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Florida's Decision To Not Decide: Leaving The Neediest Students Without A Voice

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Abstract

Since the seminal case, *San Antonio Independent School District v. Rodriguez*, School finance suits have been relegated to a state issue.

KEYWORDS: Neediest, Education, Finance

FLORIDA'S DECISION TO NOT DECIDE: LEAVING THE NEEDIEST STUDENTS WITHOUT A VOICE

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I. INTRODUCTION

Since the seminal case, *San Antonio Independent School District v. Rodriguez*,¹ school finance suits have been relegated to a state issue.² All of

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1. 411 U.S. 1 (1973).

2. Carlee Poston Escue et al., *Some Perspectives on Recent School Finance Litigation*, 268 EDUC. L. REP. 601, 601–02 (2011); see also Areto A. Imoukhuede, *The Fifth Freedom: The Constitutional Duty to Provide Public Education*, 22 U. FLA. J.L. & PUB. POL'Y 45, 47 (2011) (discussing the fact that although education was considered by President Lyndon B. Johnson to be *the freedom from ignorance*, the Supreme Court of the United States has held that education is not a fundamental right); Charles J. Ogletree, Jr., *The Legacy and*

the fifty states' constitutions contain an education provision, with each provision containing varying levels of requirements.³ Lawsuits claiming that a state is providing an unconstitutional level of education are assessed according to these provisions.⁴ However, in the most recent Florida cases, the courts of Florida have refused to interpret the meaning of the education provision in the Florida Constitution.⁵ Despite having the authority to interpret the language of the provision,⁶ the Florida courts have deferred to the legislature on this issue because of fears of breaching the separation of powers doctrine.⁷ The legislature, in turn, has refused to clarify the meaning

Implications of San Antonio Independent School District v. Rodriguez, 17 RICH. J.L. & PUB. INT. 515, 522 (2014) (discussing the Supreme Court of the United States' decision to show deference to the State Legislature, which had traditionally operated education because these localities were in the best position to make such decisions); Richard J. Stark, *Education Reform: Judicial Interpretation of State Constitutions' Education Finance Provisions — Adequacy vs. Equality*, ANN. SURV. AM. L. 609, 623 (1991).

3. Karen Swenson, *School Finance Reform Litigation: Why Are Some State Supreme Courts Activist and Others Restrained?*, 63 ALB. L. REV. 1147, 1156–57 (2000); see also Escue et al., *supra* note 2, at 602–03.

4. Swenson, *supra* note 3, at 1156.

5. See *Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400, 408 (Fla. 1996) (per curiam) (holding there were “[no] judicially discoverable and manageable standards” for the court to determine whether the state had achieved an adequate level of education); *Citizens for Strong Sch., Inc. v. Fla. State Bd. of Educ.*, No. 09-CA-4534, slip op. at 28–29 (Fla. 2d Cir. Ct. May 24, 2016) (final judgment ruling in favor of the Florida State Board of Education). The courts claim the education provision does not contain any justiciable standard. *Coal. for Adequacy & Fairness in Sch. Funding, Inc.*, 680 So. 2d at 408; *Citizens for Strong Sch., Inc.*, slip op. at 18–19.

6. *Locke v. Hawkes*, 595 So. 2d 32, 36 (Fla. 1992) (holding one of the primary functions of the Supreme Court of Florida is to interpret the constitution, and the doctrine of separation of powers is not violated by a decision that negatively affects the executive or legislative branch); see also 10 FLA. JUR. 2D *Constitutional Law* § 55 (2016).

A constitutional provision should be construed as a whole in order to ascertain the general purpose and meaning of each part . . . must be read in light of the others to form a congruous whole so as not to render any language superfluous. Each provision in the [c]onstitution was inserted with a definite purpose and all its sections and provisions must be construed together in order to determine its meaning, effect, restraints, and prohibitions and the purpose of the people in adopting it. Indeed, it is a fundamental rule of construction and interpretation of constitutions that not only should a constitutional provision be construed in its entirety, but all the provisions of the constitution should be interpreted with reference to each other unless a different intent is clearly manifested.

10 FLA. JUR. 2D *Constitutional Law* § 55.

7. *Coal. for Adequacy & Fairness in Sch. Funding, Inc.*, 680 So. 2d at 408; *Citizens for Strong Sch., Inc.*, slip op. at 16–17; Jon Mills & Timothy McLendon, *Setting a New Standard for Public Education: Revision 6 Increases the Duty of the State to Make “Adequate Provision” for Florida Schools*, 52 FLA. L. REV. 329, 357 (2000).

of the education provision.⁸ The effect of the inactions of the courts of Florida and the Florida Legislature is that children in ineffective school districts have no avenue available to challenge the constitutionality of the level of education provided to them.⁹

This Comment will explain the current landscape of school finance reform in Florida by examining the history of school finance suits within the state, and attempt to explain why the Supreme Court of Florida should interpret the language in the education provision.¹⁰ Part II will briefly discuss school finance suits within the United States and, more specifically, in Florida.¹¹ Part III will examine the 1998 amendment to the education provision in the Florida Constitution, which received heavy support from the citizens of Florida, along with the subsequent Supreme Court of Florida decision in *Bush v. Holmes*.¹² Part IV will examine the most recent challenge to Florida's school finance system.¹³ Part V will examine how the Supreme Court of Washington held that it had the power and duty to interpret its own constitutional education provision.¹⁴ Part VI will explain why the Supreme Court of Florida should interpret the education provision and what the next step for education reformers is if the court does not.¹⁵ Lastly, Part VII will offer a conclusion.¹⁶

II. SCHOOL FINANCE SUITS

Since the 1960s, there have been three significant *waves* of education finance related litigation in the United States.¹⁷ The first wave, beginning in the 1960s, was premised on the *Equal Protection* guarantee of the Fourteenth Amendment and came to an end with the infamous Supreme Court of the United States decision *San Antonio Independent School District* in 1973.¹⁸ When the Supreme Court of the United States held that education is not a fundamental right under the United States Constitution, challenges to

8. See Daniel Gordon, *Failing the State Constitutional Education Grade: Constitutional Revision Weakening Children and Human Rights*, 29 STETSON L. REV. 271, 300 (1999).

9. *Id.*

10. See *infra* Parts II–VI.

11. See *infra* Part II.

12. 919 So. 2d 392 (Fla. 2006); see also *infra* Part III.

13. See *infra* Part IV.

14. See *infra* Part V.

15. See *infra* Part VI.

16. See *infra* Part VII.

17. Escue et al., *supra* note 2, at 601–02.

18. U.S. CONST. amend. XIV; *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 24, 37 (1973); Escue et al., *supra* note 2, at 602.

education reform found a different route in state equal protection and the education provisions in state constitutions.¹⁹

“Th[is] second wave, which lasted from the” *Robinson v. Cahill*²⁰ decision until 1989, focused on equality, specifically, the difference in resources and quality of education between the wealthy and poor school districts.²¹ This disparity was a result of an *over-reliance* on funding schools through local property taxes.²² Inconsistent decisions marked this second wave, as some states found their public school financing systems to be unconstitutional while other states found them to be constitutional.²³

The third wave began with *Rose v. Council for Better Education, Inc.*,²⁴ and *Helena Elementary School District No. 1 v. State*.²⁵ Both cases focused on the issue of whether an adequate education had been provided by the state, with both courts ultimately finding that some schools failed to reach this minimum standard.²⁶ While some scholars argue there are several variables that could help explain how one court decides that its school finance system is constitutional or not,²⁷ this third wave also had inconsistent rulings, as was seen in the second wave of school finance litigation.²⁸ Other states have found the issue to be a non-justiciable question for the courts,²⁹ alleging that the legislature is better equipped to handle school finance policies.³⁰

The difference between equity and adequacy warrants a brief explanation.³¹ These terms’ definitions differ from jurisdiction to jurisdiction.³² However, generally speaking, “[p]ublic education systems are

19. Escue et al., *supra* note 2, at 602–03, 617; Mills & McLendon, *supra* note 7, at 335–36.

20. 306 A.2d 65 (N.J. 1973) (per curiam).

21. See Escue et al., *supra* note 2, at 602.

22. Mills & McLendon, *supra* note 7, at 336–37.

23. *Id.* at 337.

24. 790 S.W.2d 186 (Ky. 1989).

25. 769 P.2d 684 (Mont. 1989); see also Escue et al., *supra* note 2, at 602–03.

26. *Rose*, 790 S.W.2d at 189; *Helena Elementary Sch. Dist. No. 1*, 769 P.2d at 685, 690; see also Escue et al., *supra* note 2, at 603.

27. See generally Swenson, *supra* note 3 (stating that judicial selection procedures, the state constitution’s education clause, percent revenue from local sources, size of wealth gap, per pupil expenditure, legislative reform prior to court decisions, ideology of the mass public, and the party of the governor are all factors which can be used to determine whether a state’s Supreme Court will find its education system constitutional or not).

28. Mills & McLendon, *supra* note 7, at 341–42.

29. *Id.*

30. Swenson, *supra* note 3, at 1149.

31. CURTIS TODD BOWDEN, THE FLORIDA EDUCATION FINANCE PROGRAM FROM 1981 TO 2001: A HISTORICAL REVIEW AND EQUITY ANALYSIS, 2 (2009).

32. See *id.*

designed to produce equity [or] fairness in the treatment of their students.”³³ Equity standards examine whether schools receive similar funding.³⁴ On the other hand, adequacy generally concerns “the amount of money needed by a system of education to deliver a specific result.”³⁵ The focus of adequacy is the accomplishment of a stated outcome based on student performance, or whether a student’s needs are met.³⁶ It is widely regarded that adequacy is a better tool for reforming an education system, because adequacy focuses on needy students, while a ruling on equity may result in system-wide reform for all schools—even high achieving schools.³⁷ Therefore, state courts have been more willing to adjudicate on issues of adequacy over issues of equity.³⁸

A. *Challenges to Florida’s System*

Scholars have developed four different categories in order to evaluate the level of duty imposed on a state’s legislature by an education clause contained in the state constitution.³⁹ “[S]tates with the lowest requirements” are considered Category I, while the highest level of duty is considered a Category IV.⁴⁰ These categories are vital to understanding the evolution of Florida’s education provision within Florida’s Constitution.⁴¹

The first major change to the education provision within the Florida Constitution came in 1868, which contained the requirement for a public school system in the state.⁴² Article VIII, section 1 of the 1868 Florida Constitution made it “the paramount duty of the [s]tate” to provide for “the education of all . . . children residing within its borders, without distinction

33. *Id.* at 6.

34. *Id.* at 5.

35. *Id.* at 2.

36. DOUGLAS N. HARRIS, FLA. STATE UNIV., *FUNDING FLORIDA’S SCHOOLS: ADEQUACY, COSTS, AND THE STATE CONSTITUTION* 4.1 (2004); BOWDEN, *supra* note 31, at 2.

37. Stark, *supra* note 2, at 665.

38. *Id.*

39. Jon Mills & Timothy McLendon, *Strengthening the Duty to Provide Public Education*, 72 FLA. B. J. 28, 28 (1998).

40. *Id.*

Category I provisions merely mandate some system of free public schools with no requirement as to support or quality. Category II provisions impose some minimal standard of quality. Category III provisions strengthen this standard by adding some specific mandate. Category IV provisions make education a very important duty of the state, and impose the highest mandate of support.

Mills & McLendon, *supra* note 7, at 344.

41. *See id.* at 343–44.

42. FLA. CONST. of 1868, art. VIII; Barbara J. Staros, *School Finance Litigation in Florida: A Historical Analysis*, 23 STETSON L. REV. 497, 501 (1994).

or preference.”⁴³ Under this strong language, the education clause in Florida’s Constitution would have been classified as Category IV, or “imposing a great duty on the [state].”⁴⁴ The constitution also contained language, which “directed the legislature to provide a uniform system of common schools.”⁴⁵

Unfortunately for advocates of education, the Florida Constitution of 1885 dropped the *paramount duty* language and the new provision read, “[t]he [l]egislature shall provide for a uniform system of public free schools, and shall provide for the liberal maintenance of the same.”⁴⁶

The first case to examine the *uniform system* language was *State ex rel. Clark v. Henderson*.⁴⁷ The Supreme Court of Florida “held that the *uniform system* [language] required free public schools to be ‘established upon principles that are of uniform operation throughout the state and that such a system [shall] be liberally maintained.’”⁴⁸ The court also noted that “[t]he purpose intended to be accomplished in establishing and liberally maintaining a uniform system of public free schools is to advance and maintain proper standards of enlightened citizenship.”⁴⁹ This interpretation of *uniform system* required the state to operate uniformly across every school district.⁵⁰

The Supreme Court of Florida revisited the issue of uniformity in two cases in the 1990s.⁵¹ In 1991, in *St. Johns County v. Northeast Florida Builders Association*,⁵² the court held:

The Florida Constitution only requires that a system be provided that gives every student an equal chance to achieve basic educational goals prescribed by the legislature. The constitutional mandate is not that every school district in the state must receive equal funding nor that each educational program must be equivalent. Inherent inequities, such as varying revenues because

43. FLA. CONST. of 1868, art. VIII, § 1.

44. Staros, *supra* note 42, at 501; *see also* FLA. CONST. of 1868, art. VIII, § 1.

45. Staros, *supra* note 42, at 501; *see also* FLA. CONST. of 1868, art. VIII, § 2.

46. FLA. CONST. of 1885, art. XII, § 1; Mills & McLendon, *supra* note 7, at 349.

47. 188 So. 351 (Fla. 1939); Mills & McLendon, *supra* note 7, at 352.

48. Staros, *supra* note 42, at 502; *see also Henderson*, 188 So. 3d at 352.

49. *Henderson*, 188 So. 3d at 353.

50. *See id.*; Mills & McLendon, *supra* note 7, at 352.

51. *See Fla. Dep’t of Educ. v. Glasser*, 622 So. 2d 944, 947 (Fla. 1993); *St. Johns Cty. v. N.E. Fla. Builders Ass’n*, 583 So. 2d 635, 641 (Fla. 1991).

52. 583 So. 2d 635 (Fla. 1991).

of higher or lower property values . . . will always favor or disfavor some districts.⁵³

Moving away from the interpretation of uniformity in *Henderson*, the court essentially redefined uniformity to mean only an equal chance and not true equality.⁵⁴ Two years after the *St. John County* decision, the Supreme Court of Florida decided *Florida Department of Education v. Glasser*.⁵⁵ Justice Kogan reiterated and even cited to *St. John County* in his concurring opinion in *Glasser*, which states:

Florida law now is clear that the uniformity clause will not be construed as tightly restrictive, but merely as establishing a larger framework in which a broad degree of variation is possible. . . . [V]ariance from county to county is permissible so long as no district suffers a disadvantage in the basic educational opportunities available to its students, as compared to the basic educational opportunities available to students of other Florida districts.⁵⁶

Justice Grimes leveled another blow to advocates of education in his concurring opinion when he stated that while the Florida Constitution calls for a “uniform system of free . . . schools, it stops short of declaring public education to be a fundamental right.”⁵⁷

The Supreme Court of Florida would decide the most crucial case to understanding the current challenge to Florida’s school finance system in 1996.⁵⁸ After previous challenges to Florida’s school finance system failed to provide relief to Florida’s children, advocates had to adjust their strategy.⁵⁹ In *Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles*,⁶⁰ the court addressed both the issues of uniformity and adequacy.⁶¹ The plaintiffs in this case sought declaratory relief, claiming that a fundamental right to an adequate education existed under the Florida Constitution.⁶² The court held that it could not determine the meaning of

53. *Id.* at 641.

54. Mills & McLendon, *supra* note 7, at 353.

55. 622 So. 2d 944, 949 (Fla. 1993); *St. Johns Cty.*, 583 So. 2d at 642.

56. *Glasser*, 622 So. 2d at 950 (Kogan, J., concurring).

57. *Id.* at 950 n.8; *see also* Staros, *supra* note 42, at 514.

58. *See* *Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400, 402 (Fla. 1996) (per curiam); Mills & McLendon, *supra* note 39, at 30.

59. Gordon, *supra* note 8 at 279.

60. 680 So. 2d 400 (Fla. 1996) (per curiam).

61. *Id.* at 405–06; Mills & McLendon, *supra* note 39, at 30.

62. *Coal. for Adequacy & Fairness in Sch. Funding, Inc.*, 680 So. 2d at 402; Gordon, *supra* note 8, at 280.

adequacy, as there were no “judicially discoverable and manageable standards.”⁶³ The court evaded the constitutional challenge to the education provision by claiming that a decision would infringe on the legislature’s powers.⁶⁴

On its face, this decision seemed like a failure to funding advocates, but in actuality, it opened the door for future legal arguments in favor of adequacy.⁶⁵ The majority, once again, rejected any notion of a fundamental right to education.⁶⁶ However, the majority also held that the plaintiffs had failed to provide an appropriate standard for determining adequacy, meaning that if an appropriate standard were provided in the future, the court could revisit and adjudicate the issue.⁶⁷ Justice Overton, writing a concurring opinion, went even further when he wrote that “[w]hile *adequate* may be difficult to quantify, certainly a minimum threshold exists below which the funding provided by the legislature would be considered *inadequate*.”⁶⁸ This decision clearly invited another suit by a party who could make the proper allegations and gave a strong indication that future litigation on the issue of adequacy could be heard.⁶⁹

III. FLORIDA’S CITIZENS CALL FOR CHANGE

In light of the Supreme Court of Florida’s hesitation to rule on school finance and failure to provide relief in the 1990s, supporters of

63. *Coal. for Adequacy & Fairness in Sch. Funding, Inc.*, 680 So. 2d at 408; see also Mills & McLendon, *supra* note 39, at 30.

64. Mills & McLendon, *supra* note 39, at 30.

[T]he [c]ourt decided that the issue of *adequacy* was a nonjusticiable, political question committed by the constitution to the legislature. The members of the court stated that the constitution gives the legislature *enormous discretion* to appropriate funds for education and other matters. Absent definable standards to provide guidance, the court decided that intrusion into this area would transgress the separation of powers doctrine by usurping legislative powers.

Id.; see also *Coal. for Adequacy & Fairness in Sch. Funding, Inc.*, 680 So. 2d at 407–08.

65. HARRIS, *supra* note 36, at 4.5–6.

66. Mills & McLendon, *supra* note 39, at 30.

67. HARRIS, *supra* note 36, at 4.5–6.

68. *Coal. for Adequacy & Fairness in Sch. Funding, Inc.*, 680 So. 2d at 409; HARRIS, *supra* note 36, at 4.5.

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. As noted, however, I agree with the majority that a proper showing of inadequacy has not been made in this case.

Coal. for Adequacy & Fairness in Sch. Funding, Inc., 680 So. 2d at 409.

69. See HARRIS, *supra* note 36, at 4.5–6, 4.16; Escue et al., *supra* note 2, at 606–09; Mills & McLendon, *supra* note 39, at 30.

education reform entered the electoral process.⁷⁰ These supporters entered the political fray in hopes of having the people of Florida vote to rewrite the Florida Constitution, so that a manageable standard of the meaning of adequate could be provided.⁷¹ “The proposal required that ‘[a]dequate provision for funding public education shall be required in each fiscal year.’”⁷² The reformer’s initiative proposal defined adequate as appropriating at least 40% of all Florida state appropriations, excluding lottery proceeds, towards education.⁷³

Although the Attorney General of Florida found the proposal did not violate the constitution, “the [Supreme Court of Florida] disagreed and [erased] the proposal from the statewide ballot.”⁷⁴ The court held that a mandatory percentage violated the single subject requirement of the Florida

70. See Gordon, *supra* note 8, at 273, 283.

71. *Id.* at 284.

[E]ducational reformers utilized the Florida constitutional initiative petition, which allows the people of Florida to propose the revision or amendment of a portion or portions of the state constitution. Proponents of an initiative petition must meet certain requirements, including the collection of a set number of signatures within specific geographic areas of Florida, as well as ballot summary and title requirements. . . . [A]n initiative must meet certain tests, including whether the subject of a proposal “may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme.” In addition, the proposal may not alter the functions of multiple branches of government. . . . The Attorney General of Florida must request the [Supreme Court of Florida’s] opinion concerning the validity of an initiative petition to ensure that all the requirements have been met.

Id. at 284–85.

72. *Id.* at 285.

The educational reformers’ initiative petition proposed to amend the education article by adding a section. The proposal required that “[a]dequate provision for funding public education shall be required in each fiscal year.” The proposal also defined adequacy since the courts had not. The proposal defined adequacy as a set minimum percentage of total appropriations by the Florida Legislature, not including lottery proceeds and federal funds. That minimum percentage represented [40%] of legislative state appropriations. [This meaning] a minimum of [40%] of all Florida state appropriations made by the Florida [L]egislature in a fiscal year had to be devoted to public education, excluding lottery proceeds.

Id.

73. Gordon, *supra* note 8, at 285.

74. *Id.* at 286.

The [Supreme Court of Florida] disagreed and struck the proposal from the statewide ballot. . . . [B]y employing a government functions analysis, the court decided that the proposal would have impacted numerous government branches [The court] conceptualized “government function” very broadly, finding that the proposed amendment would have altered the [L]egislature’s discretion in deciding priorities among many vital functions of state government; consequently, the amendment would have directly affected executive branch agencies, local government, and special districts.

Id. at 286–87.

Constitution.⁷⁵ Once again, educational reformers had failed to effectuate change.⁷⁶ While the previous constitutional litigation had failed because the court ruled that the issue was for the legislature, the proposed petition failed because the constitution limited the scope of initiative petitions on revisions to the constitution.⁷⁷ Educational reformers needed to once again find an alternative avenue to accomplish their goal, and luckily an opportunity presented itself in 1997.⁷⁸

A. *Article IX Section 1(a)*

Every twenty years, the Florida Constitution Revision Commission (“Revision Commission”) meets to examine the Florida Constitution and explore the possibility of revisions.⁷⁹ In the summer of 1997, the Revision Commission “held thirteen public hearings throughout Florida” calling for any recommendations that citizens of Florida wanted to see made to the Florida Constitution.⁸⁰ Many of the public’s proposals focused on the issue of education.⁸¹

Of the 187 proposals submitted to the Revision Commission, two substantive proposals emerged that aimed to address the issue of adequacy raised in *Coalition for Adequacy*.⁸² One proposal, Proposal 157, sought to

75. *Id.* at 286; *see also* FLA. CONST. of 1968, art. XI, § 3.

The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith.

FLA. CONST. of 1968, art. XI, § 3.

76. Gordon, *supra* note 8, at 287.

77. *Id.* at 286–87.

78. *Id.* at 288.

79. FLA. CONST. of 1968, art. XI, § 2(a), (c); Gordon, *supra* note 8, at 288.

80. Mills & McLendon, *supra* note 7, at 359; *see also* FLA. CONST. of 1968 art. XI, § 2(a) (setting up the creation of the Revision Commission).

81. *See* Mills & McLendon, *supra* note 7, at 359–60. “Public proposals submitted to the [Revision] Commission included requests both for more education funding and to limit education funding, matters of education vouchers and school choice, a return to the 1868 Florida Constitution’s *paramount duty* language, and a plea for free community college” Mills & McLendon, *supra* note 39, at 32. The Revision Commission also “considered other public proposals, including a proposal to make education a fundamental right” Mills & McLendon, *supra* note 7, at 360.

82. Mills & McLendon, *supra* note 7, at 360–61; Mills & McLendon, *supra* note 39, at 32; *see also* Coal for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles, 680 So. 2d 400, 404–06 (Fla. 1996) (per curiam); Fla. CRC24-244-pr (1998) (proposed FLA. CONST. art. IX, § 1(a)–(b)); Fla. CRC6-261-pr (1998) (proposed FLA. CONST. art. IX, § 1). “Both Proposal 157 and Proposal 181 sought to amend Art. IX, § 1 to provide not just aspirational language, but also meaningful standards whereby educational adequacy could be measured.”

define adequate as “the provision of financial resources to achieve a thorough, efficient, high-quality, safe, and secure system of public education for all public schools and access to public institutions of higher learning or education.”⁸³ The other proposal, Proposal 181, looked back to the 1868 Florida Constitution, as discussed previously, in order to make education the “paramount duty of the state,” as well as to make “ample provision . . . for . . . public education.”⁸⁴

Each proposal received a negative response from the members of the Revision Commission.⁸⁵ The Revision Commission members felt that the proposals would invite a large amount of litigation, because the proposals could be interpreted as creating a cause of action for a failure to meet the educational standard it would create.⁸⁶ The Revision Commission further commented that putting the Supreme Court of Florida, an unelected body, in the position of being required to raise educational funding was not a desired outcome.⁸⁷ The Revision Commission found educational reform to be a duty for the legislature, which allows the people of Florida to effectuate change through the electoral process.⁸⁸

As a result of the Revision Commission’s feelings towards these proposals, they were changed and effectively diluted.⁸⁹ The *fundamental right* language was ripped out of both proposals.⁹⁰ The words, *provision of financial resources* were erased out of Proposal 157, which removed any meaning, in terms of financing, from the term *adequate provision*.⁹¹ The Revision Commission also made it abundantly clear that the intent of Proposal 157 was not to allow students and parents to sue for defects in a local school.⁹² In order to be successful in litigation, the party would have to prove “the whole system [had] failed to be uniform and adequate.”⁹³

Mills & McLendon, *supra* note 39, at 32; *see also* Fla. CRC24-244-pr (1998); Fla. CRC6-261-pr (1998).

83. Fla. CRC24-244-pr (1998).

84. Fla. CRC6-261-pr (1998). “The proposal proponents, by using the court’s discussion in *Coalition for Adequacy*, advocated a return to the language of the 1868 constitution which would once again make education a paramount duty in Florida.” Gordon, *supra* note 8, at 294; *see also* *Coal. for Adequacy & Fairness in Sch. Funding, Inc.*, 680 So. 2d at 405.

85. Gordon, *supra* note 8, at 297.

86. *Id.*; Mills & McLendon, *supra* note 39, at 32.

87. Gordon, *supra* note 8, at 297.

88. *See id.*

89. *Id.* at 297–98.

90. Mills & McLendon, *supra* note 39, at 32.

91. Gordon, *supra* note 8, at 298; *see also* Fla. CRC24-244-pr (1998) (proposed FLA. CONST. art. IX, § 1(a)–(b)).

92. Gordon, *supra* note 8, at 299; *see also* Fla. CRC24-244-pr (1998).

93. Gordon, *supra* note 8, at 299; *see also* Fla. CRC24-244-pr (1998).

Proposal 181 was radically rewritten as well.⁹⁴ The phrase *the fundamental right* was changed to *a fundamental value* in Proposal 181.⁹⁵ The *fundamental right* language, which had been initially called for by the people of Florida, had been downgraded.⁹⁶ For good measure, *the* was substituted for *a* because the Revision Commission wanted to make it clear that education was no more important than any other state function.⁹⁷

B. *A Major Victory for Education Reformers*

After undergoing these material changes, “both proposals were adopted by the [Revision] [C]ommission” in March of 1998.⁹⁸ The Florida Constitution, as it pertains to education, would now read:

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 education . . .⁹⁹

The passing of this amendment was another mixed result for education reformers in Florida.¹⁰⁰ Some argued that the legislature once again decided to not define the meaning of adequate, despite the fact that this is precisely what the citizens of Florida had called for.¹⁰¹ This left a feeling of uncertainty as to what would happen in future litigation, despite the Supreme Court of Florida leaving the door slightly open for future litigation in *Coalition for Adequacy*.¹⁰² The silver lining in the passing of the amendment is that it reflected the will of the people when it reincorporated the words, “[i]t is the paramount duty of the State to make ample provision

94. Gordon, *supra* note 8, at 298; *see also* Fla. CRC6-261-pr (1998) (proposed FLA. CONST. art. IX, § 1).

95. Mills & McLendon, *supra* note 39, at 32; *see also* Fla. CRC6-261-pr (1998).

96. *See* Fla. CRC6-261-pr (1998); Mills & McLendon, *supra* note 39, at 32.

97. Gordon, *supra* note 8, at 298; *see also* Fla. CRC6-261-pr (1998).

98. Mills & McLendon, *supra* note 39, at 32; *see also* Fla. CRC6-261-pr (1998); Fla. CRC24-244-pr (1998).

99. FLA. CONST. of 1968, art. IX, § 1(a) (emphasis added).

100. *See id.*; Gordon, *supra* note 8, at 298–99.

101. *See* Gordon, *supra* note 8 at 299–300.

102. *See* Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles, 680 So. 2d 400, 408 (Fla. 1996) (per curiam); Gordon, *supra* note 8 at 300; Mills & McLendon, *supra* note 39, at 32, 34.

for the education of all the children residing within its borders.”¹⁰³ This language returned the State of Florida to a Category IV, as it previously was under the 1868 Florida Constitution.¹⁰⁴

In *Bush*, the Supreme Court of Florida revisited the education provision after the 1998 amendment.¹⁰⁵ The court took note of the 1998 amendment and the new duty it imposed on the state.¹⁰⁶ The court held that where it is possible to reasonably construe the constitution, the court should do so.¹⁰⁷ The decision highlights that the reason for the 1998 amendment was to give meaning and standards by which to measure the adequacy of Florida schools, in response to the *Coalition for Adequacy* decision.¹⁰⁸ The court held that *adequate provision* was defined as providing an “efficient, safe, secure, and high quality . . . education.”¹⁰⁹ The court indicated that the meaning of adequate had finally been provided by the amendment, and it would be able to decide a case challenging the adequacy of Florida’s schools.¹¹⁰

IV. CITIZENS FOR STRONG SCHOOLS

Citizens for Strong Schools, a small non-profit organization, was formed in 2008 with the hope of improving education in Alachua County, Florida.¹¹¹ The organization filed the latest lawsuit challenging the constitutionality of the level of education provided by the state of Florida in *Citizens for Strong Schools v. Florida State Board of Education*¹¹² in 2009.¹¹³ In its second amended complaint, Citizens for Strong Schools laid out several factual allegations invoking the language from the 1998 amendment to the education provision in the Florida Constitution.¹¹⁴

103. FLA. CONST. of 1868, art. VIII, § 1; Mills & McLendon, *supra* note 39, at 34.

104. *See* FLA. CONST. of 1868, art. VIII, § 1; Mills & McLendon, *supra* note 39, at 33.

105. *See* *Bush v. Holmes*, 919 So. 2d 392, 397 (Fla. 2006).

106. *Id.* at 403–04.

107. *Id.* at 405.

108. *Id.* at 403; *Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400, 406–08 (Fla. 1996) (per curiam).

109. *Bush*, 919 So. 2d at 403 (emphasis added).

110. *Id.*

111. Eric Barton, *Florida Education on Trial: Lawsuit Makes Case That System is Unfair to Poor*, MIAMI HERALD (Mar. 12, 2016, 9:51 PM), <http://www.miamiherald.com/news/local/education/article65739822.html>.

112. No. 09-CA-4534, slip op. (Fla. 2d Cir. Ct. May 24, 2016).

113. *Citizens for Strong Sch., Inc.*, slip op. at 1–2.

114. FLA. CONST. of 1968, art. IX; *Citizens for Strong Sch., Inc.*, slip op. at 5–6; Escue et al., *supra* note 2, at 607. Citizens for Strong Schools’ factual allegations were

The case was heard and decided by Judge George S. Reynolds of the Second Circuit Court of Florida,¹¹⁵ who has since resigned from his position.¹¹⁶ But before the case began, the defendants filed a motion to dismiss.¹¹⁷

A. *The Initial Hurdle*

Despite the Supreme Court of Florida's past ruling that school finance was a non-justiciable question, Citizens for Strong Schools sought to distinguish its own case from *Coalition for Adequacy* by focusing on Justice Overton's concurring opinion.¹¹⁸ Citizens for Strong Schools argued that because it had made specific factual allegations, as Justice Overton had suggested, its claim was valid.¹¹⁹ The State moved to dismiss the case because it argued Citizens for Strong Schools lacked standing and the claims were not justiciable.¹²⁰

separated into the following six major subdivisions: "The State Has a Constitutional Duty to Provide a Uniform, Efficient, Secure and High Quality System of Free Public Schools"; "The State Has Breached Its Paramount Duty to Make 'Adequate Provision' For a System of Free Public Schools"; "The State Has Failed to Provide a 'Uniform' System of Free Public Schools"; "The State Has Failed to Provide an 'Efficient' System of Free Public Schools"; "The State Has Failed to Provide a 'High Quality' System of Free Public Schools"; and "The Public School System Does Not Allow Students to Obtain a High Quality Education." *Citizens for Strong Sch., Inc.*, slip op. at 5–6; see also Escue et al., *supra* note 2, at 606 (stating "[p]laintiffs sought a declaratory judgment declaring the legislature had breached its constitutionally paramount duty of providing a high quality system of free public schools that allows a student to obtain a high quality education.").

115. *Citizens for Strong Sch., Inc.*, slip op. at 29.

116. See Nathan Hale, *Fla. Gov. Appoints 5 Circuit Judges Around the State*, LAW360 (June 27, 2016, 5:19 PM), <http://www.law360.com/articles/811230/fla-gov-appoints-5-circuit-judges-around-the-state>.

117. See Escue et al., *supra* note 2, at 607.

118. *Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400, 408–10 (Fla. 1996) (per curiam); see also Mills & McLendon, *supra* note 39, at 30.

119. Escue et al., *supra* note 2, at 607.

120. Order Denying Dismissal at 2, *Citizens for Strong Sch., Inc. v. State Bd. of Educ.*, No. 09-CA-4534 (Fla. 2d Cir. Ct. Aug. 20, 2010); Escue et al., *supra* note 2, at 607–09.

First, the State argued that the plaintiffs lacked standing. Specifically, "plaintiffs allege no facts peculiar to their individual circumstances" and they do not allege a complaint "regarding a particular law or appropriations; instead, they allege a general dissatisfaction and a long list of grievance[s] with Florida's entire state education system."

... In *Coalition for Adequacy*, the Supreme Court of Florida, relying on the U[nited] S[tates] Supreme Court's decision in *Baker v. Carr*, adopted a six-factor test to determine justiciability of state constitutional questions. The State argued that under *Coalition* the standard was not judicially discoverable [or] manageable

Escue et al., *supra* note 2, at 607–08.

On August 20, 2010, the court issued its order denying the States' petition for dismissal.¹²¹ With respect to standing, the court determined that the "[p]laintiffs [had made] comprehensive [factual] allegations."¹²² The court would also distinguish *Coalition for Adequacy*, because it addressed the old version of the Florida Education Clause,¹²³ when it declared:

The most critical case is [*Bush*], in which the [Supreme Court of Florida] addressed the current constitutional language and stated that the specific language was drafted "to provide standards by which to measure the adequacy of the public school education provided by the state." The Court interpreted the Florida Constitution as providing a mandate that it is the state's paramount duty to make adequate provision for education¹²⁴

The court noted that it was only deciding a motion to dismiss and found the plaintiffs had "raised a justiciable question over which this [c]ourt has subject matter jurisdiction, and . . . the . . . Complaint states a [course] of action."¹²⁵ For these reasons the court would deny the motion to dismiss.¹²⁶

After the circuit court denied the motion to dismiss, the defendants filed a petition for a writ of prohibition, seeking to require the circuit court to dismiss the complaint.¹²⁷ The First District Court of Appeal cited, just as the circuit court had, the critical language from *Bush*, which stated that there are standards to determine and measure the adequacy of the Florida schooling

121. Order Denying Dismissal, *supra* note 120, at 6; Escue et al., *supra* note 2, at 608; *see also* Haridopolos v. Citizens for Strong Sch., Inc., 81 So. 3d 465, 466, 473 (Fla. 1st Dist. Ct. App. 2011) (en banc) (denying defendant's petition for writ of prohibition and holding that the circuit court had subject matter jurisdiction over the matter).

122. Order Denying Dismissal, *supra* note 120, at 3; Escue et al., *supra* note 2, at 608.

123. *See Coal. for Adequacy & Fairness in Sch. Funding, Inc.*, 680 So. 2d at 407; Order Denying Dismissal, *supra* note 120, at 3; Escue et al., *supra* note 2, at 609.

124. Escue et al., *supra* note 2, at 609 (quoting *Bush v. Holmes*, 919 So. 2d 392, 403 (Fla. 2006)).

125. Order Denying Dismissal, *supra* note 120, at 5; Escue et al., *supra* note 2, at 609.

126. Order Denying Dismissal, *supra* note 120, at 6.

127. Haridopolos v. Citizens for Strong Sch., Inc., 81 So. 3d 465, 466 (Fla. 1st Dist. Ct. App. 2011) (en banc).

After the trial judge denied their motion to dismiss respondents' amended complaint for declaratory and supplemental relief, the President of the Florida Senate, the Speaker of the Florida House of Representatives, the Commissioner of Education, and the State Board of Education filed a petition for writ of prohibition, initiating original proceedings here in an effort to bring further proceedings in the circuit court to a halt.

Id.

system.¹²⁸ The court also noted that “analogous questions have arisen under the constitutions of other states, and the majority rule is that educational adequacy provisions in state constitutions are judicially enforceable.”¹²⁹ The First District Court of Appeal denied the defendants’ petition and held that the circuit court had subject matter jurisdiction over the case.¹³⁰ The court certified the following question to the Supreme Court of Florida:

Does [a]rticle IX, [s]ection 1(a) [of the] 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 state-wide basis, so as to permit a court to decide claims for declaratory judgment—and supplemental relief—alleging noncompliance with [a]rticle IX, [s]ection 1(a) of the Florida Constitution?¹³¹

The Supreme Court of Florida declined to answer the question on petition for review.¹³² Citizens for Strong Schools had overcome this initial hurdle and would have its case heard.¹³³

B. *Opening Statements*

Opening statements by the parties took place on March 14, 2016.¹³⁴ The lead attorney for Citizens for Strong Schools, Neil Chonin, berated Florida’s *high-stakes accountability* system, which looks at “the results of students’ standardized exam[]” results, evaluations of teachers, and school grades.¹³⁵ Chonin started by stating that Florida is one of only two states with the *paramount duty* language in its constitution, and the only state to

128. *Id.* at 472; see also Janet D. McDonald et al., *School Finance Litigation and Adequacy Studies*, 27 U. ARK. LITTLE ROCK L. REV. 69, 81 (2004) (stating the 1998 amendment to the education provision on the Florida Constitution “contain[s] one of the . . . most explicit education clauses” in the nation).

129. *Haridopolos*, 81 So. 3d at 469; see also *Comm. for Educ. Rights v. Edgar*, 672 N.E.2d 1178, 1191 (Ill. 1996) (holding that the notion that educational provisions in state constitutions are non-justiciable is the minority view).

130. *Haridopolos*, 81 So. 3d at 473.

131. *Id.*

132. *Haridopolos v. Citizens for Strong Sch., Inc.*, No. SC12-216, 2012 WL 4009632, at *1 (Fla. Sept. 11, 2012).

133. See Kristen M. Clark, *Trial Challenging Florida’s Education System Gets Underway in Tallahassee*, TAMPA BAY TIMES (Mar. 14, 2016, 3:28 PM), <http://www.tampabay.com/blogs/gradebook/trial-challenging-floridas-education-system-gets-underway-in-tallahassee/2269306>.

134. *Id.*

135. *See id.*

have the term *high quality* twice in its education provision.¹³⁶ He stated that “education is the cornerstone of democracy,” and highlighted that the Supreme Court of the United States held that “[education] is the very foundation of good citizenship” in *Brown v. Board of Education*.¹³⁷

Chonin illustrated achievement gaps between Whites, African Americans, Hispanics, and students who receive free or reduced lunch by showing data from the 2014 Florida Comprehensive Assessment Test (“FCAT”) 2.0.¹³⁸ Statistics from that test showed that while 69% of White students were proficient in reading, 38% of African American students had failed, and 53% of students considered as poverty students—determined by whether or not a student qualifies for free or reduced lunch—scored below satisfactory.¹³⁹ Chonin stated that there was not only a downward trend in test scores for reading, but a downward trend for math scores as well.¹⁴⁰

Chonin also argued the Florida funding model created in the 1970s had never been updated to analyze what resources and funds would be necessary to guarantee a high quality education.¹⁴¹ Chonin went on to discuss how some school districts have had to resort to drastic measures, such as local bonds or local sales tax, to fund their schools.¹⁴² He stated:

You have the state not looking at how much is needed, you have a political battle every year of how much money and how much did we raise . . . and everything is determined by whatever revenue is raised, without any thought to what really is needed in order for, once and for all, to turn this system around and get all of our kids educated and give them all an opportunity to succeed in life.¹⁴³

Chonin explained that effective teachers are the key to improving education.¹⁴⁴ The problem with effective teachers is that they are all located

136. Video clip: Opening Statement for Plaintiff at 4:50–5:55, *3/14/16 Second Judicial Circuit Court Hearing: Citizens for Strong Schools v. Board of Education Part 1 — 10:00 AM*, FLA. CHANNEL, <http://www.thefloridachannel.org/videos/31416-second-judicial-circuit-court-scheduling-hearing-citizens-strong-schools-v-board-education-part-1/> (last visited Dec. 10, 2016); see also FLA. CONST. of 1968, art. IX, § 1(a).

137. 347 U.S. 483, 493 (1954); Video clip: Opening Statement for Plaintiff, *supra* note 136, at 6:00–6:25.

138. Clark, *supra* note 133.

139. Video clip: Opening Statement for Plaintiff, *supra* note 136, at 13:00–14:20.

140. *Id.* at 16:22–16:50.

141. Clark, *supra* note 133.

142. *Id.*

143. *Id.*

144. Video clip: Opening Statement for Plaintiff, *supra* note 136, at 18:35–18:46.

within schools graded as *A* schools—on an A-F rating system created by the state to evaluate schools—as opposed to *F* schools.¹⁴⁵ Chonin argued that these same standards used to assess students, teachers, and schools should be applied when determining if the state has failed its constitutional duty to provide a high level of education.¹⁴⁶ He also explained how students living in poverty start school at a disadvantage, and in order to fix the problem the state needs to provide effective teachers, behavioral specialists, mental health specialists, nurses, guidance counselors, parent and community liaisons, class aids, and multicultural and multilingual staff.¹⁴⁷

In the defense’s opening argument, Rocco Testani, lead defense attorney for the Florida Department of Education, claimed that the plaintiffs wanted to destroy all of the progress the State of Florida had made.¹⁴⁸ He argued that the defense would “conclusively demonstrate that the [S]tate of Florida has not only established a high-quality system of public schools that allows students to obtain a high-quality education but that the state has become a leader . . . in successfully implementing education reform.”¹⁴⁹

Testani pointed to the National Assessment of Educational Progress (“NAEP”), as opposed to the statewide exam—FCAT 2.0—Chonin had used.¹⁵⁰ He explained that in 1998, Florida’s fourth graders had ranked in the bottom ten of the fifty states in reading, according to the NAEP, and by 2015, they ranked in the top ten.¹⁵¹ He displayed several charts explaining how Florida had improved its NAEP scores consistently.¹⁵² Testani argued it was obvious that the claim that Florida had not improved in education was false.¹⁵³

Testani conceded there were achievement gaps between the different classes of students but noted that these gaps exist all over the country.¹⁵⁴ He

145. *Id.* at 19:00–19:35.

146. *Id.* at 21:20–21:40.

147. *Id.* at 25:50–26:30.

148. Video clip: Opening Statement for Defendant at 31:00–32:30, 3/14/16 *Second Judicial Circuit Court Hearing: Citizens for Strong Schools v. Board of Education Part 1-10:00 AM*, FLA. CHANNEL, <http://thefloridachannel.org/videos/31416-second-judicial-circuit-court-scheduling-hearing-citizens-strong-schools-v-board-education-part-1/> (last visited Dec. 10, 2016); Clark, *supra* note 133.

149. Clark, *supra* note 133.

150. *Id.*

151. Video Clip: Opening Statement for Defendant, *supra* note 148, at 33:10–33:40.

152. *Id.* Testani explained that in 2013, Florida’s Hispanic students were ranked first in the nation compared to other states’ Hispanic students, and Florida’s African American students were ranked fifth in the nation compared to other states’ African American students in NAEP testing. *Id.* at 37:05–37:50.

153. Clark, *supra* note 133.

154. Video clip: Opening Statement for Defendant, *supra* note 148, at 35:24.

stressed the importance of the improvements Florida had made while promising that Florida would try to continue to improve.¹⁵⁵ Decreasing achievement gaps, more students taking and doing well in Advanced Placement exams, and more students being ready for college were all recurring themes throughout Testani's remarks.¹⁵⁶

Testani also stated that the plaintiffs should have directed their complaints towards the school districts as opposed to the Department of Education.¹⁵⁷ This is because the school districts educate students, evaluate teachers, decide curriculum, and develop and manage their own budgets.¹⁵⁸ He further argued that if school board members exercised their full capacity to raise local taxes and raise funding for education, there would have been an additional 3.8 billion dollars available in the last school year.¹⁵⁹ Testani even claimed that students who are disadvantaged receive more funding than other students under the current Florida system.¹⁶⁰

C. Judge Reynold's Opinion

On May 24, 2016, Judge Reynolds issued a twenty-nine page opinion.¹⁶¹ Judge Reynolds explained that Florida's education system is *structurally complicated*.¹⁶² This is because each county has its own school board, which sets its own policies and standards.¹⁶³ Thus, even among schools with substantially similar levels of funding, it is easy to see how there are variations in how districts allocate resources and see different results.¹⁶⁴

155. See *id.* at 35:55. Between the year of 1992 and 2013, Florida had the second highest gains on the NAEP of any of the fifty states. *Id.* at 38:00. In 1998, only 52% of Florida's high school students passed high school in four years, while the latest results show that over 75% of high school students graduate in four years. *Id.* at 38:16.

156. See *id.*

157. Clark, *supra* note 133.

158. Video clip: Opening Statement for Defendant, *supra* note 148, at 1:03:50.

159. Clark, *supra* note 133.

160. Video clip: Opening Statement for Defendant, *supra* note 148, at 55:35.

Testani claimed that only \$6800 is spent per student in schools with less than 30% of student living in poverty and \$7600 is spent per student in schools with 92% of students living in poverty. *Id.* at 55:45.

161. Brandon Larrabee, *Judge Rejects Broad Challenge to Florida's Education System*, TALLAHASSEE DEMOCRAT (May 25, 2016, 12:14 AM), <http://www.tallahassee.com/story/news/local/state/2016/05/25/judge-rejects-broad-challenge-floridas-education-system/84892452/>.

162. *Citizens for Strong Sch., Inc. v. Fla. State Bd. of Educ.*, No. 09-CA-4534, slip op. at 4 (Fla. 2d Cir. Ct. May 24, 2016).

163. *Id.*

164. *Id.*

Judge Reynolds held that the plaintiffs had failed to establish that Florida had breached any duty under article IX, section 1(a) of the Florida Constitution.¹⁶⁵ Judge Reynolds found for the defendants for several reasons.¹⁶⁶ He wrote that education funding had received the largest percentage of the state budget,¹⁶⁷ “there is not a constitutional level lack of resources,”¹⁶⁸ *highly qualified* teachers are in schools across every district,¹⁶⁹ “Florida students have substantially improved their performance on the . . . NAEP,”¹⁷⁰ and that Florida cannot possibly guarantee that every student will be successful.¹⁷¹

Interestingly, Judge Reynolds noted all of these factors to rule in favor of the defendants, but goes on to say that there are no *judicially manageable standards* under the constitution to determine the adequacy claim by the plaintiffs.¹⁷² Judge Reynolds wrote that the 1998 amendment to article IX, section 1(a) provides no standards that clarify the meaning of adequate.¹⁷³ By applying the terms *efficient and high quality* to Florida’s system, it would necessarily involve a political question outside of the court’s jurisdiction.¹⁷⁴ His decision states:

Article IX, [s]ection 1(a) lacks “judicially discoverable and manageable standards for resolving” the political questions raised by [p]laintiffs’ adequacy claim. 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 [for Adequacy]* 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 [p]laintiffs assert here.¹⁷⁵

165. *Id.* at 15; *see also* FLA. CONST. of 1968, art. IX, § 1(a).

166. *Citizens for Strong Sch., Inc.*, slip op. at 15.

167. *Id.* at 7.

168. *Id.*

169. *Id.* at 9.

170. *Id.* at 11.

171. *Citizens for Strong Sch., Inc.*, slip op. at 10 (quoting FLA. STAT. § 1000.03(5)(f) (2015)). “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.” FLA. STAT. § 1000.03(5)(f) (2015).

172. *Citizens for Strong Sch., Inc.*, slip op. at 18–19.

173. *Id.* at 18; *see also* FLA. CONST. of 1968, art. IX, § 1(a); Mills & McLendon, *supra* note 39, at 30.

174. *Citizens for Strong Sch., Inc.*, slip op. at 17–18.

175. *Id.* at 18 (citing *Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400, 408 (Fla. 1996) (per curiam)); *see also* FLA. CONST. of 1968 art. IX, § 1(a).

Surprisingly, Judge Reynolds found that the State had provided an adequate education, while also finding that there was no standard for the court to determine what adequacy means.¹⁷⁶ In a dark twist of déjà vu, despite the findings of the First District Court of Appeal¹⁷⁷ and the Supreme Court of Florida holding in *Bush*,¹⁷⁸ Judge Reynolds ruled that there was no justiciable standard to determine the meaning of adequacy.¹⁷⁹

D. *Motion for Certification*

Citizens for Strong Schools appealed the decision by Judge Reynolds.¹⁸⁰ On June 28, 2016, Citizens for Strong Schools filed a motion with the First District Court of Appeal to have the case sent directly to the Supreme Court of Florida.¹⁸¹ In its motion, Citizens for Strong Schools argued that the court's decision effectively voids the education provision in the Florida Constitution.¹⁸² Citizens for Strong Schools hopes that the Supreme Court of Florida will take the case because it is of public importance and in need of an immediate resolution.¹⁸³

The attorneys for the State have filed a response in opposition to Citizens for Strong Schools' motion for certification.¹⁸⁴ The State argued that the normal appeals process should run its course.¹⁸⁵ The State further argued that the appellants have not shown a risk of imminent harm and that

176. *Citizens for Strong Sch., Inc.*, slip op. at 17–19.

177. *See id.*; *Haridopolos v. Citizens for Strong Sch., Inc.*, 81 So. 3d 465, 472–73 (Fla. 1st Dist. Ct. App. 2011) (en banc).

178. *Bush v. Holmes*, 919 So. 2d 392, 412–13 (Fla. 2006).

179. *Citizens for Strong Sch., Inc.*, slip op. at 18–19.

180. Jessica Bakeman, *Education Activists Want Quick Supreme Court Review of Funding Suit*, POLITICO (July 12, 2016, 2:11 PM), <http://www.politico.com/states/florida/story/2016/07/education-activists-hope-to-appeal-adequacy-case-directly-to-supreme-court-103719>.

181. Appellants' Suggestion for Certification at 6–7, *Citizens for Strong Sch., Inc. v. State Bd. of Educ.*, No. 16-2862 (Fla. 1st Dist. Ct. App. June 28, 2016); *see also* Bakeman, *supra* note 180.

182. *See* Appellants' Suggestion for Certification, *supra* note 181, at 3–5.

183. *Id.* at 3–4; *see also* Raoul G. Cantero III, *Certifying Questions to the Florida Supreme Court: What's So Important?*, FLA. B. J., May 2002, at 40, 44 (discussing how important issues with far-reaching consequences, cases of first impression, issues that arise frequently, unclear case law, public policy issues, old precedent, and intervening law are all issues that the Supreme Court of Florida is likely to hear on certification).

184. Appellees' Response in Opposition to Appellants' Suggestion for Pass-Through Certification at 1–2, *Citizens for Strong Sch., Inc. v. State Bd. of Educ.*, No. 16-2862 (Fla. 1st Dist. Ct. App. July 6, 2016); *see also* Bakeman, *supra* note 180.

185. Appellees' Response in Opposition to Appellants' Suggestion for Pass-Through Certification, *supra* note 184, at 1.

none of the issues raised by Citizens for Strong Schools requires an immediate resolution by the Supreme Court of Florida.¹⁸⁶

V. SCHOOL FINANCE IN THE STATE OF WASHINGTON

As discussed previously, a state will look to other states' decisions when deciding its own school finance suits.¹⁸⁷ Should the Supreme Court of Florida take the case, it will almost invariably look to states with similar levels of requirements in their education provisions.¹⁸⁸ The court should narrow its view to states that are considered Category IV.¹⁸⁹ Looking even beyond the Category IV states, one state in particular would be more important than any other.¹⁹⁰ That state is Washington because it is the only state, besides Florida, that contains the language *paramount duty* in its education provision.¹⁹¹ The Washington education provision reads: "It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex."¹⁹²

A. *Seattle School District No. 1 of King County*

The Supreme Court of Washington reviewed its education provision in *Seattle School District No. 1 of King County v. State*.¹⁹³ This case raised many of the same issues raised in *Citizens for Strong Schools*.¹⁹⁴

The State in this case disputed whether interpretation of the education provision was a justiciable issue for the court.¹⁹⁵ The court held that where the matter is "one of great public interest," that has been adequately argued before the court, and the court's opinion "will be beneficial to the public," the court may exercise its jurisdiction.¹⁹⁶ The court also held that the legislature, school districts, and people of Washington were uncertain as to the meaning of the education provision of the Washington

186. *Id.* at 2–3.

187. *See* Escue et al., *supra* note 2, at 605.

188. *See id.*

189. *See* FLA. CONST. of 1968, art. IX; Escue et al., *supra* note 2, at 605; Staros, *supra* note 42, at 501.

190. *See* FLA. CONST. of 1968, art. IX; WASH. CONST. art IX; Escue et al., *supra* note 2, at 605.

191. WASH. CONST. art IX; *see also* FLA. CONST. of 1968, art. IX.

192. WASH. CONST. art IX.

193. 585 P.2d 71, 76 (Wash. 1978) (en banc).

194. *See id.* at 80; *Citizens for Strong Sch., Inc. v. Fla. State Bd. of Educ.*, No. 09-CA-4534, slip op. at 2–3 (Fla. 2d Cir. Ct. May 24, 2016).

195. *Seattle Sch. Dist. No. 1 of King Cty.*, 585 P.2d at 80.

196. *Id.*

Constitution.¹⁹⁷ It was the opinion of the court that a clarification of the provision would not only benefit these parties, but also the students in Washington.¹⁹⁸ Therefore, the court held that it had jurisdiction because the issue of the education provision was a justiciable question.¹⁹⁹

The State argued that the issue pertaining to any ambiguity in the provision was for the legislature to determine.²⁰⁰ The court disagreed, holding that it had the “ultimate power and the duty to interpret, construe, and give meaning to words, sections, and articles of the constitution.”²⁰¹ The State also made the argument, as was made in *Citizens for Strong Schools*, that if the court decided the case, it would be violating the separation of powers.²⁰² The court held that, although separation of powers is a sensitive topic, construction and interpretation of the constitution are functions exclusively held by the judiciary.²⁰³

Once the court held that the issue of the education provision was a justiciable question, it looked to determine the meaning of paramount duty.²⁰⁴ The decision stated:

By imposing upon the [s]tate a *paramount duty* to make ample provision for the education of all children residing within the [s]tate’s borders, the constitution has created a *duty* that is supreme, preeminent, or dominant. Flowing from this constitutionally imposed *duty* is its jural correlative, a correspondent *right* permitting control of another’s conduct. Therefore, all children residing within the borders of the [s]tate possess a *right*, arising from the constitutionally imposed *duty* of the [s]tate, to have the [s]tate make ample provision for their education. Further, since the *duty* is characterized as *paramount* the correlative *right* has equal stature.²⁰⁵

The court held that it had the power and duty to interpret the constitution and affirmed the trial court’s judgment finding.²⁰⁶

197. *Id.*

198. *Id.*

199. *See id.* at 80, 83, 87.

200. *Seattle Sch. Dist. No. 1 of King Cty.*, 585 P.2d at 87.

201. *Id.*

202. *Id.* at 87–88; *see also* *Citizens for Strong Sch., Inc. v. Fla. State Bd. of Educ.*, No. 09-CA-4534, slip op. at 20 (Fla. 2d Cir. Ct. May 24, 2016).

203. *Seattle Sch. Dist. No. 1 of King Cty.*, 585 P.2d at 87–88.

204. *See id.* at 88, 91.

205. *Id.* at 91.

206. *Id.* at 83, 99.

VI. THE FUTURE OF CITIZENS FOR STRONG SCHOOLS AND FLORIDA'S SYSTEM

Despite the major wins for education reformers in the past—the 1998 amendment and the decision in *Bush*—the Circuit Court for the Second Judicial Circuit of Florida held that it could not decide the adequacy of Florida's schools because it did not have a justiciable standard.²⁰⁷ Once again, Florida's poorer students were denied the opportunity to challenge the level of schooling the state had provided to them.²⁰⁸ Should this case reach the Supreme Court of Florida, there are several reasons why the court should decide on the issue of whether the state has provided an adequate education to its students.²⁰⁹ If the court does not wish to rule on the issue of adequacy, education reformers have another fortunate opportunity in the near future.²¹⁰

A. *The Supreme Court of Florida*

In *Bush*, the Supreme Court of Florida clearly indicated that the 1998 amendment provided standards to determine the meaning of adequate.²¹¹ The decision also stated that the court should interpret the language of the Florida Constitution when it can.²¹² As previously discussed, states look at how other states have ruled when deciding their own school financial suits.²¹³ Therefore, the State of Florida should now look to how the State of Washington decided its own school finance case.²¹⁴ This is because Washington is also a Category IV state, and is the only other state to contain the *paramount duty* language.²¹⁵ In a case that examined issues strikingly similar to the issues in *Citizens for Strong Schools*, the Supreme Court of Washington determined that it could decide the case without infringing on the separation of powers.²¹⁶ For these reasons, the Supreme Court of Florida could and should decide that it does have the power to interpret the education

207. *Bush v. Holmes*, 919 So. 2d 392, 413 (Fla. 2006); *Citizens for Strong Sch., Inc.*, slip op. at 18–19; see also FLA. CONST. of 1968, art. XI, § 2.

208. See *Citizens for Strong Sch., Inc.*, slip op. at 19–20, 29.

209. See *Bush*, 919 So. 2d at 403–05; *Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400, 405, 407 (Fla. 1996) (per curiam).

210. *Coal. for Adequacy & Fairness in Sch. Funding, Inc.*, 680 So. 2d at 408; see also FLA. CONST. of 1968 art. XI, § 2; Gordon, *supra* note 8, at 288; *infra* Section VI.B.

211. See *Bush*, 919 So. 2d at 403.

212. *Id.* at 400, 405.

213. Escue et al., *supra* note 2, at 605.

214. See *id.*

215. See WASH. CONST. art. IX § 1; Staros, *supra* note 42, at 498.

216. See *Seattle Sch. Dist. No. 1 of King Cty. v. State*, 585 P.2d 71, 76, 88 (Wash. 1978) (en banc); *Citizens for Strong Sch., Inc., v. Fla. State Bd. of Educ.*, No. 09-CA-4534, slip op. at 20 (Fla. 2d Cir. Ct. May 24, 2016).

provision and assess the level of education provided by the state.²¹⁷ This is not to say that the court will find the level of education unconstitutional as the Supreme Court of Washington did.²¹⁸ It merely means the court will get to the question of whether the education provided to its students is indeed adequate.²¹⁹

B. 2017-2018 Florida Constitution Revision Commission

Education reformers in Florida will have a rare opportunity to effectuate change as of 2017.²²⁰ Just as the Revision Commission met in 1997, it will meet again in 2017.²²¹ Many changes that education reformers called for in 1997 were written out of the 1998 amendment.²²² The 1998 amendment received huge support from the public.²²³ The citizens of Florida would once again have an opportunity to have education be declared a fundamental right, further define the term adequate, and allow for students to be able to sue independent school districts.²²⁴ These changes would give a voice to students who unfortunately attend underperforming schools.²²⁵ Declaring education as a fundamental right could compel the Supreme Court of Florida to weigh in on the issue.²²⁶

VII. CONCLUSION

For far too long, the State of Florida has decided to dodge the question of how its schools perform.²²⁷ Whether the courts defer to the legislature, or the legislature intentionally dilutes the citizens' wants and needs, the time has come for the Supreme Court of Florida to decide.²²⁸ The state holds school districts accountable for how its teachers and students perform, and it is now time for the court to hold the Department of Education

217. See *Bush*, 919 So. 2d at 405; *Seattle Sch. Dist. No. 1 of King Cty.*, 585 P.2d at 76; *Citizens for Strong Sch., Inc.*, slip op. at 19–20; Escue et al., *supra* note 2, at 605; Staros, *supra* note 42, at 498.

218. *Seattle Sch. Dist. No. 1 of King Cty.*, 585 P.2d at 99.

219. *Bush*, 919 So. 2d at 398.

220. See Gordon, *supra* note 8, at 288.

221. See *id.*

222. *Id.* at 294–95, 300.

223. See *id.* at 302.

224. See *id.* at 280, 296, 298.

225. See Gordon, *supra* note 8, at 279.

226. See *id.* at 280–82.

227. See *id.* at 273, 283; *supra* Part II–III.

228. See Gordon, *supra* note 8, at 288; *supra* Parts II–III.

accountable.²²⁹ The state and legislature want to avoid flooding the judicial system with lawsuits challenging Florida's educational system.²³⁰ If the state truly believes that it has made leaps and bounds in test scores and is a national leader in education, then it should not fear the court ruling on this issue.²³¹

If the Supreme Court of Florida decides that it cannot adjudicate the issue of adequacy, educational reformers need to be successful during the 2017 to 2018 Revision Commission.²³² It would be difficult for the court to ignore claims concerning the infringement of a constitutional right.²³³

229. See *Citizens for Strong Sch., Inc. v. Fla. State Bd. of Educ.*, No. 09-CA-4534, slip op. at 2, 27 (Fla. 2d Cir. Ct. May 24, 2016); *supra* Part IV.

230. See Order Denying Dismissal, *supra* note 120, at 2; *supra* Part IV.

231. See *Citizens for Strong Sch., Inc.*, slip op. at 18–19; *supra* Part IV.

232. See Gordon, *supra* note 8, at 288; *supra* Part VI.

233. See Gordon, *supra* note 8, at 280, 296, 298; *supra* Part VI.