

Citizens For Strong Schools, Inc., Et Al. V. Florida State Board Of Education, Et Al.: How The Florida Supreme Court Decision Will Have Distressing Effects On Public Education For Vulnerable Children

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Citizens For Strong Schools, Inc., Et Al. V. Florida State Board Of Education, Et Al.:

How The Florida Supreme Court Decision Will Have Distressing Effects On Public Education For Vulnerable Children

Kristen Calzadilla*

Free public-school education is fundamental aspect to many citizens life, liberty, and pursuit of happiness in the United States. As states add constitutional provisions guaranteeing a public education, there are still great disproportionalities in the adequacy pf education provided to underrepresented students. Such are the issues at the heart of the recent Florida Supreme Court case, Citizens for Strong Schools, Inc., et al. v. Florida State Board of Education, et al. Citizens for Strong Schools throws its hat into the contentious debate over equitable educational standards. However, despite other state supreme courts' rulings that similar provisions in the state constitutions are justiciable, thereby giving the injured parties a way to force legislative change, the Florida Supreme Court refused to get involved, declaring the provision a nonjusticiable political issue that does not allow for judicial intervention to remedy the inequitable policies.

* I am very grateful for the opportunity to have researched and published an article on a topic that means so much to me. I would especially like to thank Bernie Perlmutter, who has been the best mentor I could ever ask for and without whom this article would not exist; my parents, who have supported me throughout my entire life and especially in law school; and Raymond, who encouraged me to attend law school and who pushes me to be the best version of myself so that I can contribute better to the world. I am immensely thankful for all of you.

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I. INTRODUCTION

Free public-school education is a fundamental piece of the fabric of the United States—a symbol of our historic faith in upward mobility in a democracy. It is so important, in fact, that many states, including Florida, have put provisions regarding educational guarantees into the state’s constitution¹. Florida’s Constitution, for example, has the following educational mandate:

The education of children is a fundamental value² of the people of the State of Florida. It is, therefore, a paramount duty of the state³ to make adequate provision for the

¹ See Ala. CONST. art. XIV, § 256; Alaska CONST. art. VII, § 1; Ariz. CONST. art. XI, § 1; Ark. CONST. art. XIV, § 1; Cal. CONST. art. IX, § 1; Colo. CONST. art. IX, § 1; Conn. CONST. art. VIII, §§ 1-2; Del. CONST. art. X, § 1; Ga. CONST. art. VIII, § 1; Haw. CONST. art. X, § 1; Idaho CONST. art. IX, § 1; Ill. CONST. art. X, § 1; Ind. CONST. art. VIII, § 1; Iowa CONST. art. IX, § 1; Kan. CONST. art. VI, § 1; Ky. CONST. § 183; La. CONST. art. VIII, § 1; Me. CONST. art. VIII, pt. 1, § 1; Md. CONST. art. VIII, § 1; Mass. CONST. art. V, § 2; Mich. CONST. art. VIII, § 2; Minn. CONST. art. XIII, § 1; Miss. CONST. art. VIII, § 201; Mo. CONST. art. IX, § 1(a); Mont. CONST. art. X, § 1; Neb. CONST. art. VII, § 1; Nev. CONST. art. XI, § 1; N.H. CONST. pt. Second, art. 83; N.J. CONST. art. VIII, § 4, para. 2; N.M. CONST. art. XII, § 1; N.Y. CONST. art. XI, § 1; N.C. CONST. art. I, § 15; id. art. IX, §§ 1-2; N.D. CONST. art. VIII, §§ 1, 4; Ohio CONST. art. VI, § 2; Okla. CONST. art. XIII, § 1; Or. CONST. art. VIII, §§ 3, 8; Pa. CONST. art. III, § 14; R.I. CONST. art. XII, § 1; S.C. CONST. art. XI, § 3; S.D. CONST. art. VIII, § 1; Tenn. CONST. art. XI, § 12; Tex. CONST. art. VII, § 1; Utah CONST. art. X, § 1; Vt. CONST. § 68; Va. CONST. art. VIII, § 1; Wash. CONST. art. IX, § 1; W. Va. CONST. art. XII, § 1; Wis. CONST. art. X, § 3; Wyo. CONST. art. I, § 23.

² Florida’s citizens have believed in the essential nature of education since its inception: “[E]ducation is absolutely essential to a free society under our government structure.” *Bush v. Holmes*, 919 So. 2d 392, 405 (Fla. 2021) (quoting *Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400, 409 (Fla. 1996) (Overton, J. concurring)). The term “fundamental value” is adopted from the language used by the dissent in *Coalition*: “Surely all would agree that education is a fundamental value in our society . . . The people of Florida recognized the fundamental value of education by making express provision for education in our constitution.” Jon Mills & Timothy McLendon, *Strengthening the Duty to Provide Public Education*, 72 No.9 FLA. BAR J. 28 (1998) (quoting *Coal.*, 680 So. 2d at 410 (Anstead, J., dissenting)).

³ Indeed, the Supreme Court noted public education as a paramount duty of the state in cases such as *Brown v. Board of Education*: “education is perhaps the most important function of state and local government. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society . . . [S]uch an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.” 347 U.S. 483, 493 (1954). See also *Plyler v. Doe*, 457 U.S. 202, 221 (1982): “The American people have always regarded education and [the] acquisition of knowledge as matters of supreme importance . . . In addition, education provides the basic tools by which

education of all children residing within its borders. *Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high-quality system of free public schools that allows students to obtain a high-quality education . . .*⁴

Public school education, though, must be adequate and equitable for *all* students, and states must take responsibility when its school system is not living up to the standards that America's children deserve.⁵ If a state's policies are disproportionately, negatively affecting vulnerable children's lives—such as minority children, children born into lower socioeconomic classes, and children with disabilities—then those affected must have an ability to challenge the policies as injured parties, especially if those policies are rooted in the state constitution. A claim based on the state's constitutional issues are typical examples of the kinds of claims that are commonly dealt with in the judiciary.⁶ But what happens when a state Supreme Court refuses to rule on constitutional issues?

individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of society." (quotations omitted).

⁴ Fla. CONST. art. IX, § 1(a) (emphasis added).

⁵ Indeed, the educational mandates in other states' constitutions have been found to be justiciable in a variety of situations: *See* *Citizens for Stronger Schs., Inc. v. Fla. State Bd. of Educ.*, 262 So. 3d 127, 149, n. 16 (Fla. 2021) (Pariente, J., Dissenting) (See, e.g., *Lobato v. State*, 304 P.3d 1132, 1137 (Colo. 2013) ("Plaintiffs presented a justiciable claim because 'determin[ing] whether the state's public school financing system is rationally related to the constitutional mandate that the General Assembly provide a "thorough and uniform" system of public education' does not 'unduly infring[e] on the legislature's policymaking authority.'" (quoting *Lobato v. State*, 218 P.3d 358, 363 (Colo. 2008))); *Conn. Coal. for Just. in Educ. Funding, Inc. v. Rell*, 295 Conn. 240, 242 (2010) ("[T]his court has a role in ensuring that our state's public school students receive th[e] fundamental guarantee" provided in the state constitution.); *Rose v. Council for Better Educ. Inc.*, 790 S.W.2d 186, 189 (Ky. 1989); *Cruz-Guzman v. State*, 916 N.W.2d 1, 9 (Minn. 2018) ("Although specific determinations of educational policy are matters for the Legislature, it does not follow that the judiciary cannot adjudicate whether the Legislature has satisfied its constitutional duty under the Education Clause."); *Columbia Falls Elementary Sch. Dist. No. 6 v. State*, 109 P.3d 257, 261 (2005) ("As the final guardian and protector of the right to education, it is incumbent upon the court to assure that the system enacted by the Legislature enforces, protects and fulfills the right. We conclude this issue is justiciable."); *Leandro v. State*, 346 N.C. 336, 488 S.E.2d 249, 253 (1997) ("It has long been understood that it is the duty of the courts to determine the meaning of the requirements of our Constitution."); *McCleary v. State*, 173 Wash. 2d 477, 269 P.3d 227, 231 (2012) ("The judiciary has the primary responsibility for interpreting [the constitution] to give it meaning and legal effect."); see also, e.g., *Hoke Cnty. Bd. of Educ. v. State*, 358 N.C. 605, 599 S.E.2d 365 (2004).

⁶ *See generally In re Sen. Jt. Res. of Legis. Apportionment* 1176, 83 So. 3d 597, 686 (Fla. 2012) (issuing declaratory judgment that senate apportionment plan was unconstitutional); *Askew v. Schuster*, 331 So.2d 297, 300 (Fla. 1976) (The Court "will not

Such are the issues at the heart of the recent Florida Supreme Court case, *Citizens for Strong Schools, Inc., et al. v. Florida State Board of Education, et al.*⁷ *Citizens for Strong Schools* throws its hat into the contentious debate over equitable educational standards. However, despite other state supreme courts' rulings that similar provisions in the state constitutions are justiciable, thereby giving the injured parties a way to force legislative change,⁸ the Florida Supreme Court refused to get involved, declaring the provision a nonjusticiable political issue that does not allow for judicial intervention to remedy the inequitable policies.

This case note contains five parts, including its introduction. Part II describes the relevant constitutional history of education in Florida and analyzes both the duty that the relevant educational amendment from 1998⁹ created for the State of Florida, as well as the legislation and policies that stemmed from the constitutional amendment. Part III explains the case law that led to and followed the relevant constitutional amendment. Part IV describes *Citizens for Strong Schools*' backstory and analyzes how the court's ruling stands as a break from the trends in other state supreme courts to utilize state constitutional protections for school equity and the troubling implications of the ruling in the instant case. Part V is the Conclusion.

II. THE 1998 CONSTITUTIONAL AMENDMENT AND ITS RELEVANT CASELAW

Florida became a state of the union in 1845, seven years after the then-territory drafted a constitution.¹⁰ The Constitution was amended in 1868 to include the language that it was “the paramount duty of the State to make ample provision for the education of all the children.”¹¹ In 1885, the

seek to substitute its judgment for that of another coordinate branch of government, but will only measure acts done with the yardstick of the constitution”) (citations omitted); *Dade Cnty. Classroom Tchrs. Ass'n, Inc. v. Legislature*, 269 So. 2d 684, 686 (Fla. 1972) (“The judiciary is in a lofty sense the guardian of the law of the land and the Constitution is the high law. A constitution would be a meaningless instrument without some responsible agency of government having authority to enforce it.”).

⁷ *Citizens for Strong Schs., Inc. v. Fla. State Bd. Of Educ.*, 262 So. 3d 127 (Fla. Dist. Ct. of App. 2019).

⁸ *See id.* at 149, n.16 (Pariente, J., Dissenting).

⁹ Fla. CONST. art. IX, § 1(a) (1998).

¹⁰ *Citizens for Strong Schs., Inc.*, 262 So. 3d at 127 (citing *Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400, 405 (Fla. 1996)).

¹¹ Fla. CONST. art. IX, § 1 (1868); *see also* 2 FRANCIS NEWTON THORPE, *THE FEDERAL AND STATE CONSTITUTIONS, COLONIAL CHARTERS, AND OTHER ORGANIC LAWS OF THE STATES, TERRITORIES, AND COLONIES NOW OR HERETOFORE FORMING THE UNITED STATES OF AMERICA*, at 716 (Government Printing Office, 1909).

phrase “paramount duty” was deleted from the Constitutional amendment, and the strength of the State’s duty was reduced substantially.¹² Prior to 1998, article IX § 1(a) stated that “[a]dequate provision shall be made by law for a uniform system of free public schools.”¹³

The seminal interpretation of the pre-1998 amendment came in 1996 with the Florida Supreme Court case, *Coalition for Adequacy & Fairness in School Funding, Inc. v. Chiles*.¹⁴ In *Coalition*, Appellants—which consisted of 11 Florida public school students and their parents and guardians, 23 citizens and taxpayers of the State of Florida who are also members of various school boards in the state, and 45 school boards from varying counties in Florida¹⁵—sought declaratory relief and requested the trial court declare an adequate education a fundamental right under the Constitution.¹⁶ Appellants alleged that the State had “failed to provide its students that fundamental right by failing to allocate adequate resources for a uniform system of free public school as provided for in the Florida Constitution.”¹⁷ Appellants further alleged the following:

- (1) Certain students are not receiving adequate programs to permit them to gain proficiency in the English language;
- (2) Economically deprived students are not receiving adequate education for their greater educational needs;
- (3) Gifted, disabled, and mentally handicapped children are not receiving adequate special programs;
- (4) Students in property-poor counties are not receiving an adequate education;
- (5) Education capital outlay needs are not adequately provided for; and
- (6) School districts are unable to perform their constitutional duties because of the legislative imposition of noneducational and quasi-educational burdens.¹⁸

¹² A “paramount duty” imposes a Category IV duty upon the legislature, the highest duty possible to impose on a legislature. *Coal. for Adequacy & Fairness in Sch. Funding, Inc.*, 680 So. 2d at 405. By dropping such language, the 1885 Constitutional amendment reduces the strength of the duty on the legislature. See also Mills and McLendon, *supra* note 2 (discussing previous Florida constitutional educational mandate in the 1868 constitution and how the 1885 constitutional amendment reduced the duty imposed on the state to provide for public education.); see also Barbara J. Staros, *School Finance Reform Litigation in Florida: A Historical Analysis*, 23 STETSON L. REV. 497, 498-99 (1994).

¹³ See *Citizens for Strong Schs., Inc. v. Fla. State Bd. Of Educ.*, 262 So. 3d 127, 129 (Fla. 1st DCA 2019) (citing Fla. CONST. art. IX, § 1(a) (1968)) (emphasis added).

¹⁴ *Coal. for Adequacy & Fairness in Sch. Funding, Inc.*, 680 So. 2d at 400.

¹⁵ *Id.* at 402, n.1.

¹⁶ *Id.* at 402.

¹⁷ *Id.*

¹⁸ *Id.*

Appellees argued that Appellants raised a non-justiciable political question and that due to the separation of powers doctrine, the non-justiciable political question is outside of the scope of the judiciary's jurisdiction.¹⁹ They further argued that "the constitution has committed the determination of 'adequacy' to the legislature, and that there is a 'lack of judicially discoverable and manageable standards; to apply to the question of 'adequacy.'"²⁰

The Court agreed with the Appellee's arguments, holding that Appellants "failed to demonstrate in their allegations, or in their arguments on appeal, an appropriate standard for determining 'adequacy' of support provided by state that would not present a substantial risk of judicial intrusion into the powers and responsibilities assigned to the legislature, in violation of the separation of powers doctrine."²¹ The Court affirmed the dismissal of the complaint, which "asked the trial court to declare that an adequate education is a fundamental right . . . and that the State has failed to provide its students that fundamental right by failing to allocate adequate resources for a uniform system of free public schools."²² In rejecting this claim, the Florida Supreme Court reasoned the Appellants "made a blanket assertion that the entire system is constitutionally inadequate"²³ which would require judicial intrusion into the Legislative branch's appropriations power. The Court agreed with the trial court's order, which stated that "there is no textually demonstrable guidance in Article IX, section 1, by which the courts may decide, [*a priori*], whether given an over level of state funds is 'adequate' in the abstract."²⁴ The Court further agreed with the trial court's ruling on the constitutionality of the state legislature's appropriations for education would violate the separation of powers doctrine of the Florida Constitution: "To decide such an abstract question of 'adequate' funding, the courts would necessarily be required to subjectively evaluate the Legislature's value judgments as to the spending priorities to be assigned to the state's many needs, education being one of them."²⁵

Justice Ben Overton concurred with the holding but disagreed with certain aspects of the majority's reasoning; namely, he stressed his belief that the judiciary can enforce Article IX, § 1 in certain specific cases. Justice Overton additionally emphasized that the outcome of the case "does not preclude the treatment of education as an essential, fundamental

¹⁹ *Id.* at 408.

²⁰ *Id.*

²¹ *Id.* at 400.

²² *Id.* at 402.

²³ *Id.* at 406.

²⁴ *Id.*

²⁵ *Id.* at 407-08.

right”²⁶ and “suggested that the term ‘adequate’ might have some ‘minimum threshold . . . below which the funding provided by the legislature would be considered ‘inadequate.’”²⁷ He suggested that evidence of “a thirty percent illiteracy rate” would be an example of a cause of action that would potentially necessitate the judiciary to intervene.²⁸

Following the decision in *Coalition*, the Florida Constitution Revision Commission (“CRC”) proposed amendments to Article IX section 1 during its 1997-1998 legislative sessions.²⁹ The CRC met during the 1997-1998 legislative sessions in Florida to propose various amendments, including an amendment similar to the language of the educational provision; this amendment to the educational provision came as a response to *Coalition* and the Florida Supreme Court ruling that the then-current version of the constitutional provision did not provide for judicially manageable standards.³⁰ This constitutional amendment, proposed by eight members and one alternate member of the CRC, was introduced various times throughout 1997-1998. CRC amended and redrafted and was officially adopted as Proposals 157 and 181.

Proposal 157 drew various concerns at the CRC’s February 26, 1998, meeting over the ability of injured parties to bring lawsuits against the state based on the amendment’s definition of “adequate provision.”³¹ The Commissioner of the Style and Drafting Committee (which amended Proposal 157 before it reached the floor on its final vote on February 26, 1998), Jon Lester Mills, acknowledged that although the proposed constitutional amendment was aspirational in explaining the state’s goals for public education, because of defining “adequate provision,” it likely would open the state up to litigation.³² Commissioner Mills also acknowledged that if the system was somehow inadequate based on the constitutional definition and that if interested parties (such as parents) brought suit with evidence as to how any individual school was

²⁶ *Id.* at 409.

²⁷ *Citizens for Strong Schs., Inc. v. Fla. State Bd. Of Educ.*, 262 So. 3d 127, 138 (Fla. 1st DCA 2019).

²⁸ *Id.*

²⁹ As a result of a 1968 amendment to the Florida Constitution, the CRC must meet every two decades to propose amendments to the Florida Constitution. Fla. CONST. art. XI, § 2 (1968). In order for one of the proposed CRC constitutional amendments to pass, there must be a statewide ballot vote and the voters must approve the amendment by sixty percent.

³⁰ *See Citizens for Strong Schs.*, 262 So. 3d at 145 (Pariente, J., dissenting); *see also* discussion *infra* Part III.

³¹ Fla. Const. Revision Comm’n, Meeting Proceedings for Feb. 26, 1998, at 37-60 (1998).

³² *See supra* note 8, at 53-54.

inadequate, it would possibly be representative of the system as a whole.³³ As Commissioner Mills stated:

This doesn't create an individual cause of action because it deals with the system. In other words, this creates an obligation and a definition that we hope the Legislature adheres to. It wouldn't allow you to sue your school system, as an individual. You could sue the entire state if you could prove that it was not uniform and inadequate. And, in fact, there have been lawsuits in the past on uniformity in both this state and other states. But you would be suing on the system as it applies to you . . . It would strengthen the position vis-à-vis the system. In other words, the issue is, at least as I understand it, if one individual has a bad result, that's not enough to create an action. But if the system is inadequate or un-uniform, and that can be shown, then it is possible for a system to be declared unconstitutional.³⁴

Additionally, the Commissioner acknowledged that the advantage of including the definition of "adequate provision" in the proposed amendment for the Constitution would give guidance to the Florida Supreme Court in regard to possible lawsuits on the adequacy of the public school system.³⁵ This language "was intended to define what adequate education should be in the state of Florida with common terms used in other constitutions."³⁶ This would thereby create a justiciable standard that the Florida Supreme Court could look at in any possible constitutional litigation.³⁷

Further evidence from the CRC shows that the intent of the constitutional amendment was to create a definition by which the judiciary

³³ *Id.* at 57-58.

³⁴ *Id.* at 52-53.

³⁵ *Id.* at 57-58.

³⁶ See Mills and McLendon, *supra* note 2, at n.69.

³⁷ "Commissioner Mills spoke of the importance of providing a definition for adequacy 'which would give guidance to either the legislature or the courts,' noting: 'I think the terms used here are understandable, they are derived . . . from other states that have a higher standard, and they give the court and any future legislature an opportunity to meet a standard of adequacy.'" *Id.* at n.70. "[T]he new standard is intended to provide a benchmark to require government to act when the system can be demonstrated to be dangerous, unhealthy, or not of high quality. The standard allows courts to make a determination of unconstitutionality. However, the new standard is also intended to place the legislature on notice that the people of Florida expect more with regard to education." *Id.* at n.72 (citing Fla. Const. Revision Comm'n, *Meeting Proceedings for Jan. 13, 1998*, at 203 (1998) (Statement of Comm'r Brochin)).

could interpret the educational system's effectiveness in Florida. In an Amicus Curiae brief to the Florida Supreme Court in the later *Citizens for Stronger Schools* appeal,³⁸ several members of the 1998 CRC wrote in favor of Petitioners' arguments. These CRC members contended that the history of the CRC and the ratified Article IX § 1(a) proves that the purpose of the amendment was "to provide a judicially-enforceable right to a public school system that is 'uniform, efficient, safe, secure, and high quality.'"³⁹ According to William A. Buzzett and Deborah K. Kearney's *Commentary*, "The addition of 'efficient, safe, secure, and high quality' represents an attempt by the 1997-1998 Constitution Revision Commission to provide constitutional standards to measure the "adequacy" provision found in the second sentence of section 1."⁴⁰ The resulting amendment, following the adoption of Proposal 157 and which was approved by Florida voters in 1998,⁴¹ states as follows:

The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high-quality system of free public schools that allows students to obtain a high-quality education.⁴²

Scholars who have analyzed state education articles or clauses "have classified them into four categories based upon the level of duty imposed

³⁸ Amicus Curiae Brief of Certain Commissioners of 1998 Constitution Revision Commission in Support of *Appellants, Citizens for Stronger Schs., Inc., v. Fla. State Bd. of Educ.*, 262 So. 3d 127 (Fla. Dist. Ct. App. 2019) (No. SC18-67) 2018 WL 3328836.

³⁹ *Id.* at 1-2.

⁴⁰ See *Bush v. Holmes*, 919 So. 2d 392, 404 (Fla. 2006) (quoting Fla. CONST. art. IX, § 1, construed in William A. Buzzett & Deborah K. Kearney, *Commentary to 1998 Amendment*, 26A FLA. STAT. ANN. (West Supp. 2006)).

⁴¹ See Fla. CONST. art. XI, § 5(e); Florida voters must approve a proposed Constitutional amendment by a vote of at least 60% approval; see also Brief for Petitioners' at 19, *Citizens for Strong Schs. v. Fla. State Bd. of Educ.*, 232 So. 3d 127, 1163 (Fla. Dist. Ct. App. 2019) (No. SC18-67), 2018 WL 2740355 ("The ballot statement presented to the voters who approved the revision explained: Our Constitution presently requires 'adequate provision' for public schools. The Florida courts have held, however, that the Constitution does not provide any standards for determining whether adequate provision has been made. To address these shortcomings, the Commission recommended that our Constitution state the education of Florida's children is a fundamental value and is a paramount duty of the state. Also, guidelines for determining whether the education system is adequate are provided, and require that our system be efficient, safe, secure and high quality.").

⁴² Fla. CONST. art. IX, § 1(a), (1998).

on the state legislature.”⁴³ The four categories of duty imposed on the state legislature “range from those which ‘merely provide for a system of free public schools’ Category I, to those which make education an important or paramount duty of the state, Category IV.”⁴⁴ Subsequent to the adoption of the amendment, Florida’s Constitution contained one of the strongest and most detailed explanations of a state’s duty to its students in the nation.⁴⁵

The 2006 Florida Supreme Court case *Bush v. Holmes* was the first lawsuit where the Florida Supreme Court interpreted the amendment.⁴⁶ The case involved a challenge to a specific voucher program known as the Opportunity Scholarship Program (“OSP”), which gave students the option, among others, to “receive funds from the public treasury, which would otherwise have gone to the student’s school district, to pay the student’s tuition at a private school.”⁴⁷ The Supreme Court held in *Holmes* that OSP vouchers violated Amendment IX, § 1(a) because it “funds private schools that are not ‘uniform’ when compared with each other or the public system.”⁴⁸ *Holmes* also, importantly, stated that the 1998 amendments were made “in response in part to Coalition . . . to make clear that education is a ‘fundamental value’ and ‘a paramount duty of the state,’ and to provide standards by which to measure the adequacy of the public-school education provided by the state.”⁴⁹

⁴³ Staros, *supra* note 12, at 498.

⁴⁴ *Id.* at 498-99; see William E. Thro, *To Render Them Safe: The Analysis of State Constitutional Provisions in Public School Finance Reform Litigation*, 75 VA. L. REV. 1639, 1647-49 (1989).

⁴⁵ See R. Craig Wood & William E. Thro, *Puffery or Law: Reflections on the Florida School Finance Decision*, 368 ED. LAW REP. 961, 965-66 (“Although the People of Florida amended their State Constitution to add language which seemingly imposed the highest possible duty on the State Legislature, the Supreme Court of Florida determined that these words were “puffery” rather than law.); see also Staros, *supra* note 12, at 501 (While describing the education mandate in the 1868 Florida Constitution—which the 1998 Constitution was partially modeled after—the author notes that a Constitutional amendment that states that education is the “paramount duty of the state” is classified as a Category IV clause, imposing a great duty to the legislature); see also *Holmes*, 919 So. 2d at 404: “Using this rating system, Florida’s education clause in 1868 imposed a Category IV duty on the legislature—a maximum duty on the State to provide for education.” (quoting *Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400, 405 (Fla. 1996) n.10.) “After the 1998 revision restoring the ‘paramount duty’ language, Florida’s education article is again classified as a Category IV clause, imposing a maximum duty on the state to provide for public education that is uniform and of high quality.”

⁴⁶ *Holmes*, 919 So. 2d at 392.

⁴⁷ *Id.* at 397.

⁴⁸ *Id.* at 398.

⁴⁹ *Citizens for Strong Schs., Inc. v. Fla. State Bd. Of Educ.*, 262 So. 3d 127, 140 (Fla. 1st DCA 2019) (quoting *Holmes*, 919 So. 2d at 403).

The Court in *Holmes* also “later described article IX, section 1(a) as ‘providing a comprehensive statement of the state’s responsibility regarding the education of its children.’”⁵⁰ The importance of *Bush v. Holmes* in analyzing *Citizens for Strong Schools* cannot be understated, for it is a key example of the Florida Supreme Court analyzing the language of the education mandate and ruling on the constitutionality of such language. In that instance, the Florida Supreme Court ruled that that language was, indeed, justiciable—a ruling that makes the outcome in *Citizens for Strong Schools*, in which the Court ruled the case presented a nonjusticiable political question, a break in the Court’s precedent.

III. BACKSTORY AND EXPLANATION OF *CITIZENS FOR STRONG SCHOOLS*

i. Procedural History prior to Florida Supreme Court ruling

The instant case has a lengthy procedural history. In 2009, the collective Petitioners—including public school students, parents, and citizen organizations—filed suit against the collective Respondents—including the State Board of Education, the President of the Florida Senate, the Speaker of the Florida House of Representatives, and the Florida Commissioner of Education—seeking a declaration that the State was breaching its paramount duty under the Florida Constitution’s amended version of Article IX, § 1(a).⁵¹ Focusing on the 2009 Appropriations Act’s alleged inadequacies in equitable funding⁵², Petitioners “asserted that ‘adequate provision’ and ‘high quality’ are to be ‘measured by both the enumerated characteristics of and inputs into the system itself as well as the outcome results of that system.’”⁵³ Petitioners criticized lack of accountability, misuse of standardized test results, inadequate graduation rates, and achievement tests, stating that the “failure to provide a high-quality education disproportionately impacts minority, low income and

⁵⁰ *Id.* (quoting *Holmes*, 919 So. 2d at 408).

⁵¹ *Id.* at 130.

⁵² *Id.*; see Florida Education Funding Appropriations Act of 2009, FLA. STAT. § 2009-3 (2009); see also Amended Complaint for Declaratory and Supplemental Relief at 11 ¶¶ 41-42, *Citizens for Strong Schs., Inc. v. Florida State Bd. of Educ.*, (No. 09-CA-4534), 2010 WL 8752271 (2010) (“The State has failed to make adequate provision for education, which has resulted in an educational system that is not high quality. The 2009-10 and 2010-11 Appropriations Acts for K-12 education violated the Education Clause of the Florida Constitution.”).

⁵³ *Citizens for Strong Schs., Inc. v. Fla. State Bd. Of Educ.*, 262 So. 3d 127, 130 (Fla. 1st DCA 2019).

students with disabilities.”⁵⁴ Petitioners thus requested that the trial court order Respondents to establish a remedial plan that included “necessary studies to determine what resources and standards are necessary to provide a high-quality education to Florida students.”⁵⁵

Respondents moved to dismiss Petitioners’ complaint, calling the claim a “non-justiciable political question” in the same vein as the blanket claims of unconstitutionality in the earlier *Coalition* litigation.⁵⁶ The trial court denied the motion because in the time since *Coalition*, the interpreted amendment had been amended once again and thus *Coalition* was outdated, non-binding case law.⁵⁷ The trial court then pointed to *Holmes*, which described how the 1998 amendments had been drafted “to provide *standards* by which to measure the adequacy of the public-school education provided by the state.”⁵⁸ The trial court thus permitted Petitioners to proceed on their claim seeking declaratory and supplemental relief.⁵⁹

As a result, Respondents then petitioned the First District to grant a writ of prohibition, arguing that the trial court lacked jurisdiction because the allegations were instead raising non-justiciable political questions.⁶⁰ The First District denied the petition but noted that the non-justiciable political question argument was preserved for full appeal.⁶¹ Judge Roberts and six other judges dissented, arguing that the terms “efficient and high quality” were standards too vague to be enforceable by the court.⁶² However, the First District certified the following to the Florida Supreme Court as being a question of great public importance:

“Does Article IX, Section 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 statewide bases, so as to permit a court to decide claims

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* at 131; see *Haridopolos v. Citizens for Strong Sch., Inc.*, 81 So. 3d 465, 471 (Fla. 1st DCA 2012).

⁶² “Whether the [Constitution Revision] Commission intended to create a justiciable standard is ultimately irrelevant. The test is whether an enforceable standard was actually created by the text of the amendment itself. Because the terms ‘efficient . . . and high quality’ are no more susceptible to judicial enforcement than the term ‘adequate,’ this claim cannot be enforced by the courts.” *Id.*

for declaratory judgment (and supplemental relief) alleging noncompliance with Article IX, Section 1(a) of the Florida Constitution?”⁶³

The Florida Supreme Court declined to exercise jurisdiction to consider the certified question.⁶⁴

In May 2014, Petitioners filed a Second Amended Complaint, focusing the State’s alleged “failure to provide an adequate ‘overall level of funding’ and to ‘conduct a cost analysis in order to determine the amount of funding required to institute a high-quality education system.’”⁶⁵ Petitioners also argued that the state had failed to prove “a ‘uniform’ system of free public schools,” alleging that the two choice programs – the Florida Tax Credit Scholarship Program (FTC) and the McKay Scholarship for Students with Disabilities Program (McKay) – were “systematically diverting public funds to private schools.”⁶⁶ However, the trial court eventually ruled that “the Second Amended Complaint did not contain any claim that either program violated the Florida Constitution.”⁶⁷

In 2016, a bench trial consisting of more than 5,000 documents⁶⁸ entered a Final Judgment against Petitioners “on all claims,” including a

⁶³ *Citizens for Strong Schs., Inc. v. Fla. State Bd. Of Educ.*, 262 So. 3d 127, 131 (Fla. 1st DCA 2019); *see Haridopolos*, 81 So. 3d 465, 473 (“This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction . . . and the Court having determined that it should decline to exercise jurisdiction as to the Certified Great Public Importance and that it should decline to accept jurisdiction as to the Express and Direct Conflict of Decisions, it is ordered that the Petition for Review is Denied.”).

⁶⁴ *Citizens for Strong Schs.*, 262 So. 3d at 131; *see Haridopolos v. Citizens for Strong Schs., Inc.*, 103 So. 3d 140 (Fla. 2012).

⁶⁵ *Citizens for Strong Schs.*, 262 So. 3d at 131.

⁶⁶ *Id.*

⁶⁷ *Id.* at 132.

⁶⁸ These documents were intending to establish and show “the structure of Florida’s education system; the various policies and programs implemented by the State to achieve its educational goals; the funding allocated for these programs; and student performance—overall and by various demographics—under state and national assessments and other measures. Ultimately, however, the trial court found all of the issues raised by Appellants regarding educational adequacy, efficiency, and quality were properly considered ‘political questions best resolved in the political arena,’ as the organic law did not provide judicially manageable standards by which to measure the State’s actions in enacting and implementing educational policies, as the dissenting judges on this court concluded in 2011.” *Citizens for Strong Schs. v. Fla. State Bd. of Educ.*, 232 So. 3d 1163, 1167 (Fla. 1st DCA 2017); *See* Petitioners’ Initial Brief at 14, *Citizens for Strong Schs. v. Fla. State Bd. of Educ.*, 232 So. 3d 1163 (Fla.) (No. SC18-67), 2018 WL 2740355 (“Parents presented evidence to the trial court that not all children are learning the core content knowledge, as measured by wide disparities in achievement on state assessments, especially for children experience poverty or attending school in poorer school districts.”)

175-page appendix of findings of fact.⁶⁹ The trial court described the Petitioners' claims as a nonjusticiable blanket challenge to the entire system of public education in Florida and that the "new adjectives—efficient and high quality—do not give judicially manageable content to the adequacy standard that was held non-justiciable in the *Coalition* case."⁷⁰ The trial court further reasoned that the variability in statewide performance happened between counties of equivalent funding because each county has its own authority over the allocation of resources.⁷¹ Lastly, the court held that the claims violated "Florida's strict separation-of-powers doctrine."⁷² Regarding evidence, the trial court pointed out that "K-12 education has been the single largest component of the state general revenue budget" over the course of the last twenty years and that the Florida Education Finance Program "is generally recognized as one of the most equalizing school funding formulas in the nation."⁷³ Furthermore, the trial court reasoned that the Petitioners "failed to establish any causal relationship between any alleged low student performance and a lack of resources."⁷⁴

Following the bench trial, Petitioners filed an Initial Appellate Brief in the First District Court of Appeal. In the Initial Brief, Petitioners again presented extensive data in support of their request that the appellate court hold their claim as a justiciable violation of the Florida Constitution.⁷⁵ Petitioners first pointed to the standards of measuring a "high quality" education, one of the standards from the constitutional amendment. To illustrate the standards of a "high quality" education, Petitioners presented state assessments aligned with the state's curriculum and standards.⁷⁶ The scores from these assessments "are used for graduation, grade promotion, teacher evaluations, and A-F letter grades to schools and districts" which emphasized the "importance to the State of using the assessment system to measure whether a high-quality education has been delivered."⁷⁷ Petitioners used these scores and assessments to present "undisputed evidence for a trial court to measure whether a uniform and high-quality education is being delivered to all students,"⁷⁸ which showed that in 2014,

⁶⁹ *Citizens for Strong Schs v. Fla. State Bd. of Educ.*, 262 So. 3d 127, 132 (Fla. 1st DCA 2019).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* at 133.

⁷³ *Id.*

⁷⁴ *Id.* at 134.

⁷⁵ Petitioner's Initial Brief, *Citizens for Strong Schs., Inc. v. Fla. State Bd. of Educ.*, 232 So. 3d 1163 (Fla. 2017) (No. 1D16-2862), 2018 WL 2740355.

⁷⁶ *Id.* at 4.

⁷⁷ *Id.*

⁷⁸ *Id.*

only 58% of students received a passing score of 3 or higher in reading and only 56% of students statewide received a passing score of 3 or higher in math.⁷⁹ The reading passing rates among subgroups show even greater disparities: only 38% of black students, 54% of Hispanic students, 19% of English Language Learners, 47% of students receiving Free-Reduced Lunch (a proxy for poverty), and 37% of homeless students passed the statewide assessment with a 3 or higher.⁸⁰

Petitioners also pointed to the wide disparities among school districts: the statewide average passing rate for third graders was 56% based on the 2014 statewide assessment results, but in St. Johns County, 76% of third graders passed reading, and in Hamilton County, only 35% of third grades passed reading with a 3 or higher;⁸¹ the passing rate for the eighth-grade math assessment in Bradford County was 5%, with a 6% passing rate for Free and Reduced Lunch students and a 0% passing rate for both black students and students with disabilities.⁸² Graduation rates in 2015 were equally varying, with four school districts below 60%, including Franklin County, who had a graduation rate of 49%, whereas St. Johns County had a graduation rate of over 90%, and Dixie County had a graduation rate of 96.9%.⁸³ Petitioners also point to state funding inefficiencies, including how the funding formula used does not ensure “that education financial resources are aligned with student performance expectations as required by statute,” nor has the State “determined what resources are necessary to ensure that all students achieve on the standards, or how much it costs to deliver a high-quality education.”⁸⁴

Despite all the evidence pointing to the lack of uniformity within the Florida public school system, the First District affirmed on all counts.⁸⁵ Specifically, the First DCA held that Petitioners’ arguments raised political questions not subject to judicial review because of the lack of judicially discoverable standards available in the constitutional amendment.⁸⁶ The First DCA further held that Petitioners’ requested damages would require the court to violate the separation of powers

⁷⁹ *Id.*

⁸⁰ *Id.* at 5.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.* at 6.

⁸⁴ *Id.* at 9.

⁸⁵ *Citizens for Strong Schs., Inc. v. Fla. State Bd. of Educ.*, 232 So. 3d 1163, 1165-66 (Fla. 1st DCA 2017).

⁸⁶ *Id.*

doctrine.⁸⁷ In support of the decision,⁸⁸ the Court pointed to the reasoning from *Marrero ex rel. Tabalas v. Commonwealth of Pennsylvania*,⁸⁹ a Pennsylvania Supreme Court case from 1999: “Looking to a similar case in another state, we agree with the conclusion of the Pennsylvania Supreme Court that it would be contrary to the very essence of our constitution’s educational aspirations for the courts to ‘bind future Legislatures . . . to a present judicial view’ of adequacy, efficiency, and quality.”⁹⁰ The appellate court then distinguished other state Supreme Court decisions that came to a different conclusion⁹¹, stating that the court respectfully disagrees with those “decisions as insufficiently deferential to the fundamental principle of separation of powers imposed on Florida’s judiciary and the practical reality that educational policies and goals must evolve to meet ever changing public conditions, which is precisely why only the legislative and executive branches are assigned such power.”⁹²

ii. Florida Supreme Court ruling

In a plurality opinion written and filed *per curiam*, a sharply divided Florida Supreme Court affirmed the First DCA’s opinion, ruling again in favor of the Respondent, Florida State Board of Education.⁹³ Regarding whether the Court has been presented with a manageable standard for assessing “whether the State has made ‘adequate provision’ for an ‘efficient’ and ‘high quality’ system of education ‘that allows students to obtain a high quality education,’” the Supreme Court held that it had not,

⁸⁷ “There is no language or authority in Article IX, section 1(a) that would empower judges to order 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.” *Id.* at 1166.

⁸⁸ *Id.* at 1172.

⁸⁹ 739 A.2d 110, 112 (1999).

⁹⁰ *Id.*

⁹¹ *See, e.g.*, *Conn. Coal. for Just. in Educ. Funding, Inc. v. Rell*, 295 Conn. 240, 242 (2010) (concluding the state did not provide “suitable” educational opportunities); *Columbia Falls Elementary Sch. Dist. No. 6 v. State*, 109 P.3d 257 (Mont. 2005) (holding that funding for education was inadequate and that determination of “quality” education was justiciable, but deferring to state legislature to provide threshold definition of “quality”); *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989) (concluding that the legislative branch failed to comply with the constitutional requirement of providing an “efficient system of common schools”).

⁹² *Citizens for Strong Schs., Inc. v. Fla. State Bd. of Educ.*, 232 So. 3d 1163, 1172 (Fla. 1st DCA 2017).

⁹³ *Id.* at 135. The plurality consisted of Chief Justice Canady, Justice Alan Lawson, Associate Justice Edward C. LaRose, and Justice Jorge Labarga, who concurred in the result only; Chief Justice Canady wrote a concurrence which was joined by Justice Lawson and Justice LaRose. Justice Ricky Polston recused himself from the decision.

and reasoned that “this case turns in part on Petitioners’ failure to present the courts with any roadmap by which to avoid intruding into the powers of the other branches of government.”⁹⁴ The Court reasoned that the appropriations at issue had changed throughout the many years of this case making its way through the court system, and that “[i]n effect, Petitioners ask this Court to declare the current educational system unconstitutional based on years-old evidence.”⁹⁵ Chief Justice Canady wrote a concurrence arguing that the judiciary lacks the constitutional authority “to make the monumental funding and policy decisions that the Petitioners and the dissenters seek to shift to the judicial branch.”⁹⁶ Chief Justice Canady also stated that “[t]his result is required by the fundamental structure of our constitutional system and by the very nature of judicial power.”⁹⁷

Justice Barbara Pariente wrote a dissent which both Justice Fred Lewis and Justice Peggy Quince joined.⁹⁸ Justice Pariente stated that the plurality’s opinion “eviscerates article IX, section 1, of the Florida Constitution, contrary to the clear intent of the voters, and abdicates its responsibility to interpret this critical provision and construe the terms ‘uniform,’ ‘efficient,’ and ‘high quality,’ enshrined in that provision.”⁹⁹ She further opined that the amendment in question “was intended to remedy the Court’s 1996 opinion in *Coalition*, which held that article IX, section 1 did not provide judicially manageable standards for the courts to adjudicate claims brought under the provision,”¹⁰⁰ alluding to the fact that once again, despite the amendment, the Court has ruled against petitioners on the very same grounds, which she said had “reduced to empty words a constitutional promise to provide an adequate educational system for our children.”¹⁰¹ Justice Pariente also stated that Petitioners’ claims are not to seek that the K-12 public education system is blanketly unconstitutional, but to show “the State has violated its constitutional obligation under article IX, section 1 in specific ways.”¹⁰²

Furthermore, Justice Pariente found the claims justiciable, reasoning that the Florida Supreme Court is responsible for adjudicating Constitutional claims even when it requires the Court to define terms and new standards set forth by the legislature: “[w]hile deference to the Legislature and separation of powers are clearly important constitutional

⁹⁴ *Id.*

⁹⁵ *Id.* at 136.

⁹⁶ *Id.* at 144.

⁹⁷ *Id.* at 145.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.* at 147.

principles, this Court cannot use those principles to escape its obligation to interpret provisions of the Florida Constitution and enforce the rights it grants to the citizens of this state.”¹⁰³ Justice Pariente disagreed with the First District’s reliance on *Marrero v. Commonwealth* because just three months before the First DCA’s ruling on the instant case’s appeal, the Pennsylvania Supreme Court had declined to use the precedent of *Marrero*; instead, it had held that the Petitioner in *William Penn School District v. Pennsylvania Department of Education* challenged the education system based on the state constitution *was* justiciable.¹⁰⁴ Justice Pariente also pointed out that the reliance of *Marrero* had been “outdated and overruled precedent, to the exclusion of the majority of other state supreme courts.”¹⁰⁵

In contrast to *Marrero*, Justice Pariente referenced that other state supreme courts have found the terms “uniform” and “efficient” to be justiciable in the context of a constitutional Education Clause.¹⁰⁶ Justice Pariente also argued that ordinary dictionary definitions should have been used to develop judicially enforceable standards for the term “high quality”¹⁰⁷; she also stated that “the Florida Legislature has already defined ‘high quality’ by providing substantive content standards for students. As an example, the State prioritizes students’ preparation for postsecondary education without remediation.”¹⁰⁸ Justice Pariente concluded that based on the evidence presented, “Petitioners have made a strong showing that the State has failed to provide a ‘high quality’ and ‘efficient’ education to all of Florida’s students,”¹⁰⁹ and also concluded that Petitioners’ claim is justiciable and should have had the opportunity to establish that the State is violating its constitutional obligation.¹¹⁰

Justice Fred Lewis also wrote and filed a dissent, in which Justices Pariente and Quince joined.¹¹¹ Justice Lewis stated that he believed the plurality made a “very grave and harmful mistake” in this ruling, stating: “Although I understand their good-faith and well-intentioned approach, only time will truly reveal the depth of the injury inflicted upon Florida’s

¹⁰³ *Id.* at 148.

¹⁰⁴ *Id.* at 148-149.

¹⁰⁵ *Id.* at 149. To see how other state supreme courts have construed the judicially manageable terms set forth in article IX, section 1, *see e.g.*, *Rose*, 790 S.W.2d at 211; *Campbell Cty. Sch. Dist. v. State*, 907 P.2d 1238, 1259 (Wyo. 1995); *Davis v. State*, 804 N.W.2d 618 (S.D. 2011)

¹⁰⁶ *Citizens for Strong Schs., Inc. v. Fla. State Bd. of Educ.*, 232 So. 3d 127, 152-153 (Fla. 1st DCA 2019).

¹⁰⁷ *Id.* at 154.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 155.

¹¹⁰ *Id.* at 157.

¹¹¹ *Id.*

children. The words describing the right to a high quality education and the constitutional concept of protecting that right ring hollow without a remedy to protect that right.”¹¹² Justice Lewis then cited *Marbury v. Madison* and the Federalist papers to prove his point that Article IX, section 1(a) “clearly presents many justiciable questions that Florida courts can and should decide.”¹¹³ Justice Lewis further expands on that point by saying, “If we, as common law judges, do not discharge our duty to interpret the Constitution—even in complex and at times largely passionate cases—then constitutional protections would never have life.”¹¹⁴

Justice Lewis then describes why he considers the constitutional amendment justiciable:

Preliminarily, “courts must, in the first instance, interpret the text in question and determine whether and to what extent the issue is textually committed.”¹¹⁵ Both the First District Court of Appeal below and the Respondents argue that the inclusion of the phrase “by law” in article IX, section 1(a) somehow places the entire field of education as within the exclusive, unreviewable province of the legislative and executive branches. That logic is flawed. “By law” is a common phrase in our Constitution—used on 155 occasions—simply to signify that some legislation in the area is either permissible or necessary.¹¹⁶

As a result, Justice Lewis argues that “nothing in the language of article IX, section 1(a) so much as hints at the notion that the definition of a right to education is exclusively a legislative and executive prerogative.”¹¹⁷ Justice Lewis then points to the terms “safe and secure” as two justiciable terms within the constitutional amendment.¹¹⁸ The only terms that have yet to be interpreted by the Court, he states, are “efficient”

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.* at 158.

¹¹⁵ *Id.* (quoting *Nixon v. U.S.*, 506 U.S. 224, 228 (1993)).

¹¹⁶ *Id.* at 158 (citing *Ison v. Zimmerman*, 372 So. 2d 431, 434 (Fla. 1979); *Fla. Carry, Inc. v. City of Tallahassee*, 212 So. 3d 452, 460 (Fla. 1st DCA 2017)).

¹¹⁷ *Id.*

¹¹⁸ “Two of the other requirements, safe and secure, are certainly subject to judicial review—as the trial court concluded in the final order. Final Order at 19 (“The terms in Article IX relating to “safe” and “secure” are subject to judicially manageable standards . . . Florida’s trial courts deal with issues related to safety and security all day long.”). *Id.*

and “high quality,” and Justice Lewis makes his views clear that interpreting and defining those terms part of the are imperative, vital role of the judiciary, and that by concluding the terms non-justiciable, the Court has inflicted great harm in its ruling.¹¹⁹

IV. ANALYSIS

i. THE PLURALITY IN CITIZENS FOR STRONGER SCHOOLS ERRONEOUSLY INTERPRETED PETITIONERS’ ALLEGATION AS A NONJUSTICIABLE POLITICAL QUESTION

The failure of *Coalition* to elicit a Florida Supreme Court ruling that declares the State in violation of a justiciable fundamental right has had lasting effects on the State. Following the CRC’s adoption of Proposal 157 and the subsequent Constitutional amendment, the Florida Supreme Court found in *Holmes* that the new amendment provided a judicially manageable standard. Despite this, the Florida Supreme Court ruled just the opposite in *Citizens for Stronger Schools*. This ruling goes against the legislative intent of the CRC, the will of the people, and the ample statistics and evidence on the record. Furthermore, because of this ruling, Florida has regrettably isolated itself as a state that has refused to address fundamental educational inequities¹²⁰ and will continue to fall behind in the national rankings of state education systems.

¹¹⁹ “The process of interpreting and defining those terms may be somewhat challenging, but non justiciability is simply not the appropriate solution. Judges occasionally throw up justiciability barricades only to avoid the difficult or complex cases, taking the easy way out by using excuses to defer the decision of a case to a legislative body. But if our standard is to avoid difficult questions simply because they may implicate some attenuated political concern, then the Legislature has carte blanche to do as it pleases without any constitutional oversight or protection. The Legislature is composed of politicians; so, by definition, everything that the Legislature does is political in the abstract.” *Id.*

¹²⁰ Indeed, as an Amicus Curiae Brief in Support of Appellant/Petitioners for *Citizens for Strong Schools* points out, “State supreme courts around the U.S. have held states to standards set forth in their constitutions and intervened when education systems failed to adhere to them, finding such claims to be undoubtedly justiciable.” See Amicus Curiae Brief in Support of Appellants/Petitioners, at 14, *Citizens for Strong Schs. v. Fla. State Bd. of Educ.*, 262 So. 3d 127 (2019) (No. SC18-67). It further points out that Washington, North Carolina, New Hampshire, Kentucky, and South Carolina have help educational systems accountable for disparities in performance among sub-groups of children. *Id.* at 14-18. This Amicus Curiae also points out that state supreme courts have held the funding schemes of states with similar constitutional language as insufficient and unconstitutional for failing to account for the unique needs of “all children,” pointing to similar suits in Tennessee, Kansas, New York, and New Jersey. *Id.* at 18-20. This Amici Curiae was written by four organizations and one professor of law: (1) National Law Center on Homelessness & Poverty; (2) Florida’s Children First; (3) the Children and Youth Law

The wide gaps in numerous measures of success of certain groups of students—including test scores of students of African American or Hispanic descent, impoverished students or students who attend school in a poorer district, and homeless students—show the significant ways in which the education system in Florida disproportionately fails to serve the needs of minorities, the poor, and students with physical, emotional, developmental, learning, and intellectual disabilities. These alarming gaps in success rates, based on evidence Petitioners provided, do not reveal a “uniform” or “high quality” system of education as mandated by the Constitutional amendment, and thus it is clear that the state’s “paramount duty . . . to make adequate provision for the education of *all* children residing within its borders”¹²¹ has been breached. However, the plurality argued that the constitutional amendment does not provide justiciable standards because Petitioners “fail to present any manageable standard by which to avoid judicial intrusion into the powers of the other branches of government.”¹²² The plurality’s argument that this case involves a nonjusticiable political question fails for a variety of reasons.

First, it is erroneous and misleading to say that Petitioners did not present “sufficiently manageable standards” for the Court to interpret;¹²³ given that the Court had already found the amendment to provide justiciable standards in *Bush v. Holmes*.¹²⁴ In that case, the Court said that “[a]fter the 1998 revision restoring the ‘paramount duty’ language, Florida’s education article is again classified as a Category IV clause, imposing a maximum duty on the state to provide for public education that is uniform and of high quality.”¹²⁵ If the Legislature can be found to have violated that maximum duty in *Holmes*, it can be found in violation in *Citizens for Strong Schools* as well. Furthermore, the adequate provision as set forth by the legislature can be found to be in violation of the state’s constitutional duty based again on *Holmes*’ precedent; in that case, the Court wrote “Article IX, section 1(a) is a limitation on the Legislature’s power because it provides a mandate to provide for children’s education and a restriction on the execution of that mandate.”¹²⁶ Based on that precedent, the Court should have never refused to rule in favor of Petitioners in order to “avoid judicial intrusion into the powers of the other

Clinic at the University of Miami School of Law; and (4) FSU College of Law, Children’s Advocacy Clinic and Michael J. Dale, professor of law at Nova Southeastern University.

¹²¹ Fla. CONST. art. IX, § 1(a) (1998).

¹²² *Citizens for Strong Schs. v. Fla. State Bd. of Educ.*, 262 So. 3d 262, 129-130 (Fla. 1st DCA 2019).

¹²³ *Id.* at 129.

¹²⁴ 919 So. 2d 392 (Fla. 2006).

¹²⁵ *Id.* at 404.

¹²⁶ *Id.* at 407.

branches of government” because the Court itself ruled that same Constitutional language as a necessary requirement of the judiciary, not a separation of powers violation.¹²⁷

Moreover, a major indication that the Court should have intervened is the legislative history that led to this court case in the first place; namely, that after *Coalition* failed to garner a Court ruling in favor of fixing the gaps in equitable education in Florida public schools, the Florida Constitution was amended to rectify the inability of the court to intervene in said constitutional violations. The legislative history from the Constitution Revision Committee clearly shows deliberations between committee members on the increased duty on the State, and thus the judicial actions that could be commenced against the State, that would be created by the inclusion of the 1998 amendment. Another indication of the justiciability of this amendment is the fact that the Florida voters voted for the amendment’s inclusion in the Florida Constitution. This was not some random bit of legislation that the vast majority of Floridians would never hear about; this amendment, which was on the 1998 Florida ballot, received 71% “yes” votes and 29% “no” votes, meaning this amendment was approved by an overwhelming majority of voters.

Floridians included this amendment in their Constitution because they wanted to improve the public education system in their state; when the system of education thus violates the language of the Constitution, it is the right of the people with standing, injured by that Constitutional violation, to sue and receive justice or systemic change. The Courts are supposed to imbue meaning into the words of the Constitution; this has been legal precedent in the United States since *Marbury v. Madison* established that the U.S. Constitution is law and not just aspirational language, and thus subject to judicial review.¹²⁸ Judicial review grants the judiciary the ability to strike down laws, statutes, and other governmental actions that violate the Constitution. Without justiciable recourse on state violations of constitutional amendments, whether those violations are purposeful or the act of poor legislation or policy, the Floridian children at the heart of this lawsuit have no realistic way of pursuing justice or real system change.¹²⁹

The argument that the Constitutional language is merely aspirational and not justiciable is similarly untrue and not rooted in the aftermath of

¹²⁷ *Citizens for Strong Schs., Inc.*, 262 So. 3d at 130.

¹²⁸ See *Marbury v. Madison*, 5 U.S. 137 (1927); see generally *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954); see generally *Plyler v. Doe*, 457 U.S. 202 (1982).

¹²⁹ “The protections our citizens have demanded are merely hollow phrases of nothingness if there is no remedy or actual access to the protections listed.” *Citizens for Strong Schs.*, 262 So. 3d at 162 (Lewis, J., dissenting).

Coalition and the legislative history of the amendment itself.¹³⁰ An “aspirational” constitutional statement, especially one that creates the maximum duty on the state and one that is voted by an overwhelming majority of voting constituents, does exactly what it describes; it creates binding constitutional language on specific subjects or on the state itself that the citizens aspire the state to respect as a liberty. That is to say, *every* constitutional amendment is arguably aspirational because *every* constitutional amendment aspires to show the intent of the state to respect some liberty of the people who live under that constitution. If the state and its people are bound to obey the Constitution as law, then the lack of obeying the Constitution is a violation of law, and thus there must be a judicial remedy for such a violation of law, even if those violations have been compounded by an entire system of government.

The plurality was dead set on viewing a constitutional law question not with the overwhelming precedent of the justiciability of the language, but with the strict devotion to the rigid, unworkable standards of strict separation of power. That rigid unwillingness to view the question as justiciable blinded these justices of their requirement as the judiciary to imbue meaning into the constitutional text, a tradition as old as *Marbury v. Madison*; as Justice Pariente writes in her dissent, “[t]he plurality has abdicated its responsibility to interpret the constitution and eviscerated article IX, section 1 contrary to the clear intent of the voters.”¹³¹ The plurality’s rigidity in strict separation of powers also allowed the plurality to skirt their obligation to view overwhelming evidence and data of inadequacy and lack of uniformity and deduce that inadequate funding allocation is the root of this problem. This does not require the Supreme Court to decide what funding needs to be increased or reallocated, because the plurality is correct in that funding is a function of the legislative branch;¹³² it only required the Court to look at the data and make a mathematical judgment as to whether the data provided was uniform for all Florida public school children, or at least *substantially* uniform. If the plurality was forced to admit the lack of uniformity among these affected subgroups, then it stands to reason that the Constitutional amendment is violated because there is an obvious lack of uniform scores. This lack of uniformity is logically a lack of the Constitutionally required “adequate provision.” What is the nexus between the mathematical question of

¹³⁰ See Amicus Curiae Brief of Certain Commissioners of 1998 Constitution Revision Commission in Support of Appellants, at 6-7, *Citizens for Strong Schs.*, 262 So. 3d 127 (2019) (No. SC18-67).

¹³¹ *Id.* at 157 (Pariente, J., dissenting).

¹³² Additionally, case law does not allow the Florida Supreme Court to decide the *amount* of adequate funding; see *Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400 (Fla. 1996).

uniformity posed and the State of Florida's liability? It's simply put forth by Petitioners: the current system of public education funding provision is *not* adequate because it does *not* provide for a uniform system of education for *all* students as set forth by the Florida Constitution, particularly affecting those students who perhaps need a strong education the most. It is shameful that this Court ruled in this way despite the overwhelming evidence supporting Petitioners' claims as well as the overwhelming evidence that this amendment is justiciable.

What is more disconcerting is the way the Florida Supreme Court's plurality opinion accepted the First District Court of Appeals' ruling, which cherry-picked bad law—overlooking the majority of persuasive law from other states' Supreme Courts—in order to rule that the claims were not justiciable. Why would the First District Court of Appeal, for example, rely on *Marrero v. Commonwealth*, a Pennsylvania Supreme Court case where that state's highest court held that a claim was *not* justiciable, when three months prior to the First District's ruling, the Pennsylvania Supreme Court overruled *Marrero* and held that a similar claim *was* justiciable?¹³³ Why would the First District, and the Florida Supreme Court, look at the other States' Supreme Courts and willfully ignore all of the persuasive case law from other jurisdictions to the contrary?¹³⁴ As Justice Lewis writes in his dissent, “justiciability is an excuse here to avoid a tough case in these education adequacy challenges, rather than sound legal reasoning based on a valid separation of powers analysis. And, when the risk is that a nonjusticiability label could render nugatory our children's constitutional right to education, dodging our duty won't suffice.”¹³⁵

ii. THE LACK OF UNIFORMITY AND ADEQUATE PROVISIONS WILL HAVE DEVASTATING EFFECTS ON FLORIDA'S CHILDREN—ESPECIALLY ITS MOST VULNERABLE POPULATIONS

Florida's public-school system was wrongfully found by the plurality to be an adequate system of public education. Notwithstanding the evidence provided by Petitioners, as well as national data and studies corroborating the significance of the evidence as proof of the inadequacy of the system, it is clear that the refusal of the plurality to intervene will have lasting damaging effects on Florida's place in the national education ranking system, but more importantly on the subgroups children who have been injured by these inequities.

¹³³ *Citizens for Strong Schs., Inc.*, 262 So. 3d at 149 (Pariente, J., dissenting).

¹³⁴ *Id.* at nn. 15-16; *see also* cases cited *supra* note 5.

¹³⁵ *Id.* at 161 (Lewis, J., dissenting).

A comparison of this state's education system with other states' begins with a comparison of legislative appropriations. One of the major indicators of the strength of the appropriations lies in the per pupil average per state. According to the 2017 U.S. Census Bureau's Annual Survey of School System Finances, depicting revenues and spending for all public elementary-secondary school systems in 2017, Florida spent \$9,075 per pupil, one of the lowest per pupil expenditures in the nation, where the lowest expenditure per pupil was just \$7,179.¹³⁶ For perspective, New York, the state with the highest per pupil spending, spent \$23,091 per pupil. In the 2017-2018 school year, Florida had 2,832,424 students enrolled in public elementary and secondary schools; New York had 2,724,663.¹³⁷

The wide gaps in data provided by Petitioners is a devastating insight into how the current Florida education system has perpetuated a form of de facto segregation, not necessarily in the form of traditional, racial-based segregation of pre-*Brown v. Board of Education*¹³⁸ days, but that of socioeconomic segregation. This socioeconomic segregation is just as sinister as its racially based counterpart, for it is the kind that has lasting effects on a person's chances of social mobility. If a school system's low national rankings and statistics, fueled by its inadequate funding appropriations, have created such vast inequity amongst its student population, something has gone seriously wrong. These wide gaps in success rates for certain subgroups of students are not just blatantly in violation of the Florida Constitution via Amendment IX § 1(a); they are literal indicators of the future success or failure of the state and country at large.

According to the Education Trust, Florida ranks thirty-second out of fifty comparing state contribution to state funding, within the bottom fiftieth percentile,¹³⁹ despite Florida having the third largest population in the United States¹⁴⁰ and despite having the fourth and sixth largest school districts in the country (Miami-Dade and Broward counties, respectively).¹⁴¹ Additionally, studies have shown it is an increasingly difficult task to spread funding between traditional schools and charter

¹³⁶ Michael Maciag, *States That Spend the Most (and the Least) on Education*, GOVERNING (June 3, 2019), <https://www.governing.com/topics/education/gov-state-education-spending-revenue-data.html>.

¹³⁷ NAT'L CENTER FOR EDUC. STAT., "Public Elementary/Secondary School Universe Survey," 2017-2018 v.1a.

¹³⁸ *Brown v. Bd. of Educ. Of Topeka, Shawnee Cnty., Kan.* 347 U.S. 483, 493 (1954).

¹³⁹ *The State of Funding Equity in Florida*, THE EDUCATION TRUST.

¹⁴⁰ *US states - Ranked by Population 2021*, WORLD POPULATION REVIEW.

¹⁴¹ *Top 10 Largest School Districts by Enrollment and Per Pupil Current Spending*, U.S. CENSUS BUREAU (May 21, 2019).

schools in Florida.¹⁴² Charter schools generally do not serve the same diverse populations that traditional schools may, and that can have a negative effect on the traditional schools. “[T]he implication remains funding plays a statistically significant role in student achievement in traditional schools, which was not present in many of the charter schools . . . the traditional schools were serving far more students in poverty, with special needs, and English language learner needs than the charter schools so it stands to reason funding would play a bigger role in the achievement of these groups.”¹⁴³ Impoverished students bear the brunt of such a conservative system of funding. “Inequality in mathematics and reading skills results in inequality in educational attainment and inequality in labor market earnings. The best evidence on the reading and math skills of American children comes from the National Assessment of Educational Progress (NAEP), often called the nation’s report card. Math skills are particularly important predictors of subsequent labor market outcomes.”¹⁴⁴

If the argument were based solely on the notion that these statistics violated the Constitutional mandate for “uniform[ity],” but this is not just a problem that should be left to these individual school districts. This is not just an argument that appeals to just to those interested in education as a harbinger for social equality; increasing graduation rates and encouraging better schools can have a long-term positive economic impact on a state. For example, improved education and more stable employment greatly increase tax revenue, such as a return of at least 7 dollars for every dollar invested in pre-kindergarten education.¹⁴⁵ Additionally, ensuring that K-12 public education is strong enough to carry over into a four-year college degree has important benefits for society, according to a 2008 study on the relationship between increased public spending on higher education and long-term quality of life: “higher income, lower unemployment, better health, longer life, faster technology creation and adoption, reduced crime, greater tolerance, increased civic involvement, and so on.”¹⁴⁶ For instance, poor children who attend better-funded schools are more likely to complete high school and have higher earnings and

¹⁴² Brittany Larkin, *The Relationship Between Florida’s Traditional Schools, Education Management Organization Charters, and Hometown Charters Fiscal Revenues and Instructional Expenditures on Student Achievement*, 42 J. OF EDUC. FIN. 79, 97 (2016).

¹⁴³ *Id.*

¹⁴⁴ Richard J. Murnane, *Improving the Education of Children Living in Poverty*, THE FUTURE OF CHILDREN 161, 162, (2007).

¹⁴⁵ Dana Mitra, *Pennsylvania’s Best Investment: The Social and Economic Benefits of Public Education*, EDUC. LAW CENTER at 3, (last visited Nov. 1, 2021).

¹⁴⁶ Philip A. Trostel, *High Returns: Public Investment in Higher Education*, UNIV. OF ME. (Spring 2008).

lower poverty rates in adulthood.¹⁴⁷ Also, graduating from high school reduces dependency on public health programs by 60%.¹⁴⁸ Furthermore, there is a strong correlation between increasing education and decreasing crime¹⁴⁹, which would save the state of Florida incarceration costs. This is especially true for students who finish their education and graduate from a secondary school; hence, it should be the responsibility of the state to ensure educational equity, and secondary educational attainment should be of the utmost importance to the state¹⁵⁰. The importance of educational equity thus has many far-reaching long-term economic impacts on the state of Florida, meaning this lack of adequacy and uniformity will have severe effects not just on the individual students negatively affected by this ruling, but also on the state of the economy as a whole.

Finally, the law is not black and white; while it is important to analyze precedent and to respect the differing goals and responsibilities of the executive and legislative branches, the judiciary must also think critically about the implications of its ruling. By not ruling in favor of Petitioners, the judiciary has made a series of unfortunate statements: it is a statement to the legislature that its funding is enough, when it is quite obviously not; it is a statement that these statistics are uniform, when they are mathematically and by definition not; it is a statement to Petitioners who have been injured by these policies and appropriations that they do not have a legal remedy when the government violates its Constitution, when they do; and it is a statement to the entire country that the Florida system of public education is not a uniform, high quality system.

¹⁴⁷ MICHAEL LEACHMAN, KATHLEEN MASTERSON, & MARLANA WALLACE, CENTER ON BUDGET AND POLICY PRIORITIES, AFTER NEARLY A DECADE, SCHOOL INVESTMENTS STILL WAY DOWN IN SOME STATES (2016).

¹⁴⁸ Mitra, *supra* note 81, at 3.

¹⁴⁹ “Lochner and Moretti (2004) find that a one-year increase in average education levels in a state reduces state-level arrest rates by 11 percent or more. These estimated effects are very similar to the predicted effects derived from multiplying the estimated increase in wages associated with an additional year of school by the estimated effects of higher wage rates on crime (from Gould, Mustard and Weinberg 2002). This suggests that much of the effect of schooling on crime may come through increased wage rates and opportunity costs. Given the strong relationship between high school completion and incarceration, Lochner and Moretti (2004) also estimate specifications using the high school completion rate as a measure of schooling. These estimates suggest that a ten percentage point increase in high school graduation rates would reduce arrest rates by seven to nine percent.” RANDI HJALMARSSON & LANCE LOCHNER, THE IMPACT OF EDUCATION ON CRIME: INTERNATIONAL EVIDENCE, 50-51 (2012).

¹⁵⁰ “Secondly, given the most sizeable reductions in crime appear to result from the final years of secondary school, policies that encourage high school completion would seem to be most promising in terms of their impacts on crime. Because crime rates are already quite low among high school graduates, policies that encourage post-secondary attendance or completion are likely to yield much smaller social benefits from crime reduction.” *Id.*

V. CONCLUSION

In conclusion, the decision upheld in the Florida Supreme Court will have damaging effects on the current generation of students. The most vulnerable students of the State of Florida will continue to languish with disproportionate failure rates, and an important judicial remedy was just denied to them, making it now nearly impossible for true change to come to a system of public education that so desperately needs it. The quality of an education system should not be dependent on inequitable distribution of resources, and these affected subgroups require more funding, not less. The plurality's decision is, at best, conservative justices refusing to perform their obligation to uphold the constitution based squarely at odds with prevailing trend in case law from other state supreme courts as well as with Florida's own legislative history and case law on the matter; at worst, though, it is a dangerous abuse of power—with the justices willfully overlooking evidence of a failing school system in violation of the state's constitutional mandate for education—made under the pretext of strict separation of powers, all at the expense of vulnerable children. As Justice Pariente states in the conclusion of her dissent, the guarantee of a system of free public education for Florida's children is meaningless “without a judicial branch willing to perform its constitutional duty.”¹⁵¹

¹⁵¹ *Citizens for Strong Schs. v. Fla. State Bd. of Educ.*, 262 So. 3d 127, 157 (Fla. 1st DCA 2019) (Pariente, J., dissenting).