

IN THE SUPREME COURT OF FLORIDA

SCHOOL BOARD OF OSCEOLA  
COUNTY,

Petitioner,

FLA. SUP. CT. CASE NO. SC05-1273  
5th DCA CASE NO.: 5D04-1140

v.

UCP OF CENTRAL FLORIDA,

Respondent.

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**PETITIONER, THE SCHOOL BOARD OF OSCEOLA COUNTY'S,  
JURISDICTIONAL BRIEF**

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On Review from the District Court of Appeal of the State of Florida,  
Fifth District

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## **STATEMENT OF THE CASE AND FACTS**

The School Board of Osceola County (hereinafter “OCSB”) seeks review of the opinion of the Fifth District Court of Appeal affirming the Florida State Board of Education’s (hereinafter “State Board”) order that directed OCSB to approve the charter school application submitted by UCP of Central Florida (hereinafter “UCP”).

Following the procedures established in § 1002.33(6), Florida Statutes (2003), UCP applied to OCSB to open a charter school. OCSB denied UCP’s charter application for the following two reasons: (1) “it is neither fiscally responsible nor in the best interest of students to approve any more charter applications under the current capital funding model,” and (2) UCP will pay for capital expenditures, e.g., facility lease payments, out of operating funds, which will be detrimental to UCP’s students.

UCP appealed from OCSB’s denial of its charter school application. The case was then heard by the Charter School Appeals Commission (hereinafter “Commission”), which operates pursuant to § 1002.33(6)(e), Florida Statutes (2003), and provides recommendations to the State Board on appeals by applicants whose charters have been denied by a school board. The Commission recommended that the State Board reject OCSB’s decision to deny UCP’s charter application. The primary reason for the recommendation was that OCSB’s basis of denial, inadequate school

funding, was not statutory good cause for denial of the charter application under § 1002.33(6)(b)3, Florida Statutes (2003). The Commission did not address the merits or accuracy of OCSB’s denial of the application based upon insufficient funding.

The matter thereafter proceeded to the State Board, which approved the recommendation of the Commission and rejected OCSB’s denial of UCP’s application. In its decision, the State Board did not address the merits or accuracy of OCSB’s reason for the denial of UCP’s charter and merely voted to reject OCSB’s grounds for denial of the application. OCSB appealed to the Fifth District Court of Appeal.<sup>1</sup>

The Fifth District Court found “[t]he evidence demonstrates that at the time UCP’s application was denied, Osceola County had received the lowest state operational funding of any school district in the state, ranking 67 out of 67 school districts,” and that the Osceola School District is “woefully underfunded.” *School Board of Osceola County v. UCP of Central Florida*, No. 5D04-1140, 2005 WL

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<sup>1</sup> In the Fifth District Court, the case traveled with *School Board of Osceola County v. Academies of Excellence, Inc. d/b/a Osceola County Academies of Excellence Middle School, et al.*, case number 5D04-1141, which was a consolidated appeal from two similar orders issued by the State Board of Education. As of the date of service of this brief, no decision has been rendered by the Fifth District Court in *Academies*, presumably because *Academies* presents an additional question involving the time within which a charter school applicant must appeal from a school board’s denial of its charter application, that is not presented here.

924317 (Fla. 5<sup>th</sup> DCA Apr. 22, 2005) (Appendix pp. 9-10, 11) Further, the court recognized that “[i]nadequate funding is a serious issue that continues to plague Florida school districts.” *Id.* (Appendix p. 11). Despite those telling findings, the court opined that inadequate capital funding was not good cause for the denial of a charter school application, and therefore, good cause did not exist for OCSB to deny UCP’s charter school application. Accordingly, the Fifth District Court affirmed the State Board’s order directing OCSB to approve UCP’s charter school application. OCSB now ask asks this Court to exercise its discretionary jurisdiction to review the Fifth District Court’s decision.

### **SUMMARY OF THE ARGUMENT**

The Fifth District Court of Appeal held that inadequate capital funding is not good cause for a school board’s denial of a charter application, and upheld the State Board’s decision directing OCSB to approve UCP’s charter. The Fifth District Court’s decision expressly affects a class of constitutional officers because school board members are constitutional officers, *see Kane v. Robbins*, 556 So. 2d 1381 (Fla. 1990), and the decision undermines the authority of all school boards across the State of Florida to fulfill their mandate under Article IX, § 4(b) of the Florida Constitution to “operate and control” all of the free public schools within their respective districts. OCSB contends that the Fifth District Court’s decision strips local school boards of

their constitutional authority to “control” the free public schools within their respective school districts and improperly transfers said authority to the State Board, because under the decision, school boards are forced to approve charter applications if the State Board directs that they do so. Such action is equivalent to directing a school board to open a new school in violation of Article IX of the Florida Constitution. *See Jones v. Braxton*, 379 So. 2d 115, 118 (Fla. 1<sup>st</sup> DCA 1979) (the state may not, under the Florida Constitution, order a school board to build or open a school). Because the power granted to the State Board by the Fifth District Court in this case infringes on the power of school board members across the state to fulfill their constitutional mandate to operate and control the schools within their respective districts, this Court should accept jurisdiction over this case.

### **JURISDICTIONAL STATEMENT**

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly affects a class of constitutional officers. Art V, § 3(b)(3), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(iii).

### **ARGUMENT**

#### **THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL EXPRESSLY AFFECTS A CLASS OF CONSTITUTIONAL OFFICERS.**

Article V, § 3(b)(3), of the Florida Constitution allows this Court to take

jurisdiction of a cause in which the district court opinion expressly affects a class of constitutional officers. Art. V, § 3(b)(3), Fla. Const. In order to vest this Court with jurisdiction under this provision, the lower court's decision must directly, and in some way, exclusively, affect the duties, powers, validity, formation, termination, or regulation of a particular class of such officers. *Spradley v. State*, 293 So. 2d 697, 701 (Fla. 1974). Additionally, the decision must be one which does more than simply modify, construe, or add to case law. *Id.* As indicated above, school board members are constitutional officers. *See Kane*, 556 So. 2d 1381. The Fifth District Court's decision expressly affects this class of constitutional officers because it orders that the State Board of Education has the authority to direct a school board to open a school even though the school board has determined, through the exercise of its collective experience and independent judgment under the authority granted by Article IX, § 4(b) of the Florida Constitution, that it would be contrary to its students' interests to do so. There are no reported decisions addressing this issue, other than the Fifth District Court's decision in this case, and therefore, by accepting jurisdiction, this Court would create case law defining the constitutional parameters of the authority of the State Board and local school boards regarding the creation of charter schools under §1002.33, Florida Statutes (2003).

In the Fifth District Court's decision, in determining what constitutes "good

cause,” the district court overlooked Article IX, § 4(b) of the Florida Constitution, which, without any language of qualification, empowers all school boards with the authority and duty to “operate, control, and supervise all free public schools,” including charter schools, “within their respective districts.”<sup>2</sup> Art. IX, § 4(b), Fla. Const. When interpreting a provision in the Florida Constitution, it is appropriate to refer to the dictionary to discern the plain meaning of a term. *Holley v. Adams*, 238 So. 2d 401, 405 (Fla. 1970). The word “control” is defined in relevant part as: “To exercise restraining or directing influence over . . . to have power over. . . an act or instance of controlling . . . power or authority to guide or manage.” Webster’s Collegiate Dictionary (10<sup>th</sup> ed.). The district court’s decision forcing OCSB to approve UCP’s charter application is equivalent to directing OCSB to open UCP’s charter school. Thus, under the plain meaning of the word “control,” the authority to direct the opening of a school is “control of the school.” The Fifth District Court’s decision empowering the State Board with the ability to direct a school board to open a school, therefore, confers authority upon the State Board that exceeds the authority granted to the State Board under Article IX, § 2 of the Florida Constitution, and in doing so, violates the school board’s constitutional right and duty under Article IX, § 4(b) to control the school. The right to control the schools conferred by Article IX,

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<sup>2</sup> Charter schools are public schools. § 1002.33(1), Fla. Stat. (2003).

§ 4(b) is self-executing, as there is no language in the Florida Constitution calling for any further action in the legislature to effectuate this power. *Florida Dep't of Ed. v. Glasser*, 622 So. 2d 944, 946-47 (Fla. 1993) (holding that constitutional language “shall . . . be authorized by law” makes the provision not self-executing). *Cf.* Art. IX, § 2, Fla. Const. (State Board of Education supervises the public education system as provided by law); *Jones*, 379 So. 2d 115 (holding that forcing a school board to build a new school violates the constitutional provision placing in school boards control of all public schools).

OCSB utilized its constitutional authority to determine that good cause exists for the denial of UCP's charter school application. Specifically, OCSB determined that approval of UCP's charter application would not be in the best interests of the Osceola School District students because: (1) approval of the charter application will further dilute the already inadequate capital funding of all new and existing charter schools under the current funding scheme, and (2) UCP's intent to fund capital expenditures from operating funds would further reduce the already low operating budgets of new and existing charter schools in the county, resulting in each student receiving less of an education.

It has been held that “when a public body exercises its discretionary powers within the ambit of the laws delegated to it, it is not for the courts to determine

whether the action of that body is wise, economical or advantageous.” *Jones*, 379 So. 2d at 119. The Fifth District Court recognized that “at the time UCP’s application was denied, Osceola County had received the lowest state operational funding of any school district in the state, ranking 67 out of 67 school districts,” and that the Osceola School District is “woefully underfunded.” *School Board of Osceola County v. UCP of Central Florida*, No. 5D04-1140, 2005 WL 924317 (Fla. 5<sup>th</sup> DCA Apr. 22, 2005) (Appendix pp. 9-10, 11). The court also recognized that “[i]nadequate funding is a serious issue that continues to plague Florida school districts.” *Id.* (Appendix p. 11). Nevertheless, the district court concluded that the denial of a charter school application based upon inadequate capital funding is not a legally sufficient reason.

The court in essence held that school board members (who are constitutional officers) comprising a school board should ignore the fact that a charter applicant has absolutely no source of capital funding, and approve a charter application if other statutory prerequisites have been met. That holding forces the constitutional officers who comprise the school boards to disregard their statutory obligations under § 1002.33(5), (6), (7), & (8), Florida Statutes, to determine the financial suitability of charter schools within their districts, and their statutory obligations under § 1002.33(2)(a), Florida Statutes, to promote financial efficiency. The Fifth District Court’s decision thus directly destroys the power and ability of all school board

members and school boards throughout the State of Florida to exercise their constitutional powers under Article IX, and prohibits them as a class from using their knowledge and experience to determine that it will be against their students' interest, and in violation of their statutory obligations to ensure financial suitability and efficiency, to open the school because of the school's lack of funding.

OCSB contends that this matter is of great public importance because, as the Fifth District Court opined, “[i]nadequate funding is a serious issue that continues to plague Florida school districts.” *School Board of Osceola County v. UCP of Central Florida*, No. 5D04-1140, 2005 WL 924317 (Fla. 5<sup>th</sup> DCA Apr. 22, 2005) (Appendix p. 11). Directing school boards to open charter schools where those charter school applicants have no source of capital funding and instead intend to fund their capital expenditures with operational funds, i.e., funds intended to pay instructional salaries, purchase instructional materials, and cover the other expenses needed to operate a school, strips school boards of their constitutional rights and duties in this regard, and exacerbates the already “serious issue” of underfunded schools.

### **CONCLUSION**

Based upon the foregoing, this Court should exercise its discretion to accept jurisdiction over this matter of great public importance which expressly affects school board members across the state, and consider the merits of OCSB's argument.

## **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this \_\_\_\_\_ day of July, 2005, a true and correct copy of the foregoing was furnished via Federal Express to: **Stacey K. Sutton, Esquire**, Attorney for Appellee, 222 Lakeview Avenue, Suite 1400, West Palm Beach, Florida 33402-0150; and **Jennifer Blohm, Esquire**, Attorney for Amicus Curiae, 2544 Blirstone Pines Drive, Tallahassee, Florida 32301.

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## **CERTIFICATE OF COMPLIANCE**

**I HEREBY CERTIFY** that this brief was prepared using Times New Roman 14-point font and that this brief complies with all requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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