on hiring, staffing, and the allocation of resources among schools within a particular district—the school districts are indispensable parties.

Choice Programs

25. Plaintiffs' specific allegations regarding the constitutional implications of three of Florida's choice programs—charter schools, the FTC Program, and the McKay Program—are similarly unsupported by the weight of the evidence.

26. In the operative complaint, Plaintiffs alleged that Florida's charter schools contribute to the supposed inadequacy of Florida's public-school system solely because charter schools are not "efficient."[19] Yet like other free public schools, charter schools are operated, controlled, and supervised by local school boards, and Florida law gives local school boards the authority to approve, deny, or terminate a charter based on factors that specifically include the school's financial and administrative management. Moreover, the weight of the evidence shows that Florida's charter schools—which already existed in Florida at the time of the 1998 constitutional amendment—have been able to achieve similar or better student performance than traditional public schools, while serving demographically similar student populations, with similar or even fewer financial resources. In other words, charter schools in Florida are no less efficient, and on average are actually *more* efficient, than Florida's traditional public schools.

[19] 2d Am. Compl. ¶ 112; *see also id.* ¶¶ 137–148. Plaintiffs did not assert a uniformity challenge to charter schools in their pleadings, but to the extent that they raised uniformity questions about charter schools at trial, the Court concludes that the weight of the evidence would not support such a challenge. By law, charter schools are free public schools that are subject to all the same major requirements as traditional public schools with respect to academic standards, state assessments, school grading, teacher certification, teacher evaluation, and background screening. Charter schools thus do not implicate the uniformity concerns described in *Bush v. Holmes*, 919 So. 2d at 409–10.

27. The Court has already held that Plaintiffs lack standing to challenge the FTC Program, and the Court further concludes that the weight of the evidence does not support their speculative allegations that the FTC Program diverts state funding or has any material, detrimental effect on Florida's system of public schools.

28. The weight of the evidence similarly does not support Plaintiffs' allegations about the McKay Program, which is limited to "Students with Disabilities" and requires eligible students to have an individual educational or accommodation plan under federal law. § 1002.39(1), Fla. Stat. As indicated by the Florida Supreme Court, parental decisions to send individual children with special needs to private school do not implicate the uniformity of the broader public school system—regardless of whether some of those parents accept scholarship funds from the State. *See Holmes*, 919 So. 2d at 412 ("Other educational programs, such as the program for exceptional students at issue in *Scavella*, are structurally different from the [Opportunity Scholarship Program struck down in *Holmes*], which provides a *systematic* private school alternative to the public school system mandated by our constitution." (emphasis added)).[20] This conclusion is further supported by the McKay Program's relatively small size, both in terms of student participation and overall funding—neither of which has been shown to have a material impact on the State's multibillion-dollar budget for K–12 education.

Conclusion

Because the State's education policies are rationally related to the provision of a uniform, efficient, safe, secure, and high-quality system that allows students to obtain a high-quality

[20] The Florida Legislature also explicitly designed the McKay Program to be "separate and distinct from the Opportunity Scholarship Program" that was struck down in *Holmes*. § 1002.39, Fla. Stat.

education, the Court concludes that Florida's system of free public schools satisfies the constitutional requirements of Article IX, Section 1(a).

For all these reasons, the Court concludes that Plaintiffs have failed to meet their burden to prove that Defendants have failed to meet their obligations under Article IX, Section 1(a) of the Florida Constitution and enters judgment for the Defendants on all claims.

ORDERED at Tallahassee, Florida, this 24th day of May, 2016.

George S. Reynolds, III
Circuit Judge

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

CITIZENS FOR STRONG SCHOOLS, INC.;
FUND EDUCATION NOW;
EUNICE BARNUM;
JANIYAH WILLIAMS;
JACQUE WILLIAMS;
SHEILA ANDREWS;
ROSE NOGUERAS; and
ALFREDO NOGUERAS;

Plaintiffs,

vs. Case No. 09-CA-4534

FLORIDA STATE BOARD OF EDUCATION;
ANDY GARDINER, in his official capacity as the
Florida Senate President;
STEVE CRISAFULLI, in his official capacity as
the Florida Speaker of the House of Representatives;
and PAM STEWART, in her official capacity
as Florida Commissioner of Education;

Defendants.

and

CELESTE JOHNSON; DEAUNDRICE KITCHEN;
KENIA PALACIOS; MARGOT LOGAN;
KAREN TOLBERT; and MARIAN KLINGER;

Intervenors/Defendants
_____/

ORDER GRANTING IN PART AND DENYING IN PART INTERVENORS-DEFENDANTS MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS FOR FAILURE TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED

The foregoing Intervenors-Defendants Motion for Partial Judgment on the Pleadings is hereby GRANTED in part and DENIED in part.

The Court holds that the Florida Tax Credit Scholarship Program is funded by private donations from corporations who receive tax credits in connection with their donations. As

such, the Florida Tax Credit Scholarship Program does not involve any state appropriation or any diversion of public money from the state treasury that was earmarked for the public schools. *See McCall v. Scott*, No. 14-2282, 2015 WL 3945409 (Fla. Cir. Ct. May 18, 2015).

Because tax credits are not appropriations, the Court holds that Plaintiffs lack taxpayer standing to maintain a constitutional challenge to the Florida Tax Credit Scholarship Program. *Id.*

The Court further holds that Plaintiffs also lack any "special injury" to establish standing in this case. *Id.*

Accordingly, Intervenors-Defendants' Motion for Partial Judgment on the Pleadings is hereby GRANTED with respect to Plaintiffs' challenge to the constitutionality of the Florida Tax Credit Scholarship Program, provided that this ruling does not prohibit Plaintiffs from presenting evidence regarding whether the Florida Tax Credit Scholarship Program contributes in a meaningful way to an unconstitutional treatment of the public school system by the Legislature.

Intervenors-Defendants' Motion for Partial Judgment on the Pleadings is DENIED with respect to Plaintiffs' challenge to the McKay Scholarship for Students with Disabilities Program.

DONE AND ORDERED at Tallahassee, Leon County, Florida on this 17 of December, 2015.

George S. Reynolds III
Circuit Judge

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

CITIZENS FOR STRONG SCHOOLS, INC.;
FUND EDUCATION NOW;
EUNICE BARNUM;
JANIYAH WILLIAMS;
JACQUE WILLIAMS;
SHEILA ANDREWS;
ROSE NOGUERAS; and
ALFREDO NOGUERAS;

Plaintiffs,

vs. Case No. 09-CA-4534

FLORIDA STATE BOARD OF EDUCATION;
DON GAETZ, in his official capacity as the
Florida Senate President;
WILL WEATHERFORD, in his official capacity as
the Florida Speaker of the House of Representatives;
and PAM STEWART, in her official capacity
as Florida Commissioner of Education;

Defendants.
_____/

SECOND AMENDED COMPLAINT

1. This is a declaratory action by public school students, parents and citizen organizations in the State of Florida who seek a declaration that the State of Florida is breaching its constitutional paramount duty to provide a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education, as required by Article IX, section 1(a) of the Florida Constitution.

2. Plaintiffs also seek a declaration that the State has not provided a high quality pre-kindergarten learning opportunity and not delivered an early childhood development

and education program according to professionally accepted standards, as required by Article IX, section 1(b) of the Florida Constitution.

3. Defendants have various responsibilities for educational policymaking, budgeting, operation and supervision of Florida's public schools, and have failed to fulfill their constitutional duties in these regards.

4. Plaintiffs seek declaratory and supplemental relief that requires Defendants to fulfill their constitutional duties under Article IX.

JURISDICTION AND VENUE

5. This suit is to redress the deprivation of rights and privileges secured to Plaintiffs by Article IX of Florida's Constitution.

6. Jurisdiction is conferred on this Court by Art. V, § 5(b), Fla. Const.; § 26.012, Fla. Stat. (2013) (jurisdiction of Circuit Court); § 86.011, Fla. Stat. (2013) (declaratory relief).

7. Venue is properly laid in this Court as Defendants officially reside in Leon County. § 47.011, Fla. Stat. (2013).

PLAINTIFFS

8. CITIZENS FOR STRONG SCHOOLS, INC., is a non-profit 501(c)(4) organization whose mission is to consider, study, and publicize ways to improve education in Alachua County. The members of CITIZENS FOR STRONG SCHOOLS, INC. have students in the public school system of the State of Florida. The members of CITIZENS FOR STRONG SCHOOLS, INC. are also taxpayers of the State of Florida and have suffered and will in the future suffer irreparable harm because of the State's violations of Article IX of the Florida Constitution.

9. FUND EDUCATION NOW is a corporation not for profit organized under the laws of the State of Florida. FUND EDUCATION NOW represents and is an association of a group of Florida citizens who are Florida taxpayer parents of students in Florida public schools. The purpose of this non-profit corporation is to promote excellence in education in Florida's K-12 education system and to see that the Defendants comply with their constitutional duty to provide a high quality education to the public school students in Florida. The association of citizens has suffered and will in the future suffer irreparable harm because of the State's violations of Article IX of the Florida Constitution. The directors and officers of FUND EDUCATION NOW are Florida citizens who will likewise be affected by the State's failure to meet its mandate.

10. Plaintiff EUNICE BARNUM is the legal guardian of children who attend school in Duval County, Florida, and is a Florida taxpayer who lives in Jacksonville, Florida, and whose wards do not have access to a high quality system of free public schools that allows students to obtain a high quality education as mandated by the Florida Constitution. Plaintiff has suffered and will in the future suffer irreparable harm because of the State's violations of Article IX of the Florida Constitution.

11. Plaintiff JANIYAH WILLIAMS is a black eighth grade student at LaVilla School of the Arts, located in Jacksonville, Duval County, Florida, and does not have access to a high quality system of free public schools that allows students to obtain a high quality education as mandated by the Florida Constitution. Plaintiff has suffered and will in the future suffer irreparable harm because of the State's violations of Article IX of the Florida Constitution.

12. Plaintiff JACQUE WILLIAMS is a black fifth grade student at Lake Forest School, located in Jacksonville, Duval County, Florida, and does not have access to a high quality system of free public schools that allows students to obtain a high quality education as mandated by the Florida Constitution. Plaintiff has suffered and will in the future suffer irreparable harm because of the State's violations of Article IX of the Florida Constitution.

13. Plaintiff SHEILA ANDREWS is the mother of two children who attended school in Duval County, Florida, at the time the suit was initiated. She is a Florida taxpayer who lives in Jacksonville, Florida, and whose children did not have access to a high quality system of free public schools that allows students to obtain a high quality education as mandated by the Florida Constitution. Plaintiff has suffered and will in the future suffer irreparable harm because of the State's violations of Article IX of the Florida Constitution.

14. Plaintiffs ALFREDO NOGUERAS and ROSE NOGUERAS are the parents of a Hispanic student who attended school in Pasco, County, Florida, at the time the suit was initiated. Their son did not have access to a high quality system of free public schools that allows students to obtain a high quality education as mandated by the Florida Constitution. They are Florida taxpayers who live in Pasco County, Florida. Plaintiffs have suffered and will in the future suffer irreparable harm because of the State's violations of Article IX of the Florida Constitution.

DEFENDANTS

15. Defendant FLORIDA STATE BOARD OF EDUCATION is a body corporate and is the chief implementing and coordinating body of public education in Florida. Art. IX, § 2, Fla. Const; §§ 1001.01(1) & 1001.02(1), Fla. Stat. (2013). It oversees the enforcement of all laws and rules related to education, and the timely provision of direction, resources,

assistance, intervention when needed, and strong incentives and disincentives to force accountability for results. § 1000.03(2)(b), Fla. Stat. (2013). It appoints the Commissioner of Education, and exercises general supervision over the divisions of the Department of Education. *Id.* § 20.15(2) & 1001.02(2)(c). It is required to submit to the Governor and Legislature a coordinated K-20 annual legislative budget request, which must clearly define the needs of the school districts. *Id.* §§ 1001.02(2)(e) & 1011.01(1). Its members are appointed by the Governor, subject to confirmation by the Senate. *Id.* § 1001.01(1). It has a paramount duty to provide a high quality education to the students of the State of Florida.

16. Defendant DON GAETZ is the Senate President. The Senate President is the presiding officer of the Florida Senate, and has responsibility for ensuring that adequate provision is made by law for the education of all public school children. Art. III, § 2, Fla. Const.; Art. IX, § 1, Fla. Const. The Florida Senate, along with the Florida House of Representatives, is responsible for establishing education policy, enacting education laws, and appropriating and allocating education resources. § 1000.03(2)(a), Fla. Stat. (2013). He is sued in his official capacity, and as such has a paramount duty to provide a high quality education to the students of the State of Florida. He also has a duty to provide a high quality pre-kindergarten learning opportunity that is delivered according to professionally accepted standards.

17. Defendant WILL WEATHERFORD is the Speaker of the House of Representatives. The Speaker of the House of Representatives is the presiding officer of the Florida House of Representatives, and has responsibility for ensuring that adequate provision is made by law for the education of all public school children. Art. III, § 2, Fla. Const.; Art. IX, § 1, Fla. Const. The Florida House of Representatives, along with the

Florida Senate, is responsible for establishing education policy, enacting education laws, and appropriating and allocating education resources. § 1000.03(2)(a), Fla. Stat. (2013). He is sued in his official capacity, and as such has a paramount duty to provide a high quality education to the students of the State of Florida. He also has a duty to provide a high quality pre-kindergarten learning opportunity that is delivered according to professionally accepted standards.

18. Defendant PAM STEWART is the Florida Commissioner of Education. The Commissioner is the Executive Director of the Department of Education, which is the chief educational officer of the state. §§ 20.15(2) & 1001.10, Fla. Stat. (2013). She is sued in her official capacity, and as such has a paramount duty to provide a high quality education to the students of the State of Florida. The Office of Early Learning (OEL) is housed in the Florida Department of Education, and the OEL's executive director is accountable to the Commissioner. § 20.15(3)(i)1, Fla. Stat. (2013). The Commissioner has powers and duties related to providing a high quality pre-kindergarten learning opportunity that is delivered according to professionally accepted standards. § 1002.73, Fla. Stat. (2013).

FACTUAL ALLEGATIONS

I. The State Has a Constitutional Duty to Provide a Uniform, Efficient, Safe, Secure and High Quality System of Free Public Schools.

19. Article IX, Section 1 of the Florida Constitution was amended in 1998 by 71% of the voters and provides:

> 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.

20. With this constitutional amendment, the people of Florida imposed on their state government more stringent requirements for the educational system than those contained in any other state constitution. Florida's education clause is the only one in the country that mandates all of the following: a high quality education; specific characteristics of the educational system; and the elevation of education above other governmental functions.

21. "Fundamental value" recognizes that "education is absolutely essential to a free society under our governmental structure." *See Coalition for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400, 409 (Fla. 1996) (Overton, J, concurring).

22. "Paramount duty" imposes a "maximum duty on the state to provide for public education that is uniform and of high quality." *Bush v. Holmes*, 919 So.2d 392, 404 (Fla. 2006).

23. "Paramount duty" means that making adequate provision for education is not merely a duty that is important, but rather a duty that is preeminent in rank and above all others.

24. The State's paramount duty is borne by Defendants.

25. The constitutional provision elaborates on and defines the phrase "adequate provision" with a list of judicially discoverable and manageable standards. To meet the constitutional standard, the State is required to provide a "uniform, efficient, safe, secure,

and high quality system of free public schools that allows students to obtain a high quality education."

26. The State must meet each of these enumerated standards or the system is inadequate by constitutional standards. The phrase "high quality" is used to define both the educational system and the education obtained by Florida's students. In other words, adequate provision for high quality education in Florida must be measured by both the enumerated characteristics of and inputs into the system itself, as well as the outcome and results of that system.

II. The State Has Breached its Paramount Duty to Make "Adequate Provision" For a System of Free Public Schools.

27. The annual allocation to each school district for operation of schools is determined based on a formula governed by the Florida Education Finance Program (FEFP) as well as additional categorical funding. § 1011.62, Fla. Stat. (2013).

28. Florida has established extensive educational standards for teachers, students and schools, but has not conducted a cost analysis in order to determine the amount of funding required to institute a high quality education system or to provide the districts with the financial resources to provide the programs and services the State has prescribed.

29. The FEFP does not address whether the overall level of funding is sufficient to provide a uniform, efficient, safe, secure and high quality system of public education.

30. The overall level of funding is not sufficient to provide a uniform, efficient, safe, secure and high quality system of public education.

31. The State does not, whether through the FEFP or categorical funding, specifically address funding to meet the needs of students in poverty.

32. Funding for public education is not sufficient to meet the needs of students in poverty.

33. The Florida Legislature annually determines what the required local effort is and how much money each school district will receive from the state and from federal funds. The "required local effort" is how much the State mandates that each school district must raise from local property taxes for education from citizens in that school district. § 1011.62(4), Fla. Stat. (2013).

34. The Florida Legislature has authorized school districts to levy an additional tax of .25 mills (25 cents on every $1,000 of assessed property value) for up to two years without voter approval. Some districts levy this amount to make up for reduced state funding.

35. Some school districts seek voter approval for additional millage to fund basic education, school repair and maintenance, or increased class size space requirements.

36. The State relies on federal funds, lottery proceeds, and ad valorem taxes to fund education. The sums change from year to year and are not reliable and dependable. The State has failed to provide for a consistent, reliable funding scheme for public education.

37. For fiscal year 2011, Florida ranked 50th among other states in per pupil per capita funding for education (comparing public education finance to $1,000 in personal income). (US Census Bureau, May 2013.)

38. Using a trend analysis from 2003-04 to 2013-14, per pupil spending has not kept pace with the state budget.

39. According to the 2014 National Report Card, Florida ranks 43rd in per pupil funding and earns an "F" in effort for funding based on the percentage of the state's Gross Domestic Product (GDP) allocated to education.

40. Florida's per pupil funding of $6,761.09 for 2013-14 is $381.70 less than the $7,142.79 per pupil funding for 2007-08.

41. Florida's base student allocation for 2013-14 of $3,752.30 is $327.44 less than the $4,079.74 base student allocation for 2007-08.

42. For many years, the State has not provided sufficient funding to meet school districts' school repair and maintenance needs. Many districts have school facilities that are in need of serious repair, including roofs that have collapsed and moldy, "sick" buildings.

43. For several years, funds for capital outlay projects have been allocated to charter schools and not to schools operated by a school district.

44. The State has mandated various requirements to school districts but has not provided sufficient supplemental funding to offset the cost of implementation, including the evaluation of teachers, testing of students, requirements for graduation, curriculum mandates, professional development, financial auditing and approval of charter schools.

45. The State has not provided sufficient funding to ensure that English Language Learners and students with disabilities have access to a high quality education.

46. The State does not make adequate provision as required by Article IX, section 1 of the Florida Constitution.

III. The State Has Failed to Provide a "Uniform" System of Free Public Schools

47. "Uniform" means, among other things, that there is one public school system guided by a common plan or general framework, where every student in every district has an equal opportunity to reach certain basic educational goals.

48. Florida is failing to provide a uniform system of free public schools by using public funds for private schools that, among other things, are not required to have standardized teacher certification, accreditation, curriculum and testing.

49. Florida is systematically diverting public funds to private schools.

50. Florida has created a parallel system of schools with little or no oversight by the Florida Department of Education (FDOE).

51. The private schools' curriculum and teachers are not subject to the same standards as those for public schools.

A. Florida Tax Credit Scholarship Program

52. In 1999, the Circuit Court for Leon County declared that the Opportunity Scholarship Program, a statewide private school voucher program that was funded by the State, violated Article IX, Section 1 of the Florida Constitution. *See Bush v. Holmes*, 767 So. 2d 668, 671 (Fla. 1st DCA 2000).

53. The Florida Legislature created the Florida Tax Credit Scholarship Program (FTCSP) in 2001, currently codified at §1002.395, Fla. Stat. (2013). The FTCSP is a public program funded through business tax credits that provides tuition vouchers for eligible K-12 students to attend non-public schools.

54. In 2006, the Florida Supreme Court affirmed the Circuit Court's decision and held that the uniformity requirement of Article IX, Section 1 of the Florida Constitution

prohibits the Florida Legislature from funding a private alternative to the public school system. *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006).

55. In the years following this decision, the Florida Legislature repealed the private school option of the Opportunity Scholarship Program and dramatically expanded the FTCSP.

56. The FTCSP requires the Florida Department of Revenue to issue dollar-for-dollar tax credits to businesses that make qualifying contributions to an eligible scholarship-funding organization (SFO). For 2012-13, the tax credit cap wa s $229 million. For subsequent years, the cap automatically increases 25% every year that the FTCSP tax credits have at least 90% usage. §1002.395(5)(a), Fla. Stat. (2013).

57. During the 2012-13 school year, scholarships in the amount of $206.9 million were awarded to a total of 51,075 students enrolled in 1,338 participating Florida private schools, which reflects an enrollment increase of almost 27% from 2011-12.

58. Eligible students are those who qualify for the free and reduced lunch program (185% of federal poverty level) or are in foster care. §1002.395(3), Fla. Stat. (2013). Eligibility will expand to families earning 260% of the federal poverty level in 2016-17 (to be codified at §1002.395(12)(a)3.d, Fla. Stat.).

59. For 2013-14, the Department of Revenue issued approximately $286 million in FTCSP tax credits.

60. For 2014-15, the Department of Revenue is authorized to approve about $358 million in tax credits for businesses under the FTCSP.

61. The FTCSP uses public money in the form of tax expenditures and other public resources for non-public schools and diverts public money from the public school system to non-public schools..

62. Taxpaying businesses which make eligible contributions to an SFO receive a 100% tax credit. The FTCSP tax credits constitute a 100% subsidy that completely reimburses businesses that contribute to an SFO. The entire expense of the contribution is borne by the State through a loss in revenue and no expense is borne by private charity.

63. The function of FTCSP tax credits is not related to equitably adjusting taxpayers' gross income or equitably distributing the tax burden, but is to fund private school vouchers.

64. But for the FTCSP, taxpayers' contributions to the FTCSP would be owed to and directly paid to the State.

65. The FTCSP tax credits are narrowly targeted to accomplish a specific legislative funding priority: funding private school vouchers.

66. Tax credits issued by the Department of Revenue pursuant to the FTCSP are functionally the same as collecting the revenue and then making an expenditure of public funds. Tax expenditures accomplished through narrowly targeted tax credits are equivalent to expenditures accomplished through direct budgetary spending.

67. The issuance of FTCSP tax credits reduces the funds available in the state's general treasury.

68. The SFO exists entirely to accomplish ends mandated by the Florida Legislature (the funding of private school vouchers), through means mandated by the Florida Legislature.

69. The SFO has no independent discretion or independent purpose.

70. The SFO is only able to operate with the express pre-approval of FDOE.

71. The SFO receives contributions from taxpayers but has no discretion regarding the issuance of tax credits or the amount of the taxpayers' contribution.

72. An SFO must distribute the contributions it receives to the parents of students that participate in the FTCSP. Parents must endorse the warrant only to the private school.

73. SFOs are permitted a 25% carryover for one year. Any carryover that is not spent in the following year must be returned to the State Treasury for deposit in the General Revenue Fund. §1002.395(6)(i)2, Fla. Stat. (2013).

74. The SFO has no discretion regarding the selection of students who receive scholarships because the FTCSP strictly defines student eligibility and requires the SFO to grant scholarships to previous recipients and then on a first-come-first-served basis.

75. The SFO has no discretion regarding the amount of scholarship funds to grant to students because the FTCSP strictly defines the scholarship's amount.

76. The SFO has no discretion regarding the private schools or types of expenses for which students may receive scholarships because the FTCSP strictly defines the eligible schools and the eligible costs and FDOE determines the eligibility of private schools.

77. The SFO must provide FDOE quarterly reports regarding the SFO's actions and must provide FDOE annual financial and compliance audits of its accounts and records.

78. There is a sufficiently close nexus between the State and the SFO's funding of private school vouchers such that the State may be fairly treated as itself engaging in the funding of private school vouchers.

79. The SFO is fulfilling a public function.

80. The FTCSP imposes duties on public school districts that require the expenditure of public funds and public resources.

81. The FTCSP makes public school districts responsible for implementing and administering standardized testing at any private school that participates in the FTCSP. This obligation includes training for private school staff on test security and assessment administration procedures; distribution of testing materials to a private school; retrieval of testing materials from a private school; provision of the required format for a private school to submit information to the district for test administration and enrollment purposes; and provision of any required assistance, monitoring, or investigation at a private school.

82. The FTCSP requires public school districts, upon request by an SFO, to provide notice of the FTCSP to eligible students in the district.

83. The FTCSP imposes duties on FDOE that require the expenditure of public funds and public resources.

84. FDOE maintains an Office of Independent Education and Parental Choice. This Office conducts site visits to some participating FTCSP private schools to review whether background screening and fire code inspections are maintained.

85. The 2014 Legislature amended the FTCSP to make clear that its purpose "is not to prescribe the standards or curriculum for private schools. A private school retains the authority to determine its own standards and curriculum." CS/SB 850, Laws of Fla. (2014).

86. The FTCSP does not require private schools to hire certified teachers.

87. The FTCSP does not require students participating in the FTCSP to take courses that are required of public school students.

88. The FTCSP does not require private schools to offer sufficient services to meet the students' unique needs for an appropriate education nor to provide the procedural protections under the Individuals with Disabilities Education Act.

89. The FTCSP does not require private schools to offer services to meet the needs of English Language Learners.

90. The FTCSP does not require private schools to be non-sectarian. Of the participating private schools in 2012-13, 73% were religious and 27% were non-religious institutions. Many teach religious curriculum and are accredited by religious institutions.

91. The FTCSP does not require private schools to administer the same standardized tests required by public schools.

92. The FTCSP does not require private schools to be accredited.

93. The FDOE has no authority over the private institutions or private school students in the FTCSP.

B. McKay Scholarship for Students with Disabilities Program

94. In 1999, the McKay Scholarship for Students with Disabilities Program (McKay Program) was created and is currently codified at §1002.39, Fla. Stat. (2013).

95. Eligible students are those with an Individual Educational Plan (IEP) or a 504 Accommodation Plan.

96. The McKay Program is funded through direct appropriations from the Florida Legislature. The maximum amount is the base student allocation in the FEFP multiplied by the appropriate cost factor and district cost differential. Four times a year, funds are

transferred into a separate scholarship fund from the General Revenue funds for each school districts' total funding entitlement under the FEFP and from their categorical accounts.

97. Four times a year, the Chief Financial Officer sends scholarship payments to private schools made payable in the name of the eligible student's parent. Parents must endorse the warrant to only the private school.

98. Parents are responsible for transportation to the private schools.

99. During the 2012-13 school year, $168.9 million was paid to scholarship program participants. The maximum scholarship amount for IEP students ranged from $4,395 to $19,105, with an average amount of $7,019. The average amount for students with a 504 Plan was $3,977.

100. In the 2012-2013 school year, 26,611 students from 1,163 private schools received a McKay Scholarship.

101. The McKay Program does not require eligible private schools to hire certified teachers.

102. The McKay Program does not require students participating in the McKay Program to take courses that are required of public school students.

103. Even though the McKay Program is directed at students with disabilities, it does not require private schools to offer sufficient services to meet the students' unique needs for an appropriate special education nor to provide the procedural protections under the Individuals with Disabilities Education Act.

104. The McKay Program does not require private schools to offer services to meet the needs of English Language Learners.

105. The McKay Program does not require private schools to be non-sectarian. Of the participating private schools in 2012-13, 64% were religious and 36% were non-religious institutions. Many teach religious curriculum and are accredited by religious institutions.

106. The McKay Program does not require private schools to administer any standardized test.

107. The McKay Program does not require private schools to be accredited.

108. The Florida DOE has no authority over the private institutions or private school students in the McKay Program.

109. In passing and repeatedly expanding the FTCSP and the McKay Program, the Florida Legislature intended to cause and did cause K-12 students to exit public schools and transfer to non-public schools. But for these private school voucher programs, the vast majority of students participating in these programs would have attended public schools.

110. In passing and repeatedly expanding the FTCSP and the McKay Program, the Florida Legislature intended to divert public money from the education finance program and use this money instead to fund private school vouchers through these programs. From 2008-09 through 2012-13, the FTCSP diverted over $678 million from public schools and the McKay Program diverted over $741 million, for a combined total of almost $1.5 billion less that was available for public schools.

IV. The State Has Failed to Provide an "Efficient" System of Free Public Schools

111. "Efficient" means productive of desired effects without waste, duplication, mismanagement, unnecessary expense or political influence.

112. Many of the State's reforms and programs, including the accountability system, changes to the graduation requirements, retention and promotion requirements, teacher evaluations, charter schools, and the FTCSP and the McKay Programs, have wasted millions of dollars without producing the desired effect of a high quality public school system, and are thus not efficient.

A. Florida's Accountability Program

113. Florida requires public school students to take a variety of standardized tests in different grades, including the Florida Comprehensive Assessment Test (FCAT) and End-of-Course (EOC) exams. Florida is phasing out the FCAT and transitioning to a different assessment. § 1008.22(3), Fla. Stat. (2013).

114. The current FCAT was designed to (and does) measure only student learning of the Florida Next Generation Sunshine State Standards. The EOC only measures student learning in a particular course. The FCAT and EOC were not designed to evaluate teachers, grade schools or be the basis for determining whether to retain or graduate students.

115. Since 1999, the State has used standardized test results to make high stakes decisions about students and schools.

116. Studies have documented the adverse effects of high stakes testing, finding that its use tends to narrow the curriculum, lead to increased rates of students being retained to repeat grades, and decrease high school graduation rates.

117. The existence of a high school exit examination lowers the graduation rates of high school students and increases the rate at which they take the GED.

118. Florida misuses standardized tests to retain students and to deny students a high school diploma.

119. Florida further misuses standardized tests to evaluate teachers and reward and punish schools and school districts. Seventy per cent of public school teachers in Florida do not teach courses associated with the FCAT Reading or Math, yet the FCAT is part of their evaluation.

120. Florida's accountability system fails to recognize the many other factors that affect student achievement beyond school influences, as well as the school-level variables, such as teacher experience and teacher turnover rates, that affect at-risk students' chances of passing the standardized test graduation requirements.

121. The misuse of standardized tests has an adverse impact on minority and disadvantaged students and diverts scarce resources from providing a high quality public education system. This misuse of standardized tests favors schools and districts with more high-income, non-minority students by rewarding them with extra money.

122. In 2006 and 2007, the Grade 3 FCAT Reading scores were invalid as a result of errors in "anchor" test questions, which allow comparisons from one year to the next.

123. From 2000 to 2008, the FCAT included a norm-referenced component, which allowed comparisons of Florida students to students in other states. In 2008, the Florida Legislature removed the requirement that the FCAT include a norm-referenced component.

124. In 2010, thirty-six Florida public school districts were critical of inconsistencies in the FCAT scores and errors made by Pearson, the company then responsible for FCAT.

125. FDOE warns that the FCAT Writing for 2009 and prior years cannot be compared to 2010 and 2011 due to changes in scoring methods.

126. In early 2012, the Florida State Board of Education (SBOE) and the Florida Legislature rushed reforms into place by arbitrarily setting the bar and tweaking school grades.

127. In May 2012, in "an emergency meeting to consider how to move forward with calculating school grades for this year," the SBOE voted to lower the passing score on the FCAT Writing from a 4.0 to a 3.0 (on a 6.0 scale) due to "significantly lower student performance." (FDOE Press Release.) The passing rate for FCAT Writing had plummeted from 81% to 27% for Grade 4 and showed similar drops in Grades 8 and 10. The lowered passing score spared hundreds of schools from earning an F.

128. In July 2012, FDOE reissued grades for 213 schools in 40 school districts and changed overall grades for nine school districts. The error came when FDOE forgot to include in the calculation a new provision that FDOE set in place regarding students struggling with the FCAT.

129. In July 2013, the SBOE voted to not include test scores of students at special education centers in calculating the home school overall grade.

130. The SBOE, at the recommendation of FDOE, voted in 2013 to not allow any school grade to drop more than one letter grade. If this had not been done, the State would have had 262 failing schools. Instead, there were 104 failing schools.

131. Proportionally fewer charter schools are graded under the State's school accountability system than are schools operated by a school district.

132. The formula and components used to calculate the meaning of school grades have been changed dozens of times including 16 changes in 2010 alone. There have been

additional changes to educational policies, standards and tests, all of which have an impact on grades.

133. After 15 years of high stakes testing, it has failed to produce a high quality public education system. Yet, the State has hired another testing corporation to prepare a new high stakes test scheduled to be available in 2015.

134. The accountability model is over-complicated and changes virtually every year.

135. Florida's accountability system is inefficient and lacks integrity.

136. The State's misuse of standardized tests wastes millions of taxpayer dollars.

B. Charter Schools

137. The Legislature maintains that charter schools are part of the State's program of public education. § 1002.33, Fla. Stat. (2013).

138. In the 2012-13 school year, charter schools had enrollment of 203,240 pre-kindergarten through Grade 12 students in 578 charter schools in 46 Florida school districts. Only 9% were English Language Learners and 9% were students with disabilities.

139. Charter schools are exempt from certain provisions of Florida education law and are not subject to the same oversight as schools operated by a school district.

140. Charter schools shall be organized as, or be operated by, a nonprofit organization. § 1002.33(12)(i), Fla. Stat. (2013). However, charter schools may be operated or managed by private entities, including for-profit education management corporations. § 1002.332, Fla. Stat. (2013).

141. Public funds are expended on high management fees and lease and rental fees to private charter school companies.

142. The Auditor General annually audits charter schools and regularly finds material weaknesses in internal control and instances of non-compliance with applicable laws or rules. There also is an increasing trend of fund balance deficits.

143. For several years, funds for capital outlay projects have been allocated to charter schools and not to schools operated by a school district.

144. The system of charter schools creates an inefficient duplication of expenditures for property and services.

145. Many charter schools suffer financial mismanagement or other financial problems, resulting in inefficiency within the State's system of public schools.

146. Charter schools have some discretion to accept, reject and disenroll students (even based on academic performance).

147. At a considerable number of charter schools, the student population consists of primarily one race, raising issues of segregation.

148. Charter schools can hire "selected non-certified personnel to provide instructional services."

V. The State Has Failed to Provide a "High Quality" System of Free Public Schools.

149. "High quality" means above average.

150. A high quality system of free public schools would offer a comprehensive educational opportunity with sufficient resources that are based on student need and that are efficiently used.

151. A comprehensive educational opportunity includes the availability of special services for students who come from low income families, are English Language Learners, or have other specialized needs to enable them to meaningfully benefit from education.

152. Florida public schools do not provide sufficient transportation and other necessary services to students who are experiencing homelessness.

153. Florida public schools have insufficient electives and other courses.

154. Florida public schools have insufficient educational services for English Language Learners.

155. Florida public schools have insufficient resources, professional development and teacher preparation to ensure high quality instruction for English Language Learners.

156. Florida public schools have insufficient technology available for students.

157. Florida public schools have an insufficient number of highly qualified teachers.

158. The average public school teacher salary in Florida for 2008-09 was $46,921, which was $7,353 below the national average of $54,274. That ranked Florida 34th at that time for average teacher salaries. (NEA Rankings & Estimates, Dec. 2010.)

159. For 2011-12, the average public school teacher salary in Florida was only $36,183. (OCR Database. Escambia County not included in calculation as it did not submit data.) Using information from the same database for 2008-09 (with six counties not reporting), the average public school teacher salary in Florida was $43,630, indicating a $7,447 drop three years later.

160. The issue of teacher qualifications was highlighted in the No Child Left Behind (NCLB) Act of 2001. 20 U.S.C. § 6301 et seq. The NCLB Act required that all states ensure that all schools are staffed by "fully qualified" teachers by the 2006-07 school year.

161. A fully qualified teacher is defined by the NCLB Act to be one who: (1) holds at least a bachelor's degree in the subject the teacher teaches; (2) holds full state certification; and (3) has demonstrated subject matter knowledge and teaching skill in each core academic area in which the teacher is assigned to teach.

162. The NCLB Act requires that states report their progress annually toward meeting the fully qualified teacher goal for 2014.

163. Florida is falling short of the fully qualified teacher goal. Data submitted to the US Department of Education shows that in 2011-12 only 83.7% of Florida's classroom teachers met licensing and certification requirements. (OCR Database)

164. For the 2013-14 school year, the most critical teacher shortage areas are English/Language Arts, Reading, Exceptional Education, Science, Foreign Languages, English for Speakers of Other Languages (ESOL) and Mathematics.

165. Florida school districts lack resources to hire sufficient behavior, speech, physical and occupational therapists. There also is an insufficient number of school nurses and school counselors.

166. In high poverty districts, FDOE has reported high teacher turnover and lower teacher qualifications.

167. Low performing and high poverty urban schools have a higher proportion of courses taught by teachers without the appropriate certification. Schools receiving a grade of "F" experience the largest proportion of out-of-field teachers.

168. The State of Florida received a waiver from the NCLB requirements, which allowed the SBOE and FDOE to craft their own academic improvement plan.

169. FDOE's 2012 Strategic Plan acknowledges that in 2011-12 only 38% of all African American students were reading at grade level. The 2017-18 goal is to increase this to 74%, whereas the goal for Whites is to increase from 69% to 88%. The goal for Economically Disadvantaged students is to increase from 46% to 72%, for English Language Learners from 33% to 72%, and for Students with Disabilities from 29% to 78%. Having different race-based and special population goals is an indication that African American students and other special populations have far less access to a high quality education and that there is no plan to remedy this opportunity gap.

170. Discipline referral rates are disproportionately high for African American and Hispanic students.

171. A disproportionate number of African American and low income students do not have access to highly qualified teachers.

172. A disproportionate number of African American and low income students do not have access to high quality instruction.

173. A disproportionate number of Teach for America and other alternative credentialed teachers are assigned to high poverty schools or to teach students with disabilities.

174. A high quality or comprehensive educational opportunity is not being offered to Florida's public school students, especially African American and Hispanic students, students from low income families, English Language Learners, students with disabilities and other students with specialized needs.

VI. The Public School System Does Not Allow Students to Obtain a High Quality Education.

175. A high quality public school system would be evidenced by high quality outcomes for Florida's public school students.

176. Florida's grade promotion and retention rates do not reflect that students have obtained a high quality education.

177. A disproportionate number of children who are retained in Grade 3 are African American and Hispanic.

178. Achievement test results do not reflect that students have obtained a high quality education, especially minority students.

179. Florida currently uses the Florida Comprehensive Assessment Test 2.0 (FCAT) and end-of-course (EOC) exams to assess individual student achievement in reading, mathematics, science and writing.

180. FCAT results are separated into 5 achievement levels for reading, math and science, and 6 levels for writing. Level 3 and above reflects work on grade level.

181. With exemptions for good cause, students who do not earn a Level 2 or higher on the Grade 3 FCAT 2.0 Reading must be retained. § 1008.25(5)(b), Fla. Stat. (2013).

182. For the 2014 Grade 3 FCAT 2.0 Reading, a total of 19% of students or 39,204 students earned a Level 1 and are subject to being retained. Looking at the sub-groups shows that the following earned a Level 1 and are subject to being retained: 47% of English Language Learners; 30% of African Americans; 21% of Hispanics; and 44% of students with disabilities.

183. As shown in the 2014 Grade 3 FCAT 2.0, just over half of Florida's third-graders are at grade level in reading (57%) and in math (58%).

184. To graduate with a standard high school diploma, students entering Grade 9 in 2011-12 and after must pass the Grade 10 FCAT 2.0 Reading with a Level 3 and the Algebra 1 EOC Assessment with a score of 399 or higher.

185. For the 2013 Grade 10 FCAT 2.0 Reading, only 32% of African American, 49% of Hispanic and 66% of White students passed. Put in the obverse, an alarming 68% of African American tenth grade students are not reading at grade level and are not eligible to graduate.

186. For the 2012-13 Algebra 1 EOC Assessment, 52% of African American, 39% of Hispanic and 28% of White students failed and are not eligible to graduate.

187. The 2013 Grade 8 FCAT 2.0 Math (the highest grade available for 2013) resulted in 68% of African American, 55% of Hispanic and 37% of White students failing.

188. The 2013 Grade 8 FCAT 2.0 Science (the highest grade available for 2013) resulted in 74% of African American, 59% of Hispanic and 40% of White students failing.

189. Achievement of special populations does not reflect that students have obtained a high quality education. For 2013 Grade 10 FCAT 2.0 Reading, an alarming 89% of English Language Learners (ELL), 59% of students on free and reduced lunch and 79% of students with disabilities failed.

190. For 2012-13, a disproportionate number of African American students dropped out of high school. Whites comprised 43% of the high school population with a 1.5% drop out rate. African Americans comprised only 23% of the high school population

yet accounted for more than double the drop out rate at 3.4%. A total of 17,631 high school students dropped out that school year.

191. Based on the 2013 Grade 10 FCAT 2.0 Reading, only 14% of African American, 27% of Hispanic and 43% of White students are ready for college. College readiness is indicated by achieving at Level 4 or 5.

192. Florida started retaining increased numbers of students to repeat grade 3 beginning in the 2003-04 school year.

193. The 2013 National Assessment of Educational Progress (NAEP) scores for Florida show that only 39% of fourth graders are proficient in reading and 40.7% in math. For those on the free and reduced lunch, a poverty indicator, only 23.6% of fourth graders are proficient in reading. The NAEP fourth grade results, while low, also must be considered artificially inflated because low performing third graders are retained and do not take the fourth grade test.

194. In 2011-12, there were 520,260 in-school suspensions in Florida, 354,802 out-of-school suspensions, and 1,418 expulsions. There were 32,928 referrals to law enforcement. (OCR Database.)

195. Suspensions and expulsions correlate strongly with retention and drop out rates, as suspended or expelled students are more likely to be retained or drop out of school.

196. Florida has historically had one of the worst graduation rates in the country as shown by two different methods for calculating graduation rates.

197. Graduation rates calculated from eighth grade to graduation for the class of 2010 show that while the overall graduation rate is 74.9%, there is a large racial disparity:

67.6% for African American students and 73.7% for Whites. (Nat'l Ctr. for Educ. Statistics, 2014.)

198. The most recent graduation rates, calculated using the Cohort Method, for the class of 2013 show that this disparity remains: the White graduate rate in 2012-13 was 80.5% and for African Americans was 64.6% -- a difference of 15.9%. (FDOE, 2013.) In other words, almost four out of every ten African American high school students did not graduate.

199. Calculating graduation using the Cumulative Promotion Index, the class of 2010 graduation rate is 72.9% overall, with 70.1% for African Americans, 77.1% for Hispanics, and 76.4% for Whites. (Diploma Counts 2013).

200. Data from 2011 estimate there are 113,646 youths in Florida aged16 to 21 years old who are not enrolled in school and have not completed a high school education. (Diplomas Count 2013).

VII. The State Has Not Provided a High Quality Pre-Kindergarten Learning Opportunity or Delivered an Early Childhood Development and Education Program According to Professionally Accepted Standards.

201. Article IX, Section 1(b) of the Florida Constitution provides:

> Every four-year old child in Florida shall be provided by the State a high quality pre-kindergarten learning opportunity in the form of an early childhood development and education program which shall be voluntary, high quality, free, and delivered according to professionally accepted standards.

202. Florida offers free pre-kindergarten to four-year-old children. § 1002.53(2), Fla. Stat. (2013).

203. Professionally accepted standards for a high quality pre-kindergarten learning opportunity would require: highly qualified teachers and other personnel; competitive salaries and benefits; provision for regular planning, reflection, and expert feedback and strong supervision on teaching; an effective curriculum and adequate training in that curriculum; sufficient classroom hours; appropriate services for at-risk children and children with disabilities; adequate facilities; and regular evaluation of quality and assessment.

204. Florida does not require that instructors for the school-year pre-kindergarten program be highly qualified.

205. Observational data show that Florida is not providing a high quality pre-kindergarten learning opportunity.

206. School readiness rates are much lower for Hispanic and Africa American children than for White Non-Hispanic children, and rates are much lower for free and reduced lunch students than others.

207. State spending per child enrolled in pre-kindergarten for 2012-13 was $2,242, which ranked Florida 35th among the 41 states that have pre-kindergarten programs. (NIEER State Preschool Yearbook, 2013).

208. Defendants have not provided a high quality pre-kindergarten learning opportunity.

209. Defendants have not delivered an early childhood development and education program according to professionally accepted standards.

FIRST CLAIM FOR RELIEF - Art. IX, §1(a), Fla. Const.

210. Plaintiffs re-allege and incorporate by reference paragraphs 1-200.

211. The Florida Constitution provides that the education of children is a fundamental value and that it is a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Art. IX, §1(a), Fla. Const.

212. The Florida Constitution further provides that 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. Art. IX, §1(a), Fla. Const.

213. Article IX, §1(a) of the Florida Constitution creates a clearly enforceable mandate for the State to provide an education system of high quality that allows students to obtain a high quality education.

214. Defendants have failed to make adequate provision for a uniform, efficient, safe, secure, and high quality system of free public schools.

215. Defendants have failed to make adequate provision for a system of free public schools that allows students to obtain a high quality education.

SECOND CLAIM FOR RELIEF - Art. IX, §1(b), Fla. Const.

216. Plaintiffs re-allege and incorporate by reference paragraphs 1-209.

217. Every four-year old child in Florida shall be provided by the State a high quality pre-kindergarten learning opportunity in the form of an early childhood development and education program which shall be voluntary, high quality, free, and delivered according to professionally accepted standards. Art. IX, §1(b), Fla. Const.

218. Defendants have not provided a high quality pre-kindergarten learning opportunity.

219. Defendants have not delivered an early childhood development and education program according to professionally accepted standards.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court:

a. Declare that Defendants have violated the Florida Constitution by breaching their paramount duty to make adequate provision for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education.

b. Declare that Defendants have violated the Florida Constitution by not providing a high quality pre-kindergarten learning opportunity and not delivering an early childhood development and education program according to professionally accepted standards.

c. Order Defendants to establish a remedial plan that: (1) conforms with the Florida Constitution by providing a uniform, efficient, safe, secure and high quality system of free public schools that allows students to obtain a high quality education; and (2) includes necessary studies to determine what resources and standards are necessary to provide a high quality education to Florida students.

d. Order Defendants to establish a remedial plan that conforms with the Florida Constitution by providing a high quality pre-kindergarten learning opportunity and delivering an early childhood development and education program according to professionally accepted standards.

e. Retain jurisdiction to enforce the court's orders.

f. Grant any other relief the court deems proper.

Dated this 30th day of May, 2014.

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I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via U.S. Mail on this 30th day of May, 2014, to:

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Florida Constitution Revision Commission

ANALYSIS OF THE REVISIONS FOR THE NOVEMBER 1998 BALLOT

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 |

AMENDMENT 1

(By the Legislature)

1 at a glance...

- Strikes the limitation on tax exemptions for historic properties that the owner must actively be engaging in rehabilitation or renovations to qualify for the exemption.

BACKGROUND

Currently, the Constitution authorizes local governments to establish tax exemptions to owners of historic properties engaging in restoration, rehabilitation or renovation in accordance with approved historic preservation guidelines. The exemptions must be established by local ordinance and must be in accordance with the general law enacted to implement the exemptions. The general law states that property must be undergoing renovations or have undergone renovations since the local ordinance was adopted.

This amendment allows counties and municipalities to adopt ordinances to give tax exemptions for historic properties without regard to whether the renovation or rehabilitation was undertaken after a local ordinance was adopted. It also allows local gov ernments to assess historic properties solely on the basis of character or use.

BALLOT LANGUAGE

Amendment 1

REVISION 6

(By the CRC)

6 at a glance...

- Makes it "a paramount duty of the state" to make adequate provision for the education of children.
- Expands the current constitutional mandate to require the public school system be "efficient, safe, secure, and high quality."

SUMMARY OFREVISION 6

The Commission's revision on public education amends the Constitution to better reflect the great importance that Florida's citizens place on education. The revision substantially strengthens and specifies the state's duty to provide for public education.

Our Constitution presently requires "adequate provision" for public schools. The Florida courts have held, however, that the Constitution does *not* provide any standards for determining whether adequate provision has been made.

To address these shortcomings, the Commission recommended that our Constitution state that the education of Florida's children is a fundamental value and is a paramount duty of the state. Also, guidelines for determining whether the education system is adequate are provided, and require that our system be efficient, safe, secure and high quality.

BALLOT LANGUAGE

REVISION 6

Article IX, s. 1

PUBLIC EDUCATION OF CHILDREN

Declares the education of children to be a fundamental value of the people of Florida; establishes adequate provision for education as a paramount duty of the state; expands constitutional mandate requiring the state to make adequate pr ovision for a uniform system of free public schools by also requiring the state to make adequate provision for an efficient, safe, secure, and high quality system.

PROS AND CONS

PRO: Sends a clear message to the Legislature and Governor to fund high-quality public education ahead of other, less important priorities.

CON: The Legislature can provide for improved public education without such a constitutional mandate.

PRO: Provides guidance and standards for equal educational opportunities and provides a basis for legal challenge if the system does not meet the standards.

CON: The standards are vague. The consequences will be unknown until the courts interpret some of these terms.

PRO: Restores to our Constitution similar language that was in Florida's 1868 Constitution but lost in later versions. It would make Florida one of the most pro-education states in the nation.

CON: These goals will not solve the deep-seated problems of public education.

ACTUAL TEXT OF REVISION 6

ARTICLE IX

EDUCATION

SECTION 1. ~~System of~~ Public education.--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 fo r 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 educati on and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require.

Florida Constitution Revision Commission

Meeting Proceedings for January 13, 1998

STATE OF FLORIDA
CONSTITUTION REVISION COMMISSION

COMMISSION MEETING

DATE:	January 13, 1998
TIME:	Commenced at 8:30 a.m. Concluded at 6:15 p.m.
PLACE:	The Senate Chamber The Capitol Tallahassee, Florida
REPORTED BY:	KRISTEN L. BENTLEY JULIE L. DOHERTY, RPR MONA L. WHIDDON Court Reporters Division of Administrative Hearings The DeSoto Building 1230 Apalachee Parkway Tallahassee, Florida

education be provided for adequately. Now, there are a couple questions. What does adequate mean? As a matter of fact, there was a court case which attempted to define the term "adequacy." The court was split. As a matter of fact, it was split right down the middle. Three of the members of the Court said, We find that Florida's educational system is inadequate.

Three members of the Court said, We find it is too difficult to define adequacy and therefore it is a question for the Legislature. The concurring justice, Justice Overton, said it is possible for it to be inadequate. I do not have enough information before me at this point to determine if it is inadequate. But it is possible for it to be an unconstitutional system.

What this is an attempt to do is to define what adequate education should be in the state of Florida with common terms that are used in other Constitutions. Interesting, in 1868 Florida said education was the paramount duty of state government. I don't know what's changed. It seems to me that in 1998 we all understand what, just as Thomas Jefferson said, Democratic systems are based on an educated populous, it is important to make this state run as a democracy. It is important to make this state successful as an economy. There is no more important issue than you here businesses talk about than

the educational system of the state of Florida.

And thirdly, how about our individual kids who have

to live here. Those three issues are important enough to me. Then the question is, is this a problem. Well there was, if you happen to read the papers the other day or be a C-Span junkie, there was a report on the state of the state in terms of education. Now these terms aren't defined exactly the same, but this is by -- this ranks the 50 states.

They used the term "adequacy," they didn't define it the same way, but they say adequacy in funding. Florida is ranked 33rd. And then they said -- then they have a ranking based on the amount spent on instruction. Florida ranks 46th. Then they have a rating based on equity, that is, do we have a fair funding formula. Florida is 4th. So the good news is we have an equal system, the bad news is we are equally bad.

I suggest to you that adequacy of education and providing a definition, which would give guidance to either the Legislature or the courts, is one of the most important things we can do. I think the terms used here are understandable, they are derived as we discussed in committee, from other states that have a higher standard, and they give the Court and any future Legislature an opportunity to meet a standard of adequacy.

can't raise revenue. But if the question is -- there was a really, an excellent question in the committee that said, Commissioner Mills, do you think this will cause litigation and the answer to that is absolutely not. There is going to be litigation anyway. What this will do is provide a standard by which to -- for a Court to judge.

Now, in other words, you look at the Supreme Court opinion and this is an important thing to do. There are four members of that Court that are prepared to declare the public school system of Florida inadequate, being provided with the right evidence.

So that means, that means it is possible. It doesn't mean it necessarily is, and then I guess I would turn to these list of definitions. Do we not want a system that's thorough, efficient, which do we not want it to be? Do we not want it to be safe and secure? And actually -- I mean, the safe and secure part of this is one of the things that really bothers me. I mean there are a lot of statistics on firearms in the schools, on health problems.

So if you are concerned about litigation, whether this will generate litigation, I genuinely don't think so. I think there will be litigation irrespective of what we do. Will it make that -- the resolution of that litigation more acceptable, probably.

COMMISSIONER BARKDULL: Let me ask you this, sir.

start having some problems because of the concerns of Mr. Corr, the concerns of Ms. Evans-Jones, the concerns of the Chairman, the concerns of Mr. Connor because of the way money is working its way into our system.

The business community does not like it. Let me tell you, I have been in the Legislature and I have been in the business community. Nobody likes it. But if everybody is doing it, you almost have to do it, if it is legal.

So what I decided was that we would try to fashion, and this took our staff and the rest of us that were involved two years to work up. And it is not perfect, as Mr. Langley has pointed out and others, it is not perfect at this point. I think it can get better. I think if there is a constitutional mandate to do something about it, it will get better.

But I don't think, unless we do something like this, that it will. What it does is it says, Okay, you go out and you become a creditable candidate. You have got to raise a certain amount of money to trigger the threshold so that you will start getting some of this public money, but when you begin to do that, then you become a viable candidate.

And, you know, nobody can point any more directly, no matter what party you are in, you have got to respect General Milligan. You have got to respect how he got

there. And it was because -- we are going to get better candidates, we are going to get better opportunities for candidates and we are going to get real people.

You know, I have said this a time or two, but let me emphasize it. Those of us that have served in the Legislature, in the judicial branch and other places, we are not trying to hog this show. We want to listen to Mr. Morsani; it is very important to me to hear from Ms. Riley. It is very important for me to hear from those of you who haven't been so educated in state government and the ways thereof as to what you think. And your objectivity is very, very important to all of us.

And many times you'll see us kind of sitting back and waiting and waiting and waiting. And on more than one occasion I have seen you ask us what we think, and on more than one occasion we have asked you the same thing, how do you feel about this?

It is very important I think to get candidates that don't just come from other political offices, especially state political offices. That's what shakes up the system, that's what makes us all think, that's what makes us think in here, if you will think about it.

Mr. Connor made the point yesterday that we are debating things that never got to the floor of either house of the Legislature and how good that is. And I

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COMMMISSIONER JENNINGS: Commissioner Corr, are you ready to take up your amendment?

COMMISSIONER CORR: Thank you, Madam Chair.

COMMMISSIONER JENNINGS: Madam Reading Clerk, read the amendment.

READING CLERK: On Page 1, Line 21, insert after "campaign," candidates who accept public campaign financing shall forbear accepting contributions from nonnatural persons, including Political Action Committees.

COMMMISSIONER JENNINGS: Commissioner Corr.

COMMISSIONER CORR: Thank you.

COMMMISSIONER JENNINGS: Commissioner Barkdull.

COMMISSIONER BARKDULL: I have an amendment to the amendment on the desk.

COMMISSIONER JENNINGS: Do we have an amendment to the amendment?

COMMISSIONER BARKDULL: Maybe it hasn't been printed yet.

COMMMISSIONER JENNINGS: Commissioner Thompson suggests that, Commissioner Corr, why don't you read and explain your amendment so everybody knows what it will, what the effect of Commissioner Barkdull's may be when he offers it.

COMMISSIONER CORR: Thank you.

COMMMISSIONER JENNINGS: And we will kill time for

Florida Constitution Revision Commission

Meeting Proceedings for January 15, 1998

STATE OF FLORIDA
CONSTITUTION REVISION COMMISSION

COMMISSION MEETING

DATE:	January 15, 1998
TIME:	Commenced at 8:30 a.m. Concluded at 6:30 p.m.
PLACE:	The Senate Chamber The Capitol Tallahassee, Florida
REPORTED BY:	KRISTEN L. BENTLEY JULIE L. DOHERTY, RPR MONA L. WHIDDON Court Reporters Division of Administrative Hearings The DeSoto Building 1230 Apalachee Parkway Tallahassee, Florida

children.

CHAIRMAN DOUGLASS: Okay. But we are dealing with fundamental right instead of adequate at this point?

COMMISSIONER BROCHIN: Right.

CHAIRMAN DOUGLASS: Now, you may proceed.

COMMISSIONER BROCHIN: Well, I'm going to proceed to respond a little bit to Commissioner Morsani's comments while Commissioner Lowndes is preparing that amendment.

I want to put this in a constitutional context because we are really trying to look at the constitutional aspect of it. And I think that statement in the analysis that this proposal somehow shifts responsibility from one branch of government to the other is absolutely incorrect.

Constitutionally speaking, at least from what I have read, there is four categories that you can have in your Constitution when you talk about education and it deals with various levels of constitutional scrutiny, if you will, in terms of education.

And I want to review them with you. Category 1 means a system of free public schools will be provided. That's Category 1. That's the lowest category and that's the category that Florida is in, the lowest. Category 2 imposes a minimum standard of quality that the State must provide.

Category 3 requires a, quote, stronger and more

specific education mandate and purpose in its preamble. Category 4 imposes a maximum duty on the State to provide an education.

What this does, it takes Florida out of the depth of a Category 1 and raises it to a Category 4. What it does is tell the people of this state, when they get a chance to vote on this, that we want to raise the constitutional level that in our document we want education to go from the lowest level that it is afforded, constitutional protection, and bring it to the highest.

And it is not the judiciary's responsibility and it's not just the legislative's responsibility, and it's not just the executive branch's responsibility. It is going to be the entire three branches of government's responsibility to meet that mandate and meet that statement of policy that will say that education imposes a maximum duty on the State to provide for its children.

And so there may be shifting among the three branches to ensure this paramount duty, but it doesn't shift it to the judges to decide how much money. In fact, that first decision in terms of how much to spend and where lies with the Legislature. It would be their duty and responsibility in following the constitutional mandate to provide the maximum duty on them to provide this high quality education. And I think the time has come for us

specific education mandate and purpose in its preamble. Category 4 imposes a maximum duty on the State to provide an education.

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Florida Constitution Revision Commission

Meeting Proceedings for February 26, 1998 (File size=208K

STATE OF FLORIDA
CONSTITUTION REVISION COMMISSION

COMMISSION MEETING

DATE:	February 26, 1998
TIME:	Commenced at 9:00 a.m. Concluded at 11:45 a.m.
PLACE:	The Senate Chamber The Capitol Tallahassee, Florida
REPORTED BY:	KRISTEN L. BENTLEY JULIE L. DOHERTY, RPR MONA L. WHIDDON Court Reporters Division of Administrative Hearings The DeSoto Building 1230 Apalachee Parkway Tallahassee, Florida

In other words, efficient could mean a lot of things in a lot of different contexts. It has to do with getting the most bang for the buck, it has to do with maybe eliminating or reducing bureaucracy. It has to do with the way we deliver services.

While advocating, certainly, an efficient school system, the question that I have is by including this in the language, do you potentially produce ambiguity that may be a stumbling block to the success of what you are trying to achieve?

COMMISSIONER MILLS: Thank you, Commissioner Connor. I think that actually efficient is in a number of other systems. And one of the reasons that I think we included efficient is I did not want the implication of this to be simply money. In other words, a system could be judged to be inadequate and not require any more money to fix it. What we need to do is develop an adequate system.

COMMISSIONER CONNOR: On that very question, do you think, based on your review of the cases and based on the separation of powers, would you expect that the court would accord deference to the Legislature and executive branches of government in terms of determining what's efficient and what these other provisos mean in the context of the school system?

COMMISSIONER MILLS: They would most certainly accord

state of Florida needs to make and needs to make now. And I want to explain it to you this way.

We do not talk about education in our Constitution in any meaningful way. What this amendment does is two things: One, it says that the fundamental value, not fundamental right, and there's a difference there, the fundamental value of the people of this state is the education of its children. And, Commissioners, that is aspirational. There is no better place for an aspirational statement than the Constitution.

If we are going to lay out for the people and the people's direction to its government as to what is important and what we value as a people and as a society, the Constitution is the place to put it in. And this says clearly, and unequivocally, to all people in our government, that we value, fundamentally, the education of our children.

Second, it says that the paramount duty of the state is to ensure that that education is proper for all children residing within its borders, all, all children residing within its borders. These are not my words, these are the words of Florida's 1868 Constitution. And it is very important as we move forward and we talk about education and where we are going with education, that when we go forward with education, none of Florida's children

get left behind. And that's why it's critical we have this in there.

Now, I have looked at this Constitution carefully, and I see a lot of people with a lot of rights. We have rights for the men and women now, we have the rights for people of national origin, we have rights for people with physical handicap or physical disability, we have rights for people of different race, we have rights for people of different religions, we have fundamental rights to seek documents, we have fundamental rights to seek habeas corpus, we have fundamental rights to own property, we have fundamental rights to due process.

Read the Constitution and tell me where the word "children" comes in. It comes in Article I, Section 15 when we talk about prosecuting them for crimes. That's where this Constitution talks about children. And I think the time has come now for us to put the education of our children squarely in the center of the Constitution with a statement that says to them, we value the education of our children and it will become the paramount duty of this state, legislative, executive, judicial, to ensure that that education is adequate as we have just defined through Commissioner Mills' proposal.

That is the intent, that is the purpose. It is a collective purpose, it is not an individual purpose, it's

not there to allow individual students to claim

reparations, it's not there to allow individual or potential students to claim that their rights have been deprived. It is there to put the burden on our government to take education to where it's been to a much higher constitutional level.

And you cannot avail yourselves to the argument that the Legislature can do this. The Legislature cannot do this, this is a constitutional provision. In a constitutional law sense, it's taken what I discussed before, Florida's current constitutional language of a category one or category two and putting it where it rightfully belongs as a category four, the highest category, meaning it demands the highest responsibility of this state to provide the education for all of our children.

People, you want to think of a proposal that's going to pass, if our standard is what the people want, as Commissioner Scott told us that was the standard when he was talking about the 85 percent for all prisoners, because the people want it, this is something the people of the state of Florida want to speak out on and want to speak out now. And there's no better place than through its Constitution.

CHAIRMAN DOUGLASS: You have used seven minutes and

there's no more time to debate the proposal, unless -- I mean, to oppose it. I guess, an amendment or something. But seven minutes on an amendment is too long, and we

Respectfully submitted, this 7th day of June, 2018

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