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

CITIZENS FOR STRONG SCHOOLS, INC.;
FUND EDUCATION NOW;
EUNICE BARNUM;
JANIYAH WILLIAMS;
JACQUE WILLIAMS;
SHEILA ANDREWS;
ROSE NOGUERAS; and
ALFREDO NOGUERAS;

Plaintiffs,

vs. Case No. 09-CA-4534

FLORIDA STATE BOARD OF EDUCATION;
JEFF ATWATER, in his official capacity as the
Florida Senate President;
LARRY CRETUL, in his official capacity as
the Florida Speaker of the House of Representatives;
and DR. ERIC J. SMITH, in his official capacity
as Florida Commissioner of Education;

Defendants.
_____/

ORDER DENYING DISMISSAL

This cause is before the Court on Defendants' Motion to Dismiss the Amended Complaint. Plaintiffs filed a Response in Opposition and the parties presented their arguments at a hearing on July 13, 2010. The Court, having reviewed the file, the parties memoranda, heard argument of counsel, and being otherwise fully advised in the premises, finds and orders as follows:

Plaintiffs' Prayer for Relief in their Amended Complaint seeks:

> a declaration that Defendants have violated the Florida Constitution by breaching their paramount duty to make adequate provision for a uniform, efficient, safe, secure, and high quality system of free public

schools that allows students to obtain a high quality education; and

an order requiring Defendants to establish a remedial plan that conforms with the Florida Constitution by providing a high quality system of free public schools that allows students to obtain a high quality education, and which includes necessary studies to determine what resources and standards are necessary to provide a high quality education to Florida students.

Defendants moved to dismiss, asserting that the Court lacks subject matter jurisdiction and that Plaintiffs fail to state a cause of Action. This Court disagrees with Defendants' arguments and enters this Order denying the motion to dismiss.

Plaintiffs' claim is based on Article IX, Section 1 of the Florida Constitution, which provides in pertinent part:

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

Plaintiffs make comprehensive allegations that Defendants fail to meet the standards of Article IX. For purposes of the motion to dismiss these allegations must be taken as true. For example, the Amended Complaint alleges that since 2001 only 37% of students who take the Grade 10 FCAT for Reading each year are reading at grade level. (Amd. Complaint ¶¶110-11.) Florida ranks 47th in the nation in high school graduation rates with only 57.5% of the classes of 1996 and 2006 earning a regular diploma. (Amd. Complaint ¶88.) For black and Hispanic students, the graduation and grade promotion rates are disproportionately low, and the White-Black gap in averaged freshman graduation rate grew from 11% to 18% from 1997 to 2006. (Amd. Complaint ¶125.) Florida ranks

50th in the nation in total public education spending compared to in-state wealth out of the 50 states and the District of Columbia, and the State is shifting its responsibility for education funding to local school districts. (Amd. Complaint ¶¶37, 44-47.)

Defendants argue that these deficiencies cannot be reviewed by any court. Ultimately, their position is that the judiciary has no role in interpreting Article IX and that the Legislature has absolute discretion to implement any system, checked only by the ballot box. This conclusion renders the citizens' vote to create a new education article as meaningless and this provision as a nullity. Defendants' theories are that: the Florida Constitution does not provide reviewable standards; this case presents a political question; Article IX is not self-executing; and the Legislature has immunity.

Defendants rely on *Coalition for Adequacy and Fairness in Sch. Funding v. Chiles,* 680 So. 2d 400 (Fla. 1996), for the proposition that "blanket assertions" against Florida's education system are not justiciable. This case is not a "blanket assertion," but a series of specific allegations. Moreover, *Coalition* does not control this case because it was based on a prior and weaker version of the current Article IX, Section 1.

Not only is *Coalition* no longer binding authority, but Plaintiffs make more comprehensive allegations than were made in *Coalition.* The most critical case is *Bush v. Holmes*, 919 So. 2d 392, 403 (Fla. 2006), in which the Florida Supreme Court addressed the current language of Article IX, Section 1 and concluded that the amended language was drafted intentionally "to provide ***standards*** by which to measure the adequacy of the public school education provided by the state." (Emphasis added.) The Court interpreted the Florida Constitution as providing a ***mandate*** that it is the State's paramount duty to

make adequate provision for education, as well as a ***restriction on that mandate*** by specifying that the 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. *Id.* at 407 (emphasis added).

The instant case challenges statutory enactments of the Legislature and implementation by the State Board of Education and the Department of Education. The Florida Constitution provides judicially discoverable and manageable standards that this Court can apply to resolve the issues of this case.

There is a presumption that constitutional provisions are intended to be self-executing. *Gray v. Bryant*, 125 So. 2d 846, 851-52 (Fla. 1960). However, whether or not Article IX, Section 1 is self-executing is not dispositive as to whether this case is justiciable. Regardless of whether the education system needs to be supplemented by legislative and executive action, the State already has in fact implemented Article IX. It is that implementation for which Plaintiffs seek review.

Defendants' argument that legislative immunity prevents this Court from reviewing legislative action under Article IX, Section 1 is not supported by controlling caselaw. The *Coalition* Court found that "the Florida Senate and the Florida House of Representatives, acting through their respective presiding officers, are proper parties." 680 So. 2d at 403. Unlike justiciability, the holding on legislative immunity has not been questioned by *Holmes* or any other Florida Supreme Court case. The Florida First DCA also found that a declaratory judgment action challenging appropriations, which included the Legislature through its officers, was proper. *School Board of Miami-Dade County v. King*, 940 So. 2d

at 593, 602-03 (Fla. 1st DCA 2006) (upholding dismissal of the claim on other grounds).

Defendants' argument that the associational plaintiffs do not have standing also is not correct. The directors and members of the two associational plaintiffs are Florida citizens and taxpayers and are parents of children attending Florida public schools. They would have standing as individuals; thus, they have standing as an association.

Plaintiffs seek system-wide changes, not individual relief. As the issue of whether individual relief may be sought is not before this Court, that question is not addressed. This Court holds that Plaintiffs may seek system-wide declaratory and supplemental relief under Article IX, Section 1.

"A motion to dismiss for failure to state a cause of action is not a substitute for a motion for summary judgment, and in ruling on such a motion, the trial court is confined to a consideration of the allegations found within the four corners of the complaint. *Consuegra v. Lloyd's Underwriters at London*, 801 So.2d 111, 112 (Fla. 2d DCA 2001) (citing *Cyn-Co, Inc. v. Lancto*, 677 So.2d 78, 79 (Fla. 2de DCA 1996)). "The test of sufficiency of a complaint in such a 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." *Hialeah Race Course, Inc. v. Gulfstream Park Racing Ass'n*, 210 So.2d 750, 752 (Fla. 4th DCA 1968).

The Court concludes that Defendants' Motion to Dismiss should be denied because Plaintiffs have: 1) raised a justiciable question over which this Court has subject matter jurisdiction; and 2) the Amended Complaint states a cause of action.

It is therefore ORDER AND ADJUDGED that Defendants' Motion to Dismiss Plaintiffs' Amended Complaint is DENIED. The Defendants shall file an answer to the Amended Complaint within twenty (20) days of the date of this Order.

DONE AND ORDERED in chambers in Tallahassee, Leon County, Florida, this 20th day of August, 2010.

Jackie L. Fulford
Circuit Judge

Copies to counsel of record