IN THE
SUPREME COURT OF FLORIDA

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Consolidated
Case Nos. SC04-2323
SC04-2324
SC04-2325

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JOHN ELLIS "JEB" BUSH, etc., et al., v. RUTH D. HOLMES, et al.

CHARLES J. CRIST, et al. v. RUTH D. HOLMES, et al.,

BRENDA MCSHANE, etc., et al. v. RUTH D. HOLMES, et al.

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On Appeal from the First District Court of Appeal
Nos. 1D02-3160, 1D02-3163, 1D02-3199

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# BRIEF OF AMICI CURIAE THE BERKSHIRE SCHOOL, SAGEMOUNT LEARNING ACADEMY, THE BROACH SCHOOL, PATHWAYS SCHOOL, THE RANDAZZO SCHOOL, VICTORIA'S HIGHER LEARNING ACADEMY AND GLADES DAY SCHOOL

This brief is sought to be filed by leave of court and does not support the position of any party.

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## SUMMARY OF THE ARGUMENT

THE BERKSHIRE SCHOOL, SAGEMOUNT LEARNING ACADEMY, THE BROACH SCHOOL, PATHWAYS SCHOOL, THE RANDAZZO SCHOOL, VICTORIA'S HIGHER LEARNING ACADEMY and GLADES DAY SCHOOL are non-sectarian private schools providing opportunities to students from failing schools. As *amici curiae*, they urge this Court that in the event it finds the OSP violates Art. I, § 3 of the Florida Constitution, it apply the well-established doctrine of severability to excise the language of the statute which provides funding to sectarian schools and preserve the remainder of the otherwise constitutional legislation.

Severability is a recognition of the judiciary's obligation to uphold the constitutionality of legislative enactments where it is possible to strike the unconstitutional portions and maintain the purpose of enactment. Severability is proper when the unconstitutional provisions can be separated from the remaining valid provisions, the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed one without the other, and an act complete in itself remains after the invalid provisions are stricken.

In the present case, the language of the OSP that the Lower Court found

unconstitutional may be easily excised from the statute with the legislative purpose remaining intact and attainable. The Legislature was keenly aware that the provision for aid to sectarian schools would be challenged under Art. I, § 3 and provided an express severability provision in the Act. With the offending language excised, a complete act remains which will adequately carry out the Legislature's intent in its response to the clear voter mandate to fix a failing educational system. Notwithstanding the clear applicability of the severability doctrine to these facts, the Lower Court affirmed the decision to strike the entire OSP. In so doing, it failed in its independent duty to preserve the constitutional portions of the OSP.

Severance of the provision providing funding to sectarian institutions does not violate the Free Exercise Clause of the United States Constitution under controlling decisions of the United States Supreme Court. If this Court finds that the OSP violates the "no-aid" provision of the Florida Constitution, it should only excise the offending provision and preserve the remainder of the otherwise constitutional legislation. In short, it should continue this important program for nonsectarian private schools.

## ARGUMENT

I. IF THE OSP VIOLATES ART. I, § 3 OF THE FLORIDA CONSTITUTION BY IMPERMISSIBLY RENDERING AID TO SECTARIAN INSTITUTIONS, THIS COURT SHOULD APPLY THE DOCTRINE OF SEVERABILITY AND PRESERVE THE REMAINDER OF THE OTHERWISE CONSTITUTIONAL LEGISLATION ALLOWING AID TO STUDENTS ATTENDING NONSECTARIAN INSTITUTIONS

In order to improve the quality of education in Florida, and in direct response to a voter mandate to make education a paramount duty in the state, the Legislature adopted a comprehensive educational reform package to establish accountability in the state's system of public schools. See Ch. 99-398, Laws of Fla. (1999) ("the Act"). As part of the Act, the Legislature created the Florida Opportunity Scholarship Program ("OSP"), Florida Statutes § 229.0537 (1999).[1] The OSP provided a remedy for students attending a "failing" school (as defined in the Act) to obtain the skills necessary for postsecondary education, a technical education, or general employment. Specifically, the OSP provided that if a school was found to be "failing" two out of four years, the OSP would make available scholarship monies to children attending it to facilitate their attendance at either a non-failing public school or an eligible private school, which may be sectarian or non-sectarian. The OSP defined an "eligible" school as one which agreed not to compel any student attending the school through the OSP to profess religious beliefs, to pray,

[1] Now found at § 1002.38, Fla. Stat. (2004).

or to worship and which admitted students on a random, religious-neutral basis.[2]

The constitutionality of the Act was immediately challenged on several grounds, including that the provision of opportunity scholarships to students choosing to attend eligible sectarian schools violated the "no-aid" provision of the Florida Constitution, which provides in relevant part, "[n]o revenue of the state . . . shall ever be taken from the public treasury directly or indirectly in aid . . . of any sectarian institution." Art I, § 3, Fla. Const. After a series of proceedings not relevant here, the trial court declared the OSP unconstitutional under the "no-aid" provision. In consolidated appeals before the First District Court of Appeals (the "Lower Court"), the parties to this dispute maintained "all-or-nothing" positions on the constitutionality of the OSP (e.g., all private schools or none at all). In the end, the Lower Court made a decision based on these inflexible positions to the detriment of Florida school children.[3] See Bush v. Holmes, 886 So. 2d 340 (Fla. 1st

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[2] The Lower Court concluded "that the vast majority of the schools receiving state funds from OSP vouchers at the time of the hearing below are operated by religious or church groups with an intent to teach to their attending students the religious and sectarian values of the group operating the school." Bush, 846 So. 2d at 354. If so, this only demonstrates that OSP funds were improperly received by ineligible schools and not that the legislation is facially invalid.

[3] In his separate opinion characterizing the parties "all-or-nothing" approach, Judge Wolf observed, "They take this position notwithstanding the purpose of the program, the extent of public funding, whether the level of funding substantially exceeds the cost of public benefit, or the means by which the public dollars reach the sectarian institution . . . [t]he parties have taken these inflexible positions for

DCA 2004).

Specifically, the Lower Court held that the OSP violated the Florida Constitution to the extent it allowed aid to sectarian institutions; however, its remedy was to "throw the baby out with the bathwater" by striking the whole program. Id. This result was improper under established Florida law. Instead, the Lower Court was constitutionally required to strike only that portion of the legislation allowing funding to sectarian institutions and to preserve the remainder of the OSP allowing funding to nonsectarian institutions. Its failure to do so was an unfortunate by-product of the parties' all-or-nothing approaches, approaches that are not binding on this Court.[4]

"Severability is a judicial doctrine recognizing the obligation of the judiciary to uphold the constitutionality of legislative enactments where it is possible to strike only the unconstitutional portions." Ray v. Mortham, 742 So. 2d 1276, 1280 (Fla. 1999); see also Martinez v. Scanlon, 582 So. 2d 1167, 1172 (Fla. 1991) ("It is a fundamental principle that a statute, if constitutional in one part and unconstitutional

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philosophical, political, or strategic reasons. These reasons are immaterial to this court and to consideration of this case." Bush, 846 So. 2d at 372 (Wolf, J., concurring and dissenting).

[4] In his dissent, Judge Wolf urged the Lower Court to sever the offending language and preserve the constitutionality of the OSP. One of the reasons noted by the Lower Court for declining to do so was that Appellants failed to argue severability. The failure of the Lower Court to discharge its duty, independently, to undertake a complete severability analysis represents a mistaken understanding of

in another part, may remain valid except for the unconstitutional portion"). Severability works in harmony with the axiom that legislative acts are presumed constitutional and courts should resolve every reasonable doubt in favor of finding constitutionality. State v. Kinner, 398 So. 2d 1360 (Fla. 1981); Hanson v. State, 56 So. 2d 129 (Fla. 1952).

The doctrine of severability "is derived from the respect of the judiciary for the separation of powers, and is 'designed to show great deference to the legislative prerogative to enact laws." Ray, 742 So. 2d at 1280 (quoting Schmitt v. State, 590 So. 2d 404, 415 (Fla. 1991)). "Stated simply: The severability of a statutory provision is determined by its relation to the overall legislative intent of the statute of which it is a part, and whether the statute, less the invalid provisions, can still accomplish this intent." Id.

The court in Waldrup v. Dugger, 562 So. 2d 687 (Fla. 1990) (quoting Cramp v. Board of Pub. Instruction, 137 So. 2d 828, 830 (Fla. 1962)), outlined the test for severability as follows:

> When a part of the statute is declared unconstitutional the remainder of the act will be permitted to stand provided: (1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed one

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the judiciary's role in reviewing the constitutionality of properly enacted legislation.

> without the other and, (4) an act complete in itself remains after the invalid provisions are stricken.

In applying this four-part test to the OSP, it is clear that the statute is severable. Accordingly, if this Court agrees with the Lower Court that the provision of the OSP allowing scholarships to be used at sectarian private schools violates the Florida Constitution, it should sever the offending provision and, in deference to the Legislative will, preserve the remainder of the statute.

### *A. The Provision Of The OSP Allowing Scholarships To Be Used At Sectarian Private Schools Can Easily Be Separated From The Remaining Valid Provisions*

The first prong of the severability analysis is easily met. By striking the phrase "may be sectarian or," the Court can easily separate the unconstitutional provision from the remaining valid provisions. See Bush, 886 So. 2d at 375 (Wolf, J., concurring and dissenting) ("Because the section can be read without the "may be sectarian or" language, it is severable."). The Lower Court, in rejecting severability, did not take issue with Judge Wolf's conclusion that the offending language could easily be separated. See Bush, 886 So. 2d at 346 n. 4, for the Lower Court's complete severability analysis. This Court should easily find that the first prong of the severability test is met.

### *B. The Legislative Purpose Expressed In the Valid Provisions Can Be Accomplished Independently Of Those Which Are Void*

Likewise, the Lower Court did not suggest that the Legislature's purpose in providing students in failing schools an opportunity to choose an alternative educational program could not still be accomplished after severance. It clearly can. Striking the entire program returns these students to their failing schools; severing the unconstitutional provision only narrows their options to nonsectarian private schools or other public schools.

"The severability of a statutory provision is determined by its relation to the overall legislative intent of the statute to which it is a part, and whether the statute, less the invalid provisions, can still accomplish this intent." Eastern Air Lines, Inc., v. Dept. of Revenue, 455 So. 2d 311, 317 (Fla. 1984); see also Schmitt, 590 So. 2d at 415 ("[the statute] expresses and undeniable legislative intent to root out child exploitation, and we believe this Court would do a grave disservice to the state by striking the remainder of the statute simply because a single clause is unconstitutional").

The Florida Legislature created the OSP to allow a student attending a "failing" public school to attend an eligible private or public school with financial assistance from the state. The statute states in relevant part:

> The purpose of this section is to provide enhanced opportunity for students in this state to gain the knowledge and skills necessary for postsecondary education, a technical education, or the world of work. The Legislature recognizes that the voters of the State of Florida, in the November 1998 general election, amended

> s. 1, Art. IX, of the Florida Constitution so as to make education a paramount duty of the state.
>
> The Legislature finds that the State Constitution requires the state to provide the opportunity to obtain a high-quality education. The Legislature further finds that a student should not be compelled, against the wishes of the student's parent or guardian, to remain in a school found by the state to be failing for 2 years in a 4-year period. The Legislature shall make available opportunity scholarships in order to give parents and guardians the opportunity for their children to attend a public school that is performing satisfactorily or to attend an eligible private school when the parent or guardian chooses to apply the equivalent of the public education funds generated by his or her child to the cost of tuition in the eligible private school as provided in paragraph (6)(a). Eligibility of a private school shall include the control and accountability requirements that, coupled with the exercise of parental choice, are reasonably necessary to secure the educational public purpose, as delineated in subsection (4).

§ 229.0537(1), Fla. Stat. (1999).

The critical need to address the state's failing educational system prompted Florida voters to make education of their children a "paramount duty" of the state. The Legislature responded by passing the OSP, which permitted the parents or guardians of the student to choose not only private sectarian schools, but also to choose qualifying public or private nonsectarian institutions. In enacting the OSP, the Legislature sought to promote the general welfare of Florida's citizens by providing new educational opportunities for children wholly independent of

religious influence or considerations. In fact, specific language in the OSP reveals that the Legislature intended the eligibility of a school to receive state funding be determined by that school's ability to select students on a "religious-neutral basis." § 229.0537(4)(e), Fla. Stat. (1999). In addition, eligible schools could not "compel any student attending the private school on an opportunity scholarship to profess a specific ideological belief, to pray, or to worship." § 229.0537(4)(j), Fla. Stat. (1999). Thus, the intent of the Legislature was simply that money would flow to entities able to provide adequate educational opportunities to students in failing schools; there is no indication that the Legislature sought to benefit religious schools or promote religious ideals or beliefs.

By severing the offending clause, the Legislative purpose of providing much needed educational opportunities to students in failing schools may still be fulfilled. In fact, the only practical effect that severance of the offending language will have is that students will have a reduced number of eligible schools from which to choose. This incidental effect is lessened, however, when one considers the large number of quality nonsectarian schools, including AMICI CURIAE, willing and able to meet this need. In addition, the OSP as revised would undoubtedly encourage additional nonsectarian private schools to strive to meet the eligibility requirements for funding under the statute.

Furthermore, the fact that the Legislature was addressing a critical need as

defined by the citizens of Florida strongly argues in favor of severing the offending statutory provisions to carry out the work of the Legislature. Smith v. Dep't. of Ins., 507 So. 2d 1080, 1090 (Fla. 1987)("Moreover, the sense of crisis and the need to meet that crisis expressed by the legislative preamble suggest that we should sever [the offending section] . . . [t]o declare the entire act unconstitutional would undo much of the work already accomplished and return the state to the condition which the legislature found unacceptable.").

By severing the language which provided funding to sectarian schools and preserving the otherwise constitutional provisions of the statute, the worthy purpose of providing enhanced educational opportunities to Florida's children in failing schools is preserved. The only alternative is to send these students back to their failing public schools and ignore the voter's mandate and the will of Legislature. Because the purpose of the statute is maintained, the second prong of the severability test is satisfied.

### *C. The Good And The Bad Features Of The OSP Are Not So Inseparable In Substance That It Can Be Said That The Legislature Would Have Passed The One Without The Other*

The third prong of the severability test hinges on whether the Legislature would have passed the statute without the offending language. The Lower Court's decision apparently turned on this factor, but its analysis of the issue was misinformed, flawed, and thus, error.

The Lower Court's entire treatment of severability was confined to its one-sentence conclusion, "[u]nlike Judge Wolf, we cannot say that the Florida Legislature intended the OSP statute to be severable or that the legislature would have adopted the OSP without vouchers being provided to sectarian schools." Bush, 886 So. 2d at 346 n. 4 (Van Nortwick, J.) This conclusory analysis simply ignored that the Legislature expressly stated its desire that the OSP be severable with full knowledge that the provision of vouchers to sectarian schools would be challenged under Art. I, § 3. The legislative history of the Act demonstrates that the Legislature was keenly aware of the possibility of a challenge to the OSP under Art. I, § 3 at the time it adopted this legislation. See Fla. H.R. Comm. on Transforming Florida Schools, CS/HBs 751, 753 and 755 (1999) Staff Analysis 7-8 (final June 22, 1999) (on file with comm.). With full awareness of the anticipated challenge, the Legislature expressly provided for severability in Section 77 of the Act, which reads:

> If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Ch. 99-398, § 77, at 2679, Laws of Fla. (1999).[5] To reject severability based solely on the unsupported and highly subjective conclusion, "we cannot say that the Florida Legislature intended the OSP statute to be severable or that the legislature would have adopted the OSP without vouchers being provided to sectarian schools," was plainly error.[6] The Legislature did intend the OSP statute to be severable. It said so in unmistakably clear terms.

Independently of its failure to address the express severability provision or the legislative history leading to its adoption, the Lower Court erred in its application of this prong of the Cramp test. The judicial analysis requires consideration of whether "the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed one without the

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[5] Approved by the Governor (Appellant herein) on June 21, 1999.

[6] Even without consideration of the express will of the Legislature reflected in the severability clause, this Court would be required to preserve the constitutionality of the statute by severing the clauses that render it unconstitutional. See Barndollar v. Sunset Realty Corp., 379 So. 2d 1278, 1280 (Fla. 1979) ("A severability clause is not, of course, determinative of severability."). Severability is proper – and indeed required - when part of a statute is declared unconstitutional and the remainder of the act may stand on its own. See High Ridge Management Corp. v. State, 354 So. 2d 377, 380 (Fla. 1977) (holding that even without an express severability clause, if the statute satisfies the four-part severability test, "it is the duty of the court to give

other." Decisions of this Court have looked to whether the remaining provisions are "inseparably connected with or contingent" upon the portion to be excised. State v. Lee, 356 So. 2d 276, 283 (Fla. 1978); see also Barndollar, 379 So. 2d at 1281 ("When . . . the valid and void parts of a statute are mutually connected with and dependent upon each other as conditions, considerations, or compensations for each other, then a severance of the good from the bad would effect a result not contemplated by the legislature . . ."); Beckwith v. Webb's Fabulous Pharmacies, Inc., 394 So. 2d 1009, 1010 (Fla. 1981)("We cannot excise the constitutionally infirm portion . . . without doing violence to the legislative purpose of the statute."). Under this test, there must be a contingent or dependent relationship between the portion to be excised and the remaining valid provisions such that it can be concluded that giving effect to the latter without requiring the former would lead to a result not contemplated by the Legislature. In no way does the OSP make participation by nonsectarian private schools contingent or dependent on participation of sectarian private schools. It requires cynicism to suggest that the Legislature would only have attempted to help these students if it could do so by unconstitutionally aiding sectarian institutions.

As noted above, the relevant inquiry is whether the offending phrase could be excised without adversely affecting mutually dependent or contingent provisions. A

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effect to the portion of the statute which is not infirm.").

simple reading of the statute shows that it can. Florida Statutes § 229.0537(4) (1999) provides:

> (4) Private school eligibility – To be eligible to participate in the Opportunity Scholarship Program, a private school must be a Florida private school, may be sectarian or nonsectarian, and must [comply with subsections (a) through (k)].

Accordingly, this Court would be required to determine whether the phrase "may be sectarian or" can be severed from the relevant portion of the statute without adversely affecting mutually dependent or contingent provisions. With this phrase excised, the relevant portion of § 229.0537(4), Fla. Stat. (1999) would thus read:

> (4) Private school eligibility – To be eligible to participate in the Opportunity Scholarship Program, a private school must be a Florida private school, nonsectarian, and must [comply with subsections (a) through (k)].

To the extent subsection (4) is referenced in subsection (1) of the statute (see below), the reference is limited to the extent "reasonably necessary to secure the educational public purpose." § 229.0537(1), Fla. Stat. (1999). Thus, because this section of the statute may be read with the offending language removed, and the excised statutory language does not affect mutually dependent or contingent provisions pertaining to the purpose of the statute, it plainly satisfies this prong of the Cramp test.

As noted above, the driving force behind passage of the OSP was a mandate

from Florida voters that the failing educational system needed to be addressed. The Legislature passed the OSP in direct response to this mandate, and its declared purpose in aiding schools that provide critical educational opportunities is unquestionable. It was never the purpose of the Legislature to provide funding for religious institutions, and the true purpose of the statute remains fully attainable with the phrase "may be sectarian or" removed.[7] There is no evidence in the legislative history or otherwise that the Legislature would have ignored this statewide educational crisis had it been aware of the constitutional limitation. To the contrary, the Legislature's own pronouncement is otherwise. The OSP specifically disclaims any purpose to provide aid to sectarian schools when it conditions eligibility on religious neutrality. Notwithstanding this fact, the Lower Court's decision cynically ascribes motives to the Legislature that it itself has disclaimed. Accordingly, this Court should conclude that the Legislature would have passed the OSP had it known with certainty the constitutional limitation on aid to sectarian schools would be interpreted in the manner it was interpreted by the Lower Court.

*D. An Act Complete In Itself Remains After The Invalid Provisions*

[7] As discussed in Zelman v. Simmons-Harris, 536 U.S. 639 (2002), this case is thus easily distinguishable from the contemporaneously decided cases Comm. for Public Ed. & Religious Liberty v. Nyquist, 413 U.S. 756 (1973), and Sloan v. Lemon, 413 U.S. 825 (1973) (the "Nyquist Cases"). The Nyquist Cases involved programs that gave packages of benefits exclusively to private schools, flatly prohibiting the participation of public schools in the program, and with the express design that such tuition reimbursements "offer . . . an incentive to parents to send their children to sectarian schools." Id. at 786.

*Are Stricken*

The fourth and final prong of the severability test is whether an act "complete in itself" remains after the invalid provisions are stricken. See McCall v. State, 354 So. 2d 869, 872 (Fla. 1978). As shown above, with the offending language stricken, the OSP remains a complete, viable legislative vehicle to address the critical needs of children in failing public schools. The legislative purpose remains wholly intact and the students of these schools will continue to be well-served by its implementation. The only practical effect of excising the offending language from the Act is that these students will be deprived of choosing an institution prohibited by the constitution from receiving state revenues. In all other respects, these students will have real opportunity and real choice. Because the act remains complete after severing the offending clause, the fourth prong of the severability test is met.

As all four prongs of the severability test are easily met, it is the duty of this Court – if it finds the OSP facially violates the Florida Constitution's "no-aid" provision – to sever the offending clause and preserve this worthy piece of legislation.

## II. SEVERANCE DOES NOT VIOLATE THE FREE EXERCISE CLAUSE OF EITHER THE STATE OR FEDERAL CONSTITUTION

Finally, severing out the portion of the legislation providing aid to religious

schools does not violate the Free Exercise Clause of either the State or Federal Constitution.

In Locke v. Davey, 540 U.S. 712 (2004), the Court rejected the notion that the "no-aid" clause in Washington's State Constitution violated the Free Exercise Clause or discriminated against religion by precluding aid to students pursuing theology degrees while allowing it for other degrees. The Court stated, "The state has merely chosen not to fund a distinct category of instruction." Locke, 540 U.S. at 721.[8] The Court held that it was entirely proper for the State of Washington to apply its "no-aid" provision in such a way that religious pursuits were excluded while non-religious pursuits were not. Id.

Similarly, interpreting Florida's "no-aid" provision to preclude aid to sectarian institutions does not require eliminating aid to nonsectarian institutions. Under Locke, the State may validly choose to fund one and not the other. Seemingly recognizing this concept, the Lower Court stated that "the no-aid provision does not create a constitutional bar to the payment of an OSP voucher to a non-sectarian school . . . ." Bush, 886 So. 2d at 353. However, the Lower Court then avoided the issue entirely, stating "because we are holding the OSP

[8] Similarly, in Sloan, the Court held in regards to legislative funding for private schools, "Even if [the Act] were clearly severable, valid aid to nonpublic, nonsectarian schools would provide no lever for aid to their sectarian counterparts . . . [t]he Equal Protection Clause has never been regarded as a bludgeon with which to compel a State to violate other provisions of the Constitution." Sloan, 413 U.S.

unconstitutional in its entirety, and not just its application to sectarian schools, our decision is one of general application and does not specifically target religion for disparate treatment." Bush, 836 So. 2d at 366. Thus, the Lower Court unnecessarily struck the entire Act apparently in order to avoid a Free Exercise Clause challenge it recognized to be erroneous.

Accordingly, if this Court were to sever the offending language, such action would not run afoul of the Free Exercise Clause of the United States Constitution or provide any constitutional leverage from which sectarian schools would be able to seek redress. Similarly, since the severability analysis presupposes that this Court has interpreted Art. I, § 3 in a way that prohibits aid to sectarian institutions, it would be absurd to suggest that aid to nonsectarian institutions would violate Art. I, § 3 of the State Constitution.

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at 834.

## CONCLUSION

For the foregoing reasons, if this Court finds that the Opportunity Scholarship Program is facially unconstitutional, it should sever the portion of the statute that provides funding to sectarian institutions and preserve the remainder.

## CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished via U.S. Mail to **Ronald G. Meyer**, Meyer and Brooks, P.A., 2544 Blairstone Pines Drive, Post Office Box 1547, Tallahassee, Florida 32302; **Robert H. Chanin and John M. West**, Bredhoff & Kaiser, P.L.L.C., 805 Fifteenth Street, N.W., Suite 1000, Washington, D.C. 20005; **Pamela L. Cooper**, Florida Education Association, 118 North Monroe Street, Tallahassee, Florida 32399; **Barry Richard**, Greenberg Trauig, P.A., 101 East College Avenue, Post Office Box 1838, Tallahassee, Florida 32302; **Christopher M. Kise and Louis F. Hubener,** Office of the Solicitor General, PL-01 The Capitol, Tallahassee, Florida 32399; **Raquel Rodriguez,** Office of the Governor, The Capitol, Suite 209, Tallahassee, Florida 32399; **Daniel Woodring and Nathan Adams**, Florida Department of Education, 325 West Gaines Street, Suite 1244, Tallahassee, Florida 32399; and **Clark Neily**, Institute of Justice, 1717 Pennsylvania Avenue, NW, Suite 200, Washington D.C. 20006 this 24th January, 2005.

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## CERTIFICATE OF FONT COMPLIANCE

**I HEREBY CERTIFY** that this brief complies with the font requirements of Fla.R.App.P. 9.210(a)(2).

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