Filing # 113150639 E-Filed 09/10/2020 12:49:43 PM

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA
Case No.: 1D20-____

L.T. Case No. 2020-CA-001450

RECEIVED, 09/10/2020 12:50:39 PM, Clerk, First District Court of Appeal

RON DESANTIS, in his official capacity as Governor of the State of Florida; RICHARD CORCORAN, in his official capacity as Florida Commissioner of Education; FLORIDA DEPARTMENT OF EDUCATION; and FLORIDA BOARD OF EDUCATION,

Defendant–Petitioners,

v.

FLORIDA EDUCATION ASSOCIATION, STEFANIE BETH MILLER; LADARA ROYAL; MINDY FESTGE; VICTORIA DUBLINOHENJES; ANDRES HENJES; NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INC.; AND NAACP FLORIDA STATE CONFERENCE,

Plaintiff–Respondents.

Petition for Review of Order in Consolidated Cases Pending in the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida

---

DEFENDANTS' PETITION FOR CERTIORARI

TABLE OF CONTENTS

PAGE

TABLE OF CITATIONS

PAGE(S)

Cases

Constitutional Provisions

Statutes

Other Authorities

I. INTRODUCTION

These consolidated cases arise from the State of Florida's efforts, through the Governor's executive powers, to provide additional state funding and flexibility to local school districts as they plan to educate their students during the COVID-19 pandemic. The Plaintiff–Respondents (the "Plaintiffs") challenge the Governor's authority to respond to this public-health emergency on the theory that the Department of Education (as his delegate) "unconstitutionally" conditioned the receipt of additional state funding on the development of local plans to reopen public schools safely, expressly subject to the advice and orders of state and local public-health officials. Led by representatives of Florida's teachers unions, the Plaintiffs thus sued the Defendant–Petitioners (the "State Defendants")[1] under the Florida Constitution's due-process and education clauses, art. I, § 9 and art. IX, § 1(a), Fla. Const., in an effort to prevent public schools from reopening for in-person instruction.

The State Defendants seek a writ of certiorari to quash and reverse the circuit court's order denying their motions to dismiss. [A. 357-8]. The Plaintiffs lack standing to assert their claims, which also implicate non-justiciable political

[1] The State Defendants are Governor Ron DeSantis, the State Board of Education (along with state-board chair Andy Tuck), Commissioner of Education Richard Corcoran, the Florida Department of Education (the "DOE"), and Jacob Oliva (Chancellor of the DOE's Division of Public Schools).

questions and ask the judiciary to violate Florida's strict separation of powers during an unprecedented crisis. The circuit court lacked jurisdiction to consider these claims and should have dismissed them instead of wading into policy debates and making its own political judgments about the best way to educate students safely while balancing the risks of COVID-19.[2] The court's refusal to dismiss threatens to subject the Governor, the other State Defendants, and millions of Floridians to precarious uncertainty while the State diverts limited public resources to defend its policies against claims that never should have been entertained in the first place. This Court should therefore issue a writ quashing the circuit court's order and requiring the dismissal of both consolidated cases with prejudice.

II. BASIS FOR INVOKING THE COURT'S JURISDICTION

The Court should exercise its certiorari jurisdiction under Florida Rule of Appellate Procedure 9.030(b)(2)(A) and article V, section 4(b)(3) of the Florida Constitution because the circuit court "'depart[ed] from the essential requirements of the law'" by allowing this case to proceed, which will "'result[] in material injury . . . that cannot be corrected on postjudgment appeal.'" *Fountainbleau, LLC v. Hire Us, Inc.*, 273 So. 3d 1152, 1155 (Fla. 2d DCA 2019) (quoting *Williams v.*

[2] The circuit court also erred by issuing a preliminary injunction and lifting the automatic stay pending review under Florida Rule of Appellate Procedure 9.310(b)(2). The State Defendants appealed from that order in DCA Case Nos. 1D20-2470 and 1D20-2472, and this Court reinstated the stay in orders dated August 28 and 31, 2020. That consolidated appeal is pending before this Court.

Oken, 62 So. 3d 1129, 1132 (Fla. 2011)). The circuit court's refusal to dismiss these consolidated cases—despite the Plaintiffs' lack of standing, the court's lack of jurisdiction over their non-justiciable claims, and the fact that granting the relief they seek would violate the separation-of-powers doctrine—inflicts an irreparable injury in the form of a "material injury which cannot be corrected on plenary review." *Id.*

Each of the three arguments developed below is sufficient to warrant the exercise of certiorari jurisdiction—especially in the context of the COVID-19 pandemic and the resulting statewide emergency.

First, "to prevent irreparable harm, the trial court must conduct a thorough, front-end factual analysis to determine standing." *Russell v. Pasik*, 178 So. 3d 55, 61 (Fla. 2d DCA 2015) (granting certiorari and quashing order denying motion to dismiss for lack of standing). The circuit court's order here contained no such analysis, and the Plaintiffs' own complaints show that they lack standing to assert their claims.

Second, the non-justiciable political questions implicated by the Plaintiffs' claims are "outside the scope of judiciary's jurisdiction." *Coalition for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400, 408 (Fla. 1996) (affirming dismissal of complaint asserting claims under Florida Constitution's education clause, art IX, § 1(a), Fla. Const.); *cf. Citizens for Strong Sch., Inc. v. Fla. State Bd.*

of Educ., 232 So. 3d 1163, 1174 (Fla. 1st DCA 2017) ("affirm[ing] the trial court's ruling that Appellants' claims must be rejected" under the Florida Constitution's education clause, partly because "those claims . . . raise political questions"), *approved*, 262 So. 3d 127, 140–41 (Fla. 2019) ("There is no basis for concluding that Petitioners here have been any more successful in framing a claim that is justiciable."). And the circuit court's improper "exercise of jurisdiction" is a classic example of a "material injury which cannot be corrected on plenary review" for purposes of establishing this Court's certiorari jurisdiction. *Fountainbleau*, 273 So. 3d at 1155; *see also id.* at 1157 (granting certiorari because "the [circuit] court's failure to determine its jurisdiction in the first instance is a departure from the requirements of law and is an act in excess of its jurisdiction"); *cf. Fuller v. Truncale*, 50 So. 3d 25, 30 (Fla. 1st DCA 2010) ("Because involving Fuller in further litigation will negate this immunity, thereby causing irreparable harm, and because the trial court departed from the essential requirements of the law in finding the defense inapplicable, we GRANT the petition and QUASH the order denying Fuller's motion to dismiss . . . ."); *Seminole Tribe of Fla. v. McCor*, 903 So. 2d 353, 357 (Fla. 2d DCA 2005) ("We have previously exercised our common law certiorari jurisdiction to review a trial court order denying a motion to dismiss where the motion was based on the assertion that the trial court lacked subject matter jurisdiction . . . ."); *id.* at 360 ("In failing to grant the Tribe's motion to

dismiss, the trial court violated a clearly established principle of law, resulting in injury to the Tribe that cannot be remedied on appeal. We therefore grant the Tribe's petition, quash the trial court's order denying the motion to dismiss, and direct that the trial court dismiss McCor's complaint.").

Third, and for similar reasons, "[c]ertiorari jurisdiction extends to the review of a circuit court order that violates the separation of powers doctrine." *Dep't of Corr. v. Ayala*, 180 So. 3d 239, 239 (Fla. 5th DCA 2015) (granting certiorari and quashing circuit court's order). District courts of appeal thus routinely grant certiorari when a circuit court's order violates Florida's strict separation of powers. *See*, *e.g.*, *Fla. Office of Ins. Regulation v. Fla. Dep't of Fin. Servs.*, 159 So. 3d 945, 952–53 (Fla. 1st DCA 2015) (granting certiorari and quashing order that required head of state agency to appear for a deposition, when "[t]he time spent preparing and testifying in this case will take away from the [official's] duties and responsibilities as an agency head for the state of Florida" and "would constitute a serious intrusion into the executive branch of government"); *Dep't of Children & Families v. K.R.*, 946 So. 2d 106, 107–08 (Fla. 5th DCA 2007) (granting certiorari relief because "[t]he judicial branch may not either interfere with the legislative branch by requiring funds to be spent by an executive agency in a manner not authorized by statute, nor interfere with an executive agency's discretion in the spending of appropriated funds").

The State Defendants' likelihood of success on the merits and right to appeal after a final judgment (if ultimately unsuccessful before the circuit court) are not enough to avoid the material injury that they hope to prevent by seeking certiorari. "That there exists *a* mechanism for correcting the error via postjudgment appeal is not determinative of this court's jurisdiction; 'rather, the remedy must alleviate *the harm that results from the error*.'" *Fountainbleau*, 273 So. 3d at 1155 (first emphasis added) (quoting *Gundel v. AV Homes, Inc.*, 264 So. 3d 304, 310 (Fla. 2d DCA 2019)). For example, "[o]rders granting discovery requests have traditionally been reviewed by certiorari because once discovery is wrongfully granted, the complaining party is beyond relief." *Horne v. Sch. Bd. of Miami-Dade Cty.*, 901 So. 2d 238, 240 (Fla. 1st DCA 2005); *see also id.* at 239 (granting certiorari and quashing order requiring "former commissioner of education, [to sit for deposition] regarding school-funding decisions that occurred during his tenure as commissioner"). And while the State Defendants should not be subjected to discovery either, the stakes here are much higher than in a typical discovery dispute or on a standard motion to dismiss.

The erroneous denial of the State Defendants' motions to dismiss cast a pall of uncertainty over the Governor's emergency powers and the State Department of Education's efforts to address the educational needs of Florida's students during a global pandemic. On top of the ordinary costs, distractions, and inconvenience of

litigation, the State Defendants are "not the only part[ies] who suffer[] 'consequences' from erroneously" being required to continue defending themselves against the Plaintiffs' improper, non-justiciable claims. *Tucker v. Resha*, 648 So. 2d 1187, 1189–90 (Fla. 1994). As the Florida Supreme Court has explained, "public official[s] cannot be 're-immunized' if erroneously required to stand trial or face the other burdens of litigation," and "society as a whole also pays the 'social costs' of 'the expenses of litigation, the diversion of official energy from pressing public issues, and the deterrence of able citizens from acceptance of public office.'" *Id.* at 1189, 1190 (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 814 (1982)).

There are few issues as pressing as the executive branch's authority and discretion to act decisively in the face of a statewide public-health emergency. Millions of students and parents could be adversely affected by the costs and uncertainty associated with protracted litigation in these cases as Florida families make decisions about when and how to return to public school. This Court should therefore grant the State Defendants' petition for a writ of certiorari, quash the circuit court's order denying their motions to dismiss, and ensure the dismissal of these cases with prejudice.

III. FACTS ON WHICH PETITIONERS RELY

A. The Governor and State Department of Education Issue Emergency Orders to Address the COVID-19 Pandemic.

When the COVID-19 pandemic struck Florida, Governor DeSantis declared a statewide emergency pursuant to his constitutional and statutory authority on March 9, 2020. Executive Order No. 20-52 [A. 9-15]. *See generally* Art. IV, § 1(a), Fla. Const.; ch. 252, Fla. Stat. Among the Governor's emergency powers is the authority to suspend the provisions of any regulatory statute, order, or rule, "if strict compliance with the provisions of any such statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency." § 252.36(5)(a), Fla. Stat. And as permitted by state law, *id.* § 252.36(1)(a), the Governor delegated this power to each state agency, including the Department of Education. *See* Executive Order No. 20-52, § 4.B [A. 12]; Div. Emergency Mgmt. Emergency Order No. 20-004 [A. 16-18].[3]

Pursuant to the Governor's delegation of authority, the Commissioner of Education suspended and waived certain provisions of the Florida K–20 Education Code in response to the COVID-19 emergency on March 23, 2020. DOE

---

[3] Available at https://www.flgov.com/wp-content/uploads/covid19/DEM%20ORDER%20NO.%2020-004.pdf. The Governor has extended this state of emergency and its accompanying delegation of authority to suspend or waive state laws three times, in Executive Order No. 20-114 (May 8, 2020) [A. 36-7], Executive Order No. 20-166 (July 7, 2020) [A. 50-1], and Executive Order No. 20-213 (Sept. 4, 2020) [A. 359-360].

Emergency Order 2020-EO-01 [A. 19-28]. At that time, the Commissioner recommended that school districts close their physical facilities, except to teachers and staff, and enabled them to do so without running afoul of state law or losing state funding for the remainder of the 2019–2020 school year. *See id.* §§ 1, 3 [A. 20, 21].

Several months later—after most Florida counties had entered "Phase 2" of the state's COVID-19 recovery plan[4]—the Commissioner determined that because "extended school closures can impede educational success of students, impact families' well-being, and limit many parents and guardians from returning to work," there was a need to open schools "consistent with safety precautions." (DOE Emergency Order 2020-EO-06 (the "Emergency Order"), at 1 [A. 42]).[5]

---

[4] In Executive Order No. 20-112 (Apr. 29, 2020) [A. 29-35], the Governor noted that he had convened a "Task Force to Re-Open Florida to evaluate how to safely and strategically re-open the State" and adopted a series of recommendations for Florida's "Phase 1 Recovery" in concert with the efforts of the "the White House Coronavirus Task Force, and based on guidance provided by the White House and the Centers for Disease Control and Prevention (CDC), the Occupational Safety and Health Administration (OSHA), and the Florida Surgeon General and State Health Officer." *Id.* at 1, §1 [A. 30]. The Governor further implemented the state's recovery plan in Executive Order No. 20-139 (June 3, 2020) [A. 38-41], in which he determined that most Florida counties—with the exceptions of Miami–Dade, Broward, and Palm Beach—had entered "Phase 2 Recovery." *Id.* § 1.B [A. 38]. The Governor recently approved Palm Beach County's request to move into Phase 2. Executive Order No. 20-214 (Sept. 4, 2020) [A. 361].

[5] *Cf. Certain Named & Unnamed Non-Citizen Children & Their Parents v. Texas*, 448 U.S. 1327, 1333 (Powell, Circuit Justice 1980) ("[D]elay in entering school

That determination led to the Emergency Order at issue here, number 2020-EO-06, which was intended to accomplish the goal of "reopening brick and mortar schools with the full panoply of services for the benefit of Florida students and families," in conjunction with the guidance of state and local health officials. *Id.* [A. 42-9].

In keeping with that goal, while allowing for potential safety concerns, Section I of the Emergency Order provided in part as follows:

> Upon reopening in August, all school boards and charter school governing boards must open brick and mortar schools at least five days per week for all students, *subject to advice and orders of the Florida Department of Health, local departments of health, Executive Order 20-149 and subsequent executive orders.* Absent these directives, *the day-to-day decision to open or close a school must always rest locally with the board* or executive most closely associated with a school . . . .

(Emergency Order § I.a (emphasis added) [A. 43-4].) The same paragraph of the Emergency Order also waived the requirement for "a uniform and fixed date for the opening and closing of schools" and the requirement "to operate public schools for a minimum of 180 days or an hourly equivalent." (*Id.*) Nothing in the Emergency Order required students to attend school in person, but districts taking advantage of the Emergency Order's flexibility and funding provisions (discussed below) were required to "provide the full array of services that are required by law

---

will tend to exacerbate the deprivations already suffered and mitigate the efficacy of whatever relief eventually may be deemed appropriate.").

so that families who wish to educate their children in a brick and mortar school full time have the opportunity to do so." (*Id.* § I.b [A. 44-5].)

Section II of the Emergency Order further emphasized local planning by requiring school districts that wished "to receive the flexibility and continuity provided for in this Order" to "submit to the Department [of Education] a reopening plan that satisfies the requirements of this Order." (Emergency Order § II.a [A. 46-7].) But "[n]othing herein requires a district or charter school to submit a plan if the district or charter school wishes to open in traditional compliance with statutory requirements for instructional days and hours"—i.e., the default statutory and regulatory provisions for school funding based on attendance and normal virtual coursework (summarized below). (*Id.*).

Section III of the Emergency Order described the additional funding and flexibility that districts could receive if they did submit local plans with an option for in-person instruction. First, districts with approved plans would receive full state "funding based on pre-COVID-19 FTE student membership forecasts"—without any reduction in "the distribution of funds based on the July and October 2020 student surveys" of actual attendance. (Emergency Order § III.a [A. 47].) Second, the Emergency Order recognized that not all "students will return to full-time brick and mortar schools," because "some parents will continue their child's education through innovative learning environments, often due to the medical

vulnerability of the child or another family member who resides in the same household." (*Id.* § III.b [A. 47-8].) To account for those parent-driven safety concerns, the Emergency Order provided that districts "with an approved reopening plan are authorized to report approved innovative [distance] learning students for full FTE credit." (*Id.*)[6]

These optional accommodations were significant. Florida's longstanding funding system for K–12 public schools allows local school districts to earn state funding based on their actual student attendance for in-person classroom instruction. Virtual classes are permitted, but school districts are reimbursed for those classes only if successfully completed, and at a lower rate (because the costs of virtual instruction are lower than the costs of in-person instruction). The Emergency Order reflected an effort to provide *additional* funding and *more* flexibility than school districts would have otherwise received under state law, contingent on the development of local reopening plans that are subject to the advice and orders of state and local health officials.

Without the Emergency Order, the Florida Education Finance Program ("FEFP")—which the Florida Supreme Court recently upheld under article IX, section 1(a) of the Florida Constitution, *Citizens for Strong Sch.*, 262 So. 3d 127—

[6] Students receiving traditional virtual education (for example, in a dedicated district virtual school) would continue to be funded under preexisting state law.

would allocate funding to school districts based on the number of individual students participating in a particular course or program. A student would ordinarily have to be (1) physically present in school during an attendance survey period and (2) a member of a class or course that is eligible for funding. *See* § 1011.62, Fla. Stat.; Fla. Admin. Code R. 6A-1.0451; Full-Time Equivalent (FTE) General Instructions 2019-20, at 8–9.[7]

School districts could also earn FEFP funding for virtual course offerings (regardless of the Emergency Order). *See* § 1011.61(1)(c)b.(III)–(VI), Fla. Stat. Courses delivered through district virtual programs and virtual charter schools would be funded under existing Florida law if students "successfully complete the virtual instruction program," regardless of the student's location or in-person attendance. Full-Time Equivalent (FTE) General Instructions 2019-20, at 41. But districts generally earn less FEFP funding for virtual programs than they do for in-person instruction.

Hence, under Florida's education-funding system, districts could experience significant funding losses if previously in-person students switched to a virtual instruction model or if enrollment declined because of health-related concerns. The

[7] The FTE General Instructions are incorporated by reference into State Board Rule 6A-1.0451 and are at https://www.flrules.org/Gateway/reference.asp?No=Ref-11320.

terms of the Emergency Order allowed local school boards to mitigate those losses by obtaining more state funding than they would have received under existing state law, as long as they obtained approval for a locally developed reopening plan, "subject to advice and orders of the Florida Department of Health, local departments of health, . . . and subsequent executive orders." (Emergency Order § I.a.)

B. Two Groups of Plaintiffs Sue to Challenge the Emergency Order Under the Florida Constitution's Education Clause.

As school districts were submitting and receiving state approval for their local plans to reopen, the Plaintiffs sued to challenge the Emergency Order, alleging that the State Defendants (as opposed to their local county school districts) were unconstitutionally "forcing" students and employees to report to local brick-and-mortar schools before it was safe to do so, and seeking both declaratory and injunctive relief under the state constitution's due-process and education clauses:

> No person shall be deprived of life, liberty or property without due process of law . . . .

Art. I, § 9, Fla. Const.

> 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 . . . .

Art. IX, § 1(a), Fla. Const.

One group of Plaintiffs, a parent and a teacher, filed suit in Orange County, *Bellefleur v. DeSantis*, No. 2020-CA-001467 (Fla. 9th Cir. Ct. filed July 19, 2020), seeking an injunction partly to prohibit the State Defendants "from opening public schools in Orange County until such time as the defendants can demonstrate to the Court that the Government . . . is compliant with Article IX, § 1(a) of the Constitution" and to prevent the State "from restricting state funds to [the Orange County Public Schools] should they refuse to permit face-to-face education when [the] 2020–2021 School year commences." (*Bellefleur* Am. Compl. Prayer for Relief ¶¶ (1), (3), [A. 214].) In their original and amended complaints,[8] the *Bellefleur* Plaintiffs explained that they sought "specifically to prevent [the State] Defendants from requiring in-person attendance at the start of the 2020–2021 School Year." (*Bellefleur* Am. Compl. at 2 [A. 192].)

The other group of Plaintiffs, several Miami-area parents, teachers, and other school-district employees led by union advocates at the Florida Education Association,[9] filed suit in Miami–Dade County, *Fla. Educ. Ass'n* (*FEA*) *v. DeSantis*, No. 2020-CA-001450 (Fla. 11th Cir. Ct. filed July 20, 2020), seeking an

---

[8] The *Bellefleur* Plaintiffs amended their complaint on August 13 and added two more Orange County teachers as plaintiffs. (*Bellefleur* Am. Compl. ¶¶ 9, 12, [A. 197-8].)

[9] The *FEA* Plaintiffs later added the National Association for the Advancement of Colored People, Inc. and the NAACP Florida State Conference as additional plaintiffs.

injunction partly to prevent the State Defendants "from unnecessarily and unconstitutionally forcing millions of public-school students to report to unsafe brick and mortar schools that should remain physically closed during the resurgence of COVID-19 in Florida." (*FEA* Compl. Prayer for Relief ¶ (a), [A. 81-2].)[10]

The *FEA* Plaintiffs also sued the mayor of Miami–Dade County, who moved to dismiss on the grounds that the local school board (instead of the mayor) was an indispensable party, which had already decided to provide exclusively remote schooling through at least September 30, 2020, and that "the proper way to open public schools in the face of COVID-19 is a political, nonjusticiable question[] that is beyond the courts' jurisdiction." (Def. Mayor C. Gimenez' Mot. Dismiss Compl. 3, [A. 128]). The *FEA* Plaintiffs voluntarily dismissed their claims against the mayor on August 7, 2020. (Notice of Voluntary Dismissal Without Prejudice of Def. C. Gimenez, [A. 185-7].)

---

[10] The *FEA* Plaintiffs also requested "[a]n order requiring Defendants to develop and implement an online instruction plan . . . to make internet connectivity and computer devices available to all students" and to require that each school "have adequate personal protective equipment and other necessary supplies for all employees and students; reduce class sizes to comply with physical distancing requirements; install sufficient hand-sanitizing stations; add plexiglass shields where necessary; increase staffing; increase school clinic capabilities; and take all necessary measures to protect students and staff and minimize COVID-19 transmission." (*FEA* Compl. Prayer for Relief ¶¶ (b),(c) [A. 81-2].)

The State Defendants moved to dismiss both cases on several grounds, including that the Plaintiffs' complaints (1) lacked standing and "fail[ed] to allege any specific, concrete injury suffered by any of the Plaintiffs at the hands of the [State] Defendants, (2) there is no justiciable case or controversy, (3) [they] improperly ask[] the Court to entangle itself in a political question, and because (4) Plaintiffs seek relief which affects the interests of non-parties." (*FEA* Mot. Dismiss 1 [A. 107]; *accord Bellefleur* Mot. Dismiss 1–2 [A. 107-8]; *see also* Defs.' Reply Supp. Mot. Dismiss [A. 335-56].)

Both cases were transferred to Leon County,[11] where the circuit court consolidated the actions *sua sponte* and denied the State Defendants' motions to dismiss after a hearing on August 14, 2020. (Order Consolidating Cases [A. 362-4]; Order Den. Mot. Dismiss [A. 357-8].) The court's order did not provide reasons for denying the motions to dismiss, and its explanation on the record at the hearing was similarly limited:

> THE COURT: I am—I'm denying the motion to dismiss. As each side has pointed out, on a motion to dismiss I'm required to accept the allegations of the complaint as being true.
>
> By denying the motion to dismiss, I'm not in any way saying that the plaintiffs are going to be successful with their case. They still have the burden of proving their case. Based on the

[11] In transferring the *Bellefleur* case, the Orange County circuit court severed the *Bellefleur* Plaintiffs' claims against the Orange County school board and local superintendent and stayed those proceedings pending further order of the court. (Agreed Order Severing & Transferring Claims & Staying Case [A. 188-90].)

> procedural status at this time, I'm denying the motion to dismiss. I'll get a written order out on that.

(Mot. Dismiss Hr'g Tr. 52:17–53:2 [A. 314-5].)

This petition for a writ of certiorari to review the circuit court's erroneous denial of the State Defendants' motions to dismiss is timely under Florida Rule of Appellate Procedure 9.100(c)(1).

IV. NATURE OF THE RELIEF SOUGHT

The State Defendants seek a writ of certiorari quashing the circuit court's order denying their motions to dismiss the Plaintiffs' complaints. Because the State Defendants will continue to suffer a material injury that cannot be corrected in a post-judgment appeal if the cases are not immediately dismissed, they further request an order "direct[ing] that the trial court dismiss" the complaints in both consolidated cases with prejudice. *Seminole Tribe*, 903 So. 2d at 360.

V. ARGUMENT AND CITATIONS OF AUTHORITY[12]

A. The Plaintiffs Lack Standing to Pursue Their Claims Against the State Defendants.

The circuit court did not provide a reasoned explanation for its rejection of the State Defendants' standing arguments, but the operative complaints, read in the

[12] Many of the arguments below overlap with arguments raised by the State Defendants in their pending appeal from the circuit court's preliminary injunction, in DCA Case Nos. 1D20-2470 and 1D20-2472. The State Defendants respectfully refer this Court to their briefing in that related case as well.

context of the Emergency Order at issue, show that none of the Plaintiffs have standing to pursue their claims.

> For a court of law operating as one of the three branches of government under the doctrine of the separation of powers, standing is a threshold issue which must be resolved before reaching the merits of a case. Before a court can consider whether an action is illegal, the court must be presented with a justiciable case or controversy between parties who have standing.

Solares v. City of Miami, 166 So. 3d 887, 888 (Fla. 3d DCA 2015). To have standing, a party must have "sufficient stake in a justiciable controversy, with a legally cognizable interest which would be affected by the outcome of the litigation." *Nedeau v. Gallagher*, 851 So. 2d 214, 215–16 (Fla. 1st DCA 2003) (citing *Peregood v. Cosmides*, 663 So. 2d 665 (Fla. 5th DCA 1995), and *Equity Res., Inc. v. Cty. of Leon,* 643 So. 2d 1112 (Fla. 1st DCA 1994)). The alleged interest cannot be conjectural or merely hypothetical. *Id*.

In their complaints, the Plaintiffs tie all of their potential injuries to the hypothetical risk of exposure to COVID-19 in brick-and-mortar public schools—on the assumption that the Plaintiffs might face those risks *if* they returned to those schools for in-person instruction. (*See, e.g.*, *Bellefleur* Am. Compl. at 3 [A. 193] ("[T]eachers, staff, and children are at severe risk of exposure to COVID-19, which will no doubt lead to serious illness and death. The unsafe opening of Public Schools will also worsen the spread of COVID-19 throughout our communities,

state and country."); *FEA* Compl. ¶ 2 [A. 53] ("Plaintiffs bring this suit to safeguard the health and welfare of Florida public school students, educators, staff, parents, and the general public, including residents of Miami-Dade County, following the failure to take the necessary steps to mitigate community spread of the Coronavirus Disease 2019 (COVID-19)."). The Plaintiffs further contend that "[i]t is not possible at this time nor is it possible in the foreseeable future for the State to open public schools to live and in person classrooms and comply with the standards set forth in Florida's Constitution" and that the DOE's Emergency Order "unreasonably interfere[s] with Floridians' right to public health and safety, and will cause special harm and endangerment to Plaintiffs and their families as they will be directly exposed to the virus on a daily basis if all brick and mortar schools are reopened in August." (*Bellefleur* Am. Compl. ¶ 75 [A. 211]; *FEA* Compl. ¶ 106 [A. 80].)[13]

But the language of the Emergency Order does not require *a single student* to report for in-person instruction, nor does it require teachers and staff to deliver in-person services or purport to deny them any relief that they might be able to

[13] To prevail on these theories, the Plaintiffs would have "to prove beyond a reasonable doubt that the State's education policies . . . were not rationally related to the provision 'by law' for a 'uniform, efficient, safe, secure, and high-quality system of free public schools that allows students to obtain a high-quality education," under *Citizens for Strong Sch.*, 232 So. 3d at 1172 n.5 (Fla. 1st DCA 2017).

seek from their employers—the local county school boards. Any concerns about workplace assignments or working conditions are between district teachers or staff and the local school boards that employ them. The mere possibility that some local boards, as non-party employers, may or may not take action that may or may not address the Plaintiffs' hypothetical risk of injury does not meet the requirements for standing under Florida law.

The standing barrier is even higher for the teacher and other employee Plaintiffs, including the FEA. The Florida Constitution's education clause expressly concerns "the education of *children*" and "students" within a broader statewide "*system* of free public schools." Art. IX, § 1(a), Fla. Const. (emphasis added). No Florida court has ever held that a county school district's *employees* have standing to assert claims under that provision to challenge classroom assignments or working conditions in specific districts or individual schools. *Cf. Coalition*, 680 So. 2d at 403 n.4 ("question[ing] the standing" of an incorporated "coalition," as opposed to students or parents, to assert claims under article IX, section 1(a)).

Indeed, as part of the State Defendants' pending appeal from the circuit court's erroneous preliminary injunction, this Court has already all but held that the Plaintiffs lack any cognizable injury likely to be caused by the Emergency Order or the State Defendants. In the Court's words, "nothing in the Emergency Order

requires *any* teacher or *any* student to return for in-person instruction at a brick-and-mortar school":

> As to teachers, whether a school district assigns them to in-person instruction or virtual instruction is a matter between those teachers and their employing school districts. Governor DeSantis, Commissioner Corcoran, and the other appellants have no say in the matter. And the school districts that *do* have a say are notably absent from this lawsuit.
>
> As to students, the Emergency Order does not compel any student to choose in-person instruction or attend a brick-and-mortar school. Rather, students and parents are free to choose a brick-and-mortar school for in-person instruction, virtual instruction from their local school district, Florida Virtual School, private school, or homeschooling. While many students and their families chose virtual instruction, parents of over 1.6 million students have decided that the benefits of students returning to school for in-person instruction outweigh any risks posed by COVID-19.
>
> As to school districts, none have been "forced" under the Emergency Order to offer in-person instruction for students. It is left to the individual school districts to determine whether offering in-person instruction poses risks to the welfare and safety of their students, teachers, and school personnel. Nothing in the Emergency Order disturbs the discretion of a school district to determine when to reopen schools and whether to offer in-person instruction. And nothing in the Executive Order limits a school district's ability to reopen schools under the funding formulae approved by the Legislature and administered by DOE.
>
> . . . .
>
> In sum, nothing in the Emergency Order forces school districts to reopen brick-and-mortar schools. Nothing in the order requires a student to attend a brick-and-mortar school. And nothing in the order forces a teacher to return to the classroom.

> For these reasons, the circuit court abused its discretion in concluding that reinstatement of the automatic stay would cause irreparable harm.

Order (Aug. 31, 2020) 7–8, DCA Case Nos. 1D20-2470 and 1D20-2472. Although the Court's conclusions in that pending appeal were focused on the requirement of irreparable injury to obtain temporary injunctive relief, the Court's analysis applies directly to the appropriate standing inquiry. Because the Emergency Order does not require the Plaintiff parents to send their children to a brick-and-mortar school for in-person instruction, this case essentially boils down to an employment dispute about working conditions at public schools operated by Florida's 67 local county school districts. Yet none of those school districts or the local boards that oversee them are parties to this case. Nothing in the circuit court's injunction requires any school district to operate their schools any differently, to change their teachers' classroom assignments, or to alter the working conditions for any of their employees.

The Plaintiffs therefore lack standing, and the circuit court departed from the essential requirements of the law by denying the motions to dismiss. The order should be quashed and reversed for that reason alone. *See Pasik*, 178 So. 3d at 61.

B. Questions About the Constitutional "Safety" or "Security" of Florida's Public Schools Are Non-Justiciable Political Questions.

Regardless of whether the Plaintiffs' claims technically arise under the Florida Constitution's education clause or due-process clause, they necessarily turn

on the meaning of the State Defendants' alleged obligation to "ensure that our schools operate safely." (*FEA* Compl. ¶ 80 [A. 74]; *see also Bellefleur* Am. Compl. ¶ 73 [A. 211] ("Since schools cannot open safely and be secure, no reasonable person could state that live and in person classrooms in the near term would be providing anything resembling high quality education as demanded by Florida's Constitution.").) But "safety" and "security" in the context of an evolving pandemic are elusive and debatable concepts that depend on many variables and competing policy priorities. In other words, those concepts lack "judicially discoverable and manageable standards for resolving" the non-justiciable political questions raised by the Plaintiffs' claims. *Coalition*, 680 So. 2d at 408.

In other cases involving the interpretation of the Florida Constitution's education clause, Florida courts have considered a six-factor test:

> The United States Supreme Court in *Baker v. Carr*, 369 U.S. 186, 209 (1962), set forth six criteria to gauge whether a case involves a political question: (1) a textually demonstrable commitment of the issue to a coordinate political department; (2) a lack of judicially discoverable and manageable standards for resolving it; (3) the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; (4) the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; (5) an unusual need for unquestioning adherence to a political decision already made; and lastly (6) the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Coalition, 680 So. 2d at 408. These cases satisfy all of those criteria.

First, the constitutional requirement that "[a]dequate provision shall be made *by law* for a . . . safe, secure, and high quality system of free public schools," Art. IX, § 1(a), Fla. Const. (emphasis added), shows "that the constitution has committed the determination of 'adequacy'" and concepts like safety and security "to the legislature." *Coalition*, 680 So. 2d at 408. The use of the phrase "by law" "demonstrates that the constitution continues to commit education policy determinations to the legislative and executive branches." *Citizens for Strong Sch.*, 232 So. 3d at 1171 (Fla. 1st DCA 2017). "[T]he courts possess no special competence or specific constitutional authority" to wade into "the details and execution of educational policies and related appropriations, involving millions of students and [potentially] billions of dollars." *Id.* And as in another constitutional challenge to Florida's system of free public schools that the Florida Supreme Court concluded just last year, the Plaintiffs here have "fail[ed] to present the courts with any roadmap by which to avoid intruding into the powers of the other branches of government" as they ask the judiciary to define safety during the COVID-19 pandemic. *Citizens for Strong Sch.*, 262 So. 3d at 135 (Fla. 2019).

With respect to the second, third, and fourth *Baker* factors, there are no "judicially discoverable and manageable standards" to define safety or security in

the context of the current public-health crisis. *Coalition*, 680 So. 2d at 408.[14] Nor can the courts balance the competing policy considerations that the Governor and DOE necessarily weighed—including the value of school-provided services "that are critical to the well-being of students and families, such as nutrition, socialization, counseling, and extra-curricular activities" and the "need to open schools fully to ensure the quality and continuity of the educational process, [and] the comprehensive well-being of students and families" (Emergency Order 1)[15]—

---

[14] *Cf. Haridopolos v. Citizens for Strong Sch., Inc.*, 81 So. 3d 465, 477 (Fla. 1st DCA 2011) (en banc) (Roberts, J. dissenting) ("The terms 'efficient, safe, secure, and high quality' do not lend themselves to a 'yes or no' evaluation. The terms are adjectives of degree, meaning that even an unlimited amount of resources and ideal policies and administration could not provide a guarantee of perfect efficiency, safety, security or quality. The Constitution does not provide guidance to courts in determining how efficient, safe, secure or high quality the school system is required to be. Rather, the terms require a policy judgment regarding whether the system is efficient, safe, secure or high quality. . . . For a court to attempt to determine whether the school system is efficient, safe, secure or high quality would require the court to substitute its own judgment for the policy decisions made by the other branches of the government."). The conclusion of the seven dissenting judges in *Haridopolos* that the claims in that case were not justiciable was later endorsed by this Court and the Florida Supreme Court (albeit not explicitly with respect safety or security) in *Citizens for Strong Schools*, 232 So. 3d 1163 (Fla. 1st DCA 2017), *approved*, 262 So. 3d 127 (Fla. 2019).

[15] The Emergency Order's preference for in-person instruction (when and where safe) is consistent not only with Florida's FEFP funding formula but also with a specific statute on reopening public schools in the context of an emergency:

> In the event of an emergency situation, the commissioner may coordinate through the most appropriate means of communication with local school districts, Florida College System institutions, and satellite offices of the Division of Blind Services and the Division of Vocational Rehabilitation to

without making "policy determination[s]" or "[dis]respect[ing]" the authority and discretion of the executive branch in an emergency, *Coalition*, 680 So. 2d at 408. Even the two Emergency Orders issued by the DOE in this case—one in March 2020, and the subsequent order at issue from July—reflect evolving perspectives on the risks, policy judgments, and competing priorities to be balanced during the ongoing pandemic.

With respect to the fifth and sixth *Baker* factors, the pandemic itself creates "an unusual need for unquestioning adherence to [the] political decision[s] already made," both to minimize uncertainty and to avoid "the potentiality of embarrassment" if the circuit court disagrees with the Governor and the DOE. *Coalition*, 680 So. 2d at 408. Even if the terms "safety" and "security" were somehow justiciable in the relatively simple context of, say, building codes or fire safety, Chief Justice Roberts of the U.S. Supreme Court has correctly explained that questions about "'[t]he safety and the health of the people'" during the COVID-19 pandemic "should not be subject to second-guessing by an 'unelected

---

> assess the need for resources and assistance to enable each school, institution, or satellite office the ability to *reopen as soon as possible after considering the health, safety, and welfare of students and clients*.

§ 1001.10(8), Fla. Stat. (emphasis added). Like this preexisting statute (which took effect in 2018), the Emergency Order reflects a policy preference for reopening schools for in-person instruction after considering health and safety issues.

federal judiciary,' which lacks the background, competence, and expertise to assess public health and is not accountable to the people." *S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1613 (2020) (Roberts, C.J.) (quoting *Jacobson*, 197 U.S. at 38; *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 546 (1985)).

Just as the terms "adequate," "efficient," and "high quality" were held to be non-justiciable in *Citizens for Strong Schools*, 262 So. 3d 127, the relative meanings of the words "safe" and "secure" in *this* context are not "'susceptible [of] judicial interpretation,'" *id.* at 134 (quoting First DCA's opinion, 232 So. 3d at 1170). The Plaintiffs cannot succeed on the merits of claims that are non-justiciable, and the circuit court therefore departed from the essential requirements of law in denying the State Defendants' motions to dismiss on that ground as well.

C. The Plaintiffs' Claims Are Barred by Florida's Constitutional Separation of Powers.

For similar reasons, the circuit court's continuing exercise of jurisdiction would also interfere with the State Defendants' broad executive authority and discretion to respond to emergencies and supervise Florida's system of free public schools. "The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided" in the state constitution. Art. 2, § 3, Fla. Const. "[T]he Florida Constitution [thus]

imposes a 'strict' separation of powers requirement that applies just as vigorously to the judicial branch as it does to the other two branches of government." *Citizens for Strong Sch.*, 232 So. 3d at 1170 (Fla. 1st DCA 2017) (quoting *State v. Cotton*, 769 So. 2d 345 (Fla. 2000)). And "no branch may encroach upon the powers of another." *Chiles v. Children A, B, C, D, E, & F*, 589 So. 2d 260, 264 (Fla. 1991). Yet by asking the circuit court to invalidate the Emergency Order (in whole or in part), the Plaintiffs are asking the judiciary to usurp the State Defendants' executive authority to respond to public emergencies and supervise Florida's public schools in the unique circumstances of the COVID-19 pandemic.

The "supreme executive power" in Florida is vested in the Governor, who must "take care that the laws are faithfully executed." Art. IV, § 1(a), Fla. Const. And as noted in the executive order delegating authority to suspend regulatory statutes to state agencies during the COVID-19 pandemic, the Governor—not the judiciary—"is responsible for meeting the dangers presented to this state and its people by emergencies" and may "issue executive orders, proclamations and rules . . . [that] shall have the force and effect of law." § 252.36(1)(a), (b), Fla. Stat.; (*see also* Executive Order No. 20-52, at 2 [A. 10].)

Similarly, article IX, section 2 of the Florida Constitution gives the State Board of Education—again, not the judiciary—"such supervision of the system of free public education as is provided by law." Art. IX, § 2, Fla. Const. Even with

respect to local boards of education, which *do* have constitutional authority to operate local public schools, Florida courts have recognized that "[t]he Florida Constitution . . . creates a hierarchy under which a school board has local control, but the State Board supervises the system as a whole. This broader supervisory authority may at times infringe on a school board's local powers, but such infringement is expressly contemplated—and in fact encouraged by the very nature of supervision—by the Florida Constitution." *Sch. Bd. of Collier Cty. v. Fla. Dep't of Educ.*, 279 So. 3d 281, 292 (Fla. 1st DCA 2019) (quoting *Sch. Bd. of Palm Beach Cty. v. Fla. Charter Educ. Found. Inc.*, 213 So. 3d 356, 360 (Fla. 4th DCA 2017)), *review denied*, No. SC19-1649, 2020 WL 1685138 (Fla. Apr. 7, 2020).

The Plaintiffs do not contend that the State Defendants exceeded their constitutional authority in the Emergency Order by suspending state laws to provide school districts with additional state funding that (as this Court observed) "*would have been unavailable absent a waiver of applicable statutes and rules*." Order (Aug. 31, 2020) 8, DCA Case Nos. 1D20-2470 and 1D20-2472. Quite the contrary: the Plaintiffs wish to *preserve* the additional funding and flexibility made available under the Emergency Order while eviscerating the accompanying requirement to develop a local plan with an option for in-person instruction, subject to the advice of state and local health authorities. (*See, e.g.*, *Bellefleur* Am. Compl. Prayer for Relief ¶ 3 [A. 214] (seeking "[i]njunctive relief from the Court

to order the Governor and appropriate government agents or agencies from restricting state funds to [the Orange County Public Schools] should they refuse to permit face-to-face education when [the] 2020-2021 School Year commences"); *FEA* Compl. ¶ 39 [A. 63] ("The Emergency Order comes with severe pressure by the State Government Defendants to physically reopen schools or face the loss of critical funding for public education.").)

Furthermore, despite the Plaintiffs' suggestion that the State Defendants cannot use additional funding as an incentive for local school districts to provide an option for in-person instruction—even in the *absence* of a public emergency—Florida law clearly permits the State to impose constraints on the manner, extent, and use of funds for public education under article IX of the state constitution. *See, e.g.*, *Sch. Bd. of Collier Cty.*, 279 So. 3d at 291 ("[T]he trial court reasoned in part that the school boards failed to explain how the Florida Constitution could preclude the State from imposing conditions on . . . [funds raised with state] authorization. The school boards have failed to show any error on the trial court's part."). There is nothing unconstitutionally "coercive" about requiring local planning or imposing other conditions on the receipt or use of state funds by a local school district. State-imposed conditions are part of the fundamental constitutional structure of the State's authority to supervise Florida's statewide system of public schools.

The U.S. Supreme Court has similarly recognized that states have inherent police powers to protect the public health and welfare, as well as the discretion to prescribe the "mode or manner in which those results are to be accomplished." *Jacobson v. Massachusetts*, 197 U.S. 11, 25 (1905) (upholding state law requiring smallpox vaccination); *see also id.* at 31 (permitting courts to review an emergency action on constitutional grounds only when (1) there is "no real or substantial relation" between the action and the crisis; or (2) the action is "beyond all question, a plain, palpable invasion of rights secured by the fundamental law"). Although courts may consider whether the State's actions are "arbitrary or oppressive," they should not "second-guess the wisdom or efficacy of the measures" themselves. *In re Abbott*, 954 F.3d 772, 785 (5th Cir. 2020). After all, the State's discretion is "especially broad" in emergencies "fraught with medical and scientific uncertainties." *S. Bay United Pentecostal Church*, 140 S. Ct. at 1613 (Roberts, C.J., concurring in the denial of injunctive relief involving state COVID-19 restrictions) (quoting *Marshall v. United States*, 414 U.S. 417, 427 (1974)).

In sum, the Florida Supreme Court has "described the separation of powers as the 'cornerstone of American democracy.'" *Corcoran v. Geffin*, 250 So. 3d 779, 784 (Fla. 1st DCA 2018) (quoting *Bush v. Schiavo*, 885 So. 2d 321, 329 (Fla. 2004)). That principle has even more significance during an emergency like the COVID-19 pandemic. "Courts should be loath to intrude on the powers and

prerogatives of the other branches of government," *Orr v. Trask*, 464 So. 2d 131, 135 (Fla. 1985), and they should not intervene to scrutinize the actions of the executive branch on matters related to the supervision of Florida's statewide system of public schools in a public emergency. If the circuit court were permitted to entertain this litigation moving forward, it would inevitably exceed the bounds of its judicial authority and impermissibly encroach on the powers of the executive.

VI. CONCLUSION

This Court has jurisdiction to grant this petition for certiorari and quash the lower court's order because the State Defendants will be materially injured if this litigation is allowed to proceed, and the resulting harm—both to the State Defendants and to Florida's public-school students and their families—cannot be remedied on post-judgment appeal. The circuit court departed from the essential requirements of the law by refusing to dismiss the Plaintiffs' claims on standing, justiciability, and separation-of-powers grounds. This Court should therefore grant this petition, quash the circuit court's order, and direct the circuit court to dismiss these consolidated cases with prejudice.

Respectfully submitted September 10, 2020.

s/ *David M. Wells*
Kenneth B. Bell (FBN 347035)
David M. Wells (FBN 309291)
Lauren V. Purdy (FBN 93943)
Nathan W. Hill (FBN 91473)
Primary E-mail: kbell@gunster.com

dwells@gunster.com
lpurdy@gunster.com
nhill@gunster.com
Secondary E-mail: awinsor@gunster.com
dculmer@gunster.com
dmowery@gunster.com
eservice@gunster.com
Gunster, Yoakley & Stewart, P. A.
215 South Monroe Street, Suite 601
Tallahassee, Florida 32301-1804
(850) 521-1980; Fax: (850) 576-0902

Counsel for Appellants

s/ *Raymond F. Treadwell*

Joseph W. Jacquot (FBN 189715)
GENERAL COUNSEL
Raymond F. Treadwell (FBN 93834)
DEPUTY GENERAL COUNSEL
Joshua E. Pratt (FBN 119347)
ASSISTANT GENERAL COUNSEL
Executive Office of Governor Ron DeSantis
Office of General Counsel
The Capitol, PL-5
400 S. Monroe Street
Tallahassee, FL 32399
(850) 717-9310; Fax: (850) 488-9810
Joe.Jacquot@eog.myflorida.com
Ray.Treadwell@eog.myflorida.com
Joshua.Pratt@eog.myflorida.com
(Primary)
Ashley.Tardo@eog.myflorida.com
(Secondary)

Counsel for Governor Ron DeSantis

s/ *Matthew H. Mears*
Matthew H. Mears (FBN 885231)
GENERAL COUNSEL
Judy Bone (FBN 0503398)
DEPUTY GENERAL COUNSEL
Jamie M. Braun (FBN 0058871)
ASSISTANT GENERAL COUNSEL
Department of Education
325 West Gaines Street, Suite 1544
Tallahassee, Florida 32399-0400
(850) 245-0442
matthew.mears@fldoe.org
judy.bone@fldoe.org
jamie.braun@fldoe.org

Counsel for Commissioner Richard Corcoran, the Florida Department of Education, and the Florida Board of Education

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing is being served on September 10, 2020, by email through the Florida Courts E-Filing Portal addressed to the following counsel of record:

COFFEY BURLINGTON, P.L. Kendall B. Coffey, Esquire Josefina M. Aguila, Esquire Scott A. Hiaasen, Esquire 2601 S. Bayshore Drive Ph 1 Miami, Florida 33133-5460 kcoffey@coffeyburlington.com jaguila@coffeyburlington.com shiaasen@coffeyburlington.com yvb@coffeyburlington.com service@coffeyburlington.com lperez@coffeyburlington.com *Counsel for Plaintiffs in Case No.* 2020-CA-001450	PHILLIPS, RICHARD & RIND, P.A. Lucia Piva, Esquire Mark Richard, Esquire Kathleen M. Phillips, Esquire 9360 SW 72nd Street, Suite 282 Miami, Florida 33173 lpiva@phillipsrichard.com mrichard@phillipsrichard.com kphillips@phillipsrichard.com *Counsel for Plaintiffs in Case No.* 2020-CA-001450
MEYER, BROOKS, BLOHM & HEARN, P.A. Ronald G. Meyer, Esquire P.O. Box 1547 Tallahassee, Florida 32302 rmeyer@meyerbrookslaw.com *Counsel for Plaintiffs in Case No.* 2020-CA-001450	FLORIDA EDUCATION ASSOCIATION Kimberly C. Menchion, Esquire 213 S. Adams Street Tallahassee, Florida 32302 kimberly.menchion@floridaea.org *Counsel for Plaintiffs in Case No.* 2020-CA-001450

AKERMAN LLP Katherine E. Giddings, Esquire Kristen M. Fiore, Esquire 201 E. Park Avenue, Suite 300 Tallahassee, Florida 32301 katherine.giddings@akerman.com kristen.fiore@akerman.com elisa.miller@akerman.com myndi.qualls@akerman.com *Counsel for Appellees*	AKERMAN LLP Gerald B. Cope, Jr., Esquire Three Brickell City Centre 98 Southeast Seventh St., Suite 1600 Miami, Florida 33131-1714 gerald.cope@akerman.com cary.gonzalez@akerman.com *Counsel for Appellees*
AKERMAN LLP Ryan D. O'Connor, Esquire 420 S. Orange Avenue, Suite 1200 Orlando, Florida 32801 ryan.oconnor@akerman.com jann.austin@akerman.com *Counsel for Appellees*	JACOB V. STUART, P.A. Jacob V. Stuart 1601 East Amelia Street Orlando, Florida 32803-5421 jvs@jacobstuartlaw.com *Counsel for Appellees/Respondents in Case No. 2020-CA-001467*
WIELAND & DELATTRE, P.A. William J. Wieland, II 226 Hillcrest Street Orlando, Florida 32801-1212 billy@wdjustice.com *Counsel for Appellees/Respondents in Case No. 2020-CA-001467*	BUCHANAN INGERSOLL & ROONEY PC Raquel A. Rodriguez, Esquire One Biscayne Tower 2 S. Biscayne Blvd., Suite 1500 Miami, Florida 33131-1822 raquel.rodriguez@bipc.com soraya.hamilon@bipc.com *Counsel for The Foundation for Excellence in Education, Inc.*

William E. Ploss, Esquire 75 Miracle Mile, Unit 347967 Coral Gables, Florida 33234-5099 wepwep1@gmail.com *Counsel for Florida Alliance of Retired Americans*	BUCHANAN INGERSOLL & ROONEY PC Jarrett B. Davis, Esquire 401 E. Jackson Street, Suite 2400 Tampa, Florida 33602 Jarrett.davis@bipc.com *Counsel for The Foundation for Excellence in Education, Inc.*

Additionally, pursuant to Florida Rule of Appellate Procedure 9.100(b), a copy of this Petition and attached appendix is being served on the Hon. Charles W. Dodson via hand delivery on September 10, 2020.

s/ *David M. Wells*
David M. Wells

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared in Times New Roman, 14-point font, in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

s/ *David M. Wells*
David M. Wells

ACTIVE:12416160.1