

IN THE SUPREME COURT OF FLORIDA

CASE NUMBER: SC18-67

CITIZENS FOR STRONG SCHOOLS,
INC., et al.,

Lower Tribunal Cases: 1D16-2862;
372009CA004534

Petitioners,

Vs.

FLORIDA STATE BOARD OF
EDUCATION, et al.,

Respondents,
_____ /

**MOTION FOR LEAVE TO FILE *AMICUS* BRIEF
ON BEHALF OF CERTAIN MEMBERS OF THE
1998 CONSTITUTION REVISION COMMISSION**

Certain Members of the 1998 Constitution Revision Commission¹

(“Commissioners”), pursuant to Fla. R. App. P. 9.370(a), move for leave to file an *amicus curiae* brief in support of Plaintiffs-Appellants in this appeal. The State of Florida Defendants do not consent to the Commissioners filing a brief as friends of the Court.

¹ Members of the 1998 Constitution Revision Commission who currently wish to join in and file an *amicus* brief are: Martha Walters Barnett, Robert M. Brochin, The Honorable Robert A. Butterworth, Ellen Freidin, William Clay Henderson, The Honorable Gerald Kogan, H.T. Smith, Robert Lowry Nabors, Jon Lester Mills, and Stephen N. Zack.

1. The Commissioners Have An Interest In This Appeal.

The Commissioners were members of the 1998 Constitution Revision Commission who proposed and voted in favor of amending Florida’s education provisions as contained in Article IX of the Florida Constitution. The Commissioners’ interest in this case is to provide Florida courts with their legal analysis of the 1998 amendments to Article IX and show how they were intended to impose a “paramount duty” on the State to provide Florida children with a uniform and high quality education; and that the 1998 amendments contain judicially manageable standards so that claims under Article IX are justiciable. *Bush v. Holmes*, 919 So. 2d 392, 404 (Fla. 2006) (“Florida’s education Article [IX] is again classified as a Category IV clause, imposing a maximum duty on the State to provide for public education that is uniform and high quality.”) Article IX, as amended in 1998, sets forth the “judicially manageable standards” the Florida Supreme Court found lacking in *Coalition for Adequacy & Fairness in School Funding, Inc. v. Chiles*, 680 So. 2d 400 (Fla. 1996). As noted by this Court: “in response in part to *Coalition for Adequacy & Fairness*, the Constitutional Revision Commission proposed and the citizens of the State approved an amendment to article IX, section 1 to make clear that education is a ‘fundamental value’ and a paramount duty of the state; and *to provide standards by which to measure the adequacy of the public school education provided by the State.*” *Id.* (emphasis

added.) These judicially manageable standards are contained in Article IX so that Florida children have access to Florida courts to ensure that the State has met its “paramount duty” of making adequate provisions for the education of *all* Florida children.

When interpreting provisions of the Florida Constitution, Florida courts “must endeavor to construe the constitutional provision in a manner that fulfills the intent of the framers and the voters.” *Lawnwood Med. Ctr., Inc. v. Seeger*, 990 So. 2d 503, 511 (Fla. 2008). The Commissioners, who are to be parties on this brief, were the framers of the Article IX education amendments, and they wish to convey to the Court, as *amici*, their intent and legal basis for proposing the amendments to Article IX along with a legal analysis of how and why the 1998 amendments to Article IX provide judicially manageable standards, so that Florida children have access to the courts when it comes to their education.

2. The Issues To Be Addressed In The Commissioners’ Amicus Brief.

The issues that the Commissioners wish to address are the intentions of the framers in proposing the 1998 amendments and Florida law in regard to: (a) the constitutional rights of all Florida’s children to obtain—and the responsibility of the State of Florida to provide—a high quality, safe, secure, efficient, and uniform education as a result of the 1998 amendments to Article IX of the Florida Constitution; and (b) the judicially manageable standards contained in Article IX.

Briefs from *amicus curiae* are generally for the purpose of assisting the Court in cases which are of general public interest. *Ciba-Geigy Ltd. V. Fish Peddler, Inc.*, 683 So. 2d 522, 523 (Fla. 4th DCA 1996). Issues relating to the education of Florida’s children, as mandated by the Florida Constitution, make this case one of great public interest, as the 1998 Article IX amendment made it the “paramount duty” of the State of Florida, including all three branches of government, to afford all Florida children a high quality education.

3. The Commissioners Can Assist The Court.

Understanding and interpreting Article IX of the Florida Constitution, as amended in 1998, is the focus of this appeal. The First District Court of Appeal rendered its decision on a host of legal issues involving Article IX, including whether Article IX contains judicially manageable standards. *Citizens for Strong Schools, Inc. v. Fla. State Bd. Of Education*, 232 So. 3d 1163 (Fla. 1st DCA 2017). The First District held that the “overarching question of adequacy” contained in Article IX “is not justiciable” because it did not “provide judicially manageable standards.” *Id.* at 1167 n.3. The First District erred when it opined that Article IX is *per se* not justiciable based on the separation of powers doctrine, and the Commissioners would like the opportunity to brief the Court as to why Article IX, like most constitutional provisions affording children an education, is justiciable. The Florida Supreme Court has made clear that when construing a constitutional

provision, such as Article IX, the goal of the Courts is to ascertain the intent of the framers. *See Lawnwood Med. Ctr., Inc.*, 990 So. 2d at 511 (“Our goal in construing a constitutional provision is to ascertain the intent of the framers and voters.”). As the framers of the Article IX amendments, the Commissioners, with their *amicus* brief, can assist the Court by providing their legal analysis. *See Holmes*, 919 So. 2d at 402 (The “action of the [constitution revision] commission was in direct response to recent court actions dismissing declaratory actions urging a finding that Article IX, section 1 created a fundamental right to an adequate education.”).

4. Not All Parties Have Consented.

Without an explanation as to why, the Defendants advised the Commissioners that they do not consent to the filing of an *amicus* brief. The Commissioners note, however, that the First District Court of Appeal—over the objection of the State Defendants²—granted leave to the Commissioners to file an

² The State Defendants objected to Commissioners filing an *amicus* brief with the First District because “the brief would do nothing more than express the personal views of nine members” of the Commission. But the Commissioners’ *amicus* brief filed in the First District provided (and the one they propose to file with the Court will provide) a *legal analysis* on the history of Florida’s education articles and the purpose and intent of the 1998 amendments to Article IX. And it will explain why the First District erred in concluding that any claims under Article IX are not justiciable. *See Holmes*, 919 So. 2d at 402-406 (Section titled “II. Language and History of Florida’s Education Articles”).

amicus brief to assist the appellate court in reaching a decision in this case of great public interest and importance. The Commissioners ask this Court to do the same.

Date: May 22, 2018

Respectfully submitted,

s/Robert M. Brochin

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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 Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

s/Robert M. Brochin

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CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2018, a true and correct copy of the foregoing document was sent via email pursuant to Fla. R. Jud. Admin. 2.516 to all counsel of record on the attached Service List.

s/Robert M. Brochin

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