

No. 14-12506

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

KIM COOK, *et al.*,

Plaintiffs-Appellants,

v.

PAM STEWART, in her official capacity as
Florida Commissioner of Education, *et al.*,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

**BRIEF FOR AMICI CURIAE
THE FLORIDA SCHOOL BOARDS ASSOCIATION AND
FLORIDA ASSOCIATION OF SCHOOL ADMINISTRATORS
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to Eleventh Circuit Rules 26.1-1, 26.1-2, and 26.1-3, counsel for Appellants certify that the following is a complete list of the persons and entities that have an interest in the outcome of this case:

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Amici Curiae submit the following corporate disclosure statements:

The Florida School Boards Association, Inc., is a non-profit corporation organized under the laws of the State of Florida. It has no parent corporation, and as it has no stock, no publicly held company owns 10% or more of its stock.

The Florida Association of School Administrators, Inc., is a non-profit corporation organized under the laws of the State of Florida. It has no parent corporation, and as it has no stock, no publicly held company owns 10% or more of its stock.

STATEMENT OF THE ISSUE

Do state-compelled teacher evaluation policies that base forty to fifty percent of a teacher's assessment on the standardized test scores of students she does not teach (either in the tested subject or at all) rationally further a legitimate state objective?

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STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE¹

Amici curiae the Florida School Boards Association, Inc. (“FSBA”) and the Florida Association of School Administrators, Inc. (“FASA”) are professional organizations dedicated to advancing public education in Florida through the development of effective educational leadership.

The FSBA is a nonprofit corporation that has represented all school board members in Florida since 1930. The FSBA speaks for Florida school districts and works to improve education in Florida. It strives to increase student achievement through advocacy for public education and the development of effective school board leadership.

The FASA is a nonprofit corporation that represents the full range of public school administrators in Florida, including principals, assistant principals, instructional administrators, and support administrators. It seeks to improve public education through the organized and unified efforts of school administrators and to lend assistance to local schools and organizations through communication, training, and direct support.

Together, the FSBA and FASA (“Amici”) represent the education leaders responsible for improving student learning growth in public schools across the

¹ No counsel for a party authored this brief in whole or part. No party, and no person other than the Florida School Boards Association, Inc., the Florida Association of School Administrators, Inc., or their counsel, contributed money toward the preparation or submission of this brief.

state of Florida. These leaders support utilizing valid assessments of teacher performance based in substantial part on student performance, including as measured by standardized tests. Indeed, Amici's members need such tools to effectively manage their schools and school districts. Consequently, Amici have an extraordinary interest in the teacher evaluation issues at the heart of this appeal.

Amici's members also have first-hand experience implementing Florida's Student Success Act under the guidance and direction of the state Department of Education. That experience extends to developing, submitting, and applying teacher evaluation policies in light of the Act's requirements, as interpreted by the Department. Those teacher evaluation policies have included the use of a value-added model developed by the state of Florida and based upon student performance on the Florida Comprehensive Assessment Test (FCAT). Under the guidance and direction of the Department, for nearly all of Amici's members, those teacher evaluation policies use the FCAT-based value-added model to evaluate the performance of teachers who do not teach students in grades or subjects tested by the FCAT. In fact, the FCAT-based value-added model often accounts for forty to fifty percent of such teachers' individual performance assessment.

Amici submit this brief because the above-described evaluation policies—adopted at the behest of the state and similar in all relevant respects to those challenged here—are deeply problematic. The use of the FCAT-based value-

added model to evaluate non-FCAT teachers is deeply irrational, as is weighting that variable to be half or nearly half of such teachers' evaluations. The resulting flawed evaluation policies can produce inaccurate ratings, reduce instructional quality, and harm Florida students. Amici seek a reversal of the district court's flawed decision in the hope that it will cause the state Department of Education to reconsider its implementation of the Student Success Act, allowing Amici's members to implement valid evaluation policies that improve instructional quality and help students.

Pursuant to Fed. R. App. P. 29(a), the FSBA and FASA file this brief with the consent of all parties.

SUMMARY OF THE ARGUMENT

The challenged teacher evaluation policies, and similar policies in many other Florida districts, are irrational and harm Florida students. The policies are rooted in an unfunded, unachievable mandate imposed by the Student Success Act on Florida school districts to develop testing-based assessments for subjects and grades not covered by the FCAT. When school districts predictably were unable to develop such assessments in the timeframes required by the Act, the Florida Department of Education required them to adopt the flawed evaluation policies, which use the state's FCAT-based value-added model to measure teachers who teach grades or subjects not covered by the FCAT.

There is no rational basis for using the FCAT-based value-added model to evaluate non-FCAT teachers with the goal of improving instructional quality. The measure bears no relationship to teachers' principal duty: to teach their assigned curriculum to students in their class. Moreover, it is a deeply flawed and irrational measure of teachers' out-of-the-classroom impact.

There would be no rational basis for the evaluation policies even if one made the questionable assumptions that it is desirable to evaluate teachers based on how they impact learning growth in grades or subjects they do not teach and that the FCAT-based value-added model is a reliable and accurate measure of any such impact. Even if those assumptions were rational, no rational policymaker would make such a measurement forty to fifty percent of a teacher's evaluation, as the state has required Florida school districts to do.

The flawed evaluation policies are not just deeply irrational—they are deeply harmful to Florida students. They force districts to make a host of important personnel decisions based upon an invalid and arbitrary metric. They make it harder to recruit and retain good teachers in underperforming schools—especially those specialized in early childhood education, who will almost inevitably receive negative performance reviews if they go to a struggling school. Conversely, they make it harder to identify and remove bad teachers from high-performing schools because their poor performance is masked by the school's

strong metrics. The challenged policies have many additional negative effects, warping incentives for teachers and administrators, damaging morale, and threatening the efficacy of other performance measures.

Amici's members strongly support, and indeed need, accurate measures of teacher performance keyed to student growth. The challenged policies, like many others in the state adopted under the guidance and direction of the state Department of Education, do not accurately measure teacher performance. They are unconstitutionally irrational and arbitrary, and hurt Florida schools and students.

ARGUMENT

FLORIDA HAS FORCED SCHOOL DISTRICTS TO ADOPT IRRATIONAL TEACHER EVALUATION POLICIES THAT DO NOT FURTHER A LEGITIMATE STATE OBJECTIVE AND WEAKEN FLORIDA SCHOOLS

A. The Student Success Act Imposed An Unfunded, Unrealistic Mandate On School Districts

In 2010, the state of Florida obtained a \$400 million award from the federal government's "Race to the Top" competition by promising to reform the state's teacher evaluation system to focus primarily on student performance, among other projects. In its application for the award, the state explained that past reform efforts had faltered because school districts "lack comparable and timely measures of student performance for individual teachers." Florida's Race to the Top Application for Initial Funding at 18 (Jan. 19. 2010), *available at*

<http://www2.ed.gov/programs/racetothetop/phase2-applications/florida.pdf>. To

remedy this problem, the state promised to “[s]ecure a robust measure of student growth associated with the state assessment” and to “provide [school districts] with models for measuring growth for other core courses.” *Id.*

Following the Race to the Top award, the 2011 Student Success Act overhauled the evaluation, compensation, and employment of Florida teachers and administrators. It required that forty to fifty percent of every teacher’s evaluation be based on “student learning growth.” Fla. Stat. § 1012.34(3)(a)1.a (2011). It then mandated that “student learning growth” for every teacher be based upon either (1) a state formula using scores on the Florida Comprehensive Assessment Test (FCAT) or (2) an “equally appropriate formula” or other equivalent plan adopted by a school district. *See id.* § 1012.34(3)(a)1, (7). The statute required the state to develop the formula based on the FCAT in less than three months, but set no deadline for it to develop formulas or models to evaluate performance in subjects or grades not covered by the FCAT. *See id.* § 1012.34(7)(a), (b). Because the FCAT only tests reading for grades 3 through 10 and math for grades 3 through 8, the Act thus effectively required school districts to either develop assessments for the large proportion of their teachers who taught non-FCAT grades or subjects or evaluate these teachers using the FCAT-based value-added model.

This mandate on school districts was extraordinary. Developing subject-specific tests and student-learning-growth models requires time, expertise, and

money that most local districts simply do not have. *See* Doc. 86, Ex. 6 (Escambia County Joint Stipulation) ¶ 9; Ex. 7 (Hernando County Joint Stipulation) ¶ R; *see also* Ex. 5 (Alachua County Resp. To Request For Admissions) ¶ 9. For example, the State has budgeted over \$350 million to administer, develop, score, and report the FCAT itself, *see* Florida Accountability Contract Tracking System, <https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=480000&ContractId=09658>, and spent \$4 million to develop its associated value-added model, *see* <https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=480000&ContractId=11812>. Indeed, the only county-based school district that developed comprehensive independent criteria for evaluating non-FCAT teachers received a \$100 million grant from the Gates Foundation to do so. *See* Doc. 86, Ex. 1 (Copa Dep. 30(b)(6)) at 30:10-15, 31:16-32:3, 32:10-12, 64:20-65:8, 89:21-90:5.

School districts' inability to develop their own assessment criteria was foreseeable: historically, local school districts have struggled to create their own tests. Since 1999, Florida law has required local school districts to develop assessment procedures for teachers "primarily based on the performance of students assigned to their classrooms." Ch. 99-398, § 57, at 72, Laws of Fla. But over the next decade, most school districts did not develop their own assessments, and those that did were not confident of their validity. *See* SB 736 Bill Analysis And Fiscal Impact Statement 5 (Mar. 24, 2011). The State understood this

problem—and indeed identified it as a key challenge to the federal government—but the Act nonetheless required school districts to implement alternative testing-based assessments or use FCAT-based evaluation.

B. The Department of Education Required School Districts To Adopt Irrational FCAT-Based Evaluation Systems When They Could Not Develop Equally Appropriate Measures Of Student Growth

The Department of Education’s implementation of the Act has effectively forced local school districts to adopt irrational teacher evaluation systems. The Department has provided neither the support necessary to comply with the mandate to develop alternative assessments nor the flexibility to utilize sound teacher evaluation systems. As a result, school districts incapable of developing their own “equally appropriate formula[s]” for non-FCAT grades and subjects have been forced to evaluate teachers using the value-added model based upon FCAT scores for subjects or students the teachers do not teach—a deeply flawed approach.

The Department could have avoided this outcome. Under the Act, it was supposed to “identify methods to assist and support districts” in developing assessment systems, and to “provide models for measuring student learning growth which school districts may adopt.” Fla. Stat. §§ 1008.22(8)(c), 1012.34(7)(b) (2011). Moreover, it could have interpreted some provisions in the Act to offer districts the flexibility to use alternative evaluation systems for teachers who did not teach FCAT grades or subjects, even when they could not develop “equally

appropriate formulas.” *See id.* § 1012.34(7)(b), (e). The Department, however, has offered no “equally appropriate” models, provided inadequate technical assistance, and largely failed to offer districts the flexibility to use sound teacher evaluation systems unrelated to the FCAT that achieved the statute’s goals.

The Department’s approach has been particularly unworkable in light of the aggressive time frames imposed by the Student Success Act. The law set a deadline of three years to fully implement local assessment systems. *See id.* §§ 1008.22(8)(b), 1012.34(7)(b). But it required forty to fifty percent of evaluations to be based on testing data the very next school year after the Act was passed. *See id.* § 1012.34(3)(a)1. Thus, even if it were possible for districts to develop their own equally appropriate formula in the three years provided by the Act, the Department’s binary approach forced districts to use FCAT scores for non-FCAT teachers in the interim. The districts forced into adopting such irrational policies include the individual school district defendants in this case. *See, e.g.*, Doc. 86, Ex. 6 (Escambia County Joint Stipulation) ¶ 6 (“The Escambia Board included student learning growth in the manner and to the degree it did because the Escambia Board understood it was required to do so to comply with the 2011 Act, as interpreted and overseen by the FL DOE.”); *see also* Ex. 7 (Hernando County Joint Stipulation) ¶ O; Ex. 4 (Pls.’ Request For Admissions) ¶ 6; Ex. 5 (Alachua County Resp. To Request For Admissions) ¶ 6.

Based on the record before the Court, there is every reason to expect that the Department's inflexible approach will force school districts to use irrational teacher evaluation systems for the foreseeable future. Although the original Act required school districts to implement local assessment systems by the 2014-2015 school year, and the 2013 amendments to the Act purported to prohibit the evaluation of non-FCAT teachers based on the scores of students they do not teach, *see* Fla. Stat. § 1012.3401(1) (2014), none of the defendant school districts has gained Department of Education approval for use of an alternative evaluation system. *See* Doc. 86, Ex. 3 (Pls.' Interrog. Resp. at 29, 33); Ex. 9 (Boehme Dep.) at 13:16-21. Nor should this Court expect them or most other districts to do so, as the State has failed to offer districts the resources and support they need to develop an "equally appropriate" formula for the many non-FCAT subjects and grade levels they teach. This failure comes even though the state has long recognized that school districts need such assistance and repeatedly promised to provide it. *See, e.g.*, Florida Race to the Top Application at 18; Fla. Stat. §§ 1008.22(8)(c), 1012.34(7)(b) (2011). Consequently, barring reversal of the district court's decision, many Florida school districts will likely use FCAT scores to evaluate non-FCAT teachers for the foreseeable future.

C. There Is No Rational Basis For Using The FCAT-Based Value-Added Model To Evaluate Non-FCAT Teachers

The state-compelled teacher evaluation policies at issue in this litigation do not rationally further the state's interest in "increasing student learning growth by improving the quality of instructional ... services in the public schools of the state." Fla. Stat. § 1012.34(1)(a) (2011). Specifically, the policies' use of the state's FCAT-based value-added model to evaluate teachers who do not teach grades or subjects tested by the FCAT is irrational. Of the many possible factors that could be used to evaluate teachers, no rational policymaker would choose to evaluate them based on either the test performance of students they do not teach or their students' test performance on subjects they do not teach. No rational policy maker would evaluate teachers on these bases for the simple reason that they have *nothing to do with the teacher's principal duty*: teaching students in his or her class the curriculum for that class.

Even if one wanted to evaluate teachers based upon how they impact test performance on subjects or by students they do not teach, the value-added model is a deeply flawed, irrational vehicle for doing so. Evaluating science, history, and art teachers on the value-added model derived from their students' performance on FCAT reading and math tests is irrational because the value-added model is designed to "isolate the impact of the [reading or math] teacher on th[os]e student[s'] learning." Doc. 86, Ex. 1 (Copa Dep. 30(b)(6)) at 21:21-25. In other

words, to the extent the state’s value-added model is effective, it should filter out the impact of the student’s non-reading or non-math teachers—so using it to evaluate those teachers makes no sense at all.

The challenged policies’ use of the value-added model to evaluate teachers who teach non-FCAT grades is even more deeply flawed. Those teachers are evaluated in large part by using the “school component” of the value-added model or its functional equivalent.² The school component is designed to capture a range of factors outside the control of individual math and reading teachers, including “principal leadership, ... socioeconomic disparities and other out-of-school factors that may affect learning, together with the average effectiveness of all the teachers in a given school.” Doc. 86, Ex. 13 (Haertel Expert Rep.) ¶ 13. Consequently, any impact of a single non-FCAT teacher on the test scores of students he or she did not teach would be lost amid the numerous other factors weighed in the school component.³

² Two of the challenged evaluation policies measure teachers in non-FCAT grades by using the average value-added scores for the entire school or district. Because the “teacher component” of those scores will necessarily average very close to zero, the teachers will effectively be evaluated based upon the “school component.” Doc. 86, Ex. 13 (Haertel Expert Rep.) ¶ 15 n.2

³ Additionally, by its very design the state’s value-added model rejects the premise that prior teachers will permanently impact student learning paths. *See* Doc. 86, Ex. 13C (Florida Value-Added Model Technical Report) at 71. Consequently, any supposed impact of non-FCAT teachers on FCAT test scores would result from some activity other than their classroom instruction.

Although rational basis review is a deferential standard, this Court's precedents permit and require it to reject the challenged policies' irrational use of such arbitrary criteria. In *Armstead v. Starkville Mun. Separate Sch. Dist.*, 461 F.2d 276 (5th Cir. 1972), this Court held that a school district's use of the Graduate Record Exam (GRE) to screen teachers for employment and re-employment was unconstitutional because it had "no reasonable function in the teacher selection process." *Id.* at 280. The Court found that the GRE "was not a reliable or valid measure for choosing good teachers" and "was not designed to and could not measure the competency of a teacher." *Id.* That reasoning applies at least as strongly to the challenged policies' use of the FCAT-based value-added model to evaluate teachers who do not teach FCAT subjects or grades. Similarly, in *Debra P. v. Turlington*, 644 F.2d 397 (5th Cir. 1981), this Court held that Florida violated due process by requiring students who successfully completed high school to pass a statewide standardized test before graduating. *Id.* at 404. The test violated due process because it was "fundamentally unfair in that it may have covered matters not taught in the schools of the state." *Id.* Evaluating teachers based on subjects or students they did not teach is no more rational or fair than evaluating students on content they were not taught. Under *Armstead* and *Debra P.*, the patent irrationality and unfairness of the challenged policies violates due process, even under a deferential standard of rational basis review.

D. There Is No Rational Basis For Weighting The FCAT Value-Added Model As Forty To Fifty Percent Of A Non-FCAT Teacher's Evaluation

The challenged policies do not rationally further a legitimate state objective even if one assumes—however implausibly—that there is a rational basis for evaluating teachers on the basis of students or subjects they do not teach. In other words, even if a rational policymaker found it useful to consider a teacher's impact on student learning growth outside the curriculum or students she is assigned to teach, and even if a rational policymaker considered the FCAT-based value-added model a reliable and valid measure of that effect, no rational policymaker would make that metric forty to fifty percent of a teacher's evaluation in order to improve student learning growth. Yet that is exactly what the Department of Education has forced Florida school districts to do.

Making the dominant factor in a teacher's evaluation a highly questionable measurement of a remote aspect of teacher performance defies common sense. It prevents schools from relying more heavily upon more relevant and reliable measures of teacher performance—such as measurements of student achievement in the grades and subjects they actually teach or observation-based evaluation of instructional practice. *See Fla. Stat. § 1012.34(3)(a)2, (3)(a)4, (7)(c) (2011)*. It leads to inaccurate assessments of teacher quality by assigning out-sized significance to arbitrary or at-best trivial measurements. And it produces absurd

results. For example, the lead plaintiff in this case, first-grade teacher Ms. Cook, was named “Teacher of the Year” for her school, but was not rated as “highly effective” due to the test performance of fourth- and fifth-grade students that she did not teach; indeed, she initially received a rating of “unsatisfactory.” *See* Doc. 55 (Alachua Answer) ¶¶ 6, 47-48, 54, 57; Doc. 86, Ex. 3 (Pls.’ Interrog. Resp.) at 2-5. Thus, the extraordinary weight assigned to the FCAT-based value-added model in the challenged policies simply does not rationally further a legitimate state objective.

Moreover, placing so much weight on the FCAT-based value added model when evaluating non-FCAT teachers violates equal protection by treating similarly situated teachers differently based on entirely arbitrary criteria. In *Debra P.*, this Court explained that, under an Equal Protection Clause analysis, if the challenged pre-diploma exam divided students into categories “without a rational relation to the purpose for which it was designed, then the Court would be compelled to find the test unconstitutional.” 644 F.2d at 406. Here, the dominant weight ascribed to the FCAT-based value-added model means that it effectively places non-FCAT teachers into categories (highly effective, effective, needs improvement, or unsatisfactory) “without a rational relation to the purpose for which [the value-added model] was designed.” *Id.* Indeed, there is no dispute that the value-added model was not designed to evaluate non-FCAT teachers—let alone to be the

dominant factor in their evaluation—and there is no rational basis to conclude it effectively evaluates non-FCAT teacher performance. Using it to label some non-FCAT teachers “highly effective” and others who are similarly situated “effective” is a wholly arbitrary classification that violates equal protection.

E. The State-Compelled Evaluation Of Non-FCAT Teachers Based Upon The FCAT-Based Value-Added Model Harms Student Learning Growth By Weakening Instructional Quality In Florida Schools.

The arbitrary and irrational evaluation system imposed by the Department of Education on Florida’s school districts, as reflected in the challenged policies, harms students by weakening instructional quality in Florida schools in several ways.

First, and most basically, the flawed evaluation system requires school districts to use invalid metrics in making a broad array of important personnel decisions. To be clear, Amici strongly support valid and reliable measurements of teacher quality and consider them indispensable tools, especially when they effectively identify bad teachers. However, using the FCAT-based value-added model as half or nearly half of non-FCAT teachers’ evaluations forces districts to make important personnel decisions based upon an invalid and arbitrary measure of teacher quality. The countless decisions negatively influenced by these evaluation systems will have lasting harmful consequences for Florida schools and students.

Second, the flawed evaluation systems make it more difficult to recruit and retain strong teachers at struggling schools. These schools already have difficulty attracting the highly-qualified teachers they need; indeed, the state has expressly recognized the problem. *See Fla. Stat. § 1012.2315(1)-(2) (2014)* (finding “disparities” of teaching quality and prohibiting school districts from assigning a higher than average percentage of new or low-performing teachers in underperforming schools). Using the FCAT-based value-added model to evaluate non-FCAT teachers makes this problem worse, especially with respect to teachers in early childhood education. Under current practice, teachers from kindergarten to third grade know that if they teach at an underperforming school, their “individual” performance assessment will be based in large part on the likely negative “school component” of the value-added model, which is based upon the FCAT performance of older children at the school. The prospect of receiving those negative ratings—which will not reflect how exceptional a teacher is in his or her classroom—will discourage highly-qualified teachers from working at the schools where they are most needed. It will also demoralize strong teachers at weak schools, likely compounding the already serious problem of attrition in such schools. *See Florida Senate Issue Brief 2010-313, Teacher Quality 6 (Oct. 2009)*.

Third, conversely, the flawed evaluation system makes it more difficult to identify and fire bad teachers in high-performing schools. Under current practice,

weak teachers in non-FCAT grades in high-performing schools will be evaluated in large part based upon the likely positive “school component” of the value-added model. That means that it will be harder for a successful magnet high school to fire a poor science teacher who only instructs eleventh and twelfth grade students, or for a strong elementary school to remove a first-grade teacher whose students are consistently behind in reading. Amici’s members have no interest in protecting bad teachers—but the flawed evaluation systems effectively do just that, putting Florida’s best schools at risk.

Finally, the flawed evaluation systems have countless other more subtle undercutting and destabilizing consequences. Non-reading and math teachers have the perverse incentive to teach to a test that is not part of their curriculum, detracting from core social studies, science, or arts content. Teachers in non-FCAT grades are incentivized under current practices to devote disproportionate energy to improving the performance of students they do not teach. Teachers are surely demoralized by having the dominant factor in their personal evaluation be an arbitrary measure they cannot meaningfully influence. More importantly, the resulting learned helplessness over their performance evaluation may, for some teachers, reduce the efficacy of the incentives posed by valid evaluation metrics. Additionally, some school administrators may be tempted to relax evaluation standards to ensure that good teachers do not receive bad evaluations on the basis

of statistical aberrations. *See* State’s SJ Br. 6, Doc. 84 at 6 n.6 (noting “school districts have the discretion to determine the levels of performance necessary for classification as highly effective, effective, needs improvement, or unsatisfactory”).⁴ Finally, the objectivity of the remaining qualitative measures may be undermined, as some school administrators may improperly try to “game” that variability to achieve what they see as the right outcome for their teachers.

* * * * *

Amici strongly support efforts to reform the evaluation of teachers, but such reforms must be well-researched and well-supported, implemented on an achievable time line, and accompanied by a sufficient provision of resources. As implemented by the Department of Education, the Student Success Act does none of these things. Using the FCAT-based value-added model as the dominant factor when evaluating non-FCAT teachers is inescapably irrational and will inflict significant harm on Florida students. For that reason, the challenged policies should be invalidated.

⁴ Relaxing evaluation standards may well avoid any harm to teachers from the flawed evaluation model’s arbitrariness, but it would impose significant harm on Florida’s students—the real party in interest here.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed and remanded with instructions to find the district evaluation policies, prepared under the guidance and direction of the Florida Department of Education, unconstitutional.

Respectfully submitted,

/s/ Alan Schoenfeld

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September 12, 2014

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Brief complies with the type limitations set forth in Fed. R. App. P. 32(a)(7)(B). The foregoing Brief was prepared using Microsoft Word 2010 and contains 4,233 words in 14-point proportionately spaced Times New Roman Font.

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of September, 2014, I have filed an original and six copies of the foregoing brief by overnight mail for filing with the Court, and that, on the same day, the brief was electronically uploaded on the Court's electronic filing website. I also certify that, on this same day, I have served a copy of the foregoing brief upon all counsel of record by placing a copy in the United States mail, first class postage prepaid and addressed as follows:

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