IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION

CASE NO. 2020-015211-CA-31

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

Plaintiffs,

vs.

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; FLORIDA BOARD OF EDUCATION; CARLOS GIMENEZ, in his official capacity as Mayor of Miami-Dade County,

Defendants.
_____/

MOTION TO DISMISS COMPLAINT

Defendants Ron DeSantis, in his official capacity as Governor of the State of Florida; Richard Corcoran, in his official capacity as Commissioner of Education; the Florida Department of Education (the "Department"); and the Florida Board of Education (collectively, the "Defendants"), move to dismiss the Complaint because (1) it fails to allege any specific, concrete injury suffered by any of the Plaintiffs at the hands of the Defendants, (2) there is no justiciable case or controversy, (3) it improperly asks the Court to entangle itself in a political question, and because (4) Plaintiffs seek relief which affects the interests of non-parties.

INTRODUCTION

This lawsuit is a misguided effort to obtain a judicial mandate that forbids any school in the state from providing in-person instruction to any student. Courts routinely reject such efforts

to obtain judicial intervention in matters of appropriations and public policy. Plaintiffs' Complaint is based on the flawed premise that the Florida Department of Education's Emergency Order 2020-EO-06 (the "Emergency Order") mandates the opposite approach: that all students and teachers in all of Florida's 67 county school districts must return to school in August. The Emergency Order does not mandate that all students and teachers return to school in person in August. Plaintiffs impermissibly ask this Court to substitute its judgment for the Department of Education and Florida's 67 school districts and replace the flexible, locally-focused Emergency Order with a state-wide judicial mandate enjoining all school districts from providing in-class instruction as an option for any students anywhere in the state.

Contemporaneously with the filing of this motion, Defendants also seek to dismiss this Complaint based upon the home rule privilege requiring any suit against the State of Florida Defendants to be brought in Leon County. *Bush v. State*, 945 So. 2d 1207, 1212 (Fla. 2006) ("[V]enue in civil actions brought against the state or one of its agencies or subdivisions, absent waiver or exception, properly lies in the county where the state, agency, or subdivision, maintains its principal headquarters."). Defendants respectfully request that the Court address the dismissal based on home venue privilege first, as the granting of dismissal on this basis would moot the additional grounds for dismissal raised in this motion.

BACKGROUND

The Complaint in this case is a catalogue of news reports, statistics of various origin, and public statements about the dangers of COVID-19. It concludes by asking the Court to give an advisory opinion on the Emergency Order and, critically, to prohibit the opening of all schools in Florida for any level of face-to-face instruction, for any students, anywhere across the state; require the development and implementation of an online instruction plan aimed at all children; require the appropriation of funds to make internet connectivity and computer devices available to all

students; and require that schools be equipped with a host of resources including personal protective equipment, hand-sanitizing stations, plexiglass shields, and more. Compl. at pp. 30-31. With respect to the Defendants, Plaintiffs' claims are based entirely on a misinterpretation of the Emergency Order. As discussed below, the Emergency Order contains no absolute, state-wide mandate requiring in-person classes without regard to health or safety. It is a lawful and reasonable exercise of executive discretion that provides a flexible approach to school reopening and funding that incentivizes districts to carefully consider the needs of all students, parents, and staff.

I. Background of COVID-19 Executive Orders

On March 9, 2020, due to the COVID-19 pandemic, Governor DeSantis, under the authority vested in him by Article IV, section 1(a) of the Florida Constitution, and Chapter 252, Florida Statutes, issued Executive Order 20-52. This order declared a State of Emergency for the State of Florida and authorized state agencies to suspend statutes and rules if strict compliance would in any way prevent, hinder or delay necessary action in coping with the emergency where prescribed in the State Comprehensive Emergency Management Plan or ordered by the Florida's Division of Emergency Management's State Coordinating Officer.

On March 13, 2020, Florida's Emergency Management State Coordinating Officer issued Emergency Order 20-004. That order authorized "the Department of Education to take all appropriate actions coordinated with Florida's school districts, state colleges, and other educational providers to promote the health, safety, welfare and education of Florida students under the circumstances presented by this emergency." The order directed that these actions must be informed by guidance from the Centers for Disease Control and Prevention and the State Health Officer and Surgeon General.

On July 6, 2020, the Department of Education issued the Emergency Order. Consistent with safety precautions provided by health officials, the order recognizes the need to open schools to ensure not only the continuity of the educational process for students, but their well-being. Emergency Order at 1.

II. The Flexible Approach of the Emergency Order

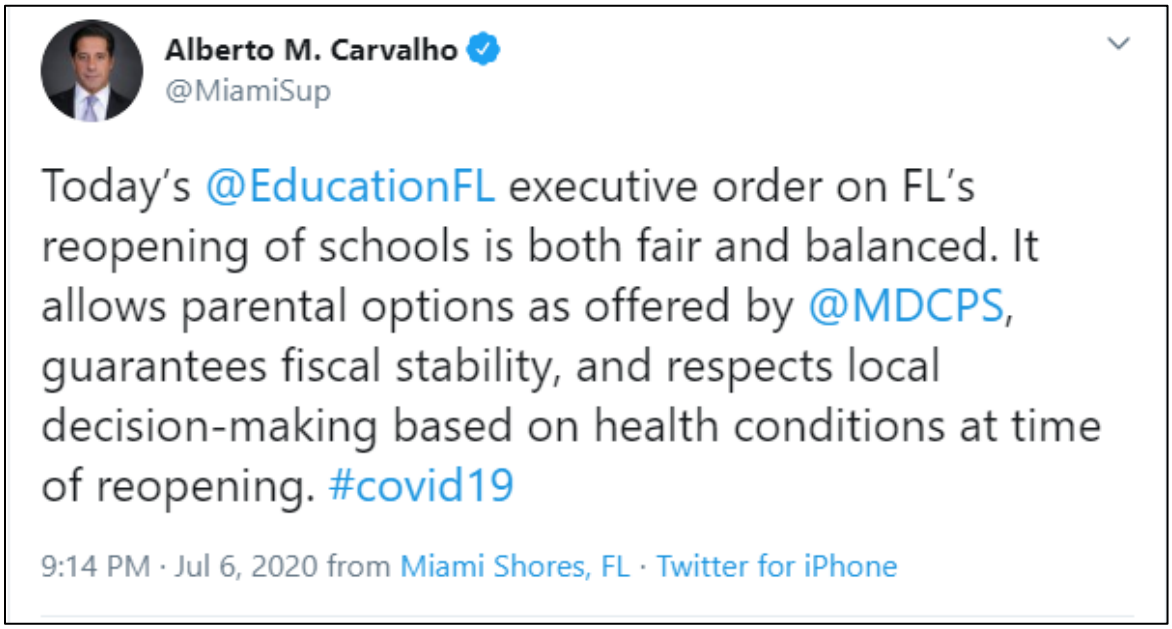
The Emergency Order provides a means for school districts to maintain funding for schools that would not otherwise be available. Since school districts receive funding based upon the reported number of students who attend the district (*see* Section 1011.62, Fla. Stat.), a decrease in reported in-person attendance in a school district would reduce the funds available to the district. Accordingly, school districts faced a potentially significant funding loss this fall given the number of parents and students who are considering virtual school or home schooling. Depending upon the extent of the loss, districts could face the need to reduce services to students and their workforce.

The Emergency Order addresses these concerns and promotes the welfare and education of Florida students by offering to waive those statutes and related rules if a school district submits a plan that provides multiple learning options for parents and students who need them.[1] A school district with an approved plan receives reporting flexibility and financial stability, without any reduction in funding that would occur as a result of declining in-person attendance. Emergency

[1] While Florida law allocates to local school districts decisions on staffing, start dates, and the like, it requires multiple student membership surveys each year so the Department can allocate funding to the districts. The Emergency Order waives requirements surrounding the October 2020 student membership survey to allow for funding flexibility—namely, to count students participating in innovative learning environments as full-time equivalents. Several school district proposals have already been approved by the Department; they clearly demonstrate the flexibility provided by the Emergency Order. Approved plans are available on the Department of Education's website at http://www.fldoe.org/em-response/index.stml.

Order, at 6. A school district that does not wish to avail itself of the flexibility provided by the Emergency Order, will simply follow the statutes and rules as they are written, without any need to file a plan. "Nothing herein requires a district or charter school to submit a plan if the district or charter school wishes to open in traditional compliance with statutory requirements . . . " Emergency Order at 6.

Tellingly, upon issuance of the Emergency Order, Alberto M. Carvalho, Superintendent of Schools for Miami-Dade County—the largest school district in the State and not a party here—recognized the balanced and flexible approach taken by the Emergency Order, stating publicly:



Carvalho, Alberto M. (@MiamiSup), TWITTER (Jul. 6, 2020 9:24 PM), https://twitter.com/MiamiSup/status/1280309191543062528.

For those school districts that wish to seek reporting flexibility and funding stability, the Emergency Order does direct the school boards to provide a plan that includes in person learning along with innovative distance learning options for the school year beginning in August it also very clearly confirms that how schools open, which students and teachers are physically present when school opens, what safety measures are in place, as well as all other opening decisions and

procedures, are left to the local school boards. The Emergency Order further provides that school opening is subject to the guidance of state and local health officials. On its face, the Emergency Order does not implicate let alone impinge upon any constitutional rights of parents, students, or teachers.

For the reasons below, the case should be dismissed.

MEMORANDUM OF LAW

Plaintiffs' claims fail for four independent reasons:

(1) Plaintiffs do not, and cannot, allege a specific concrete injury required to establish standing;

(2) There is no justiciable case or controversy. Plaintiffs' alleged injuries (to the extent there are any) are entirely hypothetical and cannot support declaratory relief. The Emergency Order does not require any student to return to school in person and does not require all teachers, let alone these Plaintiffs, to return to school in person. As such, Plaintiffs cannot allege an actual, present, and practical need for declaratory relief;

(3) Even if Plaintiffs could muster something beyond a hypothetical injury, and they cannot, this case presents a political question. Florida courts have repeatedly rejected similar attempts to entangle the courts in the details and execution of educational policy and related appropriations involving millions of students and billions of dollars in a field where the courts possess no special, or specific constitutional authority or experience; and

(4) The Court should not enter an injunction that substantially affects the rights of nonparties. Plaintiffs' requested relief would affect all students, parents, and staff in the Florida Public School System in Miami-Dade County and throughout the state.

For each of these reasons, this case should be dismissed.

I. PLAINTIFFS LACK STANDING

Plaintiffs fail to allege any actual concrete injury and, as a result, lack standing to bring this action. "[S]tanding is a threshold issue which must be resolved before reaching the merits of a case." *Solares v. City of Miami*, 166 So. 3d 887, 888 (Fla. 3d DCA 2015). To have standing, a party must have sufficient stake in a justiciable controversy, with a legally cognizable interest which would be affected by the outcome of the litigation. *Nedeau v. Gallagher*, 851 So. 2d 214,

215–16 (Fla. 1st DCA 2003) (citing *Peregood v. Cosmides*, 663 So.2d 665 (Fla. 5th DCA 1995) and *Equity Resources, Inc. v. County of Leon,* 643 So.2d 1112 (Fla. 1st DCA 1994)). The alleged interest cannot be conjectural or merely hypothetical. *Id*.

The alleged injury here is potential future exposure to COVID-19 in school, but there are no allegations that these specific Plaintiffs have been, or ever will be, required to return to school in person. Given that neither the Emergency Order, nor any school board plan approved pursuant to it, require students or any particular teacher to return to school and, indeed, allows for districts and schools to provide a plan for a remote learning curriculum, the failure to allege injury is not surprising. Nor is it surprising that the actual Plaintiffs are barely mentioned in the Complaint. Paragraphs 7-11 allege that the Plaintiffs are all involved with Florida Public Schools either as teachers or parents of students, and that the individual Plaintiffs have specific health concerns. Aside from generalities, legal conclusions, and a single reference to an April 14, 2020, policy letter to the Governor, Compl. ¶ 55, no Plaintiff is mentioned again. The remainder of the Complaint is a collage of news reports and public statements followed by the claim that all students and teachers would be at risk if required to return to school in person. It concludes by requesting relief that extends to all public schools throughout the state, with no reference or regard for any specific injury to any of the named Plaintiffs.

The lack of specific allegations is not surprising because, as discussed above, the Emergency Order does not mandate that all students or teachers return to school in person. In the event an articulable harm arises in the future, any affected individuals are free to file a proper action at that time, in the proper venue, and against the proper defendants. Plaintiffs, however, have not and cannot allege any legally cognizable harm to them, and certainly not in Miami-Dade County. The Complaint must therefore be dismissed.

II. PLAINTIFFS' CLAIMS FOR RELIEF FAIL BECAUSE THERE IS NO BONA FIDE, ACTUAL, AND PRESENT NEED FOR A DECLARATION

For similar reasons, Plaintiffs cannot obtain declaratory relief because they fail to allege that they have been or will be required to take any action whatsoever. "[I]t is well settled that Florida courts will not render, in the form of a declaratory judgment, what amounts to an advisory opinion at the instance of parties who show merely the possibility of legal injury on the basis of a hypothetical state of facts which have not arisen and are only contingent, uncertain, [and] rest in the future." *Santa Rosa County v. Admin. Com'n, Div. of Admin. Hearings*, 661 So. 2d 1190, 1193 (Fla. 1995) (internal citation and quotation marks omitted).

For those school districts that seek to take advantage of the reporting flexibility and funding stability offered in the Emergency Order, the Emergency Order requires that schools take the first steps in preparation for school year reopening, by establishing a plan that provides innovative instructional modalities for both in-person and remote instruction and to submit that plan to the Department of Education for consultation and review—any actual reopening will be "subject to advice and orders of the Florida Department of Health, local departments of health, Executive Order 20-149 and subsequent executive orders." Emergency Order at 1-3, 5, 6. Simply put, Plaintiffs are asking this Court to enter a declaratory judgment based on hypothetical circumstances which have not arisen and may never arise. Courts are not permitted "to answer a hypothetical question or one based upon events which may or may not occur." *Santa Rosa County,* 661 So. 2d at 1193 (internal citation omitted).

Apthorp v. Detzner, 162 So.3d 236, 237 (Fla. 1st DCA 2015) is instructive. In *Apthorp*, the court refused to declare unconstitutional a statute authorizing the use of blind trusts by public officials because "[n]ot only has no public officer ever used the type of 'qualified blind trust' authorized by the statute . . . but [plaintiff] concedes that he knows of no constitutional officer or

candidate who incorporated a blind trust in the most recent financial statements." *Id*. at 241. *See also State v. Florida Consumer Action Network*, 830 So.2d 148, 151, 153 (Fla. 1st DCA 2002) (explaining that a court does not have jurisdiction to enter a declaratory judgment where "the plaintiffs' asserted claims of injury . . . [are] nonspecific and hypothetical," and where purportedly constitutional concerns are "based on vague, general fears of possible future harm.").

Although several school districts have submitted reopening plans that provide for in-person instruction, as well as a well-defined remote learning plan, no students are required to return to school in person and none of the teacher-Plaintiffs in this case allege that they have, or ever will be, required to return to school against their will. Moreover, the Emergency Order does not require any particular school employee to report to school and any school reopening will be contingent upon a host of safety precautions and conditions, including any "advice and orders of the Florida Department of Health, local departments of health, Executive Order 20-149 and subsequent executive orders." *Id*. at 2. Additionally, the Miami-Dade school district has announced that students will begin the 2020-21 school year entirely remotely.[2] Thus, Plaintiffs have not alleged to have been injured in any way by the Emergency Order.

Absent any such present justiciable controversy, the Court has no jurisdiction to enter a declaratory judgment, particularly one that would impact 67 school districts and each of the students and teachers in those districts. *See Treasure Chest Poker, LLC v. Dept. of Bus. and Prof. Regulation, Div. of Alcoholic Beverages and Tobacco*, 238 So. 3d 338, 340-41 (Fla. 2d DCA 2017) (reversing and remanding with instructions to dismiss declaratory judgment action because plaintiff failed to show "a bona fide need for a declaration based on present, ascertainable facts," and consequently the circuit court lacked jurisdiction to render declaratory relief); *State, Dept. of*

[2] http://news.dadeschools.net/cmnc/new/30618.

Environmental Protection v. Garcia, 99 So. 3d 539, 544 (Fla. 3d DCA 2011) (finding that "the trial court lacked jurisdiction to enter the declaratory judgment" because plaintiff had not shown "a bona fide, actual, present, and practical need for the declaration").

III. PLAINTIFFS HAVE RAISED A POLITICAL QUESTION WHICH IS NOT FOR THE COURTS TO DECIDE

Plaintiffs ask this Court to invade the province of coequal political branches by (1) declaring that all Florida schools should remain closed and (2) setting a statewide standard for social distancing, sanitation, internet accessibility, and class size and mandate what it believes to be appropriate funding to satisfy those judicially imposed standards; something the judicial branch was not designed to address. "No person belonging to one branch shall exercise *any powers* appertaining to either of the other branches unless expressly provided herein." Art. II, § 3, Fla. Const. The Court should refrain from doing so here.

Under the political question doctrine, there must be judicially discoverable and manageable standards to obtain the broad injunctive relief sought here. *Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400, 408 (Fla. 1996). The Florida Supreme Court and the First DCA have already held that no such standards exist to determine what constitutes "adequate provision" for public schools. *Citizens for Strong Sch., Inc. v. Florida State Bd. of Educ*., 232 So. 3d 1163, 1171 (Fla. 1st DCA 2017), *approved*, 262 So. 3d 127 (Fla. 2019). Plaintiffs wrongly ask the Court to step into the role of 67 separate school districts throughout the state and decide, for each of them, whether and how to reopen, what specific safety measures to require, to appropriate sufficient funding to make that possible, and finally to determine that such measures are "adequate" for all of Florida's thousands of public school children and teachers.

Any relief would also need to account for the tens of thousands of vulnerable Florida students who may suffer irreparable harm if not provided the option of in-person instruction at

traditional brick and mortar schools. Recent guidance from the CDC recognized that schools "provide critical services that help to mitigate health disparities, such as school meal programs, and social, physical, behavioral, and mental health services."[3] Students with additional learning needs and children with disabilities "may not have access through virtual means to the specialized instruction, related services or additional supports required by their Individualized Education Programs."[4] The Emergency Order allows local school districts to take these circumstances into account on a case-by-case basis that is not possible through a state-wide injunction. Not only is that task judicially unmanageable, it is specifically delegated in the Florida Constitution to the executive and legislative branches. *Citizens for Strong Sch., Inc.*, 232 So. 3d at 1171 ("education policy determinations [are committed] to the legislative and executive branches") (discussing Art. IX, § 1(a), Fla. Const.).

Even if a judicially manageable standard existed, it would necessarily intrude into the powers and responsibilities assigned to the Florida Legislature, both generally (in determining appropriations) and specifically (in providing by law for an adequate safe and secure system of education), and to the executive branch in implementing those laws in a manner that considers all of Florida's students, parents, and teachers in each of its 67 school districts. *See Id*.

> A strict separation of powers supports the foundation and logic of the political-question doctrine, in that Florida's organic law does not permit a "dispersal of decisional responsibility" which would allow the courts to dictate educational policy choices and their implementation to the other two branches of government, absent specific authorization by law. *Id*. Absent explicit constitutional authority to the contrary, the legislative and executive branches possess exclusive jurisdiction in such matters, as the legislative branch has sole power to appropriate and enact substantive policy,

[3] Available on the CDC's website, https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/prepare-safe-return.html.

[4] *Id*.

> and the executive branch has the sole power to faithfully execute the substantive policies and budgetary appropriations enacted by the legislative branch. **The judiciary cannot dictate the manner of executing legislative policies or appropriations in any particular way**. *See* Art. II, § 3, Fla. Const. ("No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."); Art. V, § 14(d), Fla. Const. ("The judiciary shall have no power to fix appropriations.").

Id. (emphasis added)

As in *Citizens*, Plaintiffs here seek to "entangle courts in the details and execution of educational policies and related appropriations, involving millions of students and billions of dollars, in an arena in which the courts possess no special competence or specific constitutional authority" despite the fact that "the drafters of Article IX . . . declined to allocate such a role to the judiciary." *Id*. at 1171.

Moreover, this Court should not, and constitutionally cannot, substitute its judgment as to the wisdom of a policy decision made pursuant to the lawful exercise of the executive branch's emergency powers. As set forth above, the Department, through the Emergency Order, carefully balanced the variety of financial, health, and educational concerns implicated by the COVID-19 pandemic. It provides an avenue for funding that would not otherwise exist under Florida law, but it is not a blank check. Districts who opt for this new funding method are required to carefully consider and weigh not only the need to protect the health of students and staff, but also to consider the critical need of some students for in-person instruction and other services that communities depend on. Significant discretion is still afforded to school districts to deviate from those plans if, based on their judgment, current health conditions require brick and mortar schools to remain closed.[5] These decisions will be respected and funding will not be arbitrarily withheld when a

[5] The reopening plan submitted by Monroe County, and approved by the Department, for example, implements a three-phase system based on the level of community spread throughout the school year. The three phases are: (1) minimal risk, where sanitation and social distancing protocols

local district makes a reasoned decision to close a school based on real-time data and analysis. The Department's decision to suspend or modify statutory provisions under those specific conditions is a lawful policy choice made under the emergency powers derived from the Governor's constitutional and statutory authority.

This Court should decline Plaintiffs' invitation to intrude into this authority and dismiss.

IV. EACH COUNT FAILS AS A MATTER OF LAW

Plaintiffs assert two counts seeking declaratory relief and one count seeking injunctive relief. Count I for declaratory relief against the Governor and the Commissioner, Department, and Board of Education claims that the Emergency Order, which expressly leaves to the school districts, subject to the advice of state and local health officials, the day-to-day operations of the state's schools, somehow violates the Florida Constitution. Count II against all Defendants claims that the Emergency Order makes arbitrary and capricious demands on non-party public schools. Count III seeks an injunction against all Defendants by imposing a laundry list of requirements on the Defendants, which, among other things, would preclude non-party school districts from making employment and educational decisions that affect non-party teachers, parents, and students, and imposes on non-party school districts, parents, teachers, students, and staff quintessential policy directives concerning personal protective equipment, class size, physical distancing, staffing levels, in-school clinic capabilities, and more. Each count fails as a matter of law and should be dismissed.

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would allow for in-person instruction, (2) moderate risk, with increased telework and accommodations for families at high-risk, and (3) substantial risk, which anticipates "extended school closures." Monroe County's plan is available at the Department of Education's website: http://www.fldoe.org/core/fileparse.php/7748/urlt/Monroe-County-School-District-Guidebook-for-Reopening-Schools.pdf . The approved reopening plan submitted by Clay County also provides three different scenarios, one in which "schools are closed and students are instructed through distance learning." Clay County is "prepared to operate in any scenario" depending on local health data and in consultation with the health department. http://www.fldoe.org/core/fileparse.php/7507/urlt/Clay-County-School-Reopening-Plan.pdf

To obtain declaratory relief, Plaintiffs must establish that:

> (1) there is "a bona fide, actual, present practical need" for the declaration;
>
> (2) the declaration sought deals with "a present, ascertained or ascertainable state of facts or present controversy as to a state of facts;"
>
> (3) an "immunity, power, privilege or right" of the plaintiff depends on the facts or the law that applies to the facts;
>
> (4) some persons have an "actual, present, adverse and antagonistic interest" in the subject matter;
>
> (5) all persons with an adverse and antagonistic interest are before the court; and
>
> (6) the declaration sought does not amount to mere legal advice.

Citizens Prop. Ins. Corp. v. Ifergane, 114 So. 3d 190, 195 (Fla. 3d DCA 2012); *May v. Holley*, 59 So. 2d 636, 639 (Fla. 1952).

Each declaratory judgment element is not only necessary to state a cause of action, it is required to confer jurisdiction upon the Court. *See id; Martinez v. Scanlan*, 582 So. 2d 1167, 1170 (Fla. 1991); *Webster v. Inch*, 286 So. 3d 847 (Fla. 1st DCA 2019). The absence of any element deprives the Court of jurisdiction. *See Helfrich v. City of Jacksonville*, 204 So. 3d 39, 42 (Fla. 1st DCA 2016) (affirming the dismissal of a declaratory judgment action for lack of a justiciable controversy where plaintiffs posed a hypothetical question seeking an advisory opinion); *State, Dept. of Environmental Protection v. Garcia*, 99 So. 3d 539, 544 (Fla. 3d DCA 2011) (finding that "the trial court lacked jurisdiction to enter the declaratory judgment" because plaintiff had not shown "a bona fide, actual, present, and practical need for the declaration").

For the reasons set forth above, Plaintiffs are wholly unable to establish that (1) there is a bona fide, actual, present practical need for a declaration; (2) the declaration deals with a present, ascertained state of acts or present actual justiciable controversy; (3) a privilege or right of

Plaintiffs depend on the facts alleged; (4) Plaintiffs have an actual, present, adverse and antagonistic interest in the subject matter; (5) all persons with an adverse interest are before the Court; and (6) the declaration sought does not amount to mere legal advice. To state a cause of action, establish their own standing and the jurisdiction of the Court, Plaintiffs must establish each of these elements and, here, Plaintiffs establish none.

"To obtain a permanent injunction, the petitioner must 'establish a clear legal right, an inadequate remedy at law and that irreparable harm will arise absent injunctive relief.'" *Liberty Counsel v. Florida Bar Bd. Of Governors*, 12 So. 3d 183, 186 (Fla. 2009) (quoting *K.W. Brown & Co. v. McCutchen*, 819 So.2d 977, 979 (Fla. 4th DCA 2002)). Plaintiffs cannot establish any of these required elements. Foremost, as explained herein, Plaintiffs have no legal right to the injunction they seek and have suffered no legally cognizable injury. Plaintiffs seek a statewide injunction despite representing, at most, individuals in three school districts, one of which, Orange County, is already litigating in a case in that judicial circuit. Plaintiffs do not claim to, and cannot, represent parents or students elsewhere in the state, and this is not a class action. And Plaintiff Florida Education Association is two levels removed from being able to claim any injury by the Emergency Order since it is neither a teacher nor the local unions that actually contract with the school districts. Further, Plaintiffs cannot complain that school districts are allegedly required to take any actions since Plaintiffs do not represent any of Florida's 67 school districts.

Additionally, Plaintiffs have failed to allege irreparable harm caused by the Emergency Order. As described above, the harm Plaintiffs have alleged, in addition to being harm to others and not to Plaintiffs, is future speculative harm. Moreover, even the speculative harm Plaintiffs envision in the future would not arise from the Emergency Order but from the collective decisions of non-party school districts, health officials, teachers, and families who are deciding, on a local and case-by-case basis, how to safely educate students.

Accordingly, the Court should dismiss the Complaint because it fails as a matter of law.

V. PLAINTIFFS SEEK RELIEF WHICH SUBSTANTIALLY AFFECTS THE INTERESTS OF NON-PARTIES

In addition to the fact that Plaintiffs' claims ask this Court to address improper political questions, they have no right to seek injunctive and declaratory relief on behalf of all Florida teachers and students, including those who desire in-person instruction. The general rule in equity is that *all* persons materially interested, legally or beneficially, in the subject matter of a suit must be made parties so that a complete decree may be made binding thereon.[6] "An injunction can lie only when its scope is limited in effect to the rights of parties before the court." *Two Islands Dev. Corp. v. Clarke*, 157 So. 3d 1081, 1083–84 (Fla. 3d DCA 2015) (internal citations omitted). *Id.* A party is materially interested or indispensable when it is "impossible to completely adjudicate the matter without affecting either that party's interest or the interests of another party in the action." *Id.* (internal citation and quotation marks omitted).

The claims in this case are based upon Plaintiffs' individual health concerns and interests, but they seek injunctive relief that would affect hundreds of thousands of Florida families and reduce, rather than enlarge, the options available to them. Under the Emergency Order, where health and safety permit, students and families have the *option* of in-person instruction, while those who wish to continue distance learning will be free to do so at the discretion of their school district. And students continue to have the option to attend Florida Virtual School. *See* http://www.fldoe.org/schools/school-choice/virtual-edu/. Were this Court to grant Plaintiffs the relief they request, Florida families and students (particularly those without means to provide computers, internet access, daytime supervision and an environment otherwise appropriate for

[6] Indeed, an element of a declaratory judgment action is that "all persons with an adverse and antagonistic interest are before the court." *Citizens Prop. Ins. Corp.*, 114 So. 3d at 195.

distance learning) would be denied the ability to attend school in-person, anywhere in the state, regardless of local health realities. Although distance learning may operate as the right solution for some students—namely those fortunate enough to have access to appropriate computer hardware, the internet, a safe and quiet home learning environment and, of course, daytime supervision—Plaintiffs' view that distance learning is somehow appropriate for *all* families serves only to disenfranchise those students and families who rely most on public education and its related services. Because Plaintiffs seek relief which would affect the interests of these non-parties, the Court should dismiss the Complaint.

CONCLUSION

Plaintiffs are asking this Court to invalidate an Emergency Order that waives statutes tying school funding to in-person attendance, encourages innovation and flexible approaches to remote learning, and upholds local control over day-to-day health decisions. In its place, Plaintiffs impermissibly seek a judicial order that would close all schools throughout the state and usurp the authority of the Legislature, the Executive Branch, and Florida's 67 school districts to direct education policy in Florida. The Complaint should be dismissed.

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CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2020, the foregoing was electronically filed using the E-filing Portal System, and a copy was furnished by email on the following Service List:

By: /s/ Angel A. Cortiñas

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