

IN THE SUPREME COURT OF FLORIDA
STATE OF FLORIDA

CASE NO. SC04-2323, SC04-2324 & SC04-2325

JOHN ELLIS (JEB) BUSH, ET AL.,

Appellants,

v.

RUTH D. HOLMES, ET AL.,

Appellees.

**APPELLANTS' SUPPLEMENTAL BRIEF IN RESPONSE TO ORAL
ARGUMENT INQUIRY ON STATE SCHOOL TRUST FUND**

BARRY RICHARD

Florida Bar No. 0105599

M. HOPE KEATING

Florida Bar No. 0981915

Greenberg Traurig, P.A.

P.O. Drawer 1838

Tallahassee, Florida 32302

(850) 222-6891

RAQUEL A. RODRIGUEZ

Florida Bar No. 0511439

ROBERT H. FERNANDEZ

Florida Bar No. 0091080

Office of the Governor

The Capitol, Rm. No. 209

Tallahassee, FL 32399

(850) 488-3494

DANIEL WOODRING

Florida Bar No. 0086850

NATHAN A. ADAMS, IV

Florida Bar No. 0090492

Florida Department of Education

325 W. Gaines Street, Suite 1244

Tallahassee, FL 32399-0400

(850) 245-0442

RESPONSE TO COURT'S INQUIRY ON STATE SCHOOL TRUST FUND

Florida enacted the precursor to the State School Trust Fund in the Florida Constitution of 1838 due to conditions imposed by the federal government on its gift to the State of Florida of so-called sixteenth-section lands. Art. X, § 1, Fla. Const. (1838) (attached hereto as appendix 1). These lands were rented and later sold exclusively for the purpose of establishing a K-12 common school system. *Id.*¹ The federal limitation on the land grant was in the nature of a trust condition for the purpose of establishing a public school system. Ch. 75, § 1, 28th Cong., 2d Sess. (1845) (attached hereto as appendix 5); *see also* Ch. 39, § 1, 20th Cong., 2d Sess. (1829) (attached hereto as appendix 6). Modern law preserves this federal trust condition (Art. IX, § 6, Fla. Const. (2004); § 1010.71(1)(a), Fla. Stat.), but the importance of this funding source has vastly diminished.

Florida's public education system today is funded primarily from other sources never treated as subject to the federal trust condition such as general revenue appropriated by the Legislature to the Florida Education Finance Program (FEFP).² *See, e.g.*, Ch. 1011, pt. II, Fla. Stat. In 2004-05, the State School Trust

¹ *See also* § 5, Acts of Fla. (1828) (trust for seminary or school lands from sixteenth-section lands) (attached hereto as appendix 2); Ch. 93, §§ 3, 8, Laws of Fla. (1846) (similar) (attached hereto as appendix 3); Chs. 230-31, Laws of Fla. (1848) (common school fund derived from sixteenth-section lands) (attached hereto as appendix 4).

² The FEFP also funds private education for troubled students, § 1003.53(1)(d), Fla. Stat.; juveniles, §§ 1003.51(2)(g), (p) and (5) and 1003.52(12)-(13), Fla. Stat.;

Fund accounted for much less than one percent of all state and required local public school funding combined. *See* Ch. 2004-268, § 1, at 1164 (lines 6-7) and § 2, at 1182-86 (lines 81-87), Laws of Fla. (approximately \$14.3 billion compared to roughly \$91 million). The record reflects that no revenue for the Opportunity Scholarship Program is derived from the State School Trust Fund. (R: Vol. 16, 2857-60) (attached hereto as appendix 7).

teenage parents § 1003.54(3), Fla. Stat.; disabled students § 1002.39(6), Fla. Stat. (McKay Scholarship Program); exceptional students §§ 1002.42(12), 1003.57(2) and 1011.62(1)(e), Fla. Stat., *see also* *Scavella v. School Bd. of Dade County*, 363 So. 2d 1095 (Fla. 1978); students under the supervision of the Department of Children and Family Services, § 1003.58, Fla. Stat.; and students in underperforming schools, § 1002.38(6), Fla. Stat. (Opportunity Scholarship Program). In addition, the FEFP funds charter schools managed by private education providers. § 1002.33(9) and (17), Fla. Stat. *See also* § 1011.62(f), Fla. Stat. (Supplemental Academic Instruction Categorical Fund financing, *inter alia*, tutoring).

BARRY RICHARD

Florida Bar No. 0105599

M. HOPE KEATING

Florida Bar No. 0981915

Greenberg Traurig, P.A.

P.O. Drawer 1838

Tallahassee, Florida 32302

(850) 222-6891

RAQUEL A. RODRIGUEZ

Florida Bar No. 0511439

ROBERT H. FERNANDEZ

Florida Bar No. 0091080

Office of the Governor

The Capitol, Rm. No. 209

Tallahassee, FL 32399

(850) 488-3494

DANIEL WOODRING

Florida Bar No. 0086850

NATHAN A. ADAMS, IV

Florida Bar No. 0090492

Florida Department of Education

325 W. Gaines Street, Suite 1244

Tallahassee, FL 32399-0400

(850) 245-0442

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 16, 2005, a copy of the foregoing has been furnished on by U.S. mail to RONALD G. MEYER, Meyer and Brooks, P.A., 2544 Blairstone Pines Drive, Tallahassee, FL 32302 and by U.S. Mail to the following:

ROBERT H. CHANIN JOHN M. WEST ALICE O'BRIEN (National Education Ass'n) Bredhoff & Kaiser, P.L.L.C. 805 Fifteenth Street, N.W. Suite 1000 Washington, D.C. 20005	ELLIOT M. MINCBERG JUDITH E. SCHAEFFER People For the American Way Foundation 2000 M Street, N.W., Suite 400 Washington, D.C. 20036
PAMELA L. COOPER	STEVEN R. SHAPIRO

<p>Florida Education Association 118 North Monroe Street Tallahassee, FL 32399-1700</p>	<p>American Civil Liberties Union Foundation 125 Broad Street, 17th Floor New York, NY 10004</p>
<p>RANDALL MARSHALL American Civil Liberties Union Foundation of Florida, Inc. 4500 Biscayne Blvd., Suite 340 Miami, FL 33137</p>	<p>JOAN PEPPARD Anti-Defamation League 2 South Biscayne Blvd. Suite 2650 Miami, FL 33131</p>
<p>DAVID STROM American Federation of Teachers 555 New Jersey Avenue, N.W. Washington, D.C. 20001</p>	<p>STEVEN M. FREEMAN STEVEN SHEINBERG Anti-Defamation League 823 United Nations Plaza New York, NY 10017</p>
<p>MICHAEL A. SUSSMAN National Association for the Advancement of Colored People Law Offices of Michael A. Sussman 25 Main Street Goshen, NY 10924</p>	<p>AYESHA N. KHAN Americans United for Separation of Church and State 518 C Street, N.E. Washington, D.C. 20002</p>
<p>MARC D. STERN American Jewish Congress 825 Third Avenue, Suite 1800 New York, NY 10022-7519</p>	<p>JEFFREY P. SINENSKY American Jewish Committee 165 East 56th Street New York, NY 10022</p>
<p>JULIE UNDERWOOD (Florida School Boards Ass'n) General Counsel National School Boards Ass'n 1680 Duke Street Alexandria, VA 22314</p>	<p>CLINT BOLICK CLARK NEILY WILLIAM MELLOR DAVID ROLAND Institute for Justice 1717 Pennsylvania Avenue, NW Suite 200 Washington, DC 20006</p>
<p>CHRISTOPHER M. KISE</p>	<p>KENNETH SUKHIA</p>

<p>LOUIS F. HUBENER ERIK FIGLIO Office of the Solicitor General PL 01, The Capitol Tallahassee, FL 32399-1050</p>	<p>Fowler, White, Boggs, Banker, P.A. Post Office Box 11240 Tallahassee, FL 32302</p>
<p>VALERIE A. FERNANDEZ Pacific Legal Foundation 1320 South Dixie Highway Suite 1105 Coral Gables, FL 33146</p>	<p>GREGORY R. MILLER E. BRYAN WILSON Assistant United States Attorney Northern District of Florida 111 North Adams Street Fourth Floor Tallahassee, FL 32301</p>
<p>R. ALEXANDER ACOSTA Assistant Attorney General U.S. Dept. of Justice Civil Rights Division Room 5531 Washington, D.C. 20530</p>	<p>DAVID K. FLYNN ERIC W. TREENE GORDON TODD CONOR DUGAN U.S. Dept. of Justice Civil Rights Division, Appellate P.O. Box 14403 Washington, DC 20044-4403</p>
<p>BRISCOE R. SMITH Atlantic Legal Foundation 60 East 42nd Street New York, NY 10165</p>	<p>G. MARCUS COLE Professor of Law Stanford Law School Stanford, CA 94305</p>
<p>CARLOS G. MUNIZ GrayRobinson 301 South Bronough Street Tallahassee, FL 32302</p>	<p>MAJOR B. HARDING JASON GONZALEZ STEPHEN C. EMMANUEL Ausley & McMullen P.O. Box 391 Tallahassee, FL 32302</p>

<p>PROFESSOR THOMAS BERG University of St. Thomas School of Law MSL 400-1000 La Salle Avenue Minneapolis, MN 55403-2015</p>	<p>RICHARD W. GARNETT University of Notre Dame School of Law 327 Law School, P.O. Box R Notre Dame, IN 46556-0780</p>
<p>TIMOTHY W. WEBER, ESQ. ANDREW W. LENNOX, ESQ. Battaglia, Ross, Dicus & Wein, P.A. P.O. Box 41100 St. Petersburg, FL 33743</p>	<p>ROBERT R. GASAWAY ASHLEY C. PARRISH PADRAIC B. FENNELLY Kirkland & Ellis LLP 655 Fifteenth Street, N.W Washington, DC 20005</p>
<p>LANSING C. SCRIVEN Lansing C. Scriven, P.A. 442 W. Kennedy Blvd. Suite 280 Tampa, FL 33606</p>	<p>ANTHONY R. PICARELLO, JR. DEREK L. GAUBATZ The Becket Fund 1350 Connecticut Avenue, N.W. Suite 605 Washington, DC 20036-1735</p>
<p>ISAAC M. JAROSLAWICZ Givner & Jaroslawicz 1177 Kane Concourse Suite 232 Miami, FL 33154-2027</p>	<p>DEVIN J. REED, ESQ. Director, Dept. of Procurement City of Jacksonville 117 West Duval St., Suite 335 Jacksonville, FL 32202</p>
<p>RICHARD A. MULLANEY SCOTT D. MAKAR Office of General Counsel 117 West Duval St., Suite 480 Jacksonville, FL 32202</p>	<p>BILL MCBRIDE 601 Bayshore Boulevard Suite 700 Tampa, FL 33606</p>
<p>STEVEN K. GREEN Willamette University College of Law 245 Winter Street, SE Salem, Oregon 97301</p>	<p>KAREN GIEVERS 524 East College Avenue #2 Tallahassee, FL 32301</p>

TALBOT D'ALEMBERTE
Florida State University
College of Law
425 West Jefferson
Tallahassee, FL 32306

M. HOPE KEATING

CERTIFICATE OF COMPLIANCE

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

M. HOPE KEATING