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

JOANNE McCALL, et al.,
Plaintiffs,

v.

CASE NO.: 2014 CA 1859

RICK SCOTT, Governor of Florida,
in his official capacity as the head of the
Florida Department of Revenue, et al.,
Defendants.

_____/

DEFENDANTS' MOTION TO DISMISS
AND INCORPORATED MEMORANDUM OF LAW

Defendants Rick Scott, Pamela Jo Bondi, Jeff Atwater, Adam Putnam, and Pam Stewart, in their official capacities, and the Florida Departments of Education and Revenue, move to dismiss Plaintiffs' Complaint for lack of standing.

INTRODUCTION AND BACKGROUND

Some thirteen years ago, the Florida Legislature set out to "expand educational opportunities for children of families that have limited financial resources." Ch. 2001-225, § 5, Laws of Fla. The goal was simple: the Legislature sought to ensure "that all parents, regardless of means, may exercise and enjoy their basic right to educate their children as they see fit." § 1002.395(1)(a)3., Fla. Stat. The means was simple, too: the Legislature sought to "[e]ncourage private, voluntary contributions to nonprofit scholarship-funding organizations," which could in turn provide private dollars for scholarships. Ch. 2001-225, § 5, Laws of Fla. As a result, "children in this state [would] achieve a greater level of excellence in their education." 1002.395(1)(b) 4., Fla. Stat.

The program has succeeded, and in this last school year alone, the private, voluntary contributions resulted in scholarships for over 59,000 children from low-income families. Compl. ¶ 56.[1] Plaintiffs do not dispute that these 59,000 children are benefitting from the enhanced opportunities these scholarships provide.

Plaintiffs—teachers unions and others—seek to end these opportunities for these children and their families. They claim that the program violates the Florida Constitution by using public dollars for private schools (including parochial schools) and by conflicting with the requirement that Florida have a uniform system of education. But the program relies on private voluntary donations—*not* public dollars. And the program provides tax credits to *donors*—not schools or students.

Because the program's essential structure has not changed over the years, Plaintiffs' claims are the same claims that—if valid—Plaintiffs could have brought years ago. Regardless, the claims are not valid, and the Legislature's decision was consistent with its broad authority under the Florida Constitution.

This Court need not reach the merits, however, because Plaintiffs lack standing. This Court should therefore dismiss.

The Program's Operation

Florida's tax credit scholarship program is similar to programs in other states. "Scholarship tax credit programs are a growing school choice option some states are exploring. As of April 2014, 14 states have scholarship tax credit programs. These programs allow individuals and corporations to allocate a portion of their owed state taxes to private nonprofit scholarship-granting organizations that issue scholarships to K-12 students." National

[1] At this stage, the Complaint's factual allegations are presumed true. *See Nevitt v. Bonomo*, 53 So. 3d 1078, 1081 (Fla. 1st DCA 2010).

Conference of State Legislatures, *Scholarship Tax Credits*, http://www.ncsl.org/research/education/school-choice-scholarship-tax-credits.aspx (last visited Oct. 31, 2014).

There are two principal components that work together to effectuate the program. First, the law authorizes the creation of Eligible Nonprofit Scholarship-Funding Organizations (SFOs), which provide the scholarships. State universities and certain independent colleges and universities qualify as SFOs. § 1002.395(2)(f), Fla. Stat. (2014). In addition, a Florida 501(c)(3) nonprofit organization can qualify if it meets certain requirements. *Id.* § 1002.395(2)(f)1.-3. Among those requirements, an eligible SFO must award scholarships to eligible students on a first-come, first-serve basis, except that SFOs must give priority to students previously participating in the program. *Id.* § 1002.395(6)(e). Beginning in the 2016-2017 school year, they must also give priority to new applicants "whose household income levels do not exceed 185 percent of the federal poverty level or who are in foster care or out-of-home care." *Id.* SFOs may not restrict scholarships for particular private schools, *id.* § 1002.395(6)(g); must submit to certain auditing and reporting requirements, *id.* § 1002.395(6)(m)-(n) & (q); and must comply with antidiscrimination policies, *id.* § 1002.395(6)(a).

Second, to encourage private donations to the SFOs, the Legislature provided for donor tax credits. Not unlike the well-known federal tax deduction for charitable contributions (including to religious organizations), *see* 26 U.S.C. § 170, Florida's tax law allows credits for those making private, voluntary contributions, § 1002.395(5), Fla. Stat. Taxpayers who make eligible contributions to an SFO may apply for tax credits applied toward liability for certain state taxes: 1) oil, gas, and mineral severance taxes, 2) self-accrued, direct pay sales tax, 3) corporate income tax, 4) alcoholic beverage taxes, and 5) insurance premium taxes.

§ 1002.395(5)(b), Fla. Stat. The law caps the aggregate total of allowable tax credits. *Id.* § 1002.395(5)(a).

The Eligible Children

Tax credit scholarships are limited to those with financial need. Applicants can qualify if 1) they qualify for free or reduced-price school lunches under the National School Lunch Act or are on the direct certification list, or 2) they are or recently were in foster care or in out-of-home care. *Id.* § 1002.395(3)(b). In addition, previous qualifiers may continue in the scholarship program as long as their family income level does not exceed 230 percent of the federal poverty level. *Id.* (Eligibility criteria are scheduled to change for the 2016-2017 school year. *Id* § 1002.395(3)(c)).

ARGUMENT

"Standing is a legal concept that requires a would-be litigant to demonstrate that he or she reasonably expects to be affected by the outcome of the proceedings, either directly or indirectly." *Hayes v. Guardianship of Thompson*, 952 So. 2d 498, 505 (Fla. 2006); *accord Brown v. Firestone*, 382 So. 2d 654, 662 (Fla. 1980) ("[T]his Court has long been committed to the rule that a party does not possess standing to sue unless he or she can demonstrate a direct and articulable stake in the outcome of a controversy."). Plaintiffs in this case lack standing. They do not adequately allege any special injury, and they cannot rely on the taxpayer standing exception because the scholarship program does not involve any expenditure of public funds.

I. Plaintiffs Allege No Specific Injury.

"It is settled law that the constitutionality of an act cannot be questioned by a party whose rights are not affected." *Robinson v. Fla. Dry Cleaning & Laundry Bd.*, 194 So. 269, 272 (Fla. 1940). A general allegation that public action either "raises taxpayers' obligations or wastes

public money" is not sufficient to constitute a special injury. *Sch. Bd. of Volusia Cnty. v. Clayton*, 691 So. 2d 1066, 1067 (Fla. 1997) (citing *N. Broward Hosp. Dist. v. Fornes*, 476 So. 2d 154, 155 (Fla. 1985)). Rather, a special injury is one that is unique to the party bringing the claim—a party who asserts that his personal rights have been violated. *Alachua Cnty. v. Scharps*, 855 So. 2d 195, 200-01 (Fla. 1st DCA 2003); *accord Council for Secular Humanism, Inc. v. McNeil*, 44 So. 3d 112, 121 (Fla. 1st DCA 2010) (plaintiffs generally must allege a "'special injury' which differs in kind and degree from that sustained by other members of the community at large").

This requirement that taxpayers assert special injury, sometimes called the "*Rickman* rule," is settled law, and the Florida Supreme Court has repeatedly refused to depart from it. *See, e.g.*, *Fornes*, 476 So. 2d at 155-56 ("This Court has refused to depart from the special injury rule or expand our exception established in *Horne*."); *U.S. Steel Corp v. Save Sand Key, Inc.*, 303 So. 2d 9, 13 (Fla. 1974) ("We adhere resolutely to our [previous holding], and other decisions of this Court relative to the concept of special injury in determining standing."); *Alachua Cnty.*, 855 So. 2d at 198 ("The supreme court refused to depart from this special injury rule . . . .").

Plaintiffs have not identified any special injury stemming from the Scholarship Program. Their best attempt, perhaps, is their conclusory allegation that they "have been and will continue to be injured by the unconstitutional expenditure of public revenues under the Scholarship Program," Compl. ¶ 19, but they fail to connect this purported "expenditure"[2] to their "injury." And although Plaintiffs allege that their children who attend public schools, along with the Plaintiff teachers or administrators, "have been and will continue to be injured by the

[2] As discussed below, *infra* II.A, the tax credits at issue do not constitute an appropriation or expenditure of public funds.

Scholarship Program's diversion of resources from the public schools," *id.*, they fail to allege how the "diversion" leads to an injury.

Furthermore, any allegation that tax credits "divert" resources that would otherwise benefit Plaintiffs is speculative and insufficient to confer standing. In *Arizona Christian School Tuition Organization v. Winn*, which involved a challenge to a similar tax credit scholarship program in Arizona, the United States Supreme Court found that plaintiffs lacked standing. 131 S. Ct. 1436, 1440 (2011). The plaintiffs argued there, as Plaintiffs do here, that any revenue the state lost because of the tax credit would have instead benefitted them. The Court rejected that argument, explaining that it could not engage in the "unjustifiable economic and political speculation" necessary to find standing. *Id.* at 1443-44. Indeed, "[i]t would be 'pure speculation' to conclude that an injunction against a government expenditure or tax benefit 'would result in any actual tax relief' for a taxpayer-plaintiff." *Id.* at 1444 (quoting *ASARCO Inc. v. Kadish*, 490 U.S. 605, 614 (1989)); *see also DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 345-46 (2006) (addressing a challenge to a state tax credit and rejecting standing because the allegations of injury were too speculative: "Plaintiffs claim that DaimlerChrysler's tax credit depletes the Ohio fisc and 'impos[es] disproportionate burdens on [them].' This is no different from similar claims by federal taxpayers we have already rejected under Article III as insufficient to establish standing" (alterations in original)).

Plaintiffs' diversion theory, presumably, is that absent the tax credits, revenues would increase. With this increased revenue, the Legislature would provide more money to public education. And with more money in education, Plaintiffs' children and others would be better off. This is speculation stacked on top of speculation. As the United States Supreme Court reasoned, "[w]hen a government expends resources or declines to impose a tax, its budget does

not necessarily suffer. On the contrary, the purpose of many governmental expenditures and tax benefits is 'to spur economic activity, which in turn increases government revenues.'" *Winn*, 131 S. Ct. at 1443 (quoting *DaimlerChrysler*, 547 U.S. at 344). If state revenues *did* increase, whether the Legislature would appropriate the increased revenues to education is a matter of sheer speculation. *Cf. id*. at 1444 ("Even assuming the STO tax credit has an adverse effect on Arizona's annual budget, problems would remain. To conclude there is a particular injury in fact would require speculation that Arizona lawmakers react to revenue shortfalls by increasing respondents' tax liability."). Beyond that, it is speculative as to whether any resulting increased revenues would actually benefit Plaintiffs' children. Plaintiffs do not even bother to make that speculative assertion—except perhaps implied in the most conclusory form.

Accepting for the purpose of argument Plaintiffs' contention that fewer students in a particular school yields fewer dollars for that school, *see* Compl. ¶ 48 ("As students withdraw from public schools and enroll in private schools with vouchers provided by the Scholarship program, their public school district's funding under the FEFP is proportionally reduced."), only underscores the speculativeness of any claimed injury. If the Legislature funds school districts on a per-student basis, any diversion of revenue is proportional to a diversion of students—meaning the remaining district students enjoy the same per-student funding. *See Mueller v. Allen*, 463 U.S. 388, 395 (1983) ("By educating a substantial number of students [private] schools relieve public schools of a correspondingly great burden . . . .").

Plaintiffs cannot allege any particular harm without engaging in speculation. The New Hampshire Supreme Court recently found no harm or injury in a remarkably similar case. That Court held, as this Court should, that allegedly reduced school resources could not support the plaintiffs' standing:

> The petitioners argue that they have standing "because the Program will harm all the [petitioners] as taxpayers by imposing net fiscal losses on New Hampshire governments and will further harm certain [petitioners] who have children in or teach in the public schools by taking state funding away from the public schools."
>
> . . .
>
> [These allegations] are insufficient to establish standing. The petitioners' claim that the program will result in "net fiscal losses" to local governments does not articulate a personal injury. It "is the same, indistinguishable, generalized wrong allegedly suffered by the public at large." Although some of the petitioners have school-aged children or are public school teachers, at best, this establishes that those petitioners have a special interest in education. Such a special interest, alone, does not constitute a "definite and concrete" injury sufficient to confer standing. Moreover, the purported injury asserted here—the loss of money to local school districts—is necessarily speculative. Even if the tax credits result in a decrease in the number of students attending local public schools, it is unclear whether, as the petitioners allege, local governments will experience "net fiscal losses." The prospect that this will occur requires speculation about whether a decrease in students will reduce public school costs and about how the legislature will respond to the decrease in students attending public schools, assuming that occurs.

Duncan v. State, No. 2013-455, 2014 WL 4241774, at *8 (N.H. Aug. 28, 2014) (citations omitted).

II. Plaintiffs Cannot Rely on the Taxpayer Standing Exception.

Perhaps recognizing that they cannot identify any specific injury, Plaintiffs also assert that they fall into a limited exception allowing standing based only on their status as taxpayers. But they likewise fail to establish standing based on this taxpayer exception.

The Florida Supreme Court has recognized that no special injury is necessary when a taxpayer brings "an attack upon constitutional grounds based directly upon the Legislature's taxing and spending power." *Fornes*, 476 So. 2d at 155 (emphasis in original) (quoting *Dep't of Admin. v. Horne*, 269 So. 2d 659, 663 (Fla. 1972)). This exception is extremely limited and only available when a taxing provision or expenditure "violates specific constitutional limitations on the taxing and spending power." *Alachua Cnty.*, 855 So. 2d at 198-99 (citing *Martin v. City of*

Gainesville, 800 So. 2d 687, 688-89 (Fla. 1st DCA 2001); *Paul v. Blake*, 376 So. 2d 256, 259 (Fla. 3d DCA 1979)). In recognizing the limited exception, the Florida Supreme Court found "direct precedent" in *Flast v. Cohen*, 392 U.S. 83 (1968), the "landmark case deal[ing] with a federal taxpayer's 'standing' to challenge the validity of a federal spending program." *Horne*, 269 So. 2d at 662. The Florida Supreme Court's reliance on *Flast* was unambiguous: "We choose to follow the United States Supreme Court (*Flast*)." *Id.* at 663.

In *Flast*, the United States Supreme Court recognized taxpayer standing as an extraordinarily limited exception to the usual special-injury requirement. First, the exception applies only when a taxpayer challenges Congress's authority under the taxing and spending clause of Article I, section 8 of the United States Constitution. *Flast*, 392 U.S. at 102. "It will not be sufficient to allege an incidental expenditure of tax funds in the administration of an essentially regulatory statute." *Id.* In other words, alleging that a legislative package has some tangential relationship to tax funds cannot be enough. Second, it is not enough to allege that the provision is unconstitutional generally. "[T]he taxpayer must show that the challenged enactment exceeds specific constitutional limitations imposed upon the exercise of the congressional taxing and spending power and not simply that the enactment is generally beyond the powers delegated to Congress." *Id.* at 102-03.

Here, Plaintiffs cannot rely on this taxpayer standing exception because their constitutional claims are not directed at an expenditure of public money. In addition, Count 1 is not based on an express taxing and spending limitation.

A. Plaintiffs' constitutional challenges are not directed at an expenditure or appropriation of public money.

Plaintiffs cannot establish taxpayer standing for either count because they do not attack a legislative appropriation or expenditure. In taxpayer standing actions, "[t]o withstand dismissal

on standing grounds, . . . the challenge must be to legislative appropriations." *Council for Secular Humanism*, 44 So. 3d at 121 (citing *Horne*, 269 So. 2d at 663); *accord* Philip J. Padovano, Florida Civil Practice § 4.3 (2009 ed.) ("[T]his is a narrow exception which applies only to constitutional challenges to appropriations . . . .") (quoted in *Secular Humanism*). Although Plaintiffs assert that the Scholarship Program "enables" a system under which the State "pays" for the scholarships by not collecting the taxes that would have been owed but for the tax credits, Compl. ¶ 55, they acknowledge that the Scholarship Program involves no "direct appropriations," but rather relies on a "different mechanism" for its funding. *Id.* ¶ 4. They say the Scholarship Program is "[f]unded by allowing corporations to redirect some of their corporate income tax liability," *id.* ¶ 31, to private scholarship funding organizations. *Id.* ¶¶ 36, 50. "Instead of paying moneys already within the state treasury," *id.* ¶ 50, the Scholarship Program establishes a process that delivers funds from private individuals to private schools. *Id.* ¶¶ 51-52. There is no dispute, therefore, that the program expends no "moneys already within the state treasury." *Id.* ¶ 50.

The Plaintiffs nonetheless allege that the distinction between tax credits and appropriations is "constitutionally immaterial." *Id.* ¶ 66. They could not be more wrong. As the First District held, tax exemptions "constitute *substantially different* forms of aid than the transfer of public funds." *Bush v. Holmes*, 886 So. 2d 340, 356 (Fla. 1st DCA 2004) (en banc) (emphasis added); *accord Walz v. Tax Comm'n of City of New York*, 397 U.S. 664, 690 (1970) (Brennan, J., concurring) (quoted in *Bush v. Holmes*) ("Tax exemptions and general subsidies, however, are qualitatively different. Though both provide economic assistance, they do so in fundamentally different ways. A subsidy involves the direct transfer of public monies to the subsidized enterprise and uses resources exacted from taxpayers as a whole. An exemption, on

the other hand, involves no such transfer.") (note omitted)). Therefore, in considering a challenge based on the no-aid provision, the First District distinguished a case involving "a statute granting a property tax exemption" because "unlike the statute at issue" there, the tax-exemption statute "did not involve a disbursement from the public treasury." *Bush*, 886 So. 2d at 355-56 (citing *Johnson v. Presbyterian Homes of Synod of Fla., Inc.*, 239 So. 2d 256 (Fla. 1970)). If Plaintiffs were correct that any difference between tax credits and direct expenditures were "constitutionally immaterial," the First District was wrong.

The United States Supreme Court recently rejected Plaintiffs' position as well. In holding that challengers lacked standing in *Winn*—a challenge to Arizona's similar tax credit scholarship program—the Court explained that when citizens "choose to contribute to [a private scholarship funding organization], they spend their own money, not the money the State has collected from [plaintiffs] or from other taxpayers." 131 S. Ct. at 1447-48. Indeed, these "contributions result from the decisions of private taxpayers regarding their own funds. Private citizens create private STOs; STOs choose beneficiary schools; and taxpayers then contribute to STOs." Simply put, private donations that result in state tax credits cannot be classified as public money:

> Like contributions that lead to charitable tax deductions, contributions yielding STO tax credits are not owed to the State and, in fact, pass directly from taxpayers to private organizations. Respondents' contrary position assumes that income should be treated as if it were government property even if it has not come into the tax collector's hands. That premise finds no basis in standing jurisprudence. Private bank accounts cannot be equated with the Arizona State Treasury.

Id. at 1448; *accord Bush*, 886 So. 2d at 356 (quoting Donald A. Giannella, *Religious Liberty, Nonestablishment, and Doctrinal Development*, 81 Harv. L. Rev. 513, 553 (1968) (unlike a direct appropriation, in which the State spends its own money, "[i]n the case of an exemption, the state merely refrains from diverting to its own uses income independently generated by the churches through voluntary contributions.")).

Finally, common sense undermines Plaintiffs' position. If the difference between tax exemptions and direct expenditures were "constitutionally immaterial," then the government would be directly supporting countless causes not of its choosing. For example, "[a]ll of the 50 States provide for tax exemption of places of worship, most of them doing so by constitutional guarantees." *Walz*, 397 U.S. at 676; *cf. also Wiccan Religious Co-op. of Fla., Inc. v. Zingale*, 898 So. 2d 134, 135-36 (Fla. 1st DCA 2005) (noting that Wiccans enjoy tax exemptions). The State is not "expending" public funds to support every organization that benefits from tax exemptions. Plaintiffs do not challenge an appropriation or expenditure of public money, so they lack taxpayer standing. This Court must dismiss both counts.

B. Count 1 is not based upon a constitutional limitation to the Legislature's taxing and spending power.

There is an additional basis for dismissing Count 1—it is not based on an express limitation of the Legislature's taxing and spending authority.

In their first claim, Plaintiffs allege that the Scholarship Program violates Article IX, section 1(a) of the Florida Constitution, which provides that it is "a paramount duty of the state to make adequate provision for the education of all children residing within its borders," and requires that "[a]dequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools." Art. IX, § 1(a), Fla. Const. However, the overall purpose of this provision is not to limit the Legislature's taxing and spending authority, so it cannot be the basis for a taxpayer standing challenge.

After the Florida Supreme Court adopted *Flast*, a number of state cases recognized the difference between general challenges and challenges based on *specific* limitations on taxing and spending power. In *Council for Secular Humanism, Inc. v. McNeil*, for example, the plaintiffs challenged certain faith-based programs funded directly by State appropriations. 44 So. 3d 112

(Fla. 1st DCA 2010). The Court found standing for a claim that statutory provisions violated the no-aid provision of Article I, section 3, which provides that "[n]o revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution." That provision specifically limits the Legislature's spending authority, so the plaintiffs had standing to challenge the funding of the faith-based programs from legislative appropriations. *Id.* at 121-22. But the plaintiffs did not have standing to challenge contracts entered into under the law, because the issue there was not a specific limitation on Legislative authority. The tangential relationship with taxing or spending was insufficient to "allow[] third parties to gain access to courts based upon taxpayer standing." *Id.* at 122.

Earlier, in *Alachua County v. Scharps*, the First District similarly applied the "requirement that a taxpayer allege violations of s*pecific constitutional limitations on taxing or spending powers* in order to avoid the necessity of demonstrating special injury or as a prerequisite for taxpayer standing." 855 So. 2d at 199 (emphasis added). In that case, the plaintiffs challenged laws as violating general constitutional provisions. The plaintiffs asserted violations of the First and Fourteenth Amendments, Article I, section 4 of the Florida Constitution, and others, but none of the claims "constitute[d] a constitutional challenge to the taxing or spending power of the County." *Id.* at 199 n.4. Accordingly, the plaintiffs lacked taxpayer standing. *Id.*

In yet another case, the First District rejected a plaintiff's effort to rely on taxpayer standing for his challenge based on Article VIII, section 2(b) of the Florida Constitution, which establishes general limitations on municipal powers. *Martin v. City of Gainesville*, 800 So. 2d 687, 688 (Fla. 1st DCA 2001). Even though he presented a constitutional challenge, the plaintiff

could not rely on taxpayer standing because "[t]he exception to the special injury requirement . . . is only available if a taxpayer can show that an expenditure violates specific constitutional limitations on the taxing and spending power." *Id.* at 688 (citing *Horne*); *see also Paul v. Blake*, 376 So. 2d 256, 260 (Fla. 3d DCA 1979).

Allowing Plaintiffs to pursue this challenge would eviscerate the *Rickman* rule. If these Plaintiffs have standing, then substantially any plaintiff with any challenge that has something to do with spending—regardless of the basis for the challenge—would have standing, and the exception would swallow the rule. Rather than embrace this expansion, the Florida Supreme Court has repeatedly reaffirmed the exception's narrow applicability. *See Horne*, 269 So. 2d at 662 (recognizing taxpayer standing and narrowly limiting its application: "Appellees have alleged the unconstitutionality of certain sections of an appropriations act. . . . We hold that such allegations in this narrow area satisfies the requirement for 'standing' to attack an appropriations act."); *Alachua Cnty*., 855 So. 2d at 198 (citing *Fornes* and *Horne* and noting "[t]he supreme court refused to depart from this special injury rule or expand this exception."); *see also Clayton*, 691 So. 2d at 1067-68 (rejecting suggestion to revisit rule). Absent an expansion of the rule, which this Court cannot effect, Plaintiffs lack standing to bring a challenge under Article IX, section 1(a) based on the narrow taxpayer standing exception.[3]

Plaintiffs cannot establish standing under the taxpayer exception for Count 1 because it is not based on a constitutional limitation on the Legislature's taxing and spending authority.

[3] That was the recent holding of this Court in a related case, *Faasse v. Scott*, Case No. 2014 CA 1859 (Francis, C.J.). There, the plaintiff (who shares counsel with Plaintiffs in this case) sought a declaration that Senate Bill 850 (2014), which amended the law at issue in this case, violated the single-subject requirement of Article III, section 6 of the Florida Constitution. The Court found that the plaintiff lacked standing because "[u]nder Plaintiff's proposed rule, [the limited taxpayer standing exception] would be the general rule." *See* Attachment A. (The Court granted leave to amend, and the plaintiff, now joined by additional plaintiffs, recently filed an amended complaint.)

Indeed, it is no limitation at all; it imposes an affirmative obligation on the Legislature to provide an adequate educational system. Accordingly, this is an additional basis on which this Court should dismiss Count I.

CONCLUSION

Plaintiffs have no special injury, and their claims do not meet the requirements for the narrow taxpayer standing exception. This Court should dismiss the Complaint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by electronic service through the Florida Courts E-Filing Portal on this 31st day of October, 2014, to:

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Attachment A

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

TOM FAASSE,

Plaintiff,

v. CASE NO.: 2014 CA 1859

RICK SCOTT, Governor of Florida,
in his official capacity as the head of the
Florida Department of Revenue, *et al.*,

Defendants.
_____/

ORDER GRANTING MOTION TO DISMISS

This cause came on to be heard on Defendants' Motion to Dismiss. After hearing argument of counsel and being otherwise fully advised in the premises, this court orders as follows:

Plaintiff challenges the constitutionality of Chapter 2014-184, Laws of Florida, based on an alleged violation of the single subject requirement of Article III, section 6 of the Florida Constitution. The general rule under the case law is that a Plaintiff must have a special injury in order to have standing. Plaintiff has not attempted to show a special injury. There is a narrow exception to this general rule conferring standing upon a taxpayer in a case challenging a spending and taxing authority limitation. As currently pled, Plaintiff's complaint does not fall within this exception. Under Plaintiff's proposed rule, that exception would be the general rule.

Accordingly, Defendants' Motion to Dismiss is GRANTED. Plaintiff shall have 15 days from the date of this order to file an amended complaint.

This ruling has no implications upon and expresses no opinion as to the merits of Plaintiff's single subject challenge.

DONE and ORDERED this 7th day of October, 2014 in chambers in Tallahassee, Leon County, Florida.

Charles A. Francis
Chief Judge

Signed OCT - 7 2014
Original to Clerk OCT - 7 2014
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