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

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

Plaintiffs,

vs. Case No. 09-CA-4534

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

Defendants.

and

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

Intervenors/Defendants
_____/

FINAL JUDGMENT

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

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

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

STRUCTURE OF THE TRIAL COURT'S OPINION

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

PROCEDURAL BACKGROUND

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

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

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

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

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

OPINION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[4] *See* § 1008.33, Fla. Stat.

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

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

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

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

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

FINDINGS OF FACT

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

CONCLUSIONS OF LAW[6]

Justiciability

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

determine whether the State has made adequate provision by law for a "uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education." The evidence shows that many of Florida's education policies and programs are subject to ongoing debate without any definitive consensus in the education community. They are political questions best resolved in the political arena. Given that the Court has conducted a four week trial of the issues raised by the parties the Court concludes that Plaintiffs have not shown that the State has failed "to make adequate provision . . . by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education."[10]

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

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

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

Separation of Powers

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

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

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

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

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

Cost studies/Remedial Plan

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

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

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

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

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

[13] Tr. Vol. 26 at 3915:21–25.

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

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

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

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

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

[15] Tr. Vol. 37 at 5648:23—5649:4.

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

Article IX requirements

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

Rational Basis

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

Allows Students to Obtain

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

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

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

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

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

[17] 2d Am. Compl. ¶ 120.

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

Local School Boards

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

[18] Tr. Vol. 38 at 5642:12–14.

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

Choice Programs

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

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

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

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

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

Conclusion

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

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

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

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

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

George S. Reynolds, III
Circuit Judge