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IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

THE SCHOOL BOARD OF ALACHUA COUNTY, et al.,

Plaintiffs,

vs. CASE NO. 2017-CA-002158

FLORIDA DEPARTMENT OF EDUCATION, et al.,

Defendants.
_____/

MOTION TO INTERVENE
BY
THE SCHOOL BOARD OF COLLIER COUNTY, FLORIDA

COMES NOW The School Board of Collier County, Florida, moves to intervene in this case as a party Plaintiff on Counts II and IV only, pursuant to Florida Rule of Civil Procedure 1.230, and says as follows:

GENERAL ALLEGATIONS

1. This is a Motion to Intervene for declaratory and injunctive relief with respect to a facial challenge to portions of Chapter 2017-116, Laws of Florida, also known as House Bill 7069 ("HB 7069"), because those provisions unconstitutionally undermine local control of public education. HB 7069 was effective as of July 1, 2017, is codified as Chapter 2017-116, Laws of Florida, and changed nearly 70 provisions in Florida's Education Code.

2. Under this far-reaching law, the State has encroached on the authority vested by the Florida Constitution in locally elected district school boards to operate, control, and supervise the public schools in their school districts.

3. Intervenor, The School Board, of Collier County Florida, is the political subdivision possessing authority under Article IX, Section 4(b), Fla. Const., to operate, control, and supervise all free public schools located in Collier County, Florida. It has home rule authority to exercise any power except as expressly prohibited by the State Constitution and general law. Its principal place of business is at 5775 Osceola Trail, Naples, Florida 34109. (Hereinafter, the "Collier School Board," the "School Board," or the "District.")

4. The Collier School Board operates 57 schools with 47,000 students and has been rated by the Florida Department of Education as an "A" district. It is the 5th highest rated school district in the State of Florida, and the highest rated school district in the state with more than 40,000 students.

5. Florida Rule of Civil Procedure 1.230 says:

> Anyone claiming an interest in pending litigation may at any time be permitted to assert a right by intervention, but the intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding, unless otherwise ordered by the court in its discretion.

6. The School Board has an interest in public schools operating in Collier County and in a uniform system of state public education. Further, a decision in this matter would have a direct and immediate effect upon the constitutionally granted powers and rights of the School Board. *Morgareidge v. Howey*, 78 So. 14 (Fla. 1918)(saying, "The interest which will entitle a person to intervene must be in the matter in litigation, and of such a direct and immediate character that the intervener will either gain or lose by the direct legal operation and effect of the judgment."); and, *Schindler v. Schiavo*, 866 So. 2d 140, 141 (Fla. 2d DCA 2004). Finally, Courts have allowed governmental officials to intervene where alleged unconstitutional expenditures of public funds are at issue. *Askew v. Green, Simmons, Green & Hightower, P.A.*, 348 So. 2d 1245, 1247 (Fla. 1st DCA 1977).

7. The State of Florida assigns public schools a letter grade of A-F as part of its accountability system. Over the past four years the School Board has had tremendous success increasing the grades assigned to it schools. Among the District's schools are those in the farming community of Immokalee, which has a large migrant population. In 2013, 5 of 7 of Immokalee area traditional schools were a D (4) or F (1). By 2017, the District had made considerable improvement in those schools, and only 1 of 7 of Immokalee area traditional schools was below a C – Village Oaks.

8. Schools with three consecutive grades below a "C," according to the State's assessment are deemed to be a "public school in need of intervention and support to improve school performance." § 1008.33(3)(b), Fla. Stat. (2017). Schools so deemed trigger the provisions of HB 7069, now enshrined in section 1002.333, Florida Statute (2018). While the District has been working hard to improve Village Oaks' grade over the last four years and is very close to meeting the standard, it nevertheless falls with the purview section 1002.333.

9. Section 1002.333 creates so called "Schools of Hope" that the school board will not operate, control, nor supervise; but, which it will be required to fund and provide resources for. Section 1002.33(17), Florida Statute (2018), says that "students enrolled in a [School of Hope] charter school, regardless of the sponsorship, shall be funded as if they are in a basic program or a special program, the same as students enrolled in other public schools in the school district. Funding for a charter lab school shall be as provided in s. 1002.32."

10. Thus, HB 7069 would also unconstitutionally take tax revenues enacted by the duly elected representatives of the people of Collier County and divert them to schools over which these same elected officials would have no ability to operate, control, or supervise.

11. The statute on its face violates the School Board's constitutional authority in several ways: (i) allows for the creation of charter schools called "Schools of Hope" that

would operate outside of any meaningful control or supervision by local school boards, creating dual or even multiple systems of public education; and, (ii) strips district school boards of their ability to supervise and control charter schools in their jurisdiction by requiring them to enter into a "standard charter contract" with charter school operators; and, it (iii) requires local district school boards to expend locally raised school district funds and resources for schools over which it has little or no oversight. Thus, these provisions of HB 7069 on their face violate Article IX, §§ 1 and 4 of the Florida Constitution.

12. The School Board currently operates six different charter schools, each with a different contract that reflects the distinctions in the programs to be implemented, any special circumstances particular community that it serves, and local needs and concerns. The School Board, by creating and negotiating the substance of these contracts with these charter schools, is able to maintain local control and supervision over these charter schools.

13. The School Board would not be able to create or negotiate the substance of the "Schools of Hope" contracts, and thus loses its local control over the substance of those contracts.

14. On its face, HB 7069 would then require the School Board to unconstitutionally expend funds, funds which were excised on local taxpayers by their duly elected representatives, but that would be sent to schools not supervised or controlled by these same elected representatives.

15. There is a bona fide dispute between the Intervenor and the Defendants and a need for a declaration as to the constitutionality of portions of HB 7069, as to which the parties have actual, present, adverse, and antagonistic interests. The facts relevant to this dispute are well-known and readily ascertainable. Intervenor is not merely seeking legal advice from the court. Intervenor presents actual disputes and has ascertainable powers, rights, and authority under the

Florida Constitution. *Sch. Bd. of Hillsborough County v. Tampa Sch. Dev. Corp.*, 113 So. 3d 919, 923 (Fla. 2d DCA 2013)(saying, "Perhaps the parties would have been better served had the School Board raised this issue first in circuit court'" and noting that a circuit court "may entertain declaratory action on statute's validity in appropriate circumstances where statute being implemented by agency is claimed to be facially unconstitutional.")(internal citations and quotations omitted).

ALLEGATIONS FOR INTERVENTION ON COUNT II: SCHOOLS OF HOPE
(Violation of Article IX, § 1 and § 4 of the Florida Constitution)

16. HB 7069 creates section 1002.333, Fla. Stat. (2018) to authorize the establishment of "Schools of Hope" to be operated by a "hope operator," that are not overseen by the local school district.

17. A "School of Hope" is defined in section 1002.333(1)(c), Fla. Stat. (2018) as follows:

> (1) A charter school operated by a hope operator which serves students from one or more persistently low-performing schools; is located in the attendance zone of a persistently low-performing school or within a 5-mile radius of such school, whichever is greater; and is a Title I eligible school; or (2) A school operated by a hope operator pursuant to [§] 1008.33(4)(b)3[, Fla. Stat. (2017)].

18. Article IX, § 1 (a), of the Florida Constitution states, in part, as follows:

> It is . . . a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education[.]

19. Article IX, § 4 (b) of the Florida Constitution further specifies in pertinent part that: "The school board shall operate, control and supervise all free public schools within the school district and determine the rate of school district taxes within the limits prescribed herein."

20. A "School of Hope" only has to submit a "notice of intent" demonstrating the intent to open a "School of Hope" in proximity to a persistently low-performing school. § 1002.333(4)(a), Fla. Stat. (2018).

21. A "School of Hope," unlike other charter schools in Florida, is not required to have its charter school application approved by a local district school board, nor is it required to enter into a charter school contract through that it is sponsored by the locally elected district school board. Rather, local district school boards must enter into a "performance based agreement" with such charter schools within 60 days or be penalized by a limitation on the administrative fees that they receive for sponsoring charter schools. The "performance-based agreement" will not be created and negotiated by the district school board, but instead drafted by the Florida Department of Education. § 1002.333, Fla. Stat. (2018).

22. If a local district school board does not enter into a "performance based agreement" with a "School of Hope" within the specified timeframe, the State may enter into a charter-school contract in the school board's place. § 1002.333(1)(d), Fla. Stat. (2018).

23. The Collier School Board cannot constitutionally enter into a "performance based agreement" that it has no power to create or negotiate, thus stripping it of its ability to supervise and control a public school operating in the district. The operation by the State of a school in the Collier County School District would manifestly divest the School Board of its supervision and control of the "School of Hope."

24. HB 7069 on its face thus divests each district school board of its authority under Article IX, § 4(b) of the Florida Constitution to operate, control and supervise a "School of

Hope." The locally elected district school board cannot prevent a "School of Hope" from opening in its school district. Nor can a district school board ensure that a "School of Hope" is part of a uniform, efficient, safe, secure, and high quality system of free public schools. For example, teachers and principals at charter "Schools of Hope" do not need to hold educational certifications. § 1002.333(6)(4), Fla. Stat. (2017). HB 7069 by its terms also divests each district school board of its constitutional responsibility to ensure that a "School of Hope" operates in accordance with the locally elected district school board's standards for public education within its jurisdiction.

25. HB 7069 also allows charter schools established as "Schools of Hope" to be designated as a local education agency ("LEA"), "if requested." § 1002.333(6)(a), Fla. Stat. (2018).

26. Once designated as an LEA, the unelected governing board of a "charter school system," with little or no local oversight, would be able to apply for and receive State and federal funds independently and in direct competition with school districts operated by locally elected district school boards, including Plaintiffs.

27. By creating independent charter "Schools of Hope" in HB 7069, the State is fostering plural, non-uniform systems of education in direct violation of the mandate for a uniform system of free public schools in violation of Article IX, § 1 (a), of the Florida Constitution. *See, e.g., Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006)(saying statute making no provision to ensure that private school alternative to public school system satisfied uniformity requirement was unconstitutional).

28. By creating independent charter "Schools of Hope" in HB 7069, the State is creating public schools that a local school district, such as Collier County, does not operate, control, and supervise, and is thus is in direct violation of Article IX, § 4(b), of the Florida

Constitution. *Duval County Sch. Bd. v. State, Bd. of Educ.*, 998 So. 2d 641 (Fla. 1st DCA 2008)(saying in declaratory judgment context, that a statute establishing the Florida Schools of Excellence Commission, with the power to authorize charter schools throughout the state, posed a total and fatal conflict with constitutional provision empowering local school boards to "operate, control and supervise all free public schools within the school district" and, thus, was facially unconstitutional.).

ALLEGATIONS FOR INTERVENTION ON THE FOURTH CAUSE OF ACTION: STANDARD CONTRACT
(Violation Article IX, 4 of the Florida Constitution)

29. Before the adoption of HB 7069, proposed charter schools submitted an application to the district school board, and if the district school board approved an application, the applicants would form a nonprofit organization in accordance with section 1002.33(12)(i), Fla. Stat. (2018). The unelected governing board of the charter applicant would then negotiate terms, conditions, and expectations with the district school board. The applicants and the district school board would then negotiate and agree upon a written contractual agreement or charter school contract.

30. HB 7069 amends § 1002.33(7), Fla. Stat. (2016) to require that district school boards enter into a "standard charter contract" with charter school operators without regard to any special circumstances that may exist within the school district or with regard to the educational program to be operated by the charter school.

31. As a result of HB 7069, § 1002.33(7), Fla. Stat. (2018) now provides that "[a]ny term or condition of a proposed charter contract that differs from the standard charter contract adopted by rule of the State Board of Education shall be presumed a limitation on charter school flexibility."

32. Thus, HB 7069, on its face attempts to elevate charter school "flexibility" over the constitutional control and supervision granted to local school districts elected representatives.

33. This new language is coupled with the provision that district school boards "may not impose unreasonable rules or regulations that violate the intent of giving charter schools greater flexibility to meet educational goals." § 1002.33(7), Fla. Stat. (2017). Therefore, any attempt by a district school board to modify the "standard charter contract" is presumed to violate the statutory provision thereby effectively supplanting the district school board's constitutional supervision and control with "flexibility" for charter schools.

34. Article IX, § 4(b) of the Florida Constitution says "[t]he school board shall operate, control and supervise all free public schools within the school district and determine the rate of school district taxes within the limits prescribed herein." Charter schools are public schools in Florida. § 1002.33, Fla. Stat. (2018); 1000.04(1), Fla. Stat. (2018). The Constitution does not grant "flexibility" over local control to unelected charter schools boards.

35. Locally elected district school boards cannot be legislatively divested of their authority under Article IX, § 4(b) of the Florida Constitution, to "operate, control and supervise all free public schools within the school district." Further, any attempt by a State regulatory agency to "save the statute" by giving authority back to the local government would violate the statutory duty of the agency to determine the substance of the contract.

36. The Legislature does not have the authority to take away locally elected district school boards constitutional right to substantial input, discretion, and authority to control and supervise public schools, including charter schools.

37. District School Boards have that constitutional right and duty to control and supervise charter public schools in their districts through the determination and negotiation, at arms' length, of contracts with charter schools.

38. By mandating a contract, giving charter schools "flexibility," the terms of which are not determined or negotiated by the local district school board, HB 7069 divests locally elected district school boards of the authority conferred upon them in violation of Article IX, § 4 of the Florida Constitution. *See, e.g., Bush v. Holmes*, 919 So. 2d 392; and, *Duval County Sch. Bd. v. State, Bd. of Educ.*, 998 So. 2d 641.

39. The undersigned has consulted with counsel for Plaintiffs and Defendants, neither of whom object to this motion.

PRAYER FOR RELIEF

WHEREFORE, The School Board of Collier County, Florida respectfully request that this Court:

(1) Grant its Motion to Intervene in this action as a party Plaintiff on Counts II and IV;

(2) Declare the two provisions of HB 7069 identified above to be unconstitutional under Article IX, § 1 and § 4, of the Florida Constitution;

(3) Enjoin Defendants, and all persons and entities acting under their direction or in concert with them, from taking any measures to implement these aspects of HB 7069 or portions of Chapter 2017-116, Laws of Florida;

(4) And, order such other and further relief as this Court may deem appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 15, 2018, this document was electronically transmitted to the Clerk of Court via the Florida Courts E-Filing Portal ("FCEP") for filing and a true and correct copy of the foregoing was served upon all counsel of record or *pro se* parties identified in the following Service List in the manner specified below.

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