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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-2282

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

Defendants.
_____/

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

In *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006) (*Holmes II*), the Florida Supreme Court struck down under Article IX, § 1 of the Florida Constitution the Opportunity Scholarship Program ("OSP"), a State-created program that used taxpayer money to fund the education of Florida children in private schools. The *Holmes* litigation was brought by a group of individual and organizational plaintiffs, including parents of children in public school, public school teachers and administrators, and organizations representing parents, teachers, and other Florida citizens and taxpayers. In reaching its decision under Article IX, § 1, the Supreme Court left undisturbed an earlier *en banc* decision by the First District Court of Appeal, which had held the OSP unconstitutional under Article I, § 3. *See Bush v. Holmes*, 886 So. 2d 340 (1st DCA 2004) (en banc) (*Holmes I*).

The Florida Tax Credit Scholarship Program ("Scholarship Program") is the State's replacement for the OSP. Like the OSP, the Scholarship Program is a State-established program that uses taxpayer money to fund the education of Florida children in private schools—this time

through the mechanism of a 100% tax credit to reimburse taxpayer "contributions" to the Program. Like the OSP, the Scholarship Program is alleged in the Complaint to violate both Article IX, § 1 and Article I, § 3 of the Florida Constitution.

This lawsuit is brought by the same kinds of individual and organizational plaintiffs who brought the constitutional challenges in *Holmes*. Plaintiffs bring the same constitutional claims as were brought in *Holmes,* and Plaintiffs allege the same type of injuries as alleged in *Holmes*—that a State program diverts money away from the public schools, and that it amounts to a constitutionally impermissible use of taxpayer funds. As in *Holmes*, there is no question that Plaintiffs have standing to bring this lawsuit.

Plaintiffs have pled specific injuries resulting from the Scholarship Program, including precisely the harm recognized by the Supreme Court in *Holmes* arising from the diversion of public funds away from the public schools: "[B]ecause voucher payments reduce funding for the public education system, the OSP by its very nature undermines the system of 'high quality' free public schools." *Holmes II*, 919 So. 2d at 409. And, in addition, the Supreme Court has made clear that taxpayers such as Plaintiffs have standing to bring constitutional challenges to impermissible uses of the State's taxing and spending powers. *See, e.g., Chiles v. Children A, B, C, D, E, & F*, 589 So. 2d 260, 263 n.5 (Fla. 1991). Thus, Plaintiffs have both special injury standing and taxpayer standing to bring the constitutional claims asserted here.

BACKGROUND

The OSP was the State's first private-school voucher program. *See* Complaint ("Compl."), at ¶ 27. Enacted in 1999, it was a program through which certain Florida children could attend private schools at public expense, using vouchers paid for by taxpayer funds. *Id.* The legislation specifically permitted the use of OSP vouchers to attend religious schools, and in

fact over 90% of voucher recipients did so. *Id.* In 2004, the First District Court of Appeal, sitting *en banc*, held the OSP unconstitutional under Article I, § 3 in light of the fact that most of the vouchers were used to pay for religious education in sectarian schools. *Id.* at ¶ 28. The court held that "the drafters of the no-aid provision clearly intended at least to prohibit the direct or indirect use of public monies to fund education at religious schools." *Holmes I*, 886 So. 2d at 351. A five-judge concurring opinion also found the OSP unconstitutional on the additional ground that it violated Article IX, § 1. Compl. ¶ 29. In 2006, the Florida Supreme Court affirmed the judgment that the OSP was unconstitutional, relying only on the ground that the statute violated Article IX, § 1. *Id.* The OSP was contrary to Article IX, the Court said, because "[i]t diverts public dollars into separate private systems parallel to and in competition with the free public schools that are the sole means set out in the Constitution for the state to provide for the education of Florida's children." *Holmes II*, 919 So. 2d at 398.

The Scholarship Program was originally enacted in 2001 after the OSP had been challenged in the courts, Compl. ¶ 31, and it has since been expanded on multiple occasions, with increases in the amount of the vouchers provided, increases in the aggregate annual expenditure cap, expansion of the eligibility criteria to obtain a voucher, and inclusion of additional funding sources. *Id.* at ¶ 32. Like the OSP, the Scholarship Program is intended to provide for the education of Florida children in private schools, including religious schools, at public expense. *Id.* at ¶ 4. To achieve this goal, the Scholarship Program relies on a mechanism through which taxpayer funds are diverted to private intermediary organizations and then transmitted in the form of warrants to participating private schools. *Id.* at ¶ 50.

Specifically, the Scholarship Program creates a 100% tax credit through which entities that are required to pay corporate income tax, insurance premium tax, severance taxes on oil and

gas production, self-accrued sales tax, or alcoholic beverage excise taxes are fully reimbursed for contributions made to an eligible Scholarship Funding Organization ("SFO"). *Id.* at ¶ 51. The SFO, in turn, transmits these contributions as voucher payments to private schools. *Id.* at ¶¶ 52-53. The Scholarship Program's private school vouchers are thus entirely funded by the State, which fully reimburses all private "contributions" through the 100% tax credit. *Id.* at ¶ 55. Indeed, this is how the program is publicized and promoted to potential SFO donors:

> It costs you NO extra dollars – the legislature has made it possible for your company to earmark up to 100 percent of its state corporate income tax payment to fund low-income student scholarships.

Id. During the 2013-2014 school year, some 59,674 children attended private schools at public expense using vouchers provided under the Scholarship Program, funded by tax credits totaling over $286 million. *Id.* at ¶ 56.

The Scholarship Program specifically includes religious schools among the private schools eligible to participate. *Id.* at ¶ 41. In fact, during the 2013-14 school year approximately 82% of all voucher recipients under the Program attended sectarian schools. *Id.* at ¶ 42. In most or all such schools, religious proselytization is an integral part of the educational program, and the secular aspects of the education these schools provide are intertwined with religious exercise and religious education. *Id.* at ¶ 43. Private schools may use the publicly funded voucher payments they receive for any purpose, including the teaching of religion; may discriminate against children seeking admission on the basis of religion; and may require Scholarship Program students to participate in worship, prayer, and other religious exercises. *Id.* at ¶¶ 44-46.

The Plaintiffs in this action are parents of children in public schools, teachers and administrators in the public schools, religious and community leaders, the Florida Education Association ("FEA") on behalf of its approximately 140,000 members who are employed in the public schools, the Florida School Boards Association ("FSBA") on behalf of the duly elected

school board members of Florida's 67 school districts, the Florida Association of School Administrators, Inc. ("FASA") on behalf of its members who are public school administrative personnel, the Florida Congress of Parents and Teachers, Inc. ("PTA"), the League of Women Voters of Florida, Inc. ("League"), and the Florida State Conference of Branches of NAACP ("Florida NAACP"). *Id.* at ¶¶ 7-18. The PTA, League, and Florida NAACP were all plaintiffs in *Holmes*. *Id.* at ¶¶ 15, 17-18. Each of the individual plaintiffs is a Florida citizen and taxpayer, *id.* at ¶¶ 7-12, and each of the organizational plaintiffs brings suit on behalf of its members who are Florida citizens and taxpayers, *id.* at ¶¶ 13-18.

ARGUMENT

I. Plaintiffs Have Standing Because They Have Alleged Specific Injuries Arising From the Scholarship Program

"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); *see also Brown v. Firestone*, 382 So. 2d 654, 662 (Fla. 1980) (plaintiff has standing if "he or she can demonstrate a direct and articulable stake in the outcome of a controversy"). The constitutionality of a statute may be challenged by a plaintiff whose "interests [are] adversely affected" by its enforcement. *Robinson v. Fla. Dry Cleaning & Laundry Bd.*, 194 So. 269, 272 (Fla. 1940). Here, the Complaint alleges specific harms suffered by the Plaintiffs resulting from the operation of the Scholarship Program.

As detailed above, the Scholarship Program diverts money from the public fisc to private intermediaries, who channel it to private schools, as required by the statute, to pay the cost of tuition for participating Florida children. *See* Compl. ¶¶ 4, 31-32, 49-56, 60, 65-66. Since the 2005-2006 school year – when the Supreme Court issued its decision in *Holmes* invalidating the

OSP – the Scholarship Program has expanded from 15,123 participating students to 59,674 participating students, and the amount of tax revenue that has been diverted to pay for these private school vouchers has increased from $88 million to more than $286 million. Compl. ¶ 33. For the current (2014-2015) school year, that amount will exceed $357 million. *Id.* As students leave the public schools using Scholarship Program vouchers, the funding their public school districts receive under the Florida Educational Finance Program is proportionally reduced. *Id.* at ¶ 48.[1] Contrary to the State's assertions, therefore, the harm resulting from the Scholarship Program is not "speculation stacked on top of speculation," Defendant's Motion to Dismiss ("State Br."), at 6, but is instead the natural and intended result of the program's operation, which necessarily entails such reductions in public school funding. *See* Compl. ¶ 48; Fla. Stat. § 1011.62 (providing that districts are allocated funds for operation of schools based upon the number of students enrolled in each district).

Nor is it "speculative" that this systematic diversion of funds away from the public education system will have a harmful effect on the public schools and those they serve. To the contrary, the Supreme Court expressly recognized in *Holmes* that when a voucher program diverts money away from the public education system, that program "*by its very nature* undermines the system of 'high quality' free public schools." *Holmes*, 919 So. 2d at 409

[1] The Florida Department of Education publishes quarterly reports that identify the amount of funding lost as a result of the Scholarship Program by each public school district, including Leon County where Plaintiff McCall's child is a student, Okaloosa County where Plaintiff Jones is a public school principal, and all of the other school districts in which the parents, teachers, and administrators represented by the organizational plaintiffs are associated. *See, e.g.*, Florida Dep't of Ed., Florida Tax Credit Scholarship Program, June 2014 Quarterly Report, at 2, *available at* https://www.floridaschoolchoice.org/Information/CTC/quarterly_reports/ftc_report_june2014.pdf (showing hundreds of millions of dollars of reduced funding for public schools during the 2013-2014 school year alone).

(emphasis added).[2] This is the harm alleged in the Complaint, and it flows directly from the continued operation of the Scholarship Program. The parents, teachers, administrators, and school boards who are Plaintiffs here suffer the adverse effects of this diversion of resources from the public schools and the systematic "undermin[ing]" of those schools. *See* Compl. ¶ 19.

And that is not the only injury involved. The school boards represented by Plaintiff FSBA are further harmed by the specific statutory requirement that they must use their resources to publicize to parents their right to remove their children from the public schools and obtain vouchers under the Scholarship Program to attend private schools. *See* Compl. ¶ 47; Fla. Stat. § 1002.395(10)(a). School boards are also statutorily required to use their resources to provide statewide assessments to students at private schools that participate in the Scholarship Program. Fla. Stat. § 1002.395(10)(b).

In short, Plaintiffs have alleged specific, non-speculative injuries that give them the requisite stake in the outcome of the litigation to have standing to sue. *See Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400, 403 n.4 (Fla. 1996) (finding parents of children in public schools had standing to challenge Legislature's funding of public schools, as "[t]here is no question that this case involves a controversy that would have a direct impact on Florida children"); *see also Holmes v. Bush*, No. CV 99-3370, 2000 WL 526364, at *1 n.2 (Fla. Cir. Ct. Mar. 14, 2000) (citing *Coal. for Adequacy & Fairness in Sch. Funding, Inc.* and noting that the State did not contest the standing of 17 individual and organizational plaintiffs

[2] Defendants' reliance on the fallacy that a school district suffers no harm from a "diversion of revenue [that] is proportional to a diversion of students," State Br. at 7, is entirely misplaced. It ignores, for example, school districts' many fixed costs – such as staff, maintenance, utilities, and supplies – which are not reduced when the school district loses students and certainly not "proportional" to the amount of funding lost when a student leaves. Rather, the effect of this loss of funding is that public school districts are left to fund their operational costs, programs, and staff with fewer resources.

challenging the OSP and therefore the court did not need to address the State's challenge to the standing of two other organizational plaintiffs), *aff'd*, 919 So. 2d 392 (Fla. 2006).

Rather than grappling with these specific allegations of injury, the State "presum[es]" that the harm Plaintiffs allege "is that absent the tax credits, revenues would increase," and it argues from that erroneous premise that it is "speculation stacked on top of speculation" that the Legislature would use some of these increased revenues for public education. State Br. at 6-7. But as discussed above, the injury actually pled in the Complaint is that as a direct result of the Scholarship Program, public funds are taken away from the public schools to the detriment of those schools and their students, and far from being "speculative," this is a direct and automatic result of the Scholarship Program. *See supra* pp.5-6 & n.1.

Thus, the State's reliance on the U.S. Supreme Court's decisions in *Arizona Christian School Tuition Organization v. Winn*, 131 S. Ct. 1436 (2011), and *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332 (2006), are entirely misplaced, for those cases do not even purport to address the type of harm alleged here. Rather, the injury that the Court rejected as speculative in both cases was the assertion that the tax credits at issue would result in higher taxes being imposed on the plaintiffs. *See Winn*, 131 S. Ct. at 1444 ("To conclude there is a particular injury in fact would require speculation that Arizona lawmakers react to revenue shortfalls by increasing respondents' tax liability."); *Cuno*, 547 U.S. at 344 ("Establishing injury requires speculating that elected officials will increase a taxpayer-plaintiff's tax bill to make up a deficit."). And the State's citation to the New Hampshire Supreme Court's decision in *Duncan v. State*, No. 2013-455, 2014 WL 4241774 (N.H. Aug. 28, 2014), is similarly off-the-mark. It was unknown in that case whether or not the tax credit program at issue would result in "loss of money to local school districts," as this would depend on whether any students would leave the public schools and

"how the legislature will respond to the decrease in students attending public schools, assuming that occurs." *Id.* at *8. No such uncertainty exists here. Over 59,000 students were educated in private schools at public expense through the Scholarship Program during the 2013-2014 school year alone, resulting in hundreds of millions of dollars in reduced funding for public schools. *See* Compl. ¶¶ 33, 48; *supra* pp.5-6 & n.1.

In sum, the Complaint here pleads a specific injury suffered by these Plaintiffs that has resulted and will continue to result from the operation of the Scholarship Program. This injury is sufficient to confer standing to sue to enjoin the continued operation of the program.

II. Plaintiffs Have Taxpayer Standing to Bring These Constitutional Challenges to the Scholarship Program

In addition to alleging specific harm resulting from the Scholarship Program, Plaintiffs also have standing as taxpayers to challenge the constitutionality of the Scholarship Program. The Florida Supreme Court "has long held that a citizen and taxpayer can challenge the constitutional validity of an exercise of the legislature's taxing and spending power without having to demonstrate a special injury." *Chiles v. Children A, B, C, D, E, and F*, 589 So. 2d 260, 263 n.5 (Fla. 1991). Taxpayer standing is an important and necessary safeguard because "an unconstitutional exercise of the taxing and spending power is intolerable in our system of government," and therefore "the courts should be readily available to immediately restrain such excesses of authority." *Paul v. Blake*, 376 So. 2d 256, 259 (Fla. 3d DCA 1979). As the Supreme Court observed, "[i]f a taxpayer does not launch an assault, it is not likely that there will be an attack from any other source," and thus taxpayers may be "the only champion of the people" in

these circumstances. *Dep't of Admin. v. Horne*, 269 So. 2d 659, 660, 663 (Fla. 1972).[3]

Although the State recognizes the existence of the taxpayer standing doctrine, it contends the doctrine is inapplicable here because (1) Plaintiffs' claims "are not directed at an expenditure of public money"; and (2) in any event Article IX, § 1(a) "cannot be the basis for a taxpayer standing challenge" because "the overall purpose of this provision is not to limit the Legislature's taxing and spending authority." State Br. at 9, 12. Both arguments are based on a misunderstanding of the taxpayer standing doctrine.

1. The taxpayer standing doctrine has never been limited to challenges to actual appropriations, as the State asserts, *see* State Br. at 10, but rather applies to *any* "exercise of the legislature's taxing and spending power." *Chiles*, 589 So. 2d at 263 n.5; *see also N. Broward Hosp. Dist. v. Fornes*, 476 So. 2d 154, 155 (Fla. 1985) (standing exists "where the taxpayer constitutionally challenges the exercise of governmental taxing and spending powers"); *Horne*, 269 So. 2d at 662 (taxpayer status sufficient to confer standing when the claim involves "constitutional challenges on taxing and spending"). The State's argument to the contrary is based *entirely* on a sentence from the First District's decision in *Council for Secular Humanism v. McNeil*, 44 So. 3d 112, 121 (Fla. 1st DCA 2010), quoting language from Judge Padovano's treatise on *Florida Civil Practice*. *See* State Br. at 9-10. But neither the case nor the treatise was

[3] In creating a taxpayer exception to the ordinary "special injury" rule, the Florida Supreme Court relied in part on the U.S. Supreme Court's decision in *Flast v. Cohen*, 392 U.S. 83 (1968). *See Horne*, 269 So. 2d at 662-63. But the Court never suggested that taxpayer standing in Florida was *limited* to the circumstances recognized under federal law, as the State asserts. *See* State Br. at 9. Indeed, the *Horne* Court relied on *Flast* to support its *expansion* of taxpayer standing under Florida law. And the Florida Supreme Court has stated on multiple occasions that standing under Florida law is, in fact, broader than federal rules of standing. *See, e.g.*, *Coal. Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400, 403 (Fla. 1996) ("[I]n Florida, unlike the federal system, the doctrine of standing has not been rigidly followed."); *Reinish v. Clark*, 765 So. 2d 197, 202 (Fla. 2000) ("Florida does not adhere to the 'rigid' doctrine of standing used in the federal system.").

attempting to differentiate between appropriation laws and other *taxing or spending* measures. Rather the point made in both was simply that the taxpayer standing doctrine did not extend to taxpayer challenges to all actions of government, but only to constitutional challenges to an exercise of the taxing and spending powers.

This is evident from *Council for Secular Humanism* itself. While holding that the plaintiffs lacked standing as taxpayers "to challenge the performance of contracts and the decision of an executive agency to enter into a contract," *id.* at 122, the court not only entertained but sustained the taxpayer-plaintiffs' challenge to Florida statutes that provided for the use of public funds, *id.* at 116-21, notwithstanding that these statutes did not themselves contain appropriations. *See* Fla. Stat. §§ 944.473-994.4731.

There can be no dispute that the Scholarship Program involves an exercise of the State's *taxing* power—as it creates multiple new tax credits to reimburse contributions made to private school scholarship funding organizations. *See* Compl. ¶¶ 31-32, 51, 55. The Legislature's ability to create tax credits and determine who may take such credits, in what amounts, and for what purposes clearly stems from the State's taxing power, and taxpayers thus have standing to bring constitutional challenges to such legislation. *See Paul v. Blake*, 376 So. 2d 256, 260 (Fla. 3d DCA 1979) (taxpayer standing to bring constitutional challenge to tax exemption); *Charlotte Cnty. Bd. of Cnty. Comm'rs v. Taylor*, 650 So. 2d 146, 148 (Fla. 2d DCA 1995) (taxpayer standing to challenge amendment to Home Rule Charter limiting ad valorem taxes); *Fornes*, 476 So. 2d at 155 (taxpayer would have standing if she had brought "a constitutional challenge to the taxing statutes at issue").

Nor can it seriously be disputed that the Scholarship Program also involves an exercise of the Legislature's *spending* power, in that it channels to a specific purpose funds that, but for this

Program, would be paid into the public fisc. Rather than simply involving "private, voluntary contributions," as the State would have it, State Br. at 1, the Legislature has established through the Scholarship Program a mechanism by which taxpayer funds are earmarked for the chosen purpose of paying private-school tuition. Indeed, the Step Up for Students SFO, which has served as the principal intermediary for channeling taxpayer funds to private schools, acknowledges in its literature that the "contributions" it receives in reality consist of diverted tax revenue: "[T]he legislature has made it possible for your company to *earmark* up to 100 percent of its state corporate income tax payment to fund low-income student scholarships." *Id.* at ¶ 55 (emphasis added).[4].

This "systematic diversion of public funds to private schools on either a small or large scale is incompatible with article IX, section 1(a)." *Holmes II*, 919 So. 2d at 409. Furthermore, Article I, § 3 "prohibit[s] the state from using its revenue to benefit religious schools." *Holmes I*, 886 So. 2d at 362. The Complaint alleges that the Scholarship Program accomplishes this same impermissible diversion of public funds in violation of Article IX, § 1 and Article I, § 3 as found

[4] The recognition that in operation the Scholarship Program earmarks public funds for the purpose of supporting private school education is consistent with the well-established understanding that "tax expenditures" are the practical and economic equivalent of direct payments:

> The term "tax expenditure" has been used to describe those special provisions of the federal income tax system which represent government expenditures made through that system to achieve various social and economic objectives. These special provisions provide deductions, credits, exclusions, exemptions, deferrals, and preferential rates, and serve ends similar in nature to those served by direct government expenditures or loan programs.

Stanley S. Surrey, *Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures*, 83 Harv. L. Rev. 705, 706 (1970). As the Congressional Joint Committee on Taxation has explained, "[s]pecial income tax provisions are referred to as tax expenditures because they may be considered to be analogous to direct outlay programs, and the two can be considered as alternative means of accomplishing similar budget policy objectives." Staff of Joint Committee on Taxation, 109th Congress, *Estimates of Federal Tax Expenditures for Fiscal Years 2006-2010*, at 2 (Comm. Print 2006).

by the Supreme Court and First District, respectively, in *Holmes*. The State is, of course, free to argue if it wishes that channeling taxpayer funds to private schools through a 100% tax credit obviates these constitutional problems, but that is an argument on the *merits* and does not go to whether or not Plaintiffs have standing as taxpayers to litigate this legal theory. *See, e.g., Sun States Utils., Inc. v. Destin Water Users, Inc.*, 696 So. 2d 944, 945 n.1 (Fla. 1st DCA 1997) ("Standing should not be confused with the merits of a claim.").[5]

2. The State also argues that taxpayers can never have standing to bring claims under Article IX, § 1 because that provision is not an "express limitation of the Legislature's taxing and spending authority." State Br. at 12.[6] This argument is flatly inconsistent with precedent of the Florida Supreme Court, which has expressly found taxpayer standing to pursue a claim under Article IX, § 1. *See Coal. for Adequacy & Fairness in Sch. Funding*, 680 So. 2d at 403.

Moreover, the State's contention that Article IX, § 1 imposes "no limitation at all" on the Legislature's power and is only an "affirmative obligation on the Legislature to provide an adequate educational system," State Br. at 14-15, is startling to say the least – for it is directly contrary to the Supreme Court's decision in *Holmes*: "Article IX, section 1(a) is a limitation on the Legislature's power because it provides both a mandate to provide for children's education and a restriction on the execution of that mandate." *Holmes II*, 919 So. 2d at 406. Specifically, the Court explained that Article IX, § 1 prohibits the legislature from "devoting the state's resources to the education of children within our state through means other than a system of free

[5] The State devotes the bulk of its brief on this point to arguing that tax *exemptions* are distinct from direct appropriations, *see* State Br. at 10-12, but that is not the issue here. The Scholarship Program does not provide a tax exemption but a dollar-for-dollar *tax credit* that reimburses in full the so-called "contributions" made to scholarship organizations.

[6] The State concedes, as it must, that Article I, § 3 is a specific limitation on the State's ability to use public funds. *See* State Br. at 13.

public schools." *Id.* at 407. Plaintiffs' claim in this litigation is that the Scholarship Program violates precisely this Article IX, § 1 restriction on use of "the state's resources."

Finally, the State's argument suffers from an even more fundamental flaw: it assumes that some parts of the Constitution are outside the scope of the taxpayer standing doctrine altogether. That is simply wrong. As the Supreme Court explained in *Chiles*, the critical inquiry is whether the *legislation* under challenge involves "an exercise of the legislature's taxing and spending power," *Chiles*, 589 So. 2d at 263 n.5; if so, taxpayers have standing to raise constitutional challenges to such legislation regardless of whether the constitutional provision at issue could also apply to other (non-taxing or spending) legislation as well.

In the very case that created the taxpayer standing doctrine, for instance, one of the constitutional claims was a challenge under the single-subject rule contained in Article III, § 6. *See Horne*, 269 So. 2d at 660. Article III, § 6 of course applies to all types of legislation, but taxpayers have standing to bring claims under that provision when, as in *Horne*, the legislation being challenged involves an exercise of the State's taxing or spending powers. *Id.* at 662-63. Indeed, Florida courts have found on multiple occasions that the taxpayer standing doctrine extends to constitutional claims challenging an exercise of the State's taxing or spending power, even if the constitutional provision that provides the cause of action could be used to challenge other types of legislation as well. *See, e.g.*, *Chiles*, 589 So. 2d at 263 & n.5 (taxpayer standing to bring constitutional challenge under separation of powers doctrine); *Dep't of Educ. v. Lewis*, 416 So. 2d 455, 459 (Fla. 1982) (taxpayer standing to bring challenge under "the state and federal constitutional prohibition against state action abridging the freedoms of speech and association"); *Jones v. Dep't of Revenue*, 523 So. 2d 1211, 1214 (Fla. 1st DCA 1988) (taxpayer standing to bring constitutional challenge under Article II, § 3 and Article III, § 1); *Charlotte*

Cnty. Bd. of Cnty. Comm'rs, 650 So. 2d at 148 (taxpayer standing to bring constitutional challenge under Article VIII, § 1(g)).

Not surprisingly, none of the cases cited by the State supports its cramped reading of the taxpayer standing doctrine. In three of those cases, the plaintiff had failed to sufficiently allege a specific constitutional challenge to an exercise of the State's taxing or spending power. *See Paul*, 376 So. 2d at 260 (finding taxpayer standing over constitutional claims but lack of standing as to *statutory* claims); *Alachua Cnty. v. Scharps*, 855 So. 2d 195, 199 & n.4 (Fla. 1st DCA 2003) (finding that none of the plaintiff's allegations "constitute a constitutional challenge to the taxing or spending power of the County" but rather only were "general claims of expenditures beyond statutory authority"); *Martin v. City of Gainesville*, 800 So. 2d 687, 689 (Fla. 1st DCA 2001) ("claims of statutory and general law violations" were insufficient for taxpayer standing). And the First District's decision in *Council for Secular Humanism* only serves to undermine the proposition the State advances here. By finding that the plaintiffs had standing to challenge the constitutionality of an exercise of the Legislature's taxing and spending powers under Article I, § 3, but that they lacked standing to bring the *same* constitutional challenge to other types of legislative action, 44 So. 3d at 122, the court was simply applying the established rule that taxpayer standing exists over constitutional challenges directed to an exercise of the taxing or spending power – precisely the type of claims pled here.[7]

[7] The State also cites a recent order from another judge of this Court dismissing for lack of standing a constitutional claim under Article III, § 6 to an omnibus bill containing numerous subjects, including expansion of the Scholarship Program. State Br. at 14 n.3 & Attachment A. To the extent that decision can be read as holding that constitutional challenges under Article III, § 6 are outside the scope of the taxpayer standing doctrine because that provision does not specifically limit the State's ability to enact taxing or spending legislation, such a holding is squarely contradicted by the Supreme Court's decision in *Horne*, which expressly found taxpayer standing to bring a constitutional challenge under Article III, § 6. *See Horne*, 269 So. 2d at 662-63.

CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss should be denied in its entirety.

DATED this 26th day of November, 2014.

Respectfully submitted,

s/ Ronald G. Meyer

RONALD G. MEYER

On Behalf of:

RONALD G. MEYER
Florida Bar No. 0148248
rmeyer@meyerbrookslaw.com
JENNIFER S. BLOHM
Florida Bar No. 0106290
jblohm@meyerbrookslaw.com
LYNN C. HEARN
Florida Bar. No. 0123633
lhearn@meyerbrookslaw.com
Meyer, Brooks, Demma and Blohm, P.A.
131 North Gadsden Street
Post Office Box 1547 (32302)
Tallahassee, FL 32301
(850) 878-5212
(850) 656-6750 – facsimile

ALICE O'BRIEN
Pro Hac Vice No. 89985
aobrien@nea.org
National Education Association
1201 Sixteenth Street, N.W.
Washington, DC 20036-3290
(202) 822-7043
(202) 822-7033 – facsimile

DAVID STROM
Pro Hac Vice No. 111053
dstrom@aft.org
American Federation of Teachers
555 New Jersey Avenue, N.W.
Washington, DC 20001
(202) 879-4400
(202) 393-6385 – facsimile

JOHN M. WEST
Pro Hac Vice No. 53444
jwest@bredhoff.com
RAMYA RAVINDRAN
Pro Hac Vice No. 110707
rravindran@bredhoff.com
Bredhoff & Kaiser, P.L.L.C.
805 Fifteenth Street, N.W.
Suite 1000
Washington, DC 20005
(202) 842-2600
(202) 842-1888 – facsimile

PAMELA L. COOPER
Florida Bar No. 0302546
pam.cooper@floridaea.org
WILLIAM A. SPILLIAS
Florida Bar No. 0909769
will.spillias@floridaea.org
Florida Education Association
213 South Adams Street
Tallahassee, FL 32301
(850) 201-2800
(850) 224-0447 – facsimile

AYESHA N. KHAN
Pro Hac Vice No. 53428
khan@au.org
ALEX J. LUCHENITSER
Pro Hac Vice No. 90515
luchenitser@au.org
Americans United for Separation
of Church and State
1301 K Street, N.W.
Suite 850, East Tower
Washington, DC 20005
(202) 466-3234
(202) 898-0955 – facsimile

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, pursuant to Fla. R. Jud. Admin. 2.516(b)(1), a copy of the foregoing has been provided by e-mail through the Florida Courts e-filing Portal on this 26th day of November, 2014, to:

Allen Winsor
allen.winsor@myfloridalegal.com
allenwinsor@yahoo.com
Rachel E. Nordby
rachel.nordby@myfloridalegal.com
Blaine H. Winship
blaine.Winship@myfloidalegal.com
Office of The Attorney General
The Capitol, PL-01
Tallahassee, FL 32399-1050

Attorneys for Defendants

Karen D. Walker
karen.walker@hklaw.com
jennifer.gillis@hklaw.com
Nathan A. Adams, IV
nathan.adams@nklaw.com
janna.james@hklaw.com
Holland & Knight LLP
315 S. Calhoun Street, Suite 600
Tallahassee, FL 32301

Raoul G. Cantero
rcantero@whitecase.com
White & Case LLP
Southeast Financial Center, Ste. 4900
200 South Biscayne Boulevard
Miami, FL 33131

Jay P. Lefkowitz
Pro Hac Vice Pending
lefkowitz@kirkland.com
Steven J. Menashi
Pro Hac Vice Pending
Steven.menashi@kirkland.com
Kirkland & Ellis, LLP
601 Lexington Avenue
New York, NY 10022

Daniel J. Woodring
Daniel@Woodringlawfirm.com
Woodring Law Firm
203 N. Gadsden Street, Suite 1-C
Tallahassee, FL 32301

Attorneys for Intervenor-Defendants

s/ Ronald G. Meyer
RONALD G. MEYER