IN THE SUPREME COURT OF FLORIDA

CASE NO. SC18-67

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

Petitioners,

v.

FLORIDA STATE BOARD OF EDUCATION, ET AL.,

Respondents.

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

AMICI CURIAE BRIEF OF SEVERAL MEMBERS OF THE 1998 CONSTITUTION REVISION COMMISSION IN SUPPORT OF THE RULING BELOW

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CONCISE STATEMENT OF IDENTITY OF *AMICI CURIAE* AND THEIR INTEREST IN THE CASE

Several commissioners ("Members")[1] of the 1998 Constitution Revision Commission ("CRC") submit this *amicus* brief. Members support the Florida State Board of Education and the decision of the First District Court of Appeal, and disagree with several issues raised by petitioners and their *amici*, particularly the *Amicus Curiae* Brief of Certain Commissioners filed by individuals who also served as commissioners on the CRC.

The Members' interest in this appeal is to demonstrate that individual views of CRC commissioners do not assist this Court's interpretation of the constitutional amendment at issue. Any evidence of individual views and purported legal analysis from other members of the CRC should have been introduced at trial to ensure a proper basis for considering these issues on appeal.

Moreover, Members believe that Article IX, Section 1(a) ("Article IX"), as amended in 1998, contains the ambiguous terms "high quality" and "efficient," and thus does not create justiciable standards. Finally, courts should not be involved in

[1] The Members who desire to participate in this appeal and file an *amicus* brief are: Carlos Alfonso, Chris Corr, Valerie Evans, Paul Hawkes, Lieutenant Governor Toni Jennings, and Senator Jim Scott. In an effort to avoid confusion with the amicus brief filed by other CRC commissioners, [No. SC18-67 ("*Amicus Curiae* Brief of Certain Commissioners")], this brief will refer to those *amici* as "Commissioners."

defining standards for Florida's educational system. Courts do not have expertise in this realm, and judicial interference will negatively impact Florida's education system.

SUMMARY OF THE ARGUMENT

The law is not devoid of common sense and in fact relies on it:

> Laws are made for [people] of ordinary understanding and should, therefore, be construed by the ordinary rules of common sense. Their meaning is not to be sought for in metaphysical subtleties which may make anything mean everything or nothing at pleasure.

Thomas Jefferson, Letter to Judge William Johnson, June 12, 1823, 15 *The Writings of Thomas Jefferson* 449-50. Adjectives of degree like "high quality" and "efficient" mean far different things to different people, particularly in the context of a large and complex system of public education. Common sense dictates that these words do not create a justiciable standard. Indeed, parents, students, local school boards, and school officials, as well as judges and justices, are each likely to have a different opinion as to what is high quality or efficient. Similarly, the commissioners who recommended amending the Constitution in 1998 would not have had (and did not have) an identical understanding of high quality or efficient (or even *any* consistent understanding). Nor would the voters. Common sense thus demonstrates that there is no justiciable standard.

The decision of the First District should be approved for three reasons: (1) the amendments to Article IX, despite the intentions of some CRC members, do not create justiciable standards; (2) the petitioners failed to prove their case at trial and they and their *amicus* cannot, at this stage in the proceedings, introduce new evidence founded on some individual CRC commissioners' intent; and (3) strong constitutional and policy reasons militate against court intervention.

Post-hoc briefing in this Court cannot resuscitate what is the death knell of the petitioners' case – utterly failing to define what "high quality" and "efficient" mean in the context of Article IX and Florida's education system. Indeed, the petitioners' failure is best illustrated by the various arguments they and their CRC *amici* have now cobbled together in an effort to manufacture a supposed justiciable standard. Post-trial, they even cite to "Pros/Cons" from an analysis of the 1998 amendments that was not drafted by the CRC. They rely on inapplicable, non-Florida case law, and, again post-trial, they rely on what some (but certainly not all) CRC members intended for the amendment to Article IX.

The *amicus* brief filed by certain Commissioners of the CRC seeks to assure this Court that their individual *intent* was to create justiciable standards. The *intent* of a few members, however, does not mean they *established* justiciable standards by using the words "high quality" and "efficient." Moreover, even if an individual's intent is relevant to the Court's analysis in this case, it is clear that not all CRC

members understood what "high quality" and "efficient" meant. And, the intent of the CRC *as a whole* was to avoid litigation of the type brought in this case.

None of this means that education is not important to the *amici* on this brief and the Respondents. Quite the opposite is true. Terms like "high quality" and "efficient" are "inherently nebulous,"[2] and for good reason. In today's culture, more than ever, the educational system is, like the rest of society, changing rapidly. Twenty years ago the word stem meant, among other things, something holding a flower; today, educators view STEM as critical to meeting societal needs in the areas of Science, Technology, Engineering, and Math. In 1998, concepts such as on-line learning were in their infancy, and so-called virtual schools did not exist. Legislatures must be flexible and nimble, responding to societal trends, evolving college entrance criteria, changing business and research needs, and technology developing at almost break-neck speed, to ensure students can attain a college education, get a job, or otherwise contribute positively to society. Only the legislature can effect rapid change and address timely current (and future) educational needs. Conversely, courts, as demonstrated by this protracted, nine-year litigation, are not equipped or designed to respond quickly to changing educational standards and policy preferences.

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[2] Clayton B. Gillette, *Reconstructing Local Control of School Finance: A Cautionary Note*, 25 CAP. U. L. REV. 37, 37 (1996).

Moreover, if the Court were to define or establish a definitive standard, it would bind the legislature and hamstring its ability to perform its function as an elected legislative body, ultimately to the detriment of children in the state's educational system. It will create unending litigation over undefinable standards, as illustrated by the approach taken in some of the other states (such as New Jersey) praised by the petitioners and their supporting *amici*. This was never the intent of the CRC. This unintended consequence of unprecedented judicial interference with the legislature's constitutional authority cannot be overstated. Prudence, policy reasons, and our Constitution compel approval of the First District's decision.

ARGUMENT

This is not a case about whether the legislature and the State of Florida are committed to education. Respondents' and Intervenors' briefs, and the record below, demonstrate unequivocally that Florida's education system has been, and will continue, improving, and is leading the nation in some categories.[3] Rather, this case

[3] For example, Florida was the only state between 2011 and 2013 to narrow the achievement gap between both White and Black/African-American students and White and Hispanic/Latino students in grades 4 and 8 in reading and mathematics. (R.3479). Moreover, 2015 data shows that Florida's grade 4 Hispanic/Latino students were the highest percentage of students performing at or above Basic and at or above Proficient in reading, Florida's grade 4 free-and-reduced-priced-lunch-eligible students had the nation's highest percentage of students performing at or above Basic in reading and the highest average scale score in reading, and on grade 8 reading, no states scored significantly higher than Florida's Black/African-American and Hispanic/Latino students. (R.3479-3480).

boils down to whether any court can decide what "high quality" and "efficient" mean in the context of a varied, complex system of public education across the entire state of Florida. Florida's educational system is implemented by "multiple stakeholders, including the Florida Legislature, the State Board of Education, the Commissioner of Education, the Florida Department of Education, locally-elected school boards, locally-elected or appointed school superintendents, as well as school district administrators, school principals, classroom teachers, and the public at large." (R.3405). Moreover, "key stakeholders" include "teachers, teachers' unions, parents, students, postsecondary education preparation programs, community groups, and advocacy groups." *Id.* The system, therefore, can be impacted by the requirements of federal law, actions of local governments, population demographics, concurrency, and development issues, and perhaps most specifically, individual principals and teachers at each individual school.

I. THE PURPORTED STANDARDS ARE NON-JUSTICIABLE BECAUSE THEY ARE UNDEFINED, A CRC COMMISSIONERS' INDIVIDUAL AND BELATEDLY RAISED INTENT CANNOT BREATHE NEW MEANING OR CLARITY INTO ARTICLE IX, CRC MINUTES ARE NOT BINDING ON THIS COURT, AND RELIANCE ON THE PRO/CONS IS UNPRECEDENTED.

A. Article IX Does Not Create Justiciable Standards.

Article IX, as amended in 1998, does not create justiciable standards. This Court must start its analysis with the language of the provision itself. *Brinkmann v.*

Francois, 184 So. 3d 504, 509 (Fla. 2016) (quoting *In re Senate Joint Resolution of Legislative Apportionment 1176*, 83 So. 3d 597, 614 (Fla. 2012)); *see also Haridopolos v. Citizens for Strong Schs., Inc.*, 81 So. 3d 465, 478 (Fla. 1st DCA 2011) (Roberts, J., dissenting), *review den.*, 103 So. 2d 140 (Fla. 2012). But the terms "high quality" and "efficient" cannot be easily defined. The Constitution does not even attempt to define these words in the context of Florida's education system beyond the specific requirements related to maximum class sizes, which the trial court found satisfied. (R.3395.) Thus, the language of Article IX leads nowhere on the road to justiciability.

In the absence of any clear language, this Court can construe the constitutional language at issue consistent with the intent of the framers. The contemporaneous minutes of the CRC meetings, however, similarly offer no guidance to this Court in interpreting Article IX. Indeed, the minutes actually indicate confusion over the language selected and whether the language created justiciable standards. One member of the CRC, Dick Langley, asked "[W]hat does high quality mean?" C*RC Minutes Jan. 15, 1998*, at 286:25 – 287:6 (http://fall.law.fsu.edu/crc/minutes/crcminutes011598.html). Langley further emphasized that every member of the CRC has his or her own individual ideas "about what high quality is but nobody really knows . . . ." *Id.* The term "efficient" also caused confusion, with one member of the CRC, Ken Connor, expressing concerns of its ambiguity: "efficient could

mean a lot of things in a lot of different contexts." *CRC Minutes Feb. 26, 1998*, at 59:1 – 10 (http://fall.law.fsu.edu/crc/minutes/crcminutes022698.html). Connor then asked, "by including [efficient] . . . in the language, do you potentially produce ambiguity that may be a stumbling block to the success of what you are trying to achieve?" *Id.* The CRC's minutes therefore lack any clear consensus for finding a justiciable standard in the amorphous words "high quality" and "efficient."

B. Individual Views Of CRC Members Are Unavailing For Purposes Of Interpreting The 1998 Amendment.

The Commissioners' *amicus* brief offers a "legal analysis" of the 1998 amendments to Article IX.[4] Their views on how the amendments were intended to be construed two decades ago, however, are unavailing in determining whether Article IX, Section 1(a) creates justiciable standards. While Commissioners may have an "interest" in this case, their individual views or purported legal analysis will not "assist the [C]ourt in the disposition of the case." *See* Fla. R. App. P. 9.370(a).

First, certain Commissioners' statements[5] are not representative of the entire thirty-seven member CRC. The views of the CRC members have been shaped over time and may not truly represent how the amendments were intended to be

[4] *Amicus Curiae* Brief of Certain Commissioners, at 1.

[5] Statements of Commissioners Jon Mills (*CRC Minutes Jan. 13, 1998*, at 208:8 – 9 (http://fall.law.fsu.edu/crc/minutes/crcminutes011398.html)) and Robert Brochin (*CRC Minutes Feb. 26, 1998*, at 68:9 – 16 (http://fall.law.fsu.edu/crc/minutes/crcminutes022698.html)).

construed. The constitutional language at issue was amended two decades ago. Since then, the Commissioners' legal analysis of the constitutional language at issue has been influenced by their own views and opinions. *See Rogers v. Frito-Lay, Inc.*, 611 F.2d 1074, 1080 (5th Cir. 1980) ("The retroactive wisdom provided by the subsequent speech of a member of Congress stating that yesterday we meant something that we did not say is an ephemeral guide to history . . . What happened after a statute was enacted may be history and it may come from members of the Congress, but it is not part of the legislative history of the original enactment.") Therefore, the Commissioners' assertions about what they thought Article IX, as amended, meant in 1998, are irrelevant and unpersuasive.

Second, as individual framers of the 1998 amendments, Commissioners' legal analysis should not be utilized for determining the intent of the CRC. Florida law makes clear that courts should not look to statements of individual framers regarding their subjective intentions when interpreting constitutional provisions. *See Sec. Feed & Seed Co. v. Lee*, 189 So. 869, 870 (Fla. 1939) ("We do not overlook the support given appellants' contention by affidavits of members of the Senate as to what they intended to accomplish by the act brought in question. The law appears settled that such testimony is of doubtful verity if at all admissible to show what was intended by the Act."); *see McLellan v. State Farm Mut. Auto. Ins. Co.*, 366 So. 2d 811, 813 (Fla. 4th DCA 1979) ("[A]n affidavit from a member of the Legislature at the time

the act in question was passed stating his view of what the Legislature intended by the provision in question . . . is generally not accepted as admissible evidence to demonstrate legislative intent.") Commissioners are inappropriately presenting and reconstructing their views, selecting only portions of the CRC's minutes, in a belated and retroactive attempt to provide clarity on the amendments to Article IX.

Third, this Court's analysis of the constitutional language at issue should turn on what the Constitution states, not the individual *intent* of some CRC members. Judge Robert's dissent following the district court's denial of a writ of prohibition in this matter notes, "[w]hether the Commission intended to create a justiciable standard is ultimately irrelevant. The test is whether an enforceable standard was actually created by the text of the amendment itself." *Haridopolos*, 81 So. 3d at 478.

C. Evidence Of Individual CRC Members' Views Should Have Been Introduced At The Trial Court To Be Cited Or Relied On In This Appeal.

Even if the CRC members' purported legal analysis of the 1998 amendments to Article IX was somehow relevant, the introduction of their testimony would be improper. "In order to be preserved for further review by a higher court, an issue must be presented to the lower court and the specific legal argument or ground to be argued on appeal or review must be part of that presentation if it is to be considered preserved." *Tillman v. State*, 471 So. 2d 32, 35 (Fla. 1985). The Commissioners' legal analysis of the 1998 amendment should have been introduced at the trial court.

Because it was not, this Court cannot consider these arguments on appeal. *See Ellsworth v. Ins. Co. of N. Am.*, 508 So. 2d 395, 398 (Fla. 1st DCA 1987).

And, for good reason. Respondents did not have an opportunity to cross-examine Commissioners or to present opposing evidence or legal argument on these issues in the lower courts. Moreover, the trial court did not have proper opportunity to weigh the Commissioners' evidence or determine its admissibility. Allowing such evidence at the "eleventh hour" undermines the judicial process and prejudices the Respondents, the Intervenors, and the Court.

Commissioners' post-trial introduction of certain minutes and statements, and references to "Pros/Cons," will also impermissibly expand the record with new evidence not presented at trial. An *amicus* brief cannot be used to introduce new, primary evidence on appeal. *See Dade Cty. v. E. Air Lines, Inc.*, 212 So. 2d 7, 7 (Fla. 1968) (striking *amicus* brief because it attempted to introduce matters outside the scope of the record). Commissioners' purported analysis of and testimony about the revisions to Article IX should have been introduced at the trial court to ensure a fair trial and a proper basis for considering these issues on appeal. Because the petitioners failed to do so, this "evidence" cannot be heard on appeal. *Id.*

D. The Commission Meeting Minutes Are Not Binding Authority And The Petitioners Wrongly Rely On The Pros And Cons.

Although Florida courts have cited the minutes of various Constitution Revision Commissions,[6] they have not stated that the minutes are binding authority. Rather, courts have varying views, finding minutes persuasive,[7] aiding their interpretation,[8] or guiding them in ascertaining the intent of the drafters.[9]

There appears to be no Florida court decision specifically citing published "pros" and "cons" (Pros/Cons) of a Constitution (or Charter) Revision Commission. Typically, the courts look to the language of the amendment, then they consider ballot language and ballot summaries.[10] Florida law does not require the Commission to publish pros and cons for proposed amendments, so rules for their content and reliability are not established. They may reflect the opinion of one or a

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[6] *See, e.g.*, *Brown v. Firestone*, 382 So. 2d 654, 666-67 (Fla. 1980); *Gallant v. Stephens*, 358 So. 2d 536, 540 (Fla. 1978); *Davis v. Gronemeyer*, 251 So. 2d 1, 4 (Fla. 1971); *Adams v. Gunter*, 238 So. 2d 824, 827-28 (Fla. 1970); *St. Petersburg v. Briley, Wild & Assocs., Inc.*, 239 So. 2d 817, 822 (Fla. 1970); *Hayek v. Lee Cty*., 231 So. 2d 214, 216 (Fla. 1970).

[7] *Dep't of Envtl. Prot. v. Millender*, 666 So. 2d 882, 885-86 (Fla. 1996).

[8] *City of Pompano Beach v. Forman*, 919 So. 2d 692, 694 (Fla. 4th DCA 2006).

[9] *Gallant*, 358 So. 2d at 539-40.

[10] *See Kainen v. Harris*, 769 So. 2d 1029, 1032 (Fla. 2000).

few members of a commission, versus being a representation of the true intent of the entire Commission. We simply do not know in this instance the provenance of or weight to be given those statements because this "evidence" was never presented, authenticated, or considered (by *anyone*) at trial. There is certainly nothing in the record establishing the reliability of these Pros/Cons. Perhaps not surprisingly given their inherent unreliability, published Pros/Cons also have not been relied on by a court outside Florida. For all these reasons, the Pros/Cons cannot support the petitioners' positions.

II. PRACTICAL POLICY REASONS WARRANT APPROVAL BECAUSE THE LEGISLATURE IS BEST SUITED TO ADDRESS EDUCATION MATTERS AND TO RULE OTHERWISE WOULD ACTUALLY HARM THE STATE'S PUBLIC SCHOOL SYSTEM.

Courts are not well suited to developing educational standards. Courts do not set policy; courts interpret the law. They do not address political questions. *See Baker v. Carr*, 396 U.S. 186, 211 (1962). This case illustrates perfectly why courts should not be involved in the political question of how children should be educated.

A. The Legislature Is Best Able To Address Florida's Education System And Respond Promptly To The System's Constantly Evolving Needs.

Education "presents a myriad of 'intractable economic, social, and even philosophical problems.'" *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 42 (1973) (citing *Dandridge v. Williams*, 397 U.S. 471, 487 (1970)). In *Rodriguez*,

Justice Powell recognized proper educational standards cannot be effectively defined by courts:

> The ultimate wisdom as to these and related problems of education is not likely to be divined for all time even by the scholars who now so earnestly debate the issues. In such circumstances, the judiciary is well advised to refrain from imposing on the States inflexible constitutional restraints that could circumscribe or handicap the continued research and experimentation so vital to finding even partial solutions to educational problems and to keeping abreast of ever-changing conditions.

Id. at 43. Those words, written 45 years ago, resonate with greater force in today's rapidly changing world. This Court also has sounded a similar warning about the harm of standards being defined by courts:

> Still unanswered is the level of duty the present education clause places upon the legislature to ensure a certain quality of education in Florida. As the trial court correctly noted, '[t]here is no textually demonstrable guidance in Article IX, section 1, by which the courts may decide, a priori, whether a given overall level of state funds is 'adequate,' in the abstract' . . . While the courts are competent to decide whether or not the Legislature's distribution of state funds to complement local education expenditures results in the required '*uniform system*,' the courts cannot decide whether the Legislature's appropriation of funds is adequate in the abstract, divorced from the required uniformity. To decide such an abstract question of 'adequate' funding, the courts would necessarily be required to subjectively evaluate the Legislature's value judgments as to the spending priorities to be assigned to the state's many needs, education being one among them. In short, the Court would have to usurp and oversee the appropriations power, either directly or indirectly, in order to grant the relief sought by Plaintiffs. . . . [W]hat [Plaintiffs] seek would nevertheless require the Court to pass upon legislative value judgments . . . .

Coalition for Adequacy & Fairness in School Funding, Inc. v. Chiles, 680 So. 2d 400, 405-07 (Fla. 1996) (emphasis in original).

Today's society, with instantaneous worldwide research, and previously unimagined access to information and databases, exposes children, at a very early age, to cell phone technology, iPads, and computers. The meteoric rise in technological advances impacting everyday life warrants an educational system that similarly adapts to society's ever-changing needs. Even if the words "high quality" and "efficient" were justiciable and capable of understanding (they are not), what would constitute "high quality" and "efficient" education today would be obsolete in a very short time simply because the nature and scope of education is changing almost daily.[11] Therefore, the legislature, which deals with changing needs and issues in society, often on an expedited basis, is far better suited to establishing standards and improving the educational system. Courts, whose wheels of justice are

[11] One need only consider an observable theorem such as the so-called "Moore's Law" to appreciate the speed of technological advances and their impact on education. In 1965, Gordon Moore, who co-founded Intel, observed that the number of transistors incorporated into a computer microchip will approximately double every 24 months (he originally said one year, but changed to two years shortly after making this observation). Gordon E. Moore, *The Experts Look Ahead: Cramming more components onto integrated circuits*, 38 Electronics 8 (1965) Retrieved from: https://www.intel.com/content/www/us/en/history/museum-gordon-moore-law.html. This "law" eventually came to mean the rate or pace of change, and as components increased in number, and decreased in size, technology grew seemingly exponentially. Those transistors and micro-components form the foundation of virtually every piece of technology in schools today.

not as temporally responsive, and who are not as well positioned to digest and respond to policy changes, cannot meet the needs of Florida's education system.

One example suffices to show how quickly the legislature responds to the voters' will and society's needs. After the amendment to Article IX was approved by the voters in November 1998, the legislature, within six months, adopted the A+ education program in response to the amendment. Ch. 99-398, Laws of Fla. (1999). No court could make such a rapid and well-thought-out program with respect to the educational needs of Florida's children. Because courts cannot and should not manage school standards as petitioners seek, the decision below should be approved.

B. The Court Should Not Define Standards For Florida's Education System.

Defining standards for Florida's public education system would inappropriately inject this Court into policy issues. Whether Article IX creates justiciable standards is a political question inappropriate for judicial resolution. *See Citizens for Strong Schs., Inc. v. Fla. State Bd. of Educ.*, 232 So. 3d 1163, 1168 (Fla. 1st DCA 2017) ("the language of the amended constitutional article itself . . . continues to commit the duty to achieve these aspirational goals to the legislative and executive branches of government.") This question is best resolved by constituents and their representatives. Judicial deference should be given to Florida's legislative and executive branches to decide issues and determine standards for the educational system. *See id.* at 1166 ("the strict separation of powers embedded in

Florida's organic law requires judicial deference to the legislative and executive branches to adopt and execute educational policies").

The CRC was clearly concerned with judicial intrusion into the legislative and executive branches in defining standards for Florida's public education system. Language initially proposed, but left out of the final amendment, led Chairman Douglass to state, "we don't want the courts running the school system and the courts don't want to run the school system either." *CRC Minutes Jan. 13, 1998*, at 208:8 – 9 (http://fall.law.fsu.edu/crc/minutes/crcminutes011398.html). Moreover, in promoting that the proposed language, "*the* paramount duty," be changed to "*a* paramount duty," another member of the CRC, Ken Connor, stated, "I would suggest to you that it is not the paramount duty of the state to provide for the education of the children . . . This will have all kinds of implications in terms of budgetary resources and how we allocate resources and materials in this state." *CRC Minutes Feb. 26, 1998*, at 69:13 – 15, 70:9 – 11 (http://fall.law.fsu.edu/crc/minutes/crcminutes011398.html).

The courts, including this Court, "possess no special competence of specific constitutional authority," in "the details and execution of education policies and related appropriations." *Citizens for Strong Schs., Inc.*, 232 So. 3d at 1171. The drafters of Article IX, including Members and Commissioners, did not explicitly allocate authority to the judiciary to set or define standards. *Id.* The language of

Article IX, as amended, instead states "adequate provision shall be made by law," articulating that defining standards for Florida's educational system should be left to the legislative and executive branches. *Id.*[12]

The terms "efficient," and "high quality" as used in Article IX, "lack judicially discoverable or manageable standards that would allow for meaningful judicial interpretation." *Id.* Therefore, an attempt at judicial interpretation of such terms "would constitute a violation of Florida's strict requirement of the separation of powers." *Id.* Members agree with the First District and do not believe this Court should be involved in defining standards for Florida's educational system. [13]

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[12] Other states have reached similar conclusions and determined that educational adequacy should be left to the legislature. For example, the Illinois Supreme Court has held that "high quality" education is not a justiciable standard. *Committee for Educ. Rights v. Edgar*, 174 Ill. 2d 1, 28-29 (Ill. 1996). "What constitutes a 'high quality' education, and how it may best be provided, cannot be ascertained by any judicially discoverable or manageable standards. . . . It would be a transparent conceit to suggest that whatever standards of quality courts might develop would actually be derived from the constitution in any meaningful sense." *Id.* at 29. In addition, "the question of educational quality is inherently one of policy involving philosophical and practical considerations that call for the exercise of legislative and administrative discretion." *Id*. A judicial determination of educational quality would "deprive the members of the general public of a voice in a matter which is close to the hearts of all individuals in [the state]." *Id*. *See also Campaign for Quality Educ. v. State of California*, 209 Cal. Rptr. 3d 888, 891, 898-99 (Cal. Ct. App. 1st 2016).

[13] In a substantive due process claim, the U.S. Supreme Court noted: "[b]y extending constitutional protection to an asserted right or liberty interest, we, to a great extent, place the matter outside the arena of public debate and legislative action. We must therefore 'exercise the utmost care whenever we are asked to break new ground in this field,' . . . lest the liberty protected . . . be subtly transformed into the policy

III. THE LACK OF JUSTICIABLE STANDARDS DOES NOT MAKE ARTICLE IX MEANINGLESS.

Petitioners and Commissioners wrongly assert that Article IX is meaningless if it has no justiciable standards. This argument misses the point – both factually and legally. Florida has already demonstrated its commitment to improving its educational system. The amendment to Article IX set forth aspirational goals that resulted in almost immediate adoption of the 1999 A+ legislation. *See* Ch. 99-398, Laws of Fla. (1999). Moreover, the legislature has itself adopted tests and goals for its students, further recognizing its obligation to make education a paramount duty. In other words, the legislature has acted to improve Florida's education system, and Article IX has clearly made education a priority for the legislature.

And simply because something is not legally justiciable does not *ipse dixit* make it meaningless. Florida's Constitution has elsewhere delegated powers not subject to judicial review, such as clemency (Art. IV, § 8(a)), appropriations (Art. III, § 12), and impeachment (Art. III, § 17). Clemency is exclusively the power of the executive and the other two non-reviewable powers are exclusively powers of the legislative. All of these powers have great import and meaning despite the lack

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preferences of the members of this Court." *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (citations omitted). These cautions apply with equal force in this appeal.

of any judicial review or justiciability.[14] To find that there are no judicially manageable standards under Article IX, as amended, therefore, does not render the responsibility of executing high quality education meaningless. To find that there are no judicially manageable standards under Article IX instead rightfully places the education of our children in the hands of the legislative and executive branches.

IV. THE PETITIONER'S FAILED TO DEFINE "HIGH QUALITY" AND "EFFICIENT" AS EVIDENCED BY THEIR MULTIPLE (AND DIFFERING) PROPOSED STANDARDS.

In arguments and pleadings, the petitioners made multiple efforts to define what "high quality" and "efficient" means. *See* Answer Brief at 35-37 & note 37. Their prayer in the second amended complaint is most telling because they asked the trial court to order "studies to determine what resources and standards are necessary to provide a high quality education to Florida students." (R.162, ¶ c). This is an admission that the petitioners could not (and, in the end, they did not) establish standards. The petitioners' shotgun approach to trying the case and establishing justiciable standards was properly found by the courts below to be insufficient. This Court should find the same and approve the decision of the First District.

CONCLUSION

The decision of the First District should be approved.

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[14] With respect to appropriations, as CRC Commissioner Connor pointed out, changing "the" paramount duty to "a" paramount duty preserved the legislature's discretion to determine priorities and appropriations. *See* Section II. A., *supra*.

Dated: July 30, 2018.

Respectfully submitted,

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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).

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CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2018, a true and correct copy of the foregoing document has been furnished by electronic service through the Florida Courts E-Filing Portal.

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