IN THE SUPREME COURT OF FLORIDA

CASE NO. SC18-67

CITIZENS FOR STRONG SCHOOLS, INC., ET AL.,

Appellants,

v.

FLORIDA STATE BOARD OF EDUCATION, ET AL.,

Appellees.

On Appeal From the First District Court of Appeal of Florida
L.T. Case No. 1D16-2862

AMICUS CURIAE BRIEF OF CERTAIN COMMISSIONERS OF 1998 CONSTITUTION REVISION COMMISSION IN SUPPORT OF APPELLANTS

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CONCISE STATEMENT OF IDENTITY OF *AMICUS CURIAE* AND ITS INTEREST IN THE CASE

Submitting this *amicus curiae* brief were members ("Commissioners") of the 1998 Constitution Revision Commission ("CRC") who authored, proposed, and voted in favor of amending Florida's education provisions as contained in Article IX.[1] The CRC received numerous proposals from citizens, many of whom expressed concern about Florida's public education system. After consideration of these proposals and debating the issues, the CRC voted 28–8 in favor of placing the Article IX amendments on the ballot. In November 1998, more than 70% of Florida voters approved the Article IX education amendments.

As the framers of the 1998 amendments to Article IX, the CRC members wish to provide a legal analysis showing that the First District's Opinion erred in holding that Article IX does not contain sufficient judicial standards and thus it is *per se* non-justiciable. The history of the CRC's passage of Article IX shows that the goal of the amendments was twofold: first, to return a constitutional mandate that makes public education a "paramount duty" of the State; second, to provide a judicially-enforceable right to a public school system that is "uniform, efficient,

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[1] The members of the 1998 Constitution Revision Commission joining this brief as an *amicus curiae* are: Martha Walters Barnett, Robert M. Brochin, The Honorable Robert A. Butterworth, Ellen Freidin, William Clay Henderson, The Honorable Gerald Kogan, Jon Lester Mills, Robert Lowry Nabors, H.T. Smith, and Stephen N. Zack.

safe, secure, and high quality." Article IX now provides judicially manageable standards so Florida courts may determine whether the State is fulfilling its "paramount duty" to provide *all* Florida children with a high quality education. The manageable standards were proposed because this Court in *Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles*, 680 So. 2d 400 (Fla. 1996) ("*Coalition*"), determined that, under some circumstances, Article IX did not have justiciable standards.

In evaluating the Article IX provisions, this Court "must endeavor to construe the constitutional provision in a manner consistent with the intent of the framers and the voters." *Ford v. Browning*, 992 So. 2d 132, 136 (Fla. 2008). This amicus brief presents the legal framework of the intent of the CRC and the voters in drafting, considering, and enacting Article IX. This framework and fundamental canons of constitutional interpretation show that Article IX provides judicially manageable standards.

SUMMARY OF THE ARGUMENT

This Court has recognized that Article IX imposes the highest duty on the State to provide for public education among the constitutional provisions on education in the United States. *Bush v. Holmes*, 919 So. 2d 392, 404 (Fla. 2006). Not only does the First District's Opinion not adhere to that high standard, the

Opinion is in direct conflict with this Court's decisions interpreting both the prior and current versions of Article IX.

Article IX of the Florida Constitution requires the *State*—including the legislative, executive, and judicial branches—to provide all of its children with a high quality education. That constitutional mandate was proposed by the CRC and approved by Florida's voters. After the 1998 amendments were approved, this Court in *Bush v. Holmes* concluded that Article IX provides judicially manageable educational "*standards by which to measure the adequacy of the public school education provided by the state*." *Id*. at 403 (emphasis added).

The 1998 Article IX amendments, in response to this Court's decision in *Coalition*, provided *additional* more explicit manageable standards. The intent and effect of the amendments is to provide judicially enforceable standards to ensure that the State meets its "paramount duty" to provide children with a high quality and efficient education. To find that there are no judicially manageable standards is to find Article IX's text and its intent meaningless and unenforceable. Under that interpretation a future legislature could appropriate one dollar for public education or allow patently unsafe public schools and the courts could do nothing.

The First District wrongly determined that any claims under Article IX are not justiciable and presented a political question. But the text, intent of the CRC, and prior decisions by this Court unequivocally show that Article IX is justiciable.

The seminal case on the political question doctrine, *Baker v. Carr*, 369 U.S. 186 (1962), sets forth factors when deciding whether claims present political questions. Two of the factors are particularly pertinent here: (1) whether judicially manageable standards for resolving the claims are lacking, and (2) whether the constitutional text demonstrates a commitment of the issue to only one political department? For both of these questions, the answer is No.

The 1998 amendments to Article IX added clear standards intended for review and enforcement by Florida courts: "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. This Court explicitly stated these terms provide manageable standards. *See Holmes*, 919 So. 2d at 403. Moreover, other courts, interpreting provisions with less demanding standards, found review of education adequacy a justiciable issue. Florida courts have interpreted terms such as "cruel and unusual," "compact," and "probable cause," and they are plainly capable of interpreting standards such as "safe," "secure," "high quality," and "efficient." Surely, where the constitution mandates the highest standards for education and makes it the State's paramount duty to provide such an education, Florida children should have justiciable claims under Article IX, just as Florida prisoners have justiciable claims under Article I to interpret "cruel and unusual" punishment.

Article IX makes clear that it is the *State's "paramount duty"* to ensure that all children be afforded an opportunity to obtain a high quality and efficient education. It is the "State"—all three of its branches, not any "one political department"—that has this duty. Unlike constitutional powers such as clemency, impeachment, and appropriations that are assigned to one branch, the adequate provision for a high quality education is a power, duty, and responsibility of the State—including the judiciary.

ARGUMENT

I. ARTICLE IX'S 1998 AMENDMENTS PROVIDE JUDICIALLY MANAGEABLE STANDARDS

A. This Court's Decision in *Coalition for Adequacy and Fairness in School Funding v. Chiles* Demonstrated the Need for More Robust, Justiciable Standards.

In 1996, a sharply divided Court decided *Coalition* in three separate opinions, none of which garnered a majority. 680 So. 2d at 400. At the time, the Article IX education provision provided that "*[a]dequate provision* shall be made by law for a *uniform* system of free public schools . . . ." *Id.* at 405 (initial alteration in original, second emphasis added). A plurality of the *Coalition* Court (the three-justice *per curiam* opinion plus Justice Overton) read the "shall be made by law" language in conjunction with the absence of a specific definition of "adequate" and concluded that an "insufficient showing has been made to justify judicial intrusion." *Id.* at 407. Four justices, however, concluded that Article IX's

pre-1998 standards were justiciable under appropriate circumstances. In addition to the three dissenting justices who concluded that Article IX was justiciable, Justice Overton wrote:

> In my view, the intent of [Article IX], which mandates that adequate provision shall be made by law for a uniform system of free public schools, is to require the establishment of an educational system that fulfills the basic educational needs of the citizens of this state to provide for a literate, knowledgeable population. . . . While "adequate" may be difficult to quantify, certainly a minimum threshold exists below which the funding provided by the legislature would be considered "inadequate." For example, were a complaint to assert that a county in this state has a thirty percent illiteracy rate, I would suggest that such *a complaint has at least stated a cause of action under our [Article IX] education provision. To say otherwise would have the effect of eliminating the education provision from our constitution and relegating it to the position occupied by statutes.*

Id. at 409 (emphasis added).

B. The 1998 Amendments to Article IX Provided the Standards Found Lacking in *Coalition* and Were Specifically Intended to do so.

Since statehood, Florida's citizens have steadfastly believed that "education is absolutely essential to a free society under our governmental structure." *Holmes*, 919 So. 2d at 405 (quoting *Coalition,* 680 So. 2d at 409 (Overton, J., concurring)). In 1868, the education article was significantly expanded, making it the "paramount duty of the State to make ample provision for the education of all the children residing within its borders[.]" *Id.* at 402. The 1998 amendments to Article IX explicitly focused on creating judicially manageable standards. *See* FLORIDA CONSTITUTION REVISION COMMISSION MEETING PROCEEDINGS ("CRC

MINUTES"), Jan. 13, 1998, at 147, 150. In specifically discussing the proposal as a response to *Coalition,* Commissioner Mills explained that the standards were intended "to define what adequate education should be in the state of Florida with common terms that are used in other Constitutions." *Id*. at 147; *see also id.* at 150 ("What this [language] will do is provide a standard . . . *for a Court to judge*." (Stmt. of Comm'r Mills) (emphasis added)). In addition to explicit discussion of the intent by CRC members during debate, the public was informed that the effect of the proposed revision was to remedy the previous situation and provide a judicially enforceable standard. The voters were informed that the new education provisions provided a basis for a legal challenge of a deficient education system. In other words, it provided standards for a justiciable constitutional right.[2]

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[2] According to the FSU Archives of the Constitution Revision Commission Analysis of Amendments, this was also the intent advertised to the public when it voted on the amendment. The Archives state:

> Our Constitution presently requires "adequate provision" for public schools. The Florida courts have held, however, that the Constitution does *not* provide any standards for determining whether adequate provision has been made.
>
> *To address these shortcomings*, the Commission recommended that our Constitution state that the education of Florida's children is a fundamental value and is a paramount duty of the state. Also, *guidelines for determining whether the education system is adequate are provided,* and require that our system be efficient, safe, secure and high quality.

Florida Constitutional Revision Commission, Analysis of the Revisions for the November 1998 Ballot (certain emphases added), http://fall.fsulawrc.com/crc/tabloid.html (last visited June 13, 2018). Further, the

C. This Court, in *Bush v. Holmes,* Stated that the 1998 Amendments Provided Justiciable Standards.

This Court examined whether Article IX is justiciable in *Bush v. Holmes*. 919 So. 2d 392. In addition to finding that the provision created the highest category of constitutional education standards in the country, the Court recognized that the CRC was providing *Florida courts with judicially manageable standards* in response to *Coalition*. *Id*. at 404. The "action of the [C]ommission was *in direct response* to recent court actions seeking a declaration that Article IX, section 1 created a fundamental right to an adequate education . . . ." *Id.* (emphasis added). The purpose of the Article IX amendments was to (1) establish education as a "fundamental value" of Florida's citizenry, (2) make it a "paramount duty of the state" to make adequate provision for the highest quality education for all of Florida's children, and (3) provide meaningful "*standards by which to measure the adequacy of the public school education provided by the state*[.]" *Id*. at 403 (emphasis added). This statement is an explicit recognition of Article IX's justiciablity.[3]

"Pro" column also states that "[*this amendment p*]*rovides guidance and standards for equal educational opportunities and provides a basis for legal challenge if the system does not meet the standards.*" *Id.* (emphasis added).

[3] The First District's Opinion seems to ignore its own precedent holding that Article IX is justiciable. *See School Board of Miami–Dade Cty. v. King*, 940 So. 2d 593, 602 (Fla. 1st DCA 2006) ("[A]ny citizen/taxpayer may bring a declaratory action to challenge the constitutionality of provisions in a general appropriations

The *Holmes* decision is instructive for two additional reasons. First, the Court correctly considered the intent of the CRC. *Id.* at 403–04. The intent of the CRC is considered as the "framers" of the constitutional provision. *See Lawnwood Med. Ctr., Inc. v. Seeger*, 990 So. 2d 503, 510 (Fla. 2008). The Court's "goal in construing a constitutional provision is to ascertain and effectuate the intent of the framers and voters." *Id.* at 510. "[I]t must be presumed that those who drafted the Constitution had a clear conception of the principles they intended to express, that they knew the English language and that they knew how to use it [and] that they gave careful consideration to the practical application of the Constitution . . . ." *Id.* (quoting *Erwin v. Collins*, 85 So. 2d 852, 855 (Fla. 1956)). The history of the CRC's consideration shows the clear intent to create an enforceable, justiciable education provision—just as the Court found in *Holmes.*

Second, the *Holmes* Court interprets the new Article IX as a constitutional mandate to provide a high quality education to all Florida children. *Holmes*, 919 So. 2d at 405. The amended provision "sets forth an education *mandate* that provides that it is 'a paramount duty of the state to make adequate provision for the education of all children residing within its borders[.]'" *Id.* (emphasis added); *see also* TALBOT D'ALEMBERTE, THE FLORIDA STATE CONSTITUTION (OXFORD

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act, including a claim that the state has failed to make adequate provision for a uniform system of free public schools as required by Article IX[.]").

COMMENTARIES ON THE STATE CONSTITUTIONS OF THE UNITED STATES) 270 (2d ed. 2016).[4] That mandate, considering the history of the CRC, creates the highest constitutional education standards in the country.

II. ARTICLE IX'S STANDARDS FOR EDUCATION DO NOT PRESENT A POLITICAL QUESTION

The First District determined that Article IX is not justiciable because the Petitioners' claims present political questions and the separation of powers doctrine prevents the judiciary from reviewing the education policies set forth in the constitution.[5] The First District's decision that Article IX is *per se* non-justiciable renders meaningless any constitutional right to an education and is in direct conflict with the constitutional text and precedent. If, as the First District

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[4] In so doing, the Court recognized that the 1998 amendments increased the State's level of constitutional duty to provide for education. "Florida's education article is again classified as a Category IV clause, imposing a maximum duty on the state to provide for public education that is uniform and of high quality." *Holmes*, 919 So. 2d at 404. Academics have classified state education constitutional clauses into a four category system, with Category IV imposing the highest duty on the state to provide for education. *See Coalition*, 680 So. 2d at 405 n.7. As a Category IV clause, Article IX is now in line with the 1868 version of Florida's Constitution. *See id.*; *see also* CRC MINUTES, Feb. 26, 1998, at 68 (Stmt. of Comm'r Brochin) (stating that the intent is to move Florida's clause "where it rightfully belongs as a category four, the highest category, meaning it demands the highest responsibility of this state to provide the education for all of our children").

[5] Judicial review stands as a bulwark against unconstitutional or illegal actions by the two political branches. *Marbury v. Madison*, 5 U.S. 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is."). The foundation for the rule of law is the axiom that, when disagreements arise, this Court has the final word regarding the Constitution's meaning.

held, no claim was justiciable, the legislature could appropriate one dollar for public schools, and yet Florida's courts would be powerless to deem this inadequate and in violation of the constitutional mandate.

In *Baker v. Carr*, 369 U.S. 186 (1962), the United States Supreme Court described the elements which identify political questions for one specific branch of government to address exclusively under the separation of powers doctrine.[6] Two of the *Baker* elements—lack of judicially discoverable and manageable standards for resolving the claims and a textually demonstrable commitment of the issue to a coordinate political department—are particularly germane here as they each show that Article IX claims do not present "political questions." *See id.* at 217. There is not a lack of judicially manageable standards; to the contrary, there are clear, high standards in Article IX resulting from the 1998 amendments. And the text of Article IX imposes the constitutional mandate on *the State*, including the judiciary, and not to a single political department or branch. The Opinion below renders Article IX meaningless and denies access to the courts even where the State fails in

[6] Florida courts have approved of the *Baker* factors in assessing whether an issue is justiciable. *See Coalition*, 680 So. 2d at 408 (citing *Baker* factors approvingly); *Everton v. Willard*, 468 So. 2d 936, 947 n.10 (Fla. 1985) (citing *Baker* "on justiciablity"); *see also City of Sweetwater v. Lopez*, No. 3D16-1879, 2018 WL 1308904, at *5 n.6 (Fla. 3d DCA Mar. 14, 2018) (citing *Baker* factors regarding what constitutes a political question).

its "paramount duty" to provide an education as mandated by the constitution.[7]

A. Article IX Provides Specific Standards for Education that are Definable and Judicially Manageable.

A constitutional issue is not a "political question" where the constitutional text provides judicially manageable standards. *Baker*, 369 U.S. at 217. Article IX mandates that "adequate provision" be made for a "uniform, efficient, safe, secure, and high quality system" that allows all Florida children to obtain a high quality education.

The First District found that these terms could not be managed by the judiciary. *Citizens for Strong Schools, Inc. v. Fla. State Bd. of Educ.*, 232 So. 3d 1163, 1165, 1168–72 (Fla. 1st DCA 2017). This conclusion is in direct conflict with *Bush v. Holmes*, Article IX's text, the intent of the CRC, and the voters. Indeed, the First District found that the terms "efficient" and "high quality," as used in Article IX, section 1(a), are not judicially manageable standards that would allow for meaningful judicial review. 232 So. 3d. at 1168. That conclusion is contrary to the logic of this Court's opinion in *Coalition.* As discussed above, under the prior, less explicit version of Article IX, a majority of justices (Justice

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[7] Florida citizens have a unique constitutional right to access to the Courts. Art. I, § 21 ("The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."); *see also Lussy v. Fourth Dist. Ct. of Appeal*, 828 So. 2d 1026, 1027 (Fla. 2002) ("This Court has a responsibility to ensure every citizen's access to courts.").

Overton and the three dissenters) concluded that without judicial review, the education mandate would be effectively eliminated from Florida's Constitution.

Under the much more stringent 1998 provision and the Court's interpretation in *Bush v. Holmes*, the error is more obvious. As recognized by *Holmes*, Florida courts are empowered to determine whether Florida's education system is "[of] high quality," "efficient," "safe," or "secure."[8] Florida courts regularly and routinely evaluate legal terms and constitutional and statutory provisions. *See, e.g., In re Sen. Jt. Resol. of Legis. Apportionment 1176*, 83 So. 3d 597, 631 (Fla. 2012) ("[A]s is universally recognized, it is the exclusive province of the judiciary to interpret terms in a constitution and to define those terms."); *Lawnwood Med.*, 990 So. 2d at 510 ("[I]t is the duty of this Court to determine the meaning of this constitutional provision."). The legislature places these very constitutional standards —"high quality" and "efficient"—in Florida statutes, and Florida courts, in turn, routinely determine whether the *statutory* standards for "high quality" and "efficient" are met. If Florida courts find standards judicially manageable when it comes to evaluating "high quality" and "efficient" in statutes, they can do the same

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[8] The trial court determined that Article IX was justiciable and the judiciary could adjudicate constitutional violations for schools that were not "safe" and "secure." The trial court recognized "safe and secure" as judicially manageable standards because "*courts deal with issues related to safety and security all day long.*" Petitioners' Amended Appendix at App. page 000057 (emphasis added).

for identical standards contained in Florida's Constitution. *See, e.g., United Faculty of Fla. v. Fla. State Bd. of Educ.*, 157 So. 3d 514, 519 (Fla. 1st DCA 2015) (Section 1004.65, Florida Statutes, requires the Florida college system to "provide high-quality . . . education," and Section 1001.02(6), Florida Statutes, requires "efficient progress" for providing high quality education, and these statutes "individually and collectively provide sufficient standards and guidelines . . . [that] can be evaluated for compliance with legislative intent.").

1. Courts in other states have interpreted similar constitutional provisions to be justiciable, including terms such as "high quality" and "efficient."

Courts in other states, including states that have lower standards than Florida's Category IV education standards, have determined that these same types of standards—high quality and efficient—are judicially manageable. *See, e.g., Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 213 (Ky. 1989) (holding that Kentucky educational system did not meet the "constitutional mandate of 'efficient'"); *Columbia Falls Elem. Sch. Dist. No. 6 v. State*, 109 P.3d 257 (Mont. 2005) (holding that determination of "quality" education was justiciable); *Abbott v. Burke*, 575 A.2d 359, 364, 394 (N.J. 1990) (holding that the legislature failed to comply with its constitutional requirement of a "thorough and efficient" education system); *Pauley v. Bailey*, 324 S.E.2d 128, 136–37 (W. Va. 1984) (holding that West Virginia educational system did not meet the "high quality" standard); *see*

also Conn. Coalition for Justice in Educ. Funding, Inc. v. Rell, 990 A.2d 206 (Conn. 2010) (holding that state did not provide "suitable" educational opportunities). "High quality" and "efficient" are common justiciable standards that the First District arbitrarily refused to apply.

In holding that "high quality" and "efficient" are not judicially manageable standards, the First District relied heavily on the Pennsylvania Supreme Court's decision in *Marrero ex rel. Tabalas v. Pennsylvania*, 739 A. 2d 110 (Pa. 1999). *Citizens for Strong Schools*, 232 So. 3d at 1172. But *Marrero* was overruled months *before* the First District issued its Opinion. In overruling *Marrero*, the Pennsylvania Supreme Court found "irreconcilable deficiencies in the rigor, clarity, and consistency" of the decision. *William Penn Sch. Dist. v. Penn. Dep't of Educ.*, 170 A.3d 414, 457 (Pa. 2017). In *William Penn*, the Pennsylvania Supreme Court rejected *Marrero's* "artificially narrow account of how a court may go about reviewing Education Clause challenges" and agreed with "*the broader proposition—long accepted by dozens of our sister courts—that it is feasible for a court to give meaning and force to the language of a constitutional mandate to furnish education of a specified quality, in* [Pennsylvania's] case 'thorough and efficient,' without trammeling the legislature in derogation of the separation of powers." *Id.* (emphasis added). The *William Penn* decision follows the widespread recognition that standards like "thorough and efficient" or "high

quality" are amenable to definition. In so doing, the Pennsylvania Supreme Court found that "many other states have found claims under their respective education clauses to be justiciable, either explicitly in the face of political question challenges, or implicitly by analyzing at length the merits of the challenges at issue" and noted that education clauses that employ qualitative language are justiciable. *Id.* at 453.[9] This Court should do the same.

2. Courts routinely define difficult terms in contexts other than education, such as "probable cause," "cruel and unusual," and "compact," because it is the duty of the courts to interpret the constitution.

Courts have concluded that they have the duty and capability of defining difficult terms, including "probable cause" and "cruel and unusual." Florida courts regularly evaluate whether the judicial standards of "cruel and unusual punishment" or "excessive fines" found in Article I of the Florida Constitution

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[9] *Accord Roosevelt Elem. Sch. Dist. No. 66 v. Bishop*, 877 P.2d 806 (Ariz. 1994); *DuPree v. Alma Sch. Dist. No. 30 of Crawford Cty.*, 651 S.W.2d 90 (Ark. 1983); *Serrano v. Priest*, 557 P.2d 929 (Cal. 1976); *Lobato v. State*, 218 P.3d 358 (Colo. 2009); *McDaniel v. Thomas*, 285 S.E.2d 156 (Ga. 1981); *Thompson v. Engelking*, 537 P.2d 635 (Idaho 1975); *Unified Sch. Dist. No. 229 v. Kansas*, 885 P.2d 1170 (Kan. 1994); *Rose*, 790 S.W.2d at 186; *McDuffy v. Sec. of Exec. Office of Educ.*, 615 N.E.2d 516 (Mass. 1993); *Comm. for Educ'l Equality v. State*, 294 S.W.3d 477 (Mo. 2009); *Columbia Falls Elem. Sch. Dist. No. 6 v. State*, 109 P.3d 257 (Mont. 2005); *Matthews v. State*, 428 P.2d 371 (Nev. 1967); *Claremont Sch. Dist. v. Governor*, 703 A.2d 1353 (N.H. 1997); *Leandro v. State*, 488 S.E.2d 249 (N.C. 1997); *Bismarck Pub. Sch. Dist. No. 1 v. State*, 511 N.W.2d 247 (N.D. 1994); *Davis v. State*, 804 N.W.2d 618 (S.D. 2011); *Neeley v. W. Orange–Cove Consol. Ind. Sch. Dist.*, 176 S.W.3d 746 (Tex. 2005); *Seattle Sch. Dist. No. 1 v. State*, 585 P.2d 71 (Wash. 1978); *Kukor v. Grover*, 436 N.W.2d 568 (Wis. 1989).

have been violated. *See* Art. I, § 17; *State v. Benitez*, 395 So. 2d 514 (Fla. 1981). Claims and lawsuits by prisoners under Article I are justiciable because Florida courts interpret "cruel and unusual" as judicially manageable standards. *See, e.g.*, *Benitez*, 395 So. 2d at 517–18. Indeed, a convicted felon sentenced to prison may bring claims for Article I violations and have them adjudicated for constitutional violations because courts are capable of interpreting standards such as "cruel and unusual." But a child, who is *required* to attend school and be subjected to an education that does not meet the constitutional standards of being "uniform, efficient, safe, secure, and high quality," does not have—under the First District's Opinion—the same access to the courts as prisoners who may bring claims for violations of constitutional rights under Article I.

This Court recently held that the term "compact," as used in Article III, section 21, is a judicially manageable standard. *In re Senate Joint Res. of Legis. Apportionment 1176*, 83 So. 3d at 631–32. Like Respondents here, the Florida Senate argued that "compact" was not judicially manageable and the Court should leave the task of interpreting "compact" to the Legislature. *Id*. at 631. The Court disagreed and found "compact" judicially manageable, explaining that it "is the exclusive province of the judiciary to interpret terms in a constitution and define those terms" and it is "incumbent upon this Court to define the term in accordance with the intent of the voters[.]" *Id.* at 631–32. The framers and the voters who

approved the current Article IX did not intend the standards provided to be meaningless. Rather, they intended it to be enforceable.

B. Article IX Creates a Duty to Maintain High Quality Education on the State as a Whole, Not One Coordinate Branch.

An element in the political question doctrine is whether the final responsibility for interpreting the powers conferred by the Constitution is committed to just one branch of government. *See Nixon v. United States*, 506 U.S. 224, 240 (1993) (White, J., concurring) ("[T]he issue in the political question doctrine is *not* whether the constitutional text commits exclusive responsibility for a particular government function to one of the political branches. . . . Rather, the issue is whether the Constitution has given one of the political branches final responsibility for interpreting the scope and nature of such a power."); *Baker*, 369 U.S. at 217; *McPhearson v. Flynn*, 397 So. 2d 665, 668 (Fla. 1981). For example, under the Florida Constitution, the power to grant clemency is an exclusive executive power (Art IV, § 8(a)); and the power to appropriate (Art. III, § 12) or to impeach (Art. III, § 17) are exclusive legislative powers. For these powers, the executive and legislative branches, respectively, have the final responsibility for interpreting the scope and nature of these powers and they have been designated only to them as one branch of government. Article IX, however, specifically ascribes final responsibility for a high quality education *to the State* as its

paramount duty. *See Haridopolos v. Citizens for Strong Schools, Inc.*, 81 So. 3d 465, 473 (Fla. 1st DCA 2011) (recognizing "the importance of interbranch cooperation in discharging 'a paramount duty of the state'").

In its Opinion, the First District held that "the drafters of Article IX, section 1(a) declined to allocate [any] role to the judiciary" in Article IX. *Citizens for Strong Schools*, 232 So. 3d at 1171. Rather, it found that Article IX "assigns such matters to the legislative branch" because it states that "adequate provision shall be made *by law*." *Id.*[10] Indeed, the legislature is obligated to make *adequate provision* by law. And if adequate provision is not made, the judiciary must say so. That was the intent of the CRC and the reasoning of this Court in *Holmes.* Article IX allocates a role to the judiciary in ensuring that the State does its paramount duty in providing an education. Indeed, the second sentence of Article IX expressly states that the duty to adequately provide for the education system is imposed on "the State"—not only the legislative or executive branches. When the term "State" is used in the Florida Constitution, it includes "the judicial branch."

[10] Interestingly, in the following sentence (and throughout the Opinion), the First District seems inconsistent when stating that Article IX's language "demonstrates that the constitution continues to commit education policy determinations to the legislative *and executive branches*." *Id.* (emphasis added). Although the Opinion recognizes Article IX's reference to "by law" shows that the CRC allocated a role to the legislature, the Opinion does not explain why the executive branch has a role and the judiciary does not.

See, e.g., *Smithwick v. Tele. 12 of Jacksonville, Inc.*, 730 So. 2d 795, 798 (Fla. 1st DCA 1999). Article IX is not only meant to allocate a role to the legislative branch; rather, in direct response to *Coalition*, the Commissioners used the term "the State" to ensure that the "paramount duty" in Article IX applies to the State, including Florida's judiciary. *See Holmes*, 919 So. 3d at 404; CRC MINUTES, Jan. 13, 1998, at 149–52 (Dialogue between Comm'rs Barkdull & Mills); CRC MINUTES, Jan. 15, 1998, at 279–80 (Stmt. of Comm'r Brochin). Educating children is the responsibility of the State, and thus Article IX claims do not present political questions to be resolved only by the legislative branch.[11]

CONCLUSION

Florida children have justiciable claims under Article IX and they may seek redress from Florida courts to ensure that their constitutional right to an efficient and high quality education is not infringed upon. On these legal points, the First District's decision should be reversed.

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[11] The First District also found that the judiciary's evaluation of whether children are being afforded a high quality and efficient education "would constitute a violation of Florida's strict requirement of the separation of powers." *Citizens for Strong Schools*, 232 So. 3d at 1168, 1170. For more than 100 years, it has been the "exclusive province of the judiciary" (83 So. 3d at 631–32), to interpret and define terms in a constitution and the "interpretation of the Florida Constitution is a question of law for the Court." *Pleus v. Crist*, 14 So. 3d 941, 944 (Fla. 2009); *see also Brown v. City of Lakeland*, 61 Fla. 508, 510 (1911). If the Court finds Article IX non-justiciable, the Court would allow the interpretation of Article IX to rest with the legislative branch, which itself would run afoul of the separation of powers doctrine.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2018, a true and correct copy of the foregoing document was sent via electronic mail pursuant to Fla. R. Jud. Admin. 2.516 to all counsel of record on the attached Service List.

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

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