

IN THE FIRST DISTRICT COURT OF APPEAL  
FOR THE STATE OF FLORIDA

RON DESANTIS, in his official capacity as  
Governor of the State of Florida; RICHARD  
CORCORAN, in his official capacity as  
Florida Commissioner of Education; FLORIDA  
DEPARTMENT OF EDUCATION; and  
FLORIDA BOARD OF EDUCATION,

Defendant–Appellants,

Case No. 1D20-2470

v.

FLORIDA EDUCATION ASSOCIATION;  
STEFANIE BETH MILLER; LADARA ROYAL;  
MINDY FESTGE; VICTORIA DUBLINO-HENJES;  
and ANDRES HENJES,

Plaintiff–Appellees.

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**SUGGESTION THAT ORDER BE CERTIFIED AS REQUIRING  
IMMEDIATE RESOLUTION BY THE FLORIDA SUPREME COURT**

Appellant–Defendants, Governor Ron DeSantis, Commissioner Richard Corcoran, Florida Department of Education (“DOE”), and Florida Board of Education (collectively, the “State Defendants”), move this Court to certify the order below as requiring immediate resolution by the Florida Supreme Court. *See Fla. R. App. P. 9.125.*

## ARGUMENT

Florida’s Constitution permits pass-through jurisdiction in cases that “require immediate resolution by the supreme court.” Art. V, § 3(b)(5), Fla. Const. Typical pass-through appeals involve injunctions and other time-sensitive disputes over issues of great public importance that affect Floridians on a statewide basis. *State v. Adkins*, 71 So. 3d 184, 185-86 (Fla. 2d DCA 2011). This appeal meets both requirements.

First, an issue of great public importance here is whether Emergency Order 2020-EO-06, issued by the Department of Education in response to the COVID-19 pandemic to address school-reopening plans for Florida’s 2.8 million public-school students (“the Emergency Order”), complies with the Florida Constitution.

The State Board of Education has constitutional authority to supervise “the system of free public education,” to ensure that students are provided with access to a “uniform, efficient, safe, secure, and high quality system of free public schools.” Art. IX, §§ 1(a), 2, Fla. Const.; *see also Sch. Bd. of Collier Cty. v. Fla. Dep’t of Educ.*, 279 So. 3d 281, 292 (Fla. 1st DCA 2019) (“The Florida Constitution therefore creates a hierarchy under which a school board has local control, but the State Board supervises the system as a whole. This broader supervisory authority may at times infringe on a school board’s local powers, but such infringement is expressly contemplated—and in fact encouraged by the very nature of supervision—by the

Florida Constitution.” (quoting *Sch. Bd. of Palm Beach Cty. v. Fla. Charter Educ. Found. Inc.*, 213 So. 3d 356, 360 (Fla. 4th DCA 2017)), *review denied*, No. SC19-1649, 2020 WL 1685138 (Fla. Apr. 7, 2020). And Article IV, section 1(a) of the Florida Constitution vests the Governor with “[t]he supreme executive power.” Under this broad grant of constitutional authority the Governor must act for the benefit of the entire State of Florida. These powers are critical during the COVID-19 pandemic, because “[t]he Governor is responsible for meeting the dangers presented to this state and its people by emergencies.” Section 252.36(1)(a), Florida Statutes.

Florida law allocates funding to school districts based, in part, on the number of students receiving instruction “in a standard school” within each district. §§ 1011.61(1), 1011.62(1), Fla. Stat. Student membership surveys are conducted four times each year for this purpose. Fla. Admin. Code R. 6A-1.0451.

The State Defendants, cognizant of the financial impact a massive reduction to in-person attendance would have on school districts, sought to provide financial continuity to school districts to support Florida’s “uniform, efficient, safe, secure, and high quality system of free public schools.” Art. IX, §§ 1(a), 2, Fla. Const. Therefore, under his delegated powers, the Commissioner of Education issued the Emergency Order on July 6, 2020. The Emergency Order provides a framework for Florida’s entire K–12 education system by requiring local school districts to submit

local reopening plans to the DOE. This plan requires districts to describe the full array of educational services required by law, especially for vulnerable populations whose education and welfare is most threatened by the pandemic. The Emergency Order also provides a funding guarantee for districts that submit approved plans and strikes a balance between encouraging in-person instruction where feasible in the judgment of local school boards, subject to state and local public-health guidance, and providing additional funding for virtual or remote instruction.

The circuit court's order on appeal improperly rewrote the Emergency Order, striking the requirement that local districts have a reopening plan as a condition for receiving additional state funding and flexibility. As rewritten by the Court's Order, local districts are no longer even required to have a reopening plan, are not required to open schools in August, are not required to provide the full panoply of educational services required by law, and are not required to have a plan to offer an option for in-person instruction. The circuit court's blue-penciled version of the Emergency Order provides guaranteed additional funding and flexibility without the Emergency Order's corresponding requirement for an appropriate plan to provide appropriate services.

This appeal is of great public importance because the circuit court's order on appeal impairs the authority of the Governor to manage state affairs during an emergency, and it impairs the ability of the State Board of Education to supervise

the statewide system of public education. Education is a paramount duty of the State. But the circuit court's order completely disregards the constitutional framework for the management of our system of education, substituting its own judgment for that of the Governor and the Department of Education. The circuit court's order improperly deprives parents and vulnerable students of the protections provided through the Emergency Order.

The circuit court's injunction order thus impacts Florida's public school students on a statewide basis and improperly intrudes into a public-policy decision of the executive branch made in the context of a global public-health emergency.

Second, the issue requires immediate resolution by the Florida Supreme Court because the school year is already underway, with 711,000 students already attending brick-and-mortar schools. Without a definitive and immediate resolution by the Florida Supreme Court, students, teachers, parents, and school boards will be mired in uncertainty. For example, tens of thousands of Florida families who are not parties to this case may need to quickly line up daycare, renegotiate work schedules, and alter their daily lives while waiting for a final ruling.

If school districts rely on the judicially rewritten Emergency Order, and the Emergency Order is later reinstated on appeal, then school districts could face significant financial consequences because the additional financial benefits provided under the Emergency Order were contingent upon a local district's following an

approved reopening plan. And the circuit court's order excised the requirement for such a plan altogether. Having a definitive state-wide determination on the validity of the Emergency Order well before the October student membership survey, as required by Section 1011.62(1) and Rule 6A-1.0451, would provide certainty to all education stakeholders.

Accordingly, this appeal concerns an issue of great public importance: the authority of the Governor and of the DOE to establish policy about reopening Florida's public schools in the context of the COVID-19 pandemic. And it requires an immediate, definitive, and final state-wide resolution by the Florida Supreme Court so that Florida's public-school students and their families can begin the 2020-2021 academic year with certainty and stability.

### **CERTIFICATION**

I express a belief, based on a reasoned and studied professional judgment, that this appeal requires immediate resolution by the Supreme Court and is of great public importance.

August 27, 2020

Respectfully submitted,

/s/ David M. Wells

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on August 27, 2020 by email through the Florida Courts E-Filing Portal to the following:

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