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

THE SCHOOL BOARD OF ALACHUA COUNTY, FLORIDA; THE SCHOOL BOARD OF BAY COUNTY, FLORIDA; THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA; THE SCHOOL BOARD OF CLAY COUNTY, FLORIDA; THE SCHOOL BOARD DUVAL COUNTY, FLORIDA; THE SCHOOL BOARD OF HAMILTON COUNTY, FLORIDA; THE SCHOOL BOARD OF LEE COUNTY, FLORIDA; THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA; THE SCHOOL BOARD OF PINELLAS COUNTY, FLORIDA; THE SCHOOL BOARD OF POLK COUNTY, FLORIDA; THE SCHOOL BOARD OF ST. LUCIE COUNTY, FLORIDA; THE SCHOOL BOARD OF VOLUSIA COUNTY, FLORIDA; and THE SCHOOL BOARD OF WAKULLA COUNTY, FLORIDA, Plaintiffs, THE SCHOOL BOARD OF COLLIER COUNTY, FLORIDA, Intervenor–Plaintiff, v. FLORIDA DEPARTMENT OF EDUCATION; STATE BOARD OF EDUCATION; PAM STEWART, in her official capacity as Florida Commissioner of Education; and MARVA JOHNSON, in her official capacity as Chair of the State Board of Education, Defendants, THE PASSPORT SCHOOL, INC., HOPE CHARTER SCHOOL, INC., LEGACY HIGH SCHOOL, INC., MARCO ISLAND ACADEMY, A PUBLIC CHARTER HIGH SCHOOL, INC., JENNY CARTWRIGHT, BETH SCHMUDE, and LISA BURDUE TACKETT, Intervenor–Defendants.	Case No. 2017 CA 002158

FINAL ORDER AND JUDGMENT

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This matter comes before the Court on the parties' cross-motions for summary judgment. Having considered the parties' written submissions, as well as oral arguments at a hearing on April 4, 2018, the Court denies the Plaintiffs' motion and grants the Defendants' motion.

I. BACKGROUND

A. Procedural Posture

The Plaintiffs are ~~14~~ 13 JCC local school boards (the "Local Boards") that assert six claims for declaratory and injunctive relief challenging Florida education statutes related to public charter schools, federal education funding, and low-performing public schools. Most of these provisions were enacted or amended by House Bill 7069, ch. 2017–116, Laws of Fla., which took effect on July 1, 2017.

The first cause of action challenges HB 7069's requirement that local school boards share discretionary "capital-millage" property-tax revenues with the local charter schools that they sponsor. Ch. 2017-116, §§ 29, 31, Laws of Fla. (amending §§ 1011.71(2), 1013.62, Fla. Stat.). The second cause of action challenges HB 7069's requirement that local school boards enter into performance-based agreements with qualified nonprofits to establish "schools of hope," a type of public charter school designed to provide additional choices for students who attend "persistently low-performing" traditional schools. Ch. 2017-116, § 43, Laws of Fla. (creating § 1002.333, Fla. Stat.). The third cause of action challenges a preexisting statute that allows eligible public charter-school systems to qualify as "local educational agenc[ies]" (or LEAs) for purposes of federal education funding. § 1002.33(25)(a), Fla. Stat.; *cf.* ch. 2017-116, § 21, Laws of Fla. (in part, amending other provisions of § 1002.33(25), Fla. Stat.). The fourth cause of action challenges HB 7069's requirement that local school boards use a "standard charter contract," as previously established under section 1002.33(21) of the Florida Statutes, in their negotiations

with charter-school applicants. Ch. 2017-116, § 21, Laws of Fla. (in part, amending § 1002.33(7), Fla. Stat.). The fifth cause of action challenges HB 7069's amendment to the Equity in School-Level Funding Act, § 1011.69, Fla. Stat., requiring local school districts to provide a certain amount of their federal "Title I" grant funding directly to all eligible schools (including charter schools). Ch. 2017-116, § 45, Laws of Fla. (creating § 1011.69(5), Fla. Stat.). The sixth cause of action challenges HB 7069's adjustments to Florida's "turnaround provisions" for public-school improvement—particularly new limits on a school district's ability to maintain the operational status quo in chronically low-performing schools. Ch. 2017-116, § 41, Laws of Fla. (amending § 1008.33(3)–(5), Fla. Stat.).

The Local Boards contend that these statutory requirements, individually and collectively, "cross [a] line between permissible regulation of the system of public education and usurpation of constitutionally mandated local control" (Pls.' Opp'n to Defs.' Mot. Summ. J. 9) by infringing on their authority to "operate, control and supervise all free public schools within the school district" under article IX, section 4(b). With respect to their first cause of action, the Local Boards further contend that the capital-millage provisions violate article VII, section 1(a) by imposing an impermissible "state ad valorem tax[]" and violate article VII, section 9 by diverting local tax revenues to a state purpose. And with respect to their second and third causes of action, the Local Boards further contend that the schools-of-hope and LEA provisions also violate the constitutional requirement of a "uniform . . . system of free public schools" under article IX, section 1(a).

The Florida Department of Education, State Board of Education, Commissioner of Education, and Chair of the State Board of Education (collectively, the "State Defendants"),

contend that the Local Boards' claims fail as a matter of law because of the State Defendants' authority under article IX, sections 1 and 2 of the Florida Constitution and settled caselaw.

B. Undisputed Facts Common to All Claims[1]

The parties agree that "constitutional authority over public education in Florida is shared among the State and local district school boards." (Pls.' Opp'n to Defs.' Mot. Summ. J. 1; *see also* Defs.' Mot. Summ. J. 8–10.) Article IX, section 1(a) of the Florida Constitution provides that the State shall 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." Article IX, section 2 of the Florida Constitution gives the State Board of Education "such supervision of the system of free public education as is provided by law." And article IX, section 4(b) provides that the local "school board shall operate, control and supervise all free public schools within the school district."

This shared authority is reflected in Florida's long-standing system of free public schools and education finance. "Public education is a cooperative function of the state and local educational authorities," and "[t]he state retains responsibility for establishing a system of public education through laws, standards, and rules." § 1000.03(3), Fla. Stat. In addition, "[t]he district school system shall be considered as a part of the state system of public education. All actions of district school officials shall be consistent and in harmony with state laws and with rules and minimum standards of the state board." *Id.* § 1001.32(1). Florida's charter schools are likewise "part of the state's program of public education," and "[a]ll charter schools in Florida are public schools." § 1002.33(1), Fla. Stat.

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[1] To the extent that these facts concern questions of law, they may be construed as the Court's conclusions of law regarding the applicable constitutional provisions and Florida statutes.

The Local Boards do not challenge the overall structure of Florida's system of public schools or its primary funding mechanism, the Florida Education Finance Program ("FEFP"), and Florida courts have repeatedly acknowledged the constitutionality of Florida's basic funding formula for public education. *See, e.g.*, *Fla. Dep't of Educ. v. Glasser*, 622 So. 2d 944, 948–49 (Fla. 1993); *Dep't of Educ. v. Sch. Bd. of Collier Cty.*, 394 So. 2d 1010, 1013 (Fla. 1981). The Court will therefore presume that these requirements, like the overall structure of Florida's public schools and the FEFP, are constitutional.

Nor do the Local Boards challenge the underlying constitutionality of public charter schools or the State's authority to require local boards to approve an application to open a charter school—both of which also have been upheld by Florida courts. *See Sch. Bd. of Palm Beach Cty. v. Fla. Charter Educ. Found., Inc.*, 213 So. 3d 356, 360 (Fla. 4th DCA 2017), *review denied*, No. SC17-958, 2017 WL 4129202 (Fla. Sept. 19, 2017); *Sch. Bd. of Volusia Cty. v. Acads. of Excellence, Inc.*, 974 So. 2d 1186, 1193 (Fla. 5th DCA 2008). Although the Local Boards "do not concede that these cases themselves were correctly decided" (Pls.' Am. Mot. Summ. J. 24 n.6), this Court is bound by the decisions of Florida's district courts of appeal and will presume that charter schools and the State's authority to require local boards to approve charter applications are consistent with the Florida Constitution.

Under these presumptively constitutional laws, local school boards are responsible for considering and approving applications to open a charter school (including "[t]he facilities to be used and their location") and for monitoring and reviewing any charter schools that they approve or "sponsor." § 1002.33(5)(a)1, (5)(b), (7)(a)13, (6)(b), Fla. Stat. (*See generally* Aff. of Adam Miller [hereinafter Miller Aff.] ¶¶ 6–9, 21–46.) The Local Boards thus "monitor the revenues and expenditures of [each] charter school" and may terminate or nonrenew a charter for a variety

of reasons, including "failure to meet the requirements for student performance stated in the charter" and "[f]ailure to meet generally accepted standards of fiscal management." *Id.* § 1002.33(5)(b)1.b, (8)(a)1, (8)(a)2. (*See generally* Miller Aff. ¶¶ 48–51). Since the creation of public charter schools in 1996, Florida's charter-school laws have also required local school boards to "make timely and efficient payment and reimbursement to charter schools" based on a statutory funding formula that includes "gross state and local funds, discretionary lottery funds, and funds from the school district's current operating discretionary millage levy." § 1002.33(17)(e), (b), Fla. Stat.; *accord* ch. 96-186, § 1, Laws of Fla. (*See generally* Aff. of Adam Miller ¶¶ 54–55; Champion Aff. ¶ 60.) For example, during the 2016–2017 school year, 12 of the Local Boards (excluding the school boards for Hamilton and Collier counties) distributed nearly $780 million in FEFP funding to charter schools —including over $330 million in locally generated ad valorem tax revenues. (Champion Aff. ¶ 60.)

II. CONCLUSIONS OF LAW[2]

A summary judgment should "be rendered immediately if the pleadings and summary judgment evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fla. R. Civ. P. 1.510(c).

In addition, "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.* (internal alterations, citation, and

[2] To the extent that these conclusions describe facts relevant to each cause of action, they may be construed as the Court's findings of undisputed fact.

quotation marks omitted). 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).

A. The State Defendants' Procedural Defenses Do Not Warrant a Summary Judgment in Their Favor.

Before reaching the parties' arguments on the merits, the Court rejects the State Defendants' arguments that some or all of the Local Boards' claims are barred by a lack of standing, the doctrine of estoppel, or a failure to exhaust administrative remedies.

With respect to standing, the Local Boards seek a declaratory judgment that various statutes interfere with their authority under article VII and article IX of the Florida Constitution. Florida law allows "[a]ny person . . . whose rights, status, or other equitable or legal relations are affected by a statute" to "obtain a declaration of rights, status, or other equitable or legal relations thereunder." § 86.021, Fla. Stat. The Local Boards allege that the statutes at issue affect their rights, and despite the State Defendants' arguments to the contrary, the Local Boards have standing to seek declaratory relief in this action.

The Court also rejects the State Defendants' argument that principles of estoppel prevent the Local Boards from challenging HB 7069's capital-millage and schools-of-hope provisions. The fact that the Local Boards complied with and received funding under HB 7069 does not, in the circumstances of this case, bar their constitutional challenges to those provisions.

Finally, the Court rejects the State Defendants' argument that the Local Boards are required to exhaust administrative remedies before pursuing their facial constitutional challenges to schools of hope and the standard charter contract. *See Dep't. of Gen. Servs. v. Willis*, 344 So. 2d 580, 590 (Fla. 1st DCA 1977).

B. The Local Boards' First Claim, Challenging the "Capital-Millage Provisions," Fails as a Matter of Law.

The Local Boards' claim that HB 7069's capital-millage provisions violate article VII and article IX of the Florida Constitution is barred by binding and settled precedent. The Florida Constitution "creates a hierarchy under which a school board has local control, but the State Board supervises the system as a whole." *Palm Beach Cty. v. Fla. Charter Educ. Found.*, 213 So. 3d at 360. The State's "broader supervisory authority may at times infringe on a school board's local powers, but such infringement is expressly contemplated—and in fact encouraged by the very nature of supervision—by the Florida Constitution." *Id.* And "there is nothing in the constitution"—not in article VII, nor in article IX—"which requires that [junior colleges or other public education programs] be under the control of the local school board or that prohibits the legislature enacting laws requiring that some local school funds be used in support of such institutions to the extent that they serve a local purpose." *Bd. of Pub. Instruction of Brevard Cty. v. State Treasurer*, 231 So. 2d 1, 3 (Fla. 1970) (quoting and approving circuit court's judgment).

In *Brevard County*, the Florida Supreme Court held that requiring local boards of education to share their property-tax revenues with junior colleges (which were outside the local boards' control) did not violate article VII or article IX of the Florida Constitution. The *Brevard County* plaintiff was a local school board challenging two statutes "providing for the support of junior colleges by county (now district) boards of public instruction." 231 So. 2d at 2 (quoting and affirming circuit court's judgment). The Supreme Court rejected that challenge for several reasons that apply here as well. First, "while the local board must determine the rate of all school district taxes, some of the taxes so levied by the local school district can properly be used for local school purposes other than the support of the free public schools when so provided by law." *Id.* at 3. Second, there is not "anything in the constitution which requires that all taxes

levied by a county-wide school district be appropriated exclusively to free public schools or that requires that no part of such funds may be appropriated for other school purposes and administrated by other officers." *Id.* Third, the fact that "control of the free public schools in each district is vested in the local school board" under article IX "does not prohibit the legislature from placing upon the local school districts the duty to render financial support to junior colleges which are not under the control of the local school boards but which have been established at their request." *Id.* at 4. And if "[a]d valorem taxes levied by school districts for support of [junior colleges] are local taxes levied for local purposes," *id.*, then taxes levied to support local public charter schools must also be permissible under article VII, sections 1(a) and 9.

The Local Boards' attempt to distinguish *Brevard County* on the ground that the junior colleges in that case were not "under the control of the local school boards" (Pls.' Am. Mot. Summ. J. 27) is unpersuasive. If local tax revenues could be used in *Brevard County* to support junior colleges that were not even under the local board's control, surely those funds can be used to support local public charter schools that will in turn use the funds to house and educate local schoolchildren. The Legislature has at least as much authority to require the use of local taxes to support locally sponsored and supervised charter schools here as it did to require local boards to fund junior colleges that were beyond the local boards' control in *Brevard County*.[3] Thus, *Brevard County* forecloses the Local Boards' article VII and article IX claims.

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[3] The other cases that the Local Boards cite to support their capital-millage challenge are inapposite. *Jones v. Braxton*, 379 So. 2d 115 (Fla. 1st DCA 1979) (*cited in* Pls.' Am. Mot. Summ. J. 16–17, 21–22), involved a group of private plaintiffs who had asked the court to enjoin a school district from rescinding a construction contract—not a declaratory-judgment claim that statutory capital-outlay requirements were unconstitutional. And *Duval County School Board v. State, Board of Education*, 998 So. 2d 641 (Fla. 1st DCA 2008)—in which the court disapproved of an independent state-level entity with "all the powers of operation, control and supervision of

The Court also rejects the Local Boards' argument that HB 7069 unconstitutionally requires them to share capital-outlay revenues "on an arbitrary basis" because the enrollment-based distribution formula does not consider each eligible "charter school's actual need." (Pls.' Am. Mot. Summ. J. 20, 5.) To the contrary, it is undisputed that the average distribution of capital-millage funds to eligible charter schools under HB 7069 for the 2017–2018 school year was not enough to cover the full cost of a typical charter-school lease. (*See* Miller Aff. ¶¶ 73–77.) HB 7069's enrollment-based formula for charter-school capital-outlay funding accounts for the fact that schools with more students need more classrooms, and charter schools are required to spend capital-outlay funding for substantially the same purposes as school districts. (*See* Champion Aff. ¶ 44.) The Local Boards have not shown that the capital-millage provisions are constitutionally different from the numerous other, presumptively constitutional requirements governing the use of local tax dollars in Florida's public schools—which have included charter schools for more than 20 years.

This Court cannot wade into policy debates about "the enactment of educational policies regarding teaching methods and accountability, the appropriate funding of public schools, the proper allowance of charter schools and school choice, the best methods of student accountability and school accountability, and related funding priorities." *Citizens for Strong Schs., Inc. v. Fla. State Bd. Of Educ.*, 232 So. 3d 1163, 1166 (Fla. 1st DCA 2017). Regardless of whether requiring the Local Boards to share capital-millage revenues with their local charter schools is "bad policy" (Pls.' Am. Mot. Summ. J. 19), the Court cannot determine that HB 7069's

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free public education," *id.* at 643—has no bearing on whether the Local Boards can be required to share public funding with the local charter schools that they sponsor and supervise under state law.

capital-millage provisions "cross constitutional lines" (Pls.' Opp'n to Defs.' Mot. Summ. J. 1) when those policies are supported by a conceivable rational basis.

Nor have the Local Boards explained how the Constitution could preclude the State from imposing conditions on a discretionary capital-millage tax that can be levied only with legislative authorization and the Local Boards' voluntary approval. *See generally Glasser*, 622 So. 2d at 947. This requirement is no more intrusive than the presumptively constitutional requirements imposed on local school districts by the FEFP and many other statutory requirements that the Local Boards have not challenged in this litigation.

C. The Second Claim, Challenging Schools of Hope, Fails as a Matter of Law.

The Local Boards' second cause of action challenges section 1002.333 of the Florida Statutes, which requires school boards to contract with approved nonprofit charter-school operators to open "schools of hope," which are a new type of public charter school designed to "serve students from one or more persistently low-performing schools"—i.e., nearby public schools that have earned three consecutive grades lower than C (a D or an F) in Florida's accountability and school-grading system. § 1002.333(1)(c)1, (1)(b), Fla. Stat. (*See generally* Mar. 1, 2018 Aff. of Melissa Ramsey [hereinafter Ramsey Aff.] ¶ 19; Miller Aff. ¶ 78.) Eligible "hope operator[s]" must have a proven track record of success in serving low-income families in other charter schools and must be specifically designated by the State Board of Education. *Id.* § 1002.333(2). (*See also* Ramsey Aff. ¶ 20.) Hope operators can submit a detailed "notice of intent to the school district in which a persistently low-performing school has been identified," after which the "school district shall enter into a performance-based agreement with a hope operator to open schools to serve students from persistently low-performing schools." *Id.* § 1002.333(4), (4)(b). During the 2016–2017 school year, about 90 schools throughout Florida

qualified as persistently low-performing, partly because of their students' poor average performances on state assessments. (*See* Miller Aff. ¶ 79; Ramsey Aff. ¶ 19.)

The Court concludes that the schools-of-hope provisions are constitutional under article IX. Florida's appellate courts have already upheld the constitutionality of charter schools—as well as the State's authority to require local school boards to approve charter applications unless there is "good cause" for a denial. *See Palm Beach Cty. v. Fla. Charter Educ. Found.*, 213 So. 3d at 360; *Volusia Cty. v. Acads. of Excellence*, 974 So. 2d at 1193. *See generally* § 1002.33(6)(b)3.a, Fla. Stat. To the extent that the schools-of-hope provisions require local boards to contract with pre-approved hope operators in areas with persistently low-performing schools, the State could rationally determine that refusing to contract with a hope operator would not be supported by "good cause." And the State Defendants' summary-judgment evidence belies the Local Boards' unsworn assertions that schools of hope are somehow "independent of local district school boards" or have performance-based agreements that "will not be negotiated by the district school board." (Pls.' Am. Mot. Summ. J. 6, 7. *See generally* Miller Aff. ¶¶ 78, 81-82, 84–85; *id.* Ex. L.) *See also* Fla. Admin. Code R. 6A-1.0998271(4)(a).

With respect to the Local Boards' argument that the schools-of-hope provisions violate article IX, section 4(b), even they concede that schools of hope do not entail the creation of an "independent, state-level [chartering] entity" of the sort held unconstitutional in *Duval County School Board v. State, Board of Education*, 998 So. 2d 641, 644 (Fla. 1st DCA 2008). (*See* Pls.' Am. Mot. Summ. J. 29.) The fact that the State Board of Education may contract with a hope operator if a local school board refuses to do so as required by law does not mean that HB 7069 "eliminat[es] any role for local district school boards." (*Id.* (emphasis omitted).) As long as the

Local Boards either prevent their local schools from remaining in a persistently low-performing state under § 1002.333(1)(b), Fla. Stat., or fulfill their statutory obligation to enter into performance-based agreements and supervise any schools of hope themselves under § 1002.333(4)(b), there will be no occasion for the State Board to contract with hope operators directly. *Cf.* Fla. Admin. Code R. 6A-1.0998271(6).

The Local Boards' attempt tc construe schools of hope as violating the constitutional uniformity requirement under article IX, section 1 and *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006), is similarly unpersuasive. Public schools of hope are not "an alternative system of private schools" within the scope of the narrow holding in *Bush v. Holmes*, 919 So. 2d at 412 (*quoted in* Pls.' Am. Mot. Summ. J. 30). But even if schools of hope could be fairly characterized as "a separate system of public schools entirely independent of local district school boards" (*id.*), the Local Boards' uniformity challenge would be barred by the First DCA's holding in *Citizens for Strong Schools*, 232 So. 3d at 1174: "It is difficult to perceive how a modestly sized program designed to provide . . . children with more educational opportunities to ensure access to a high quality education could possibly violate the text or spirit of a constitutional requirement of a uniform system of free public schools."

D. The Third Claim, Regarding "Local Education Agencies," Fails as a Matter of Law.

The Local Boards' third cause of action challenges § 1002.33(25)(a), Fla. Stat., which has allowed eligible "charter school systems" to serve as their own "local educational agency ['LEA'] for the purpose of receiving federal funds" since 2011. *See* ch. 2011-55, § 8, Laws of Fla. This claim under article IX fails as a matter of law because regardless of LEA status—which affects only federal funds and programs—each school within a charter system is still approved, sponsored, monitored, and reviewed by a local school board.

Undisputed summary-judgment evidence shows that although LEAs assume responsibility for administering federal grants, charter schools that become part of their own LEA are still (1) part of the school district, (2) operate under a district-negotiated charter contract with the local board, (3) provide reports and audits to the school district, (4) are monitored and overseen by the school district, and (5) are subject to termination by the school district. (Miller Aff. ¶¶ 65, 67.) Given these undisputed facts, allowing charter systems (or schools of hope) to receive federal funds directly, as permitted by federal law, does not violate article IX's local-control provision in section 4(b) or the uniformity requirement of section 1. Regardless of whether a charter system administers its own federal grants, it is still part of the school district and subject to the local board's supervision. (Miller Aff. ¶ 67.) The State Defendants are therefore entitled to judgment as a matter of law on the Local Boards' third cause of action.

E. The Fourth Claim, Regarding a "Standard Contract" for Charter Schools, Fails as a Matter of Law.

The Local Boards' challenge to the standard charter contract required by § 1002.33(7) and (21), Fla. Stat., fails for many of the same reasons that undermine their arguments about the performance-based agreement for schools of hope. Both the standard contract and its implementing regulations contemplate a process of negotiation and agreement between charter applicants and their sponsoring school districts—a process that has continued to play out in actual negotiations involving revisions to the standard charter contract. (*See* Miller Aff. ¶¶ 34–40.) Florida law expressly contemplates that charter applicants and their school-board sponsors will still "negotiate" charter contracts. § 1002.33(7)(b), Fla. Stat.; *see also* Fla. Admin. Code R. 6A-6.0786(3). The State Defendants are thus entitled to summary judgment on this claim as well.

F. The Fifth Claim, Regarding "Title I" Funds, Fails as a Matter of Law.

The Local Boards' Title I claim—which is based on the theory that they have a state constitutional right under article IX, section 4(b) "to allocate Title I [federal] funds in the manner [they] deem[] most beneficial" (Pls.' Am. Mot. Summ. J. 37)—fails as a matter of law because the Local Boards do not have any state constitutional right to federal Title I dollars. Under federal law, a school district cannot receive any of those funds unless the State determines that the district's Title I plan meets the requirements of federal law and "provides that schools served under this part substantially help children served under this part meet the challenging State academic standards." *Id.* § 6312(a)(3)(B)(i). *See generally id.* §§ 6311, 6312(a)(1). (*See generally* Aff. of Sonya Morris [hereinafter Morris Aff.] ¶¶ 9–14.)

HB 7069's effort to direct more Title I funding toward individual schools is also rationally related to legitimate concerns about ensuring that Title I funds benefit schools with the highest proportions of economically disadvantaged students. It is undisputed that federal policy has "emphasized poverty and established the priority that Title I funding flow to high-poverty schools before serving schools with less poverty." (Morris Aff. ¶ 8.) And guidance from the U.S. Department of Education has further encouraged the use of Title I funds in specific schools as opposed to reserving those funds at the district level. (*See id.* Ex. A, at 10). The State Defendants are entitled to judgment as a matter of law on the Local Boards' fifth cause of action.

G. The Sixth Claim, Regarding HB 7069's "Turnaround Provisions," Fails as a Matter of Law.

The Local Boards' sixth and final cause of action challenges HB 7069's adjustments to the requirements for public-school improvement in chronically low-performing "turnaround" schools that have received multiple consecutive grades of D or F in the state accountability system. This claim fails because it does not account for the State's shared authority over

Florida's public schools—or for the State's interest in "apply[ing] intensive intervention and support strategies tailored to the needs of schools earning two consecutive grades of 'D' or a grade of 'F'" throughout the entire state. § 1008.33(4)(a), Fla. Stat.

HB 7069 amended Florida's turnaround provisions to require local school districts to implement a two-year "district-managed turnaround plan" for any school that "earns two consecutive grades of 'D' or a grade of 'F'" in the state's school-grading and accountability system. § 1008.33(4)(a), Fla. Stat. (*See also* Ramsey Aff. ¶ 9; *id.* Exs. D and E.) If a school subject to those "intensive intervention and support strategies" does not pull its grade up to at least a C within two or three years, the local school district must choose one of three turnaround options for that school: (1) reassigning students to another school, (2) converting the school to a charter school, or (3) contracting with an outside operator that has a demonstrated record of effectiveness. *Id.* § 1008.33(4)(b). But "[i]mplementation of the turnaround option is no longer required if the school improves to a grade of 'C' or higher." *Id.* § 1008.33(4)(c). (*See generally* Ramsey Aff. ¶¶ 9–15.)

The Court concludes that none of the mandatory turnaround options for chronically low-performing schools under HB 7069 "automatically and directly divest[]" school districts "of their authority over such public schools" (Pls.' Am. Mot. Summ. J. 38). If the district chooses to reassign students to another traditional public school, the district maintains the same level of control over those students in the other school to which they are reassigned. And if the district chooses to collaborate with a charter school's governing board or another outside operator, the local school board can negotiate the terms of their agreement and supervise the school's operation in a sponsorship role. Hence, even if a small school district were required to choose a mandatory turnaround option for its "only" school, it would not thereby lose "control" over that

school for purposes of article IX. From a constitutional perspective, requiring a local board to reassign students from chronically low-performing school to another school or to collaborate with a charter operator is no different from reversing a local board's denial of a charter application. *Cf. Palm Beach v. Fla. Charter Educ. Found.*, 213 So. 3d at 360.

Moreover, the Legislature has found that "[t]he academic performance of all students has a significant effect on the state school system," and there is a rational, constitutional basis for the State to focus on chronically low-performing schools under HB 7069. § 1008.33(3)(a), Fla. Stat. If a local board fails over a period of years to turn around a chronically low-performing school, the constitutional "hierarchy" of state authority and supervision over the statewide system of public schools justifies a limited "infringe[ment] on [the] school board's local powers" to help the affected students. *Palm Beach v. Fla. Charter Educ. Found.*, 213 So. 3d at 360. Because the Local Boards cannot show that the turnaround provisions are unconstitutional beyond a reasonable doubt or lack a conceivable rational basis, the State Defendants are entitled to judgment as a matter of law on the sixth cause of action.

H. The Local Boards' "Collective" Challenge to HB 7069 Fails as a Matter of Law.

The Local Boards' last argument is that "[e]ven if the challenged provisions of HB 7069" do not "independently violate Article IX of the Florida Constitution," the Court should nevertheless grant their motion for summary judgment on the theory that those provisions are "collectively" unconstitutional. (Pls.' Am. Mot. Summ. J. 39.) The Court rejects this invitation to venture beyond the claims actually asserted in the Complaint. "[I]ssues that are not pled in a complaint cannot be considered by the trial court at a summary judgment hearing." *Fernandez v. Fla. Nat'l Coll., Inc.*, 925 So. 2d 1096, 1101 (Fla. 3d DCA 2006). The Court rejects the Local Boards' "collective" challenge for this reason alone—because it was not asserted in the

Complaint. *See Hart Props., Inc. v. Slack*, 159 So. 2d 236, 239–40 (Fla. 1963). Further, even if Local Boards had asserted a collective challenge that claim would also fail.

The Local Boards' "collective" theory of liability also underscores the deficiencies of their individual claims. The Local Boards argue that "[a]ll six of the challenged aspects of HB 7069 cross [the] line between permissible regulation of the system of public education and usurpation of constitutionally mandated local control" (Pls.' Am. Mot. Summ. J. 17–18)—but they do not explain how to find that constitutional "line." Nor do the Local Boards propose any judicially manageable standards to resolve the constantly evolving political and policy debates surrounding laws like HB 7069 (and for that matter, HB 7055). *Cf. Citizens for Strong Schs.*, 232 So. 3d at 1169. The Local Boards' argument that even "insignificant, incremental changes" could be unconstitutional in theory (Pls.' Opp'n to Defs.' Mot. Summ. J. 11) does not rest on principles that could allow the Court to determine when statutory education policies cross an undefined "line."

III. CONCLUSION

For the reasons set forth above, the Court **DENIES** the Local Boards' motion for summary judgment and **GRANTS** the State Defendants' motion for summary judgment.

DONE AND ORDERED in Tallahassee, Leon County, Florida on this 17 day of April 2018.

JOHN C. COOPER
CIRCUIT JUDGE

Copies to:

This order will be eserved to all counsel of record if their names and email addresses have been recorded by the Clerk. It is the responsibility of each counsel to ensure that their names and email addresses have been recorded by the Clerk so that they may be eserved by the Court with its orders.