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Strengthening the Duty to Provide Public Education

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Ballot Title: *Public Education of Children*

Ballot Summary: *Declares the education of children to be a fundamental value of the people of Florida; establishes adequate provision for education as a paramount duty of the state; expands constitutional mandate requiring the state to make adequate provision for a uniform system of free public schools by also requiring the state to make adequate provision for an efficient, safe, secure, and high quality system.*

With its proposed Revision 6, the Constitution Revision Commission has offered to Florida's voters an amended education article that substantially strengthens and specifies the state's duty to provide for public education. The members of the Constitution Revision Commission and the sponsors were encouraged in their consideration of this proposal by a strong consensus on the importance of education for Florida's citizens.[1] Furthermore, as a matter of principle, education is the glue that makes democracy work. As Thomas Jefferson wrote, "If a

nation expects to be ignorant and free . . . it expects what never was and never will be."[2] Likewise, the more tangible economic and business benefits of quality education in Florida are acknowledged and accepted.[3]

The Constitution Revision Commission's proposal also marks a response to disputes about the existing constitutional standards for education. The commission was aware both of the recent case, *Coalition for Adequacy and Fairness in School Funding v. Chiles,* 680 So. 2d 400 (Fla. 1996),[4] in which a majority of the Florida Supreme Court declined to read any measurable standard for adequacy into Florida's current requirement that "[a]dequate provision shall be made by law" for the public schools,[5] and, in contrast, numerous cases where courts in other states have found a sufficient standard in their respective constitutions to measure the provision of resources to education.[6]

Education, under the current standard of Article IX, is the only substantive government function that has its own constitutional article. Other articles deal with branches of government, or certain government fundamentals such as taxation or elections. Arguably, education is the most important function of state governments under our federal system. Yet education in Florida is in a crisis. A recent report in "Education Week" listed Florida's relative problems: schools not operated in a way conducive to learning;[7] only 49 percent of Florida high school graduates go on to study in a two-year or four-year college;[8] Florida is 33rd in order of the states with regard to the adequacy of resources it provides to education, but 46th with regard to the allocation of these resources to instruction of students.[9] One bright spot, however, is the overall equity of spending among school districts, where Florida is fourth in the nation,[10] and in the establishment of state standards, where Florida measures well.[11] The result is perhaps not "uniformly bad," but is of doubtful quality. Lack of resources is one major problem, though not the only one. The sponsors submitted the ▲

proposed revision to the education article as far more than a noble aspiration, but rather to spell out a guidepost and benchmark for the state to move education forward.

Constitutional Provisions on Education

One impetus for consideration of a new education provision was a comparison of Florida's education article with the provisions of other states. Scholars considering the education clauses of the various state constitutions have divided them into four categories based upon the level of duty imposed upon the state legislature.[12] Under this categorization, states with the lowest requirements would be Category I, while the maximum duty would be imposed under Category IV.[13] The Florida Supreme Court noted in its recent *Coalition for Adequacy* decision that Florida's current constitutional clause is a Category II, meaning that there is some minimal level of support required for education.[14]

As the Supreme Court and other commentators have noted, however, Florida's constitution once contained a very strong educational mandate. The Constitution of 1868 provided that "[i]t is the paramount duty of the State to make ample provision for the education of all children residing within its borders, without distinction or preference."[15] Such a provision imposed a Category IV duty upon the legislature.[16] The 1868 Constitution was also important for introducing the uniformity requirement into Florida's education article.[17] In 1885, the "paramount duty" language was dropped from the constitution, and the provision adopted read, "The legislature shall provide for a uniform system of public free schools, and shall provide for the liberal maintenance of the same."[18]

Likewise, adoption of the 1968 Constitution brought the current language, removing the "liberal maintenance" requirement, and adding▲

the current "adequate provision" standard.[19] The 1978 Constitution Revision Commission considered several possible constitutional changes involving education, including a proposed addition to Art. I, §2, that would have guaranteed each person "[e]quality of educational opportunity," as well as a proposed revision to Art. IX, §1, that would have guaranteed the right "to an efficient and high quality education from the kindergarten to the secondary level."[20] Ultimately these proposals were withdrawn, but the 1978 commission did propose to add a subsection (b) to Art. IX, §1 specifying that the primary purpose of elementary and secondary education should be "to develop the ability of each student to read, communicate and compute."[21] Ultimately, however, Florida's voters rejected all of the 1978 revision commission's proposals,[22] and the text of Art. IX remains as it was drafted in 1968.

The Florida Supreme Court, in several recent cases, has given some definition and scope to Art. IX, §1, both as to the uniformity and the adequacy requirements. In the first case, *St. Johns County v. Northeast Florida Builders*, 583 So. 2d 635 (Fla. 1991), the court found that a county ordinance imposing an impact fee on building permits to pay for new school facilities did not violate the uniformity clause of Art. IX, §1.[23] Rejecting arguments that the scheme violated uniformity by introducing variations into school finance, the court found that uniformity requires only that every student should have an equal chance to achieve the basic educational goals set by the Legislature.[24] Again, in *Florida Department of Education v. Glasser*, 622 So. 2d 944 (Fla. 1993), the court revisited uniformity. Overturning an attempt by a school board to increase ad valorem taxes without legislative authorization,[25] the court rejected arguments that its earlier broad reading of uniformity allowed school boards to provide any level of support so long as this met the legislative educational goals.[26] The result, according to Justice Kogan, is a system where "Florida law now is clear that the uniformity clause will not be construed as tightly restrictive, but merely establishing a larger framework in which a broad ▲

degree of variation is possible."[27]

The most recent case addresses not merely uniformity, but also adequacy. In *Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles*, 680 So. 2d 400 (Fla. 1996),[28] the court upheld dismissal of a suit by certain students, parents, and school boards against the Governor and other state officials.[29] The plaintiffs sought a declaration that Art. IX, §1 created a fundamental right to an adequate education, which the state had violated by failing to provide sufficient resources to public education.[30] Finding that "adequacy" had no "judicially discoverable and manageable standards," the three-judge plurality of the court[31] decided that the issue of "adequacy" was a nonjusticiable, political question committed by the constitution to the legislature.[32] The members of the court stated that the constitution gives the legislature "enormous discretion" to appropriate funds for education and other matters.[33] Absent definable standards to provide guidance, the court decided that intrusion into this area would transgress the separation of powers doctrine by usurping legislative powers.[34]

The majority of the court in *Coalition for Adequacy* rejected any notion of a fundamental right to education.[35] However, a majority of the justices did find that Article IX created a duty for the legislature to provide some minimum level of support for education, and that this duty could be enforced by the courts.[36] Four justices agreed that a plaintiff who made certain allegations ("were a complaint to assert that a county in this state has a 30-percent illiteracy rate") would be able to state a justiciable cause of action under Art. IX, §1.[37]

The division of the Supreme Court in *Coalition for Adequacy*, with Justice Overton poised in the middle apparently writing for the dissent, though voting with the majority, has prompted much analysis and speculation for those concerned with public education in Florida. Optimists found room for hope in the opinion. Indeed, the dissent ▲

seemed to invite another suit by plaintiffs or others who could make the necessary allegations.[38] Other commentators also see room for success in future education suits challenging specific legislative enactments which would give the court the opportunity to fashion criteria or standards for adequacy to guide the legislature.[39]

Others have sought to change the constitution itself. In 1997, a group of education organizations proposed an initiative amendment to the constitution which would have provided a very specific definition to "adequate provision," as used in Art. IX, §1. The "Requirement for Adequate Public Education Funding" initiative would have required education funding to equal a minimum of 40 percent of appropriations.[40] The percentage was that proportion of the state budget spent on education before adoption of the lottery in 1986.[41] The Supreme Court invalidated this initiative, however, finding that the use of a mandatory percentage violated the single subject requirement of Art. XI, §3.[42]

Seeking some alternative to court and legislative action, those concerned with the inadequacies of Florida's education system observed the situation in other states, where courts have found in their state constitutions measurable standards to hold their respective legislatures to account for inadequate education systems.[43] In North Carolina, the courts were confronted with a challenge very similar to *Coalition for Adequacy*, and decided that the state constitution provided sufficient basis to allow the suit to go to trial.[44] The North Carolina court expressly found that the "adequacy" as used in the North Carolina Constitution established a qualitative standard.[45]
An even more compelling case comes from Ohio, in *DeRolph v. State*, 677 N.E.2d 733 (Ohio 1997), in which the Ohio Supreme Court upheld a trial court finding that the Ohio Legislature had failed to provide a "thorough and efficient" school system, as required by the Ohio Constitution.[46] Relying on a factual record detailing the weaknesses of ▲

the curriculum, the numerous instances of dangerous or inadequate facilities, and lack of both teachers and materials, the Ohio court found the state education financing system unconstitutional.[47] The lesson for Floridians is twofold: first, that a meaningful constitutional standard might place state government on notice as to the public's intent to have a high quality public education system. Secondly, if the legislature does not act, a clear and meaningful standard would help to guide the courts in declaring how to fulfill the constitutional requirements.

Commission's Proposals

When it began its work in the summer of 1997, the Constitution Revision Commission toured Florida holding public hearings inviting citizens to submit their concerns.[48] Public proposals submitted to the commission included requests both for more education funding and to limit education funding, matters of education vouchers and school choice, a return to the 1868 Constitution's "paramount duty" language, and a plea for free community college education.[49] These concerns were reflected when the public proposals were translated to formal commission proposals. Of 187 CRC proposals, 20 dealt in some way with public education, and 10 of these concerned either education funding or substantive educational quality, as opposed to the structure of school boards or the state board of education.[50]

Two substantive proposals emerged from the committee stage, designed in part to address the questions raised by the *Coalition for Adequacy* case and emphasize the state's commitment to education.[51] Both Proposal 157 and Proposal 181 sought to amend Art. IX, §1 to provide not just aspirational language, but also meaningful standards whereby educational adequacy could be measured. Proposal 157, introduced by Commissioner Jon Mills, originally made education a fundamental right for Florida citizens, and defined "adequate provision" as "the provision of financial resources to achieve a thorough, efficient, ▲

high-quality, safe, and secure system of public education for all public schools and access to public institutions of higher learning or education."[52] Proposal 181, introduced by Commissioner Robert Brochin, also made primary and secondary education a fundamental right.[53] Proposal 181 also looked back to the 1868 Constitution making education the "paramount duty of the state," and likewise requiring the state to make "ample" provision for public education.[54] The "ample provision" requirement was soon amended back to an "adequate provision" requirement.[55]

Ultimately, the "fundamental right" language was removed from both proposals. Many commissioners and others feared this language would place too severe a burden on school districts and the state by potentially making their actions subject to strict scrutiny.[56] It was feared that the proposal might be interpreted to create a cause of action for failing to meet the particular educational needs of individuals.[57] For Proposal 181, Commissioner Chris Corr successfully moved an amendment to change the term "fundamental right" to "a fundamental value."[58] Such a term adopts language used by the dissenting justices in *Coalition for Adequacy*, who wrote:

Surely all would agree that education is a fundamental value in our society. The question remains as to how we have recognized that value in Florida. The most obvious and effective way to recognize a value as fundamental and of the highest importance is to make provision for that value in our society's supreme and basic charter, our constitution. We did that in Florida. The people of Florida recognized the fundamental value of education by making express provision for education in our constitution.[59]

The use of the term "fundamental value" instead of fundamental right is important in emphasizing that the focus of Article IX is the education system, and the adequacy of that system generally.

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On March 17, 1998, both proposals were adopted by the commission by

overwhelming votes (28-2 for Proposal 157, 28-1 for Proposal 181).[60] Presented together to the commission as Revision 2, the revision was adopted by the commission on March 23, 1998, by a 28-8 vote.[61]

Changes to the constitution, the organic law of our state, are always significant. Where constitutional language is changed or amended, courts have presumed such changes to be intentional and to have a different effect from the prior language.[62] In interpreting a constitutional provision, a court's duty is to discern and give effect to the will of the people who adopted the provision.[63] The interpreting court should keep in view the objective to be accomplished and the evils to be remedied by the provision, and so interpret the provision as to accomplish rather than defeat this objective.[64] The legislative history, statements of the drafters and adopters, are all looked to by courts.[65]

In construing an amended or revised constitutional provision, "the words should be given reasonable meanings according to the subject matter, but in the framework of contemporary societal needs and structure. Such light may be gained from historical precedent, from present facts, or from common sense."[66] Finally, the Supreme Court has stated that newly passed constitutional provisions "must be viewed in light of the historical development of the decisional law extant at the time of . . . adoption and the intent of the framers and adopters."[67]

Describing the intent of Proposal 181, Commissioner Brochin said:

The intent, and I do want to be clear on intent, is as follows: One, it is to allow the people of this state to say through its Constitution, through its document, that it has fundamental values, and one of those fundamental values is the education of its children.

Two, it is to allow the people of this state, through the Constitution, its document, to instruct its state government that its paramount duty is to provide an adequate . . . education for its children.

Three, it is to [allow the people of this state to say that when government moves]. . . forward in the education of our children, whether it's through vouchers, whether it's through charter schools, whether it's through private schools, public schools, that all children, all children in this state will move there together.

* * *

Proposal 181 is quintessential constitutional language that sets forth, in clear and unambiguous terms, the high value of education that we place in our Constitution. . . .[68]

Similar language exists to describe the intent of the commission in adopting the definition of "adequacy" in Proposal 157. Commissioner Mills discussed the recent *Coalition for Adequacy* case, and noted that Proposal 157 was intended "to define what adequate education should be in the state of Florida with common terms used in other constitutions.[69] Commissioner Mills spoke of the importance of providing a definition for adequacy "which would give guidance to either the legislature or the courts," noting: "I think the terms used here are understandable, they are derived . . . from other states that have a higher standard, and they give the court and any future legislature an opportunity to meet a standard of adequacy."[70]

Issues Raised by Proposals

As the debates show, Revision 6 is a conscious response to the *Coalition for Adequacy* case, attempting to give meaningful definition to "adequacy" under Article IX, and provide a measurable standard for the legislature's duty to support education. The revision commission has attempted to raise Florida's constitutional education standard from Category II to Category IV,[71] or in other words, to increase the standard from a low basic duty to provide for education to the highest duty by the state to make provision for education. Several important issues were raised in debate on the proposals, and should be clearly explained

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to those considering Revision 6, and those who may be called upon to interpret it in the future.

First, is it possible for the state's educational system to be held unconstitutional based on the language of Revision 6? Yes, the new standard is intended to provide a benchmark to require government to act when the system can be demonstrated to be dangerous, unhealthy, or not of high quality. The standard allows courts to make a determination of unconstitutionality. However, the new standard is also intended to place the legislature on notice that the people of Florida expect more with regard to education.[72]

Second, will adoption of Revision 6 automatically result in more money being spent on public education? Not necessarily, because the intent is to create a high quality system, and the word "efficient" was included advisedly, indicating that the way resources are used is important. An education system cannot be adequate merely by having more money.[73]

Third, will adoption of Revision 6 generate more litigation? Litigation over school conditions probably is inevitable. Commentators think that the current language of Art. IX, §1 could result in a finding of unconstitutionality,[74] and indeed the opinion in *Coalition for Adequacy* appears to invite further litigation with or without the new standards provided by Revision 6.[75] The advantage that Revision 6 offers is that it provides a clear expression of public will, and a measurable constitutional definition to help courts in any future litigation.[76] Revision 6 is directed at all three branches of state government, stating that this new standard of adequacy is the minimum level of education that the people of this state demand.[77]

Fourth, could a court interpret "fundamental value" to mean "fundamental right," that Revision 6 might provide an individual cause of action for damages against the state for failure to meet the particular educational needs of some person? This was a legitimate concern of

several commissioners,[78] and resulted in the amendment of both Proposals 157 and 181 to remove "fundamental right" language. The intent of the proposals, as expressed by the commission, is not to create a cause of action based upon some alleged failure to adequately educate an individual, but to address the needs of the entire education system.[79] The obligation of the state is to provide for an adequate education system, not necessarily to meet the special educational needs of a particular individual.[80]

Fifth, does the adoption of this new standard for "adequacy" potentially impact the existing "uniformity" standard of Art. IX, §1? Revision 6 is not intended to alter the standard for uniformity in any way. The stated purpose is only to define "adequacy," which was previously undefined.[81] There already exists a meaningful "uniformity" standard for Florida courts.[82] The new standard, as modified by Revision 6, is that the education system in Florida must be "uniformly adequate," and meet the new standards uniformly.

Finally, might not the addition of terms such as "efficient, safe, secure, and high quality education" merely add to the constitution well-sounding, but ultimately useless, words that themselves have no meaningful standards for courts to follow? No, the terms have understandable significance for judging adequacy. The significance of the terms used in Revision 6 is that they have been found to be measurable and meaningful in other states.[83] Courts in other states have found efficiency, safety, security, and some standard of quality as necessary components of an adequate education system.[84] Revision 6 explicitly includes these components in the definition of adequacy.

Furthermore, the revision has an additional and necessary qualitative standard. Not only must the system be "efficient, safe, secure, and high quality," but the system must allow "students to obtain a high quality education."[85] The term "high quality education" is thus a separate standard. A high quality education is one that not only meets standards set by the Legislature, but is also one that is high quality compared to

other education systems.[86] Thus, Revision 6 offers both an input and outcome-based standard, intended to be measurable and meaningful in Florida.

Conclusion

The ultimate intent of Revision 6 is to raise the standards for Florida's system of public education. From the revision commission's statements and debate, it is clear that it did not believe that the current education system is "efficient, safe, secure, and high quality."[87] By restoring education to a paramount duty, and emphasizing its place as a fundamental value of the people of Florida, this constitutional expression places an obligation on all parts of Florida government. The new standard presents a test that Florida can fail, for the standard is intended to be meaningful and measurable. However, Revision 6 also presents an opportunity to codify and cement a legacy of commitment to high quality education, and help place Florida at the top of this country's education systems. The Constitution Revision Commission believes that it is appropriate to anchor this commitment in the Florida Constitution. q

[1] This consensus is reflected in the adoption of these proposals by an overwhelming majority of the CRC. *See supra* text accompanying notes 59–60.

[2] Letter from Thomas Jefferson to Col. Charles Yancey (Jan. 6, 1816) (quoted in *Coalition for Adequacy and Fairness in School Funding v. Chiles*, 680 So. 2d 400, 409 (Fla. 1996) (Overton, J., concurring)); *cf. Florida Constitution Revision Comm'n Meeting Proceedings*, Jan. 13, 1998, at 147 (hereinafter *CRC Minutes*) (Statement of Comm'r Jon Mills).

[3] *See, e.g.*, *CRC Minutes*, Feb. 26, 1998, at 49–50 (Statement of Comm'r Jon Mills).

[4] This is opposed to the "uniformity" standard of Art. IX, §1, which the courts have been able to interpret and apply. *See Florida Dep't of Educ.*

v. Glasser, 622 So. 2d 944 (Fla. 1993); *St. John's County v. Northeast Fla. Builders Ass'n*, 583 So. 2d 634 (Fla. 1991); *State ex rel. Clark v. Henderson*, 188 So. 351 (Fla. 1939).

[5] **Fla. Const.** art. XI, §1.

[6] *E.g.*, *DeRolph v. State*, 677 N.E.2d 733 (Ohio 1997). For more generally on school finance reform litigation based upon state constitutional education clauses, *see* William E. Thro, *The Role of Language of the State Education Clauses in School Finance Litigation*, 79 **Ed. L. Rep.** 19 (1993); Molly McUsic, *The Use of Education Clauses in School Finance Reform Litigation*, 28 **Harv. J. Legis.** 309 (1991); William E. Thro, *To Render Them Safe: The Analysis of State Constitutional Provisions in Public School Finance Reform Litigation*, 75 **Va. L. Rev.** 1639 (1989).

[7] *Quality Counts '98*, **Education Week**, January 8, 1998, at 84–85.

[8] *Id.* at 79.

[9] *Id.* at 86–87.

[10] *Id.*

[11] *Id.* at 80, 129. "Education Week" lists Florida as seventh among the states for its overall standard and assessments.

[12] *See, e.g.*, Grubb, *Breaking the Language Barrier: The Right to Bilingual Education*, 9 **Harv. C.R.-C.L. L. Rev.** 52, 66–70 (1974); Ratner, *A New Legal Duty for Urban Public Schools: Effective Education in Basic Skills*, 63 **Tex. L. Rev.** 777, 814–16 n.143–46 (1985); McUsic, *supra* note 6, at 333–39; Barbara J. Staros, *School Finance Reform Litigation in Florida: A Historical Analysis*, 23 **Stetson L. Rev.** 497, 498–99 (1994).

[13] Briefly described, those constitutional provisions that merely mandate some system of free public schools, with no requirement as to support or quality, are Category I. Category II states, such as Florida, do impose some minimal standard of quality. Category III states strengthen this standard with some specific mandate. Category IV clauses make education the most important duty of the state with the highest mandate for support. *See* Thro, *Role of Language*, *supra* note 6, at 23–25.

An example of a Category I state, according to Thro, is Tennessee, which provides in its constitution: "The General Assembly shall provide for the maintenance, support and eligibility standard of a system of free public ▲

schools." **Tenn. Const.** art. 11, §12.

As an example of a Category II state with some minimal standard, Pennsylvania's constitution provides: "The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth." **Pa. Const.** art. III, § 14.

California is included among the Category III states, with higher and more specific education standards. Its constitution provides: "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement." **Cal. Const.** art. IX, §1.

Washington ranks among the Category IV states. Its constitution has language based upon Florida's 1868 constitution, and states: "It is the paramount duty of the state to make ample provision for the education of all children residing within its borders without distinction or preference on account of race, color, or sex." **Wash. Const.** art. IX, § 1. *See generally* Thro, *Role of Language*, *supra* note 6, at 23–25.

As a practical matter, some of the distinctions between the categories are no longer as clear as they were. For example, Ohio's constitution has the "thorough and efficient" standard that most commentators included in Category II, along with Florida's "adequate provision" standard. *See* **Ohio Const.** art VI, § 3. Yet in the recent *DeRolph v. State* case, the Ohio Supreme Court found relatively strict and meaningful standards within the "thorough and efficient" standard established by the Ohio Constitution. 677 N.E.2d 733, 745 (Ohio 1997). *See supra* text accompanying notes 46–47.

[14] *Coalition for Adequacy*, 680 So. 2d at 405 n. 7 (citing Staros, *supra* note 12, at 498–99).

[15] **Fla. Const.** art. VIII, §1 (1868).

[16] *See Coalition for Adequacy*, 680 So. 2d at 405 n.7.

[17] **Fla. Const.** art. VIII, §2 (1868) ("The Legislature shall provide a uniform system of common schools and a university, and shall provide for the liberal maintenance of the same. Instruction in them shall be free."). ▲

[18] **Fla. Const.** art. XII, §1 (1885).

[19] *See generally* Staros, *supra* note 12, at 500–05 (discussing and analyzing historical changes in Florida's education article).
[20] **Florida Constitution Revision Comm'n, Final Summary of Action Taken on all Comm'n Proposals** 1, 39 (1978) (CRC proposals 26 and 78); *see also* Staros, *supra* note 12, at 503–04 (discussing these proposals).
[21] **Florida Constitution Revision Comm'n, Proposed Revision of the Florida Constitution** 20 (1978). The proposal also allowed for vocational training, special instruction to students with special needs. *Id.* The revision included amendments to Art. IX, §2 making the state board of education an appointive body, and a new Art. IX, §7 constitutionalizing the Board of Regents. *Id.*; *see* Patricia A. Draper, *A New Look for Public Education: The Proposed Revision of Florida's Educational Governance System*, 6 **Fla. St. U. L. Rev.** 851 (1978) (reviewing mainly the structural changes); **Manning J. Dauer, Proposed 1978 Florida Constitution Revision and Proposal on Casino Gambling** 24–25 (1978) (briefly analyzing the proposals).
[22] *See, e.g.*, Steven J. Uhlfelder & Robert A. McNeely, *The 1978 Constitution Revision Commission: Florida's Blueprint for Change*, 18 **Nova L. Rev.** 1489, 1490–91 (1994).
[23] *St. Johns County v. Northeast Florida Builders,* 583 So. 2d 635, 637 (Fla. 1991).
[24] *Id.* at 641. The court did strike a section of the ordinance that apparently made the impact fee a user fee for those households with children, thus violating Art. IX, §1's requirement of free public schools. *Id.* at 640. Finally, the court found that the St. Johns County impact fee could not be collected until it imposed within municipalities in the county to ensure that funds spent would benefit those who were subject to the fee. *Id.* at 637–39 (citing *Contractors & Builders Ass'n v. City of Dunedin*, 329 So. 2d 314 (Fla. 1976)).
[25] *Glasser,* 622 So. 2d at 946–47. The decision was based upon **Fla. Const.** art. VII, §9(a), which requires legislative authorization for the imposition of ad valorem taxes.
[26] *Id.* at 947.
[27] *Id.* at 950 (Kogan, J., specially concurring). As one commentator has noted, the result of the court's decisions in this area is to adopt the

statutory term “substantially equal,” used in **Fla. Stat**. §236.012(1) as a working definition for uniformity. Staros, *supra* note 12, at 511. Such a standard is in keeping with the decisions of other states, which often allow for substantial funding disparities between school districts. *See, e.g.*, Peter Enrich, *Leaving Equality Behind: New Directions in School Finance Reform*, 48 **Vand. L. Rev.** 101, 143–44 (1995).

[28] For useful analyses of this important case, *see* E. John Wagner, Comment, *Florida Constitutional Law: What is the Legislature’s Duty to Provide for the State’s Educational System*, 49 **Fla. L. Rev.** 339 (1997); Michael L. Buckner, *The Adequacy Provision in the Florida Constitution: The Next Step After* Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles, 71 **Fla. B.J.** 24 (Oct. 1997).

[29] *Coalition for Adequacy*, 680 So. 2d at 401–02. The court did find that a declaratory judgment action was proper, and that the individual plaintiffs and the school boards each had standing even absent a showing of a special injury. *Id.* at 402–04.

[30] *Id.* at 401. The plurality, quoting the trial court’s judgment, noted that the plaintiffs were not attacking any specific legislative action, but rather the general level of support provided by the Legislature. *Id.* at 407.

[31] Justices Grimes, Harding, and Wells concurred with the plurality judgment of the court. *Id.* at 408.

[32] *Id.* at 407–08 (citing *Baker v. Carr*, 369 U.S. 186, 209 (1962)).

[33] *Id.* at 408.

[34] *Id.* at 407.

[35] Justice Overton, writing of the importance of education to Florida citizens and the importance of educated citizens to a functioning democracy, recognized a fundamental right to education. *Id.* at 410 (Overton, J., concurring).

[36] *Id.* at 409–10 (Overton, J., concurring); *id.* at 410–11 (Anstead, J., joined by Kogan, C.J., and Shaw, J., dissenting).

[37] *Id.* at 409 (Overton, J., concurring); *id.* at 410 (Anstead, J., joined by Kogan, C.J., and Shaw, J., dissenting).

[38] *Id.* at 410 n.10 (Anstead, J., dissenting) (“The appellants, of course, have the option of filing another action if they can allege and

demonstrate inadequacies sufficient to meet the requirements set out in the various opinions of the judges of the Court filed in this case.").

[39] *See* Buckner, *supra* note 28, at 28–30 (pointing to judicial involvement with the complex issues related to school desegregation as precedent for courts upholding constitutional provisions).

[40] *See Advisory Opinion to the Attorney General Re: Requirement for Adequate Public Education Funding*, 703 So. 2d 446, 447–48 (Fla. 1997).

[41] *Id.* at 447.

[42] *Id.* at 450. The problem for the court with use of a percentage was that this percentage affected every tax dollar raised and spent, and thus affected many other functions of government which, according to the court, would be relegated to the remaining 60 percent of appropriations. *Id.* at 449.

Justice Anstead wrote a dissent noting that the court would have benefited in the earlier *Coalition for Adequacy* case "if there had been an express statement in the constitution defining 'adequate provision' to guide us." *Id.* at 450 (Anstead, J., dissenting).

[43] *See id.* at 410 n.9 (citing cases in other states).

[44] *Leandro v. State*, 488 S.E.2d 249 (N.C. 1997). The court expressly found that, in North Carolina, questions of educational adequacy were not nonjusticiable political questions and were indeed subject to the review of the courts. *Id.* at 253–55. The North Carolina court held: "The principal question presented by this argument is whether the people's constitutional right to education has any qualitative content, that is, whether the state is required to provide children with an education that meets some minimum standard of quality. We answer that question in the affirmative and conclude that the right to education provided in the state constitution is a right to a sound basic education. An education that does not serve the purpose of preparing students to participate and compete in the society in which they live and work is devoid of substance and is constitutionally inadequate." *Id.* at 254.

[45] *Id.* at 255.

[46] *DeRolph,* 677 N.E.2d at 747. After reviewing the deficiencies in Ohio schools, the Ohio court concluded: "All the facts documented in the record lead to one inescapable conclusion—Ohio's elementary and

secondary public schools are neither thorough nor efficient. . . . Consequently, the present school financing system contravenes the clear wording of the Constitution and the framers' intent." *Id.* at 745.

[47] *Id.* at 747.

[48] *See, e.g.*, Randolph Pendleton, *Panel hears constitution concerns*, **Fla. Times-Union**, July 30, 1997, at B1; Howard Troxler, *Line forms here for democracy in Florida*, **St. Petersburg Times**, September 12, 1997, at 1B.

[49] 1 **Florida Constitution Revision Comm'n, Public Proposals** 660–83 (1997). The public proposals also included matters related to the education structure, including appeals for an appointed board of education, and changes allowing multi-county school districts or division of counties into multiple school districts. *Id.*

[50] Brief summaries of all CRC proposals are found in the December 1997–January 1998 CRC Newsletter. *See Constitution Revision Comm'n Proposals Filed*, **Florida Constitution Revision Comm'n Revision Watch**, December 1997–January 1998, at 5–11.

[51] The term "substantive" is used for Proposals 157 and 181 to distinguish them from those "structural" proposals related to the state board of education or local school board composition and elections.

[52] **Florida Constitution Revision Comm'n, Special Order Packet, Week of January 12–16, 1998,Vol. II**, Proposal 157 (hereinafter *CRC Proposal 157*). The text of all CRC proposals is also available at <**http://www3.law.fsu.edu/crc** >. CRC Proposal 157, as originally drafted, would have amended Art. IX, §1, as follows:

"SECTION 1. System of public education.

(a) Residents of this state have a fundamental right to an adequate system of public education. Adequate provision shall be made by law for a uniform system of free public schools and for the establishment, maintenance and operation of institutions of higher learning and other public education programs that the needs of the people may require.

"(b) As used in this section, the term 'adequate provision' means the provision of financial resources to achieve a thorough, efficient, high-quality, safe, and secure system of public education for all public schools and access to public institutions of higher learning or education. This section shall be self-executing."

▲

Id. The self-executing language was quickly removed from the proposal. *See* **Journal of the 1997–98 Constitution Revision Comm'n**, January 13, 1998, (hereinafter **CRC Journal**) at 140. The CRC Journals are also available at <**http://www3.law.fsu.edu/crc** >. Likewise, the proposal was amended to remove the specific reference to "adequacy" as the provision of "financial resources." *See id.*; *cf. CRC Minutes*, January 13, 1998, at 167 (Statement of Comm'r Douglass).

[53] **Florida Constitution Revision Comm'n, Special Order Packet, Week of January 12–16, 1998, Vol.V**, Proposal 181 (hereinafter *CRC Proposal 181*). CRC Proposal 181, as originally drafted, would have amended Art. IX, §1, as follows:

"SECTION 1. ~~System of~~ Public education. Each resident of this state has a fundamental right to a public education during the primary and secondary years of study, and it is the paramount duty of the state to ensure that such education is complete and adequate. Ample ~~Adequate~~ provision shall be made by law for a uniform system of free public schools and for the establishment, maintenance and operation of institutions of higher learning and other public education programs that the needs of the people may require."*Id.*

[54] *Id. See also CRC Minutes*, Jan. 15, 1998, at 263–64 (Statement of Comm'r Brochin) in which he stated:

"[This proposal] comes out of our Constitution of 1868. And although I didn't use the exact language, I used language fairly close. And what the 1868 Constitution says is that it is the paramount duty of the state to ensure that children, and they use the word children, have a right to an education without distinction or preference. And this is modeled after that. It was a good idea in 1868 and it is even a better idea in 1998." *Id.*

[55] *See* **CRC Journal**, January 15, 1998, at 148–49.

[56] *See, e.g.,* the analysis provided by the staff of the CRC Committee on Education, contained in **Florida Constitution Revision Comm'n, Special Order Packet, Week of January 12–16, 1998, Vol. II**, Proposal 157 & **Vol.V**, Proposal 181. *See United States v. Carolene Products*, 304 U.S. 144, 152–53 n.4 (1938) (noting that government actions affecting fundamental rights receive the most heightened scrutiny of the courts).

[57]

[57] *See CRC Minutes*, Jan. 15, 1998, at 282 (Statement of Comm'r Riley); *id.* at 284 (Statement of Comm'r Marshall); *id.* at 285–87 (Statement of Comm'r Langley). Responding to these concerns, expressed on January 15, 1998, Commissioner Brochin proposed the amendment making education "the fundamental value." *See CRC Minutes*, Feb. 26, 1998, at 65–66 (Statement of Comm'r Brochin), in which he stated: "I sensed a concern, and on further reading and discussion of the subject was concerned that it would create perhaps litigation in the area of special needs by people coming forward, as Commissioner Corr alluded to earlier, and claiming individual rights fundamentally had been violated, and therefore, people with special needs and juveniles, perhaps in juvenile detention centers, would bring forth claims that their fundamental right to an education had been violated. That was not the intent, initially, and that is not the intent today."*Id.* at 65.
Ultimately, Commissioner Corr's substitute amendment making the education of children "a fundamental value" (not "the fundamental value") was adopted by the commission. *Id.* at 80–81 (Statement of Comm'r Corr); **CRC Journal**, February 26, 1998, at 207.
[58] **CRC Journal**, February 26, 1998, at 207.
[59] *Coalition for Adequacy*, 680 So. 2d at 410 (Anstead, J., dissenting); *cf. Plyler v. Doe*, 457 U.S. 202 (1982) ("Education has a fundamental role in maintaining the fabric of our society.").
[60] **CRC Journal**, March 17, 1998, at 216–17.
[61] **CRC Journal**, March 23, 1998, at 226.
[62] *See, e.g.*, *State v. Creighton*, 469 So. 2d 735, 739 (Fla. 1985); In re *Advisory Opinion to the Governor*, 112 So. 2d 843, 847 (Fla. 1959).
[63] *See Plante v. Smathers*, 372 So. 2d 933, 936 (Fla. 1979); *In re Advisory Opinion to the Governor*, 243 So. 2d 573, 577 (Fla. 1971); *State ex rel. McKay v. Keller*, 191 So. 542 (Fla. 1939).
[64] *State ex rel. Dade County v. Dickinson*, 230 So. 2d 130, 135 (Fla. 1970); *Gray v. Bryant*, 125 So. 2d 846, 851–52 (Fla. 1960); *Amos v. Mathews*, 126 So. 308 (Fla. 1930).
[65] *See, e.g.*, *Winfield v. Div. of Pari-Mutuel Wagering*, 477 So. 2d 544 (Fla. 1985). In *Winfield*, the Supreme Court was considering Florida's newly adopted privacy amendment, Art. I, §23. The court looked to the ▲

legislative history of the amendment, noting that the drafters had rejected such terms as "unreasonable" or "unwarranted" in defining the protection from "governmental intrusion" intended by the amendment. The court concluded that the intent of the amendment was to provide for a greater level of protection from governmental intrusion. *Id.* at 548.
[66] *In re Advisory Opinion to the Governor*, 276 So. 2d 25, 29 (Fla. 1973). *See also Department of Environ. Protection v. Millender*, 666 So. 2d 882, 886 (Fla 1996) (quoting *Plante*, 372 So. 2d at 936).
[67] *Jenkins v. State*, 385 So. 2d 1356, 1357 (Fla. 1980).
[68] *CRC Minutes*, March 17, 1998, at 237–38 (Statement of Comm'r Brochin).
[69] *CRC Minutes*, January 13, 1998, at 147–48 (Statement of Comm'r Mills).
[70] *Id.* at 148.
[71] *See CRC Minutes*, Feb. 26, 1998, at 68 (Statement of Comm'r Brochin). *See supra* notes 12–13 and accompanying text.
[72] *See CRC Minutes*, Jan. 13, 1998, at 203 (Statement of Comm'r Brochin).
[73] *See CRC Minutes*, Jan. 13, 1998, at 149 (Statement of Comm'r Mills).
[74] *See* Buckner, *supra* note 28, at 28–30; *see supra* text accompanying notes 38–39.
[75] *Coalition for Adequacy*, 680 So. 2d at 410 n.10 (Anstead, J., joined by Kogan, C.J., and Shaw, J., dissenting).
[76] *See CRC Minutes*, Feb. 26, 1998, at 54 (Statement of Comm'r Mills) ("I personally believe that there is probably going to be litigation no matter what you do. I'm not going to mislead you on that. [This proposal] does provide a definition.").
[77] *CRC Minutes*, Jan. 13, 1998, at 203 (Statement of Comm'r Brochin).
[78] *See supra* note 57, and accompanying text.
[79] *See CRC Minutes*, Feb. 26, 1998, at 57–59 (discussion between Comm'rs Connors and Mills).
"Commr Connors: Now would you agree that the definition of "adequate provision" modifies system and not a particular school?
"Comm'r Mills: Yes.
"Comm'r Connors: And so if you had a particular school which was neither efficient or deficient in terms of safety or security or in the

quality of education that it provided, would that necessarily mean that the system as a whole failed to meet the standard?
"Comm'r Mills: No, it wouldn't. There is a good example of this in Justice Overton's opinion where he said, and I think this would be a sort of threshold. He said, if the entire school system, that is the school board, had a 40 percent [illiteracy] rate, that would be emblematic of an entire system that was broken.
"Comm'r Connors: Then in response to Commissioner Corr's question about litigation by parents on behalf of their child in a given school, for instance where it may have been deemed by them that adequate provision was not being made, would they be perhaps less likely to prevail than otherwise because the adequate provision refers to the system as a whole as opposed to the individuals?
"Comm'r Mills: The adequate provision does refer to the system any particular school of course would be evidence of that."

[80] *See CRC Minutes*, Feb. 26, 1998, at 52 (Statement of Comm'r Mills).

[81] *See supra* text accompanying notes 31–34.

[82] *See supra* text accompanying notes 23–27.

[83] *E.g.*, *DeRolph*, 677 N.E.2d at 747. *See supra* notes 43–47, and accompanying text.

[84] "Obviously, state funding of school districts cannot be considered adequate if the districts lack sufficient funds to provide their students a safe and healthy learning environment." *DeRolph*, 677 N.E.2d at 744. The Ohio court also found:
"Although a student's success depends upon numerous factors besides money, we must ensure that there is enough money that students have the chance to succeed because of the educational opportunity provided, not in spite of it. Such an opportunity requires, at the very least, that all of Ohio's children attend schools which are safe and conducive to learning. At the present, Ohio does not provide many of its students with even the most basic of educational needs."
Id. at 746. *See also Leandro*, 488 S.E.2d at 254 (necessary qualitative content to state's requirement to make provision for education).

[85] *See CRC Minutes*, Jan. 13, 1998, at 207 (discussion between Comm'rs Zack and Mills regarding why "high quality" was used twice in Proposal ▲

157).
[86] *See supra* text accompanying notes 7–11.
[87] *See, e.g.*, *CRC Minutes*, Jan. 15, 1998, at 278–80 (Statement of Comm'r Brochin).

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