Filing # 66305795 E-Filed 01/09/2018 02:50:08 PM

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

THE SCHOOL BOARD OF ALACHUA COUNTY, FLORIDA; THE SCHOOL BOARD OF BAY COUNTY, FLORIDA; THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA; THE SCHOOL BOARD OF CLAY COUNTY, FLORIDA; THE SCHOOL BOARD DUVAL COUNTY, FLORIDA; THE SCHOOL BOARD OF HAMILTON COUNTY, FLORIDA; THE SCHOOL BOARD OF LEE COUNTY, FLORIDA; THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA; THE SCHOOL BOARD OF PINELLAS COUNTY, FLORIDA; THE SCHOOL BOARD OF POLK COUNTY, FLORIDA; THE SCHOOL BOARD OF ST. LUCIE COUNTY FLORIDA; THE SCHOOL BOARD OF VOLUSIA COUNTY, FLORIDA; and THE SCHOOL BOARD OF WAKULLA COUNTY, FLORIDA, Plaintiffs, v. FLORIDA DEPARTMENT OF EDUCATION; STATE BOARD OF EDUCATION; PAM STEWART, in her official capacity as Florida Commissioner of Education; and MARVA JOHNSON, in her official capacity as Chair of the State Board of Education. Defendants.	)	Case No. 2017 CA 002158

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS AND PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT AND INCORPORATED MEMORANDUM

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INTRODUCTION

Defendants' Motion to Dismiss and Incorporated Memorandum of Law ("Motion to Dismiss") does not present any plausible argument that this case should be dismissed. The Plaintiffs clearly have standing to seek a declaratory judgment as to the constitutionality of several provisions of HB 7069, and the Complaint states six claims upon which relief may be granted. Most significantly, the Complaint establishes that six aspects of the statutory changes in HB 7069, which on their face impermissibly restrict local district school boards' constitutional authority and responsibility to "operate, control and supervise all free public schools" located in their districts. Article IX, § 4(b), Fla. Const.

Lacking any basis for the dismissal of this action, Defendants spend the overwhelming majority of their 44-page filing arguing that they should prevail on the merits of this facial challenge to HB 7069. In this respect, the Defendants' Motion to Dismiss is really a motion for summary judgment, and the Court should treat it as such.[1]

Plaintiffs agree with Defendants that this dispute is ripe for summary judgment, *see* Motion to Dismiss at n.3 (arguing that because this is a "facial challenge" the Court can rule of the constitutionality of the statute at issue), but not that summary judgment for the Defendants is warranted. Rather, Plaintiffs hereby ask the Court for summary judgment in Plaintiffs' favor because the six challenged aspects of HB 7069 individually and collectively violate one or more provisions of the Florida Constitution.

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[1] Defendants "may move for a summary judgment in that party's favor as to all or any part thereof at any time with or without supporting affidavits." Fla. R. Civ. P. 1.510. Moreover, there is no requirement that a motion for summary judgment under Fla. R. Civ. P. 1.510(b) be preceded by a responsive pleading under Fla. R. Civ. P. 1.110(d). *Coral Ridge Properties, Inc. v. Playa Del Mar Ass'n, Inc.*., 505 So. 2d 414, 417 (Fla. 1987).

For these reasons, as more fully elaborated below, Plaintiffs respectfully request that the Court deny the Motion to Dismiss, reject Defendants' arguments, and grant Plaintiffs' Motion for Summary Judgment.

FACTUAL BACKGROUND

At the end of its last session, the Florida Legislature passed a 274-page bill known as HB 7069. HB 7069 contains provisions affecting numerous aspects of public education, and Plaintiffs here do not challenge most of those provisions. However, there are six fundamental changes wrought by HB 7069 that relate to charter schools and their relationship to locally elected district school boards. These changes effectively remove certain charter schools from the supervision and control of local district school boards in violation of the Florida Constitution.

In their Motion to Dismiss, Defendants mischaracterize each of these charter-related aspects of HB 7069:

1. While Defendants assert that the "capital-millage" provisions of HB 7069 merely require local school boards to share property-tax revenues (Motion to Dismiss at 2), those provisions actually mandate that a formula-based percentage of those revenues be given to charter schools irrespective of whether those schools actually have *any* capital needs, in spite of the presence of unmet facilities' needs in the school districts and without any requirement that the funds be used to construct usable schools. *See* §§ 1011.71(2) and 1013.62, Fla. Stat. (2017).[2]

2. Similarly, while Defendants assert that the charter "Schools of Hope" provisions challenge "choices for students who attend persistently low-performing traditional schools"

[2] The Honorable James O. Shelfer of this Court recently denied a motion to dismiss in a case raising a similar challenge to HB 7069 as that asserted in Count I of the Complaint here. *See Sch. Bd. of Palm Beach Cnty. v. Florida Dept. of Educ., et al.,* Case No. 2017 CA 002046 (December 18, 2017).

(Motion to Dismiss at 2), there actually is no statutory requirement that charter "Schools of Hope" serve students previously attending low-performing schools. Moreover, charter "Schools of Hope" do not have to go through the process of applying for a charter or negotiating a charter agreement with local district school boards, allowing them to open and operate independently after merely submitting a "notice of intent." *See* § 1002.333(4)(a), Fla. Stat. (2017).

3. HB 7069 also allows certain "charter school systems" to operate as their own independent "local educational agencies" ("LEAs") and compete with local school districts for federal grant funding. *See* §§ 1002.33(25) and 1002.333(6)(a), Fla. Stat. (2017).

4. Defendants claim that HB 7069 merely requires local school boards to use a previously established standard charter contract provided by the State (Motion to Dismiss at 3), but HB 7069 actually removes local district school boards' authority to negotiate charter contracts by establishing a statutory presumption that any deviation from the standard charter contract is invalid. *See* § 1002.33(7), Fla. Stat. (2017).

5. Likewise, Defendants assert that HB 7069 merely requires local district school boards to distribute federal Title I grant funding to schools instead of "withholding" it "for other purposes" (Motion to Dismiss at 3), but HB 7069 actually mandates precisely what amount of such funding local district school boards should provide to which schools without regard to the local district school boards' assessment of educational need. *See* § 1011.69(5), Fla. Stat. (2017).

6. Finally, what Defendants characterize as "new limits on a school district's ability to maintain the operational status quo" at low performing schools (Motion to Dismiss at 3), is actually a set of provisions in HB 7069 that effectively remove local district school boards from the process of trying to improve local schools. *See* § 1008.33(4)(b), Fla. Stat. (2017).

ARGUMENT

I. THE LEGAL STANDARDS FOR A MOTION TO DISMISS AND A MOTION FOR SUMMARY JUDGMENT

A. Motion to Dismiss

"The test of the sufficiency of a complaint in a declaratory judgment proceeding is not whether the complaint shows that the plaintiff will succeed in getting a declaration of rights in accordance with his theory and contention, but whether he is entitled to a declaration of rights at all." *Rosenhouse v. 1950 Spring Term Grand Jury, in & for Dade Cnty.*, 56 So. 2d 445, 448 (Fla. 1952) (internal citation and quotation marks omitted). "Unlike other actions, a motion to dismiss a petition for declaratory judgment does not go to the merits but goes only to the question of whether or not the plaintiff is entitled to a declaration of rights—not to whether or not he is entitled to a declaration in his favor." *Mills v. Ball*, 344 So. 2d 635, 638 (Fla. 1st DCA 1977) (citing *Rosenhouse*, 56 So. 2d at 445); *see also Royal Selections, Inc. v. Fla. Dept. of Revenue*, 687 So. 2d 893, 894 (Fla. 4th DCA 1997) ("A motion to dismiss a complaint for declaratory judgment is not a motion on the merits. Rather, it is a motion only to determine whether the plaintiff is entitled to a declaration of its rights, not to whether it is entitled to a declaration in its favor.").

"A complaint for declaratory judgment should not be dismissed if the plaintiff established the existence of a justiciable controversy cognizable under the Declaratory Judgment Act[.]" *Angelo's Aggregate Materials, Ltd. v. Pasco Cnty.*, 118 So. 3d 971, 974 (Fla. 2d DCA 2013) (quoting *Murphy v. Bay Colony Prop. Owners Ass'n*, 12 So. 3d 924, 926 (Fla. 2d DCA 2009)). That Act "should be liberally construed in order to settle uncertainties with respect to rights, status, or other equitable and legal relationships." *Rigby v. Liles*, 505 So. 2d 598, 600 (Fla. 1st DCA 1987). Moreover, as with other actions, on a motion to dismiss a complaint for declaratory judgment "it must be assumed that all allegations in the complaint are true and all reasonable

inferences must be drawn in favor of the pleader." *The Tribune Co. Holdings, Inc. v. State, Dept. of Revenue*, 34 So. 3d 762, 765 (Fla. 1st DCA 2010) (internal citations and quotation marks omitted).

B. Summary Judgment

Summary judgment is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fla. R. Civ. P. 1.510(c).

By demonstrating that no genuine issue of material fact exists, Plaintiffs shift the burden to Defendants to come forward with counter-evidence sufficient to demonstrate a genuine and material disputed issue of fact. *See O'Donnell v. BellSouth Advert. & Pub. Corp.*, 906 So. 2d 1264 (Fla. 4th DCA 2005). The court's review on summary judgment is necessarily limited to evidence that "ultimately would be admissible evidence at a trial and the inferences which might be properly drawn therefrom." *Am. Bankers Ins. Co. of Fla. v. Sintros,* 294 So. 2d 689, 689 (Fla. 3d DCA 1974) (internal citations omitted).

Plaintiffs are entitled to summary judgment as a matter of law if Defendants fail to present admissible evidence that creates a genuine issue of material fact on an issue that must be established at trial. *See Connolly v. Sebeco, Inc.,* 89 So. 2d 482, 484 (Fla. 1956) ("if the party moved against . . . is without evidence to support a fact which he must establish to succeed . . . then there is no necessity for a trial and a summary judgment is proper."); *Tarr v. Cooper*, 708 So. 2d 614, 615 (Fla. 3d DCA 1998) ("Since there is no admissible evidence to support some of the essential elements of Buyer's case, we conclude that the summary judgment must be affirmed. . . .").

Where a statutory provision is unconstitutional on its face, summary judgment is appropriate. *See, e.g.*, *Bush v. Holmes*, 919 So. 2d 392, 405 (Fla. 2006) (upholding summary judgment declaring statute creating independent system of funding private schools

unconstitutional). The Court's inquiry in the context of such a challenge is whether there exists any set of facts under which the challenged enactment might be upheld. *Fla. Dep't of Revenue v. City of Gainesville*, 918 So. 2d 250, 265 (Fla. 2005). Where, as in *Bush v. Holmes*, there are no circumstances in which the challenged statutory provisions can be reconciled with the clear dictates of the Florida Constitution, summary judgment should be granted.

II. THE MOTION TO DISMISS SHOULD BE DENIED

A. Plaintiffs Have Standing to Seek a Declaratory Judgment on the Constitutionality of Provisions of HB 7069.

Under Florida Statutes section 86.021, any person whose rights, status, or other equitable or legal relations are affected by a statute can bring an action for declaratory relief. Defendants, however, groundlessly assert that Plaintiffs lack standing to bring this action for declaratory relief and challenge the constitutionality of HB 7069. Defendants themselves cite the Florida Supreme Court's decision in *Coalition for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400 (Fla. 1996) (*see* Motion to Dismiss at 4), but neglect to mention in their discussion of standing, *id.* at 17-19, that the Supreme Court there held that local district school boards have standing to bring a constitutional challenge seeking declaratory relief. 680 So. 2d at 403.

Defendants' meritless standing argument relies on their misapplication of the holding in *Crossing at Fleming Island Community Development District v. Echeverri*, 991 So. 2d 793, 798-99 (Fla. 2008). There, the Court held that "a public official may not defend his nonperformance of a statutory duty by challenging the constitutionality of the statute." *Crossing at Fleming*, 991 So. 2d at 797. That holding is inapposite here because the Plaintiffs have not refused to perform any official duty. Rather, they have challenged the constitutionality of a statute on the grounds that it improperly strips them of constitutional authority and responsibility. By bringing this action, the

local district school boards are in fact upholding their duty to Florida voters to defend the Constitution.

Here, Plaintiffs are not attempting to justify nonperformance of any official duty. Rather, Plaintiffs challenge the constitutionality of HB 7069 because it "divests each district school board of its authority under Article IX, § 4(b) of the Florida Constitution." (Compl. ¶ 79). Indeed, there have been numerous other cases—several of which Defendants cite to in their Motion to Dismiss—in which school districts have challenged the constitutionality of legislation that conflicted with school districts' constitutional authority. *See e.g.*, *Duval Cnty Sch. Bd. v. State, Bd. of Educ.*, 998 So. 2d 641 (Fla. 1st DCA 2008); *Sch. Bd. of Escambia Cnty. v. State*, 353 So. 2d 834, 838 (Fla. 1977). Because Plaintiffs are asserting that their constitutional rights are affected by HB 7069, they have standing to bring this action.

B. The Complaint States Claims Upon Which Relief May Be Granted, and Defendants' Arguments on the Merits Do Not Show Otherwise.

Defendants' argument that the Complaint fails to state a cause of action (*see* Motion to Dismiss at 4), also rests on cases that are clearly distinguishable and, in fact, support Plaintiffs' request for summary judgment. For example, in *Undereducated Foster Children of Florida. v. Florida. Senate*, 700 So. 2d 66 (Fla. 1st DCA 1997) (per curiam), "a plain reading" of Article IX, § 1 revealed that it contemplates a right to educational opportunity rather than a "guarantee of equal educational performance." *Id.* at 67. Here, similarly, a plain reading of Article IX, § 4(b) contemplates that local district school boards must have some non-trivial role in the operation, control and supervision of *all* the public schools in their jurisdiction.

Similarly, in *Chiles*, the Florida Supreme Court rejected a challenge to the adequacy of the amount of funding appropriated for public education where the plaintiffs had not asked "the Court to review the constitutionality of any specific legislative enactment." *Chiles*, 680 So. 2d at 407.

Here, in contrast, the Complaint is quite specific about exactly which provisions are challenged. In *Chiles*, the Court relied on separation-of-powers principles in upholding the dismissal because both the appropriations authority and the general authority to establish a uniform system of education were constitutionally "assigned to the legislature." *Id.* at 408. In this case, however, the power and responsibility impinged upon by the specific legislative enactments at issue are expressly assigned by the Florida Constitution to local district school boards.

Defendants also attempt to bolster their argument for dismissal by mischaracterizing the Plaintiffs' position. Defendants claim that this case somehow relies on "the false premise that local school boards have sole and exclusive authority over every aspect of Florida's public schools." Motion to Dismiss at 5-6. This case does not depend upon that premise at all, and Plaintiffs make no such claim. Rather, Plaintiffs acknowledge that the educational system established by the Florida Constitution is one in which State and local authorities share various powers and responsibilities. *See infra* Section III.A. Indeed, Plaintiffs do not challenge most of the provisions of HB 7069, including many educational policy decisions with which they disagree, because those provisions do not implicate the constitutional structure of public education in Florida in the way that the six challenged provisions do.

Thus, while State and local authorities share responsibility for public education, there is a specific set of duties – most importantly, to "operate, control and supervise all free public schools within the school district," Article IX, § 4(b), Fla. Const. – that have been constitutionally assigned to local district school boards. Plaintiffs' contention in this case is simply that the State Defendants, in the purported exercise of their authority over public education, may not eliminate the role of local district school boards in important decisions about the operation, control or supervision of free public schools in their jurisdiction. As discussed further below, this is what HB

7069 does in several ways. If these provisions are allowed to stand, they would render Article IX, § 4(b) of the Florida Constitution meaningless.

C. There is No Requirement that Defendants Exhaust "Administrative Remedies" Before Bringing a Facial Constitutional Challenge.

The Defendants also argue that some of the Plaintiffs' claims are somehow speculative, and that they have failed to exhaust "available administrative remedies." Motion to Dismiss at 6. However, there is nothing speculative about the claims raised in the Complaint, and there are no "administrative remedies" that can correct the facial constitutional defects in HB 7069.

While a party may be required to exhaust applicable administrative remedies in an as-applied constitutional challenge, the facial constitutionality of a statute cannot be decided in an administrative proceeding. *Chrysler Corp. v. Florida Dep't of Highway Safety & Motor Vehicles*, 720 So. 2d 563, 567-68, (Fla. 1st DCA 1998) (citation omitted). In *Chrysler*, the court held that "[i]f Chrysler is correct that the statute is unconstitutional on its face because of a lack of standards for determining when a proposed modification is 'unfair or otherwise prohibited,' then the extraordinary relief of a declaratory judgment is justified before Chrysler is required to incur the expense of litigating in the administrative forum to determine if this proposed modification is unfair or otherwise prohibited." *Id.* at 568. Here, Plaintiffs are bringing a facial constitutional challenge with respect to HB 7069, not an as-applied constitutional challenge.

Moreover, the administrative procedures to which Defendants refer do not apply to the subject matter of the dispute here. Defendants claim that § 1002.333(11)(c) Fla. Stat. provides an administrative procedure to resolve disputes related to HB 7069 (Motion to Dismiss at 22), but this procedure is designed to resolve disputes arising from a performance-based agreement between a charter operator and a school district. § 1002.33(11)(c) Fla. Stat ("Pursuant to Art. IX of the State Constitution, which prescribes the duty of the State Board of Education to supervise

the public school system, the State Board of Education shall . . . [r]esolve disputes *between a hope operator and a school district* arising from a performance-based agreement or a contract between a charter operator and a school district under the requirements of s. 1008.33." (emphasis added)). There is no dispute pending between a school district and a charter school; rather, the Plaintiffs challenge the constitutionality of HB 7069. Thus, Plaintiffs are not required to pursue this action before any administrative body, let alone the State Board of Education (the "Board")—one of the defendants in this action. Neither the Board nor any other administrative agency has the authority to determine that HB 7069 is unconstitutional. Only the judiciary can do that. *See Dep't of Revenue of Florida v. Young Am. Builders*, 330 So. 2d 864, 865 (Fla. 1st DCA 1976) (holding that the facial constitutionality of a statute may not be decided in an administrative proceeding, and that the Administrative Procedure Act cannot "impair the judicial function to determine constitutional disputes.") (citing Art. II, § 3, Fla. Const., *et al.*).

Similarly, Defendants claim that the facial challenge to the provisions of HB 7069 removing Plaintiffs' ability to negotiate charter contracts adapted to local needs is subject to some exhaustion requirement. Once again, Defendants point to provisions requiring that any dispute relating to an "approved charter" be subject to "'mediation' by the State Department of Education." Motion to Dismiss at 29. But this case is not a dispute about an approved charter and the State Department of Education does not have the authority to declare HB 7069 unconstitutional. *See Dep't of Revenue of Florida*, 330 So. 2d at 865. This Court, however, does have the authority to do so, and, for the reasons discussed below should exercise that authority.

III. SUMMARY JUDGMENT FOR DEFENDANTS SHOULD BE DENIED AND PLAINTIFFS ARE ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW

A. The Florida Constitution Vests Local Control of Public Schools in the Hands of Local District School Boards.

According to Article IX, § 4(b) of the Florida Constitution, "[t]he school board shall operate, control and supervise all free public schools within the school district." To interpret this provision properly, it must be read in conjunction with other relevant constitutional provisions, and its words must be given their plain meaning.

The Florida Constitution is explicit in how it allocates different types of responsibility related to education among State and local authorities. First, under Article IX, § 1(a) of the Constitution, "[i]t is . . . a paramount duty of the state to make adequate provision for the education of all children residing within its borders." Moreover, "[a]dequate provision shall be made by law for a *uniform*, efficient, safe, secure, and high quality system of *free public schools*." *Id.* (emphasis added). The Florida Supreme Court has interpreted this language, and earlier versions of the education article, to mean that the Legislature must create "a system of public free schools . . . established upon principles that are of uniform operation throughout the State." *Holmes,* 919 So. 2d at 405 (*quoting State ex rel. Clark v. Henderson*, 188 So. 351, 352 (Fla. 1939)). Second, Article IX, § 2 of the Constitution provides that "[t]he state board of education shall be a body corporate and have such supervision of the system of free public education as is provided by law." Third, Article IX, § 4(b) provides that local district school boards shall "operate, control and supervise all free public schools within the school district." Finally, local district school boards, under Article VII, § 9(a), are "authorized by law to levy ad valorem taxes" not to exceed ten mills "for all school purposes." Thus, while the Legislature must establish a system of free public schools and the State Board of Education must supervise that overall system, the day-to-day

control over the actual operation of public schools must reside in the hands of local district school boards.

The Constitution establishes an important role for local district school boards that the Legislature cannot ignore. As the Florida Supreme Court has repeatedly recognized, "when the Constitution prescribes the manner of doing an act, the manner prescribed is exclusive, and it is beyond the power of the Legislature to enact a statute that would defeat the purpose of the constitutional provision." *Holmes,* 919 So. 2d at 407 (*quoting Weinberger v. Bd. of Pub. Instruction of St. Johns Cnty*, 112 So. 253, 256 (Fla. 1927)); *see also S. & J. Transp., Inc. v. Gordon*, 176 So. 2d 69, 71 (Fla. 1965). However, as discussed further below, that is precisely what the Legislature has done here.

Under Article IX, § 4(b), the role of each local district school board is to "operate, supervise and control" all public schools in its district. While those terms are not expressly defined in the Constitution, their meaning is clear. *See, e.g.*, *Myers v. Hawkins*, 362 So. 2d 926, 930 n.10 (Fla. 1978); *City of Jacksonville v. Continental Can Co.*, 151 So. 488, 490 (Fla. 1933). To "operate" is to "perform a function or exert power or influence." *See Webster's Ninth Collegiate Dictionary* at 827. To "control" is to "exercise a restraining or directing influence over" or to "regulate." *Id.* at 285. Finally, to "supervise" is to "superintend" or "oversee." *Id.* at 1185. Read together, these words make clear that local district school boards must have substantial authority over all public schools, including charter schools.

Prior decisions have concluded that local school boards have significant constitutional authority under Article IX, § 4(b), and that they cannot be relegated to "essentially ministerial functions." *Duval County v. State Bd. of Education,* 998 So. 2d 641, 644 (Fla. 1st DCA 2008). In *Duval County*, the First District Court of Appeals upheld a facial challenge to a statute that

established the "Florida Schools of Excellence Commission" as an independent entity with the authority to authorize charter schools. *Id.* at 642. The court found that the statute violated Article IX, § 4(b) by giving this independent entity the "powers of operation, control and supervision of free public education" specifically reserved to local district school boards. *Id.* at 643.

The same court has also held that the State cannot force a school board to build a school building. *See Jones v. Braxton*, 379 So. 2d 115, 118 (Fla. 1st DCA 1979). In *Jones*, the court explained the interplay between the State's constitutional role under Article IX, § 2 and the role of local school boards under Article IX, § 4(b):

> The state may, consistently with the constitution, establish reasonable regulations for the construction of public schools once a board determines whether a new facility need be built. The schools may not be built unless their plans are in accord with established guidelines of the State Board of Education. The state may not, however, force a board to build, nor once a board decides to build, force it to persist in that decision if later events prove the board's course unwise.

Jones, 379 So. 2d at 118.

Thus, when the State goes beyond its role of establishing reasonable regulations for the State-wide system of public education in a way that effectively removes local district school boards' ability to make decisions necessary for the operation, supervision and control of public schools, or that relegates local district school boards to ministerial functions, the State violates Article IX, § 4(b) of the Florida Constitution. All six of the challenged aspects of HB 7069 cross that line between permissible regulation of the system of public education and usurpation of constitutionally mandated local control of public schools, and therefore this Court should declare them unconstitutional and enjoin their implementation.

B. The Capital Millage Provisions of HB 7069 Are Unconstitutional on Their Face.

1. The Capital Millage Provisions Violate Article IX, § 4(b) of the Constitution.

HB 7069 amends § 1011.71 and § 1013.63, Fla. Stat., to require school districts to distribute a portion of their Capital Outlay Millage revenues to eligible charter schools based on a State-mandated formula and regardless of whether the charter schools actually have any capital needs. In so doing, HB 7069 strips local district school boards of their constitutional authority to determine the appropriate allocation of local tax revenues for the operation of public schools in their districts under Article IX, § 4(b) of the Florida Constitution.

Capital Outlay Millage revenues make up a portion of the ad valorem tax revenues levied by local district school boards under Article VII, § 9(a) of the Florida Constitution. Before the passage of HB 7069, subject to State regulation, local district school boards used their discretion to determine the appropriate allocation of Capital Outlay Millage revenues to meet capital needs in the district. § 1011.71(2), Fla. Stat. (2016). The same process, which is designed to provide transparency and accountability in using public funds to address capital needs, is applied to all public schools, including charters. Pursuant to State law, each year local district school boards must "adopt a capital outlay budget for the ensuing year in order that the capital outlay needs of the board for the entire year may be well understood by the public." §§ 1011.012 and 1013.61, Fla. Stat. The capital outlay budgets must be based on and in harmony with the comprehensive facilities plans that boards are also required to prepare and adopt each year. *See* § 1013.35, Fla. Stat.; *see also* § 1013.31(1), Fla. Stat. (requiring school boards to arrange for an educational plant survey at least every five years). Local district school boards also have long been required to prepare district educational facilities plans that include "long-range planning for facilities needs over 5-year, 10-year, and 20-year periods" and that allocate funds according to the greatest need

in the district. § 1013.35(2)(a), Fla. Stat. (2017). In addition, local district school boards are required to hold local public hearings before adopting a capital outlay budget, § 200.065, Fla. Stat., and to share their capital plans with other local government bodies. § 1013.35, Fla. Stat.

Now, under HB 7069, none of that process applies to charter schools. Instead, local district school boards are now *mandated* to give a specified portion of their Capital Millage Outlay revenues calculated by the Department of Education to charter schools regardless of the local district school board's assessment of capital needs within the district. The Defendant Department of Education is directed to calculate the amount based on the formula set forth in § 1013.62(3), Fla. Stat. The formula is a mechanical calculation based on the number of students in each charter school, with no consideration of actual capital needs. *Id.* Once the money is allocated, charter schools have discretion to expend the funds for any lawful school purpose and do not necessarily have to be used for school construction or renovation, but can be used for a wide variety of statutorily authorized purposes. Local district school boards also are bound by the Department's calculation, and the statute does not have an appeal provision. *Id.*

This system eliminates the role of local district school boards in assessing the capital needs of public charter schools in their communities in violation of Article IX, § 4(b) of the Florida Constitution. Plaintiffs also have no authority over the amount of money that they must provide to charter schools. Nor do local district school boards have any authority over how charter schools spend that locally generated revenue.

This provision thus creates a far more severe constitutional violation than that found by the First District Court of Appeals in *Jones*, 379 So. 2d 115. In *Jones*, the Court held that the State may not force a local district school board to build a school if the board believes it unnecessary or imprudent to do so. *Id.* at 118. Here, through HB 7069, the State is mandating that local district

school boards provide locally generated school construction money to charter schools regardless of need and without any involvement by the boards. Compounding this violation, the charter schools do not even have to use these local tax revenues for the purpose for which they have been approved. Charter operators do not have to use those funds on facilities at all; the funds need only be used "for school purposes for charter schools." § 1011.71(2), Fla. Stat.[3]

Moreover, this system also impinges on the Plaintiffs' authority under Article IX, § 4(b) to address capital needs in schools at which such needs actually have been identified pursuant to the local district school boards' capital facilities planning process. Rather than address needs identified through a coherent, deliberate process and reported to the public in a transparent way, the amounts calculated by the State instead will be redirected to charter schools regardless of need and without any input from local district school boards. This is entirely inconsistent with Article IX, § 4(b) of the Florida Constitution.

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[3] Even if the charter schools do use these funds for school construction, there is no guarantee charters will build schools that a local district school board could actually use. District school boards, such as Plaintiffs, are required to build all education and ancillary facilities in compliance with the State Requirements for Education Facilities 2014 ("SREF"). Fla. Admin. Code R. 6A-2.0010. Charter schools, with the exception of conversion charter schools located on campuses built and maintained by district school boards, are exempt from SREF and cannot be held to the more stringent standards required of district school boards. § 1002.33(18)(1), Fla. Stat. (2017). Pursuant to the Florida Building Code, educational use and occupancy of facilities owned by district school boards is limited to facilities built to noncombustible Type I, II, or IV construction standards or better. Fla. Bldg. Code §§ 305.1, 453.8.3, 602.2, 602.4 (Bldg. 2014). Charter schools, even though built with capital outlay dollars, are not required to be built to these standards. §§ 1002.33(18)(a), 1002.33(19), 1011.71(2), 1013.62, Fla. Stat. (2017). Accordingly, when a charter school closes, even though a charter school's property and improvements purchased with public funds revert to ownership by the district school board, subject to complete satisfaction of any lawful liens or encumbrances, § 1002.33(8)(e), Fla. Stat. (2017), the district school board that would obtain ownership of the property would not be able to continue to operate a school in any facility built by a charter that was not built to the higher SREF and Florida Building Code standards required of district school boards.

Defendants' contention that HB 7069's Capital Millage provisions are appropriate as part of the State's "shared authority over . . . public schools" (Motion to Dismiss at 8) is misguided. Mandating that capital funds be paid to charter schools, regardless of need and outside of the purview of any public planning process, is not the type of reasonable regulation of the system of public education that is within the State's powers under Article IX, § (1). If local district school boards cannot decide which schools get built or repaired in their communities, or prioritize the use of locally-levied tax dollars for such purposes, in what sense can they be said to be operating, controlling or supervising *all* the public schools in the district?

This situation is thus distinguishable from the cases which have upheld the State's authority to reverse on appeal a local district school board's decision to deny a charter application. *See* Motion to Dismiss at 9 (citing *Sch. Bd. of Palm Beach Cnty. v. Fla. Charter Educ. Found., Inc.*, 213 So. 3d 356, 360 (Fla. 4th DCA 2017) and *Sch. Bd. of Volusia Cnty. v. Acads. of Excellence, Inc.*, 974 So. 2d 1186, 1193 (5th DCA 2008)).[4] In both of those cases, the courts relied heavily on the fact that the local district school boards had a meaningful ongoing role in the operation, control and supervision of the charter schools. *Palm Beach*, 213 So. 2d at 361 (discussing board's authority to negotiate a contract, non-renew a contract, or terminate the contract); *Volusia County*, 974 So. 2d at 1193 (the "approval of an application is just the beginning of the process. . . ."). Here, in contrast, the amount to be paid is determined by the State, regardless of need and with no local input, and the use of the funds is determined by the charter schools with no involvement or supervision by the local boards.

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[4] Moreover, Plaintiffs do not concede that these cases themselves were correctly decided. Over time, the Legislature has gradually increased the independence of charter schools and reduced the role of local district school boards in spite of Article IX, § 4(b), Fla. Const. Regardless of whether the authorization appeal process in existing law actually is constitutional, the challenged provisions of HB 7069 clearly cross this line and are unconstitutional.

Nor does the State's "historical role in determining local funding for public schools" (Motion to Dismiss at 12), save its new Capital Millage Outlay scheme from its constitutional defect. Specifically, there are significant differences in the pre-existing statutory requirement to share operational funding with charters and this new requirement to provide a specific share of Capital Outlay Millage revenue. With respect to operational revenue, local district school boards, as discussed above, are involved in evaluating charter applications, negotiating charter contracts, evaluating performance, and considering renewals. With respect to the new provisions regarding capital funds, the State unilaterally sets the amount to be paid and the charter schools unilaterally decide on expenditures. The local boards serve purely a ministerial, rather than substantive, function.

Moreover, the entire system of building and maintaining public school facilities, as recognized in *Jones*, 379 So. 2d 115, is based on local judgments about competing needs. In contrast, the funding provided on a per capita basis for charter school operational needs in HB 7069 does not inherently involve the same complex assessment of competing local priorities and the allocation of scarce locally-generated resources.

Finally, Defendants' reliance on *Florida Department of Education v. Glasser*, 622 So. 2d 944 (Fla. 1993) is also misplaced. That case did not involve the question of whether local school boards' authority to operate, control, and supervise all public schools required boards to have a role in the allocation of local tax revenues for capital purposes, but turned instead on different constitutional language governing school boards' ability to set tax rates. It is simply inapposite.

For these reasons, the Capital Outlay Millage provisions of HB 7069 violate Article IX, § 4(b), Fla. Const.

2. The Capital Millage Provisions Also Violate Article VII, § 1(a) and § 9 of the Florida Constitution.

The Capital Outlay Millage provisions regarding charter schools constitute a State mandate requiring each local school board to distribute a portion of its local capital revenues to charter schools. By directing local capital outlay revenues to charter schools, these provisions circumvent the local taxing and budgetary control of local district school boards. Thus, they constitute an ad valorem tax effectively levied by the State, which is prohibited by Article VII, § 1(a) of the Florida Constitution. Art. VII, § 1(a), Fla. Const. ("No state ad valorem taxes shall be levied upon real estate or tangible personal property.")

The Capital Millage Outlay provisions are also invalid under Article VII, § 9(a) of the Florida Constitution, which provides that school districts and other public bodies may be authorized by law to levy ad valorem taxes "for their respective purposes." These provisions require the local district school board to distribute Capital Outlay Millage revenues to charter schools. *See* § 1013.62(1), Fla. Stat. However, the local district school boards are not permitted to decide whether the charter schools' unknown uses of the funds by the charter are in fact school district purposes. Rather, the statute has usurped that authority.

Defendants contend that the Plaintiffs' Article VII arguments are somehow foreclosed by *Bd. of Public Instruction of Brevard Cnty. v. State Treasurer*, 231 So. 2d 1 (Fla. 1970). *See* Motion to Dismiss at 16-17. However, the factual circumstances in *Brevard County* were unique and distinguishable from this case. In *Brevard County*, a local school board brought a declaratory judgment action challenging a statute that required the board to use locally generated ad valorem tax revenues to support junior colleges. *Id.* at 2. The junior colleges had been established at the school board's request but had since been removed from the board's control pursuant to statute. *Id.* at 3-4.

Brevard County does not control here. The Court's decision in *Brevard County* rested on the fact that the junior colleges had been *established at the request of the board*. Under the reasoning of *Brevard County*, the legislature could direct a school board to use locally generated tax revenues to support educational institutions created pursuant to board action. In contrast to the junior colleges considered by the Court in *Brevard County*, which were created at the request of the local boards, charter schools have always been authorized as an initiative of the state, and local school boards are required by statute to allow charter schools within their districts. Even prior to HB 7069, local boards could only reject normal charter school applications for "good cause" and a board's decision to deny a charter school application has always been subject to review by the State Board of Education. § 1002.33(6), Fla. Stat.; *see also Sch. Bd. of Volusia Cnty.*, 974 So. 2d at 1193 (affirming reversal of school board's decisions to deny charter school application upon finding that the school board lacked good cause to deny application). Now, not only do those arguably unconstitutional conditions persist, *see supra* note 4, but the State has also permitted and encouraged a whole new category of charter schools not subject to the local authorization process at all. *See infra* Section III, C.

Moreover, none of the other cases relied upon by Defendants, which considered the limits of State authority to designate a portion of ad valorem tax revenues for a particular purpose under Article VII, § 1 concerned local district school boards, which as discussed above have expressly specified constitutional roles. The inapposite cases cited by Defendants show only that the State may direct the use of locally generated funds by different types of local government entities, where the courts conclude that the service at issue serves a local purpose. *Sandegren v. State ex rel. Sarasota Cnty. Pub. Hosp. Bd.*, 397 So. 2d 657, 659 (Fla. 1981) (community mental health programs served a local purpose); *St. Johns River Water Mgmt. Dist. v. Deseret Ranches of Fla.,*

Inc., 421 So. 2d 1067, 1070 (Fla. 1982) (availability of fresh water was an important local and state interest); *Bair v. Cent. & S. Fla. Flood Control Dist.*, 144 So. 2d 818, 819 (Fla. 1962) (holding that an assessment to support a local flood control district served a local purpose). No court has ever determined that local district school boards may be directed to provide local tax revenue to State-initiated charter schools for unknown purposes.

C. The "Schools of Hope" Provisions of HB 7069 Are Unconstitutional on Their Face.

On their face, the charter "Schools of Hope" provisions of HB 7069 violate Article IX, § 1 and § 4 of the Florida Constitution. As noted above, Article IX, § 4 of the Florida Constitution requires that local district school boards maintain exclusive authority over the authorization of charter schools. *See Duval County*, 998 So. 2d at 644. HB 7069, however, exempts charter "Schools of Hope" from the provisions of § 1002.33, Fla. Stat., pursuant to which other charter schools must apply for local district school boards for the authority to open. *See* § 1002.333(4)(a), Fla. Stat. (2017). Instead, "Schools of Hope" operators merely submit a "notice of intent" to the district school board. *Id.* The school board is then *required* to enter into a "performance-based agreement" with the charter operator. § 1002.333(4)(b), Fla. Stat. (2017). This "performance-based agreement" unlike other charter school agreements is not negotiated between the operator and the school district, but instead is mandated by the State. § 1002.333(5), Fla. Stat. (2017). HB 7069 thus removes from district school boards the authority to determine (1) whether to authorize a charter "School of Hope" and, (2) if so, under what conditions. In addition, in some circumstances, HB 7069 further authorizes the State Board of Education itself to enter into performance agreements with charter "Schools of Hope" operators, eliminating any role for local district school boards. § 1002.333(11)(d), Fla. Stat. (2017).

By so restricting—and in some instances, removing—the role of local district school boards, the "Schools of Hope" provisions of HB 7069 unconstitutionally relegates school boards to "essentially ministerial functions." *See Duval County*, 998 So. 2d at 644. This is exactly what the Florida Legislature unsuccessfully attempted to do in 2006 when it created the Florida Schools of Excellence Commission with the authority to authorize charter schools without the involvement of local district school boards. *Id.* at 642. However, bypassing the constitutional role of local district school boards was plainly illegal then, and it remains so today.

Indeed, the "Schools of Hope" provisions of HB 7069 are even more clearly unconstitutional than the Florida Schools of Excellence Commission, because they even more extensively impinge on the authority of local district school boards to "operate, control and supervise all free public schools within the school district." Article IX, § 4, Fla. Const. For example, HB 7069 also confers on charter "Schools of Hope" a unilateral right to takeover school district facilities that are "underused, vacant or surplus." § 1002.33(7)(d), Fla. Stat. (2017). Moreover, "Schools of Hope" are exempt from almost all of the provisions of the Florida Education Code, chapters 1000-1013, and from all local district school board policies. § 1002.333(6)(f), Fla. Stat. (2017). Unlike any other public school operating in the State of Florida, "Schools of Hope" need not even employ school administrators or teachers who hold educator certifications. § 1002.333(6)(d), Fla. Stat. (2017). Charter "Schools of Hope" can also opt to be designated as their own local educational agency ("LEA"), making chartered "Schools of Hope" public authorities in direct competition with local district school boards. § 1002.333(6)(a), Fla. Stat. (2017).

What these "Schools of Hope" provisions of HB 7069 fundamentally attempt to do is to create a separate system of public schools entirely independent of local district school boards. The

Supreme Court, however, has already held that the Constitution does not allow "some children to receive a publicly funded education through an alternative system of private schools that are not subject to the uniformity requirements of the public school system." *Holmes*, 919 So. 2d at 412. For the same reason, Article IX, § 4 and § 1(a) of the Florida Constitution similarly prohibit the establishment of a parallel system of public schools through HB 7069's "Schools of Hope" provisions.

That other courts previously have held that the State Board of Education has constitutional authority "to approve or deny a charter application after it completes an extensive review process," *Volusia County*, 974 So. 2d at 1193, cannot save the "Schools of Hope" provisions of HB 7069. Even assuming that the *Volusia County* case was correctly decided,[5] it is obviously distinguishable. For example, the Fifth District Court of Appeals expressly noted that § 1002.33(6)(c) (2005), unlike HB 7069, "does not permit the State Board to open a charter school." *Id.* Moreover, the court expressly relied upon the fact that "the school board still has control over the process because the applicant and the school board must agree on the provisions of the charter." *Id.* For charter "Schools of Hope" under HB 7069, this is not so.

Moreover, the language of HB 7069 in other sections makes clear the Legislature's intent to remove charter schools from the constitutionally mandated system of public schools operated by locally elected district school boards. For example, HB 7069 amends § 1011.71(2), Fla. Stat. (2016) as follows:

> In addition to the maximum millage levy as provided in subsection (1), each school board may levy not more than 1.5 mills against the taxable value for school

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[5] As noted above, a strong argument can be made that allowing the State Board to reverse a local district school board's denial of a charter application is inconsistent with Article IX, § 4's mandate that school boards "shall, operate, control and supervise all free public schools within the school district." *See supra* note 4.

purposes for ~~district schools, including~~ charter schools pursuant to s. 1013.62(3) and for district schools ~~at the discretion of the school board~~ [. . . .]

As the amendment above indicates, the State no longer considers charter schools to be "district schools," but rather their own separate class of schools, again elevating charter schools to be a parallel, competing system in violation of Article IX, § 1(a) of the Florida Constitution. Allowing a charter school system to operate independently from the local district school board violates Article IX, § 1(a) of the Florida Constitution because the creation of dual public school systems would no longer constitute a uniform system of free public schools.

Thus, HB 7069 plainly violates Article IX, §§ 4(b) and 1(a) of the Florida Constitution.

D. The Provisions of HB 7069 Permitting a Charter School System to Become a Local Education Agency Are Unconstitutional on Their Face.

HB 7069's provisions allowing for a "charter school system" to become a local education agency ("LEA"), on their face, violate Article IX, §§ 1 and 4 of the Florida Constitution. No genuine issue of material fact exists with respect to Plaintiffs' third cause of action alleging that HB 7069's LEA provisions violate Article IX, § 1 and 4 of the Florida Constitution, and summary judgment should be granted.

Defendants argue that Plaintiffs' claims "incorrectly describe the limited consequences of a charter system's LEA status." *See* Defendants' Motion to Dismiss at 27. However, Defendants fail to address the two fundamental defects of the HB 7069 provisions allowing charter school systems to become LEAs "for the purpose of receiving federal funds." § 1002.33(25)(a), Fla. Stat. (2017). First, these provisions violated Article IX, § 4(b) of the Florida Constitution by eliminating the role of local district school boards in obtaining and allocating federal funds, which is a significant part of school boards' role in operating, controlling, and supervising all public schools in the district. Second, by allowing charter school systems to compete with local district school boards for federal grant funding, these provisions effectively establish a parallel system of public

schools in competition with those operated, controlled, and supervised by local district school boards in violation of Article IX, § 1 of the Florida Constitution.

Article IX, § 4(b) of the Florida Constitution requires that local district school boards "shall operate, control and supervise all free public schools within the school district." Fulfilling that role requires local district school boards to have a role in important management functions like applying for and administering federal grants. The provisions of HB 7069 interfere with that role in significant ways. It is well-established that Article IX, § 4(b) requires local district school boards to maintain authority over the authorization of charter schools and ongoing involvement in their supervision and control. *See also Duval County*, 998 So. 2d at 644. By allowing charter school systems to become LEAs unilaterally, *see* § 1002.33(25), Fla. Stat. (2017), HB 7069 violates that principle. As Defendants acknowledge (*see* Motion to Dismiss at 2-3), charter school systems that become LEAs will be able to directly compete for federal grant funding with the very local district school boards charged with operation, control and supervision of all public schools. § 1002.33(25)(a), Fla. Stat. (2017). However, just as with the proper allocation of scarce capital funding, the process of preparing and executing a district-wide budget for all public schools is constitutionally vested with local district school boards. Moreover, those locally elected district school boards, unlike the boards of charter school systems, are democratically elected and accountable to the local public for their decisions.[6]

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[6] Allowing charter school systems to unilaterally become LEAs also violates the clear constitutional requirement that: "[i]n each school district there shall be a school board composed of five or more members chosen by vote of the electors in a nonpartisan election." Art. IX, § 4(a). Rather, HB 7069's "charter school system" LEAs place charters in the position of operating as "public" schools—without constitutional, democratically-elected local school boards in place to operate, control, and supervise the schools. Art. IX, § 4(b). Instead, under HB 7069's provisions, charter schools-turned-LEAs will remain under control of their private governing boards—while becoming eligible for public, taxpayer funding.

The LEA provisions of HB 7069 also violate Article IX, § 1, of the Florida Constitution, which requires that the State, by law, provide "for a *uniform*, efficient, safe, secure, and high quality system of free public schools." Article IX § 1(a), Fla. Const. (emphasis added). The conversion of charter school systems to LEAs fosters a plural, non-uniform system that is in violation of § 1(a)'s mandate. A charter school system that operates independently from the local school board can hardly be considered part of a "uniform system of free public schools," and should certainly not be entitled to compete for federal funding with the local district school boards responsible for "all public schools in their district." *Holmes*, 919 So. 2d at 412.

Defendants' only response to this argument is to point a completely inapposite case upholding a county's authority to enact an impact fee ordinance. *See* Motion to Dismiss at 28 (*citing St. Johns Cnty. v. Ne. Fla. Builders Ass'n, Inc.*, 583 So. 2d 635 (Fla. 1991)). This case simply has nothing to do with whether the State can allow a separate competing system of public schools. That question, as discussed above, was resolved in *Duval County,* in which the First District Court of Appeals concluded that the State cannot. Moreover, Defendants do not even purport to rely on the holding of *St. Johns County,* but instead point the irrelevant dicta that the "constitutional mandate is not that every school district in the state must receive equal funding nor that each educational program must be equivalent." *Id.* at 641. Plaintiffs' argument has nothing to do with the level of funding available to various local district school boards and relates solely to the constitutionally mandated structure for the operation and control of all public schools in the State of Florida.

Because the LEA provisions of HB 7069 impinge on the operational authority of local district school boards and effectively promote a separate system of public schools that are

independent of, and in competition with, local district school boards, they violate Article IX, §§ 4(b) and 1(a) of the Florida Constitution.

E. The Provisions of HB 7069 Requiring the Use of a Standard Contract on their Face Violate Article IX, § 4 of the Florida Constitution.

HB 7069's requirement that local district school boards enter into a "standard charter contract" with charter school operators, on its face, violates Article IX, § 4(b) of the Florida Constitution because it removes Plaintiffs' authority "to operate, control and supervise" all public schools by creating a presumption that any charter contract provision proposed by a board to address local needs is invalid. *See* § 1002.33(7), Fla. Stat. (2017). Plaintiffs' motion for summary judgment should be granted because no genuine issue of material fact exists regarding whether HB 7069's requirement that local school districts use standard contracts with charter schools is in violation of Article IX, § 4(b) of the Florida Constitution.

As discussed above, the First District Court of Appeal already has held that Article IX, § 4(b) of the Florida Constitution requires that local district school boards maintain authority over the authorization of charter schools. *Duval County*, 998 So. 2d at 644. Furthermore, the Defendants cannot relegate local school boards to "essentially ministerial functions," because this is in direct violation of Article IX, § 4(b). *Id.*

On its face, HB 7069 handcuffs district school boards by requiring them to enter into a "standard charter contract" with charter school operators without regard to any special circumstances that may exist within the school district or with regard to the educational program to be operated by the charter school. § 1002.33(7), Fla. Stat. (2017). Prior to the enactment of HB 7069, proposed charter schools submitted an application to the district school board. District school boards then reviewed the application and determined whether it was approved or not. The unelected governing board of the charter applicant would then negotiate terms, conditions, and

expectations with the local district school board. Ultimately, charter applicants and local district school boards would agree upon a written contractual agreement or charter school contract.

Now, under HB 7069, § 1002.33(7), Fla. Stat. (2017), "[a]ny term or condition of a proposed charter contract that differs from the standard charter contract adopted by rule of the State Board of Education *shall be presumed a limitation on charter school flexibility*." *Id.* (emphasis added). This new language is coupled with another provision that district school boards "may not impose unreasonable rules or regulations that violate the intent of giving charter schools greater flexibility to meet educational goals." § 1002.33(7), Fla. Stat. (2017). Together, these provisions entirely remove the authority of local district school boards to adapt charter contracts to meet local needs.

However, locally elected district school boards cannot be constitutionally divested of their authority to "operate, control and supervise all free public schools within the school district." Article IX, § 4(b), Fla. Const. The boards must be afforded substantial input, discretion, and authority to control and supervise any charter schools permitted to operate within their respective school districts.

Defendants' only counter-argument is that Florida law still technically contemplates that charter applicants will "negotiate" charter contracts. *See* Motion to Dismiss at 29 (citing § 1002.33(7)(b), Fla. Stat.). But, no true negotiation is allowed when any provision proposed by a local district school board is presumed invalid. By stacking the deck in this way, HB 7069 effectively eliminates the role of local district school boards in charter contract development, a role that every reviewing court considering constitutional issues related to charter schools has found significant. *See Duval County*, 998 So. 2d 641 (striking down statute establishing separate charter school authorizing body); *see also Palm Beach Cnty.,* 213 So. 2d at 360-61 (noting that

school boards still had the power to operate, control, and supervise charters because "a local school board must still negotiate with the proposed charter to create a charter contract. . ."); *Volusia County*, 974 So. 2d at 1193 (upholding charter authorization appeal process in part *"because the applicant and the school board must agree on the provisions of the charter."* (emphasis added)).

By mandating the use of standard one-size-fits-all contracts, the terms of which are forced upon local district school boards by the State and by unelected charter school operators, HB 7069 on its face precludes a development of a charter school contract that is a meeting of the minds between the local district school board and the charter school operator. As a result, HB 7069's requirement that local school districts require that district school boards enter into a standard charter contract with charter school operators, on its face, violates Article IX, § 4 of the Florida Constitution, and Plaintiffs' motion for summary judgment should be granted.

F. HB 7069's Provisions related to Title I on Their Face Violate the Florida Constitution.

HB 7069's mandate that school boards provide Title I funding to "all eligible schools . . . , including a charter school" on its face violates Article IX, § 4(b) of the Florida Constitution. § 1011.69(5), Fla. Stat. (2017). Defendants' arguments to the contrary misunderstand the cause of action asserted and fail to provide any basis to uphold this provision of HB 7069. Furthermore, Plaintiffs' motion for summary judgment should be granted because no genuine issue of material fact exists regarding whether HB 7069's requirements on Title I funds violate Article IX, § 4(b) of the Florida Constitution. The entire first section of Defendants' motion on this point argues the unremarkable proposition that Title I funds flow to school districts through grants applied for and administered by the State. *See* Motion to Dismiss at 31-32. This argument is a complete red

herring, because Plaintiffs have never argued to the contrary.[7] Plaintiffs do not contest that the State applies for Title I funds and that the State maintains a process to pass along those funds to individual school districts. HB 7069, however, does not purport to alter *any* of those already existing functions. Rather, HB 7069 regulates the school districts' ability to use those funds *once already allocated to the districts*.

Defendants' second argument (Motion to Dismiss at 32) makes a similar mistake by asserting that Plaintiffs do not have a cause of action because Plaintiffs have no legal right to Title I funds and no private right of action under Title I. But, of course, Plaintiffs are neither suing under Title I, nor seeking Title I funds. Rather, Plaintiffs are challenging the Legislature's impermissible overreach in regulating the manner in which district school boards must spend and allocate those funds *once received*. Whether the Defendants believe they had a "rational basis" or is not irrelevant; a rational basis does not give license to abandon structural safeguards established in the Florida Constitution.

Defendants conclude by arguing that the "Florida Constitution does not require the State to serve as a passive conduit for federal education funding. . . ." Motion to Dismiss at 32. This much is true, and the State retains its ability to participate in the sub-grant process. But the Florida Constitution similarly does not require local school districts "to serve as a passive conduit for federal education funding." In fact, it provides the opposite, guaranteeing local boards the ability to "operate, control and supervise all free public schools." Article IX, § 4(b), Fla. Const. Prior to HB 7069, local school districts had the ability to allocate Title I funds in the manner deemed to be

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[7] So too is Defendants' argument that there are several Federal laws that govern the distribution of Title I funds. *See* Motion to Dismiss at 31-32. Both the State and the individual school districts, of course, are required to follow those federal laws. But the existence of those separate requirements does not provide the State with authority to violate the Florida Constitution by impermissibly regulating the manner in which districts are able to allocate those funds.

most impactful in their districts, including by using district-wide programs designed to maximize the benefits provided to low-income students. Now, local district school boards are prohibited from doing so, because funds must now be allocated to all eligible schools (including charter schools), and that the allocation provided to such "eligible schools" may not exceed certain specific thresholds. § 1011.69(5), Fla. Stat. (2017).

While it appears that Defendants have a particular disdain for district-wide programs, the entire purpose of Article IX, § 4(b) is that local district school boards are in the best position to determine what works best in their districts. HB 7069's regulation of the distribution of Title I funds fundamentally changes local school boards' role, transforming it into "essentially ministerial functions," which violates Article IX, § 4(b) of the Florida Constitution. *Duval County*, 998 So. 2d at 644.

G. HB 7069's "Turnaround Provisions" on their Face Violate Article I, § 10 and Article IX, § 4 of the Florida Constitution.

HB 7069's requirement that local school districts implement only statutorily mandated turnaround provisions on its face violates Article IX, § 4(b) of the Florida Constitution. Furthermore, Plaintiffs' motion for summary judgment should be granted because no genuine issue of material fact exists regarding whether HB 7069's requirement that local school districts must implement the turnaround provisions is in violation of Article IX, § 4(b), Fla. Const.

Defendants argue "the Local Boards overstate the significance of HB 7069's changes to the state turnaround options" and because the Plaintiffs did not contend that "the previous version of the turnaround statute was unconstitutional." *See* Motion to Dismiss at 33. The Defendants further contend that the changes made to the turnaround statute are "incremental—not earth shattering" because the new law simply accelerates the obligations of school districts. *Id.* But, these so-called incremental changes are constitutionally monumental because they create three

options, none of which allows the locally elected district school board *itself* to decide to have more than a ministerial role in addressing the needs of a low performing public school. This is plainly inconsistent with Article IX, § 4(b) of the Florida Constitution.

Specifically, HB 7069 requires district school boards to implement at any district public school which have three consecutive grades below a "C" one of three State-mandated turnaround methods:

> 1. Reassign students to another school and monitor the progress of each reassigned student; 2. Close the school and reopen the school as one or more charter schools, each with a governing board that has a demonstrated record of effectiveness; or 3. Contract with an outside entity that has a demonstrated record of effectiveness to operate the school. An outside entity may include a district-managed charter school in which all instructional personnel are not employees of the school district, but are employees of an independent governing board composed of members who did not participate in the review or approval of the charter.

§ 1008.33(4)(b), Fla. Stat. (2017). The commonality among the three options is obvious. All of the allowable options require control by a charter school or an outside entity. Local district school boards are thus automatically and directly divested of their authority over such public schools.

However, Article IX, § 4(b), Fla. Const. states definitively that "[t]he school board shall operate, control and supervise all free public schools within the school district." And, again, the First District Court of Appeals already has held that the State may not relegate local school boards to "essentially ministerial functions." *Duval County*, 998 So. 2d at 644. That is exactly what HB 7069's turnaround provisions do.

Prior to HB 7069, Florida law allowed school districts the option to turn around schools needing improvement themselves. Local school districts understand the challenges within their districts and are best situated to develop plans to improve their schools. On its face, however, HB 7069 divests locally elected school boards of their authority and responsibility to determine the best solution to improve low performing schools.

H. Collectively these Provisions Attempt to Indirectly Create a Separate, Independent System of Charter Schools Free From the Control and Supervision of Local District School Boards.

Even if the challenged provisions of HB 7069 did not each independently violate Article IX of the Florida Constitution (as the discussion above makes clear they each do), collectively they certainly do. It is plain to see that the Legislature is trying to do indirectly what it already was told it could not do directly. In 2006, the Legislature attempted to establish an independent network of charter schools not authorized by local district school boards. *See Duval County*, 998 So. 2d at 642. In *Duval County*, the First District Court of Appeals held that permitting and encouraging "the creation of a parallel system of free public education escaping the operation and control of local elected school boards" violated Article IX, § 4(b), Fla. Const. *Id.* at 643. Read in their entirety, the challenged provisions of HB 7069 clearly permit and encourage the exact same thing; a system of charter schools free of the local control of public education mandated by the Florida Constitution.

And the Legislature's new system of independent charter schools – not authorized by local school boards, receiving their own local capital funding, operating as their own LEAs, competing with local districts for federal funds, and usurping the role of local districts in school improvement efforts – also violates the uniformity clause of Article IX, § 1(a), Fla. Const. *See Bush v. Holmes*, 919 So. 2d at 409. Article IX, § 1(a) requires the State system of public schools to be "uniform." *Id.* The parallel system of public charter schools permitted by HB 7069 is not consistent with this mandate.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny the Defendants' Motion to Dismiss, grant Plaintiffs' Cross-Motion for Summary Judgment, declare

the challenged provisions of HB 7069 unconstitutional, and enjoin defendants from implementing them.

Respectfully submitted this 9th day of January, 2018.

Franklin R. Harrison, #142350 (FL)
Heather K. Hudson, #91178 (FL)
Hand Arendall Harrison Sale LLC
304 Magnolia Avenue
Panama City, Florida 32401
P: (850) 769-3434
F: (850)769-6121
E: fharrison@hsmclaw.com

John W. Borkowski, #6320147 (IL)
Michael T. Raupp, # 65121 (MO)
Aleksandra Ostojic Rushing, #68304 (MO)
Pro hac vice motions pending
Husch Blackwell LLP
120 South Riverside Plaza, Suite 2200
Chicago, Illinois 60606-3912
P: (312) 526-1538
F (312) 655-1501
E: john.borkowski@huschblackwell.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of January, 2018, I electronically filed the foregoing with the Clerk of the Court by using the Florida Court's E-Filing Portal, which will send a notice of electronic filing to counsel of record.

Franklin R. Harrison, #142350 (FL)
Hand Arendall Harrison Sale LLC
304 Magnolia Avenue
Panama City, Florida 32401
P: (850) 769-3434
F: (850)769-6121
E: fharrison@hsmclaw.com