Reduction of Class Size

Number: PETITION

Date: November 08, 2001

The Honorable Charles T. Wells Chief Justice, and
Justices of The Supreme Court of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

Dear Chief Justice Wells and Justices:

In accordance with the provisions of Article IV, section 10, Florida Constitution, and section 16.061, Florida Statutes, it is the responsibility of the Office of the Attorney General to petition this Honorable Court for a written opinion as to the validity of an initiative petition circulated pursuant to Article XI, section 3, Florida Constitution.

On October 11, 2001, this office received from the Secretary of State an initiative petition seeking to amend the Florida Constitution to reduce class size in public schools. The full text of the proposed amendment states:

"Article IX, Section 1, Florida Constitution, is amended to read:

Section 1. Public Education.--
The education of children is a fundamental value of the people of the State of Florida. It is, therefore, 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 and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require. To assure that children attending public schools obtain a high quality education, the legislature shall make adequate provision to ensure that, by the beginning of the 2010 school year, there are a sufficient number of classrooms so that:

1. The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for prekindergarten through grade 3 does not exceed 18 students;

2. The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for grades 4 through 8 does not exceed 22 students; and

3. The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for grades 9 through 12 does not exceed 25 students.

The class size requirements of this subsection do not apply to extracurricular classes. Payment of the costs associated with reducing class size to meet these requirements is the responsibility of the state and not of local school districts. Beginning with the 2003-2004 fiscal year, the

legislature shall provide sufficient funds to reduce the average number of students in each classroom by at least two students per year until the maximum number of students per classroom does not exceed the requirements of this subsection."

The underlined and bold typed language above constitutes new language to Article IX, section 1, Florida Constitution.

The ballot title for the proposed amendment is "Florida's Amendment to Reduce Class Size." The summary for the proposed amendment states:

"Proposes an amendment to the State Constitution to require that the Legislature provide funding for sufficient classrooms so that there be a maximum number of students in public school classes for various grade levels; requires compliance by the beginning of the 2010 school year; requires the Legislature, and not local school districts, to pay for the costs associated with reduced class size; prescribes a schedule for phased-in funding to achieve the required maximum class size."

BALLOT TITLE AND SUMMARY

Section 16.061, Florida Statutes, requires the Attorney General's Office to petition this Honorable Court for an advisory opinion as to whether the proposed ballot title and summary comply with section 101.161, Florida Statutes.

Section 101.161(1), Florida Statutes, provides in relevant part:

"Whenever a constitutional amendment . . . is submitted to the vote of the people, the substance of such amendment . . . shall be printed in clear and unambiguous language on the ballot . . . . The wording of the substance of the amendment . . . shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of."

This Court has stated on several occasions "that the ballot [must] be fair and advise the voter sufficiently to enable him intelligently to cast his ballot." *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982), *quoting, Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954). While the ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, they need not explain every detail or ramification of the proposed amendment. *Carroll v. Firestone*, 497 So. 2d 1204, 1206 (Fla. 1986); *Advisory Opinion to the Attorney General--Limited Political Terms in Certain Elective Offices*, 592 So. 2d 225, 228 (Fla. 1991).

The ballot summary states that the amendment proposes to require the Legislature to provide funding for sufficient classrooms "so that there be a maximum number of students in public school classes for various grade levels." This language could lead voters to believe that the amendment requires a certain number of students in each class ("so that there be a maximum number of students"), rather than seeking to reduce the number of students to a certain level.

In addition, the summary does not advise the voter that its terms do not apply to "extracurricular

classes." This term is not defined by the amendment. The Legislature, therefore, is free to define the term. A voter may not be aware that the Legislature could affect the impact of the amendment by merely redefining what constitutes "extracurricular classes."

Therefore, I respectfully request this Honorable Court's opinion as to whether the ballot title and summary of the proposed constitutional amendment comply with section 101.161, Florida Statutes.

SINGLE-SUBJECT LIMITATION

Section 16.061, Florida Statutes, requires the Attorney General's Office to petition this Honorable Court for an advisory opinion as to whether the text of the proposed amendment complies with Article XI, section 3, Florida Constitution.

Article XI, section 3, Florida Constitution, provides in relevant part:

"The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith."

The single-subject provision "is a rule of restraint designed to insulate Florida's organic law from precipitous and cataclysmic change." *Advisory Opinion to the Attorney General--Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994).

To comply with the single-subject requirement, an initiative must manifest a "logical and natural oneness of purpose." *Fine v. Firestone,* 448 So. 2d 984, 990 (Fla. 1984). This Court stated in *Advisory Opinion to the Attorney General--Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1020 (Fla. 1994), that "[t]o ascertain whether the necessary 'oneness of purpose' exists, we must consider whether the proposal affects separate functions of government and how the proposal affects other provisions of the constitution."

As this Court stated in *Advisory Opinion to the Attorney General–-Save Our Everglades*, 636 So. 2d 1336, 1340 (Fla. 1994), although a proposal may affect several branches of government and still pass muster, it cannot substantially alter or perform the functions of multiple branches:

"The test . . . is functional and not locational, and where a proposed amendment changes more than one government function it is clearly multi-subject. . . . We recognize that all power for each branch of government comes from the people and that the citizens of the state have retained the right to broaden or to restrict that power by initiative amendment. But where such an initiative performs the functions of different branches of government, it clearly fails the functional test for the single-subject limitation the people have incorporated into article XI, section 3, Florida Constitution."

In *Advisory Opinion to the Attorney General–Requirement for Adequate Public Education Funding*, 703 So. 2d 446 (Fla. 1997), this Court struck down an initiative petition requiring that a minimum of forty percent of the total state appropriations, not including lottery proceeds or

federal funds, be directed to education. The Court held that the initiative violated the single-subject requirement by substantially affecting separate, distinct functions of government and multiple provisions of the state constitution. Not only did the proposed amendment substantially alter the Legislature's discretion in making value choices as to appropriations among the various vital functions of state government, it also affected the various state agencies of the executive branch as well as local governments and special districts that rely on appropriations.

The Court found that the Governor's constitutional veto power was also affected since the "Governor would be unable to veto any specific appropriation within the forty-percent educational appropriation if the veto would reduce the education appropriation to less than the required forty percent." 703 So. 2d at 449. In addition, the amendment was found to affect the function of the Governor and Cabinet to reduce the state budget in the event of a revenue shortfall.

Subsequently, in *Advisory Opinion to the Attorney General–Florida Transportation Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation System,* 769 So. 2d 367 (Fla. 2000), the Court upheld a proposed amendment that required funding for a high-speed rail system for which construction was required to begin on or before November 1, 2003. The Court distinguished the *Adequate Public Education Funding* case by stating that "its rigid funding percentage actually performed the appropriation function of the Legislature and removed entirely the Governor's ability to veto any portion of that appropriation." 769 So. 2d at 370. Even assuming that the high-speed rail initiative placed some limitations on the Governor's ability to veto, the Court held that "we do not find this to be the type of 'precipitous' or 'cataclysmic' change prohibited by the single subject restriction." *Id.* at 371. The Court recognized that the proposed amendment left the branches of government with wide discretion in determining the details and funding of the project.

Like both the *Adequate Public Education Funding* and the *Statewide High Speed Monorail* petitions, the initiative now before this Court does not point to any specific fee or tax from which the revenues for the project will come. While the proposed amendment does not identify a specific percentage of the budget or a specific amount to accomplish the amendment's purpose of reducing class sizes, it does require the Legislature, beginning with the 2003-2004 fiscal year, to appropriate funds sufficient to reduce the average number of students in each classroom by at least two students per year until the maximum number of students per classroom does not exceed the requirements of the amendment. This would affect the Governor's veto power by preventing the Governor from vetoing any appropriation that furthers this mandate. It would likewise affect the ability of the Governor and Cabinet to reduce the state budget in compliance with Article VII, section 1(d), Florida Constitution, in the event of a revenue shortfall.

While the state is responsible for funding the proposed amendment's mandate, the amendment will still have a significant impact on the decision-making responsibilities of local school districts. The lowering of class sizes will necessitate an increase in the number of classes, thereby requiring in some cases the construction of new classrooms and schools. Such decisions which are normally within the discretion of the local school board would now be effectively dictated by the amendment.

Thus, the proposed amendment would substantially affect the functions historically carried out by the district school boards.

Therefore, I respectfully request this Honorable Court's opinion as to whether the proposed amendment constitutes the type of "precipitous" or "cataclysmic" change prohibited by the single subject restriction in Article XI, section 3, Florida Constitution.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

cc: The Honorable Katherine Harris
Secretary of State

The Honorable Jeb Bush
Governor, State of Florida

The Honorable John McKay
President, Florida Senate

The Honorable Tom Feeney
Speaker, Florida House of Representatives

The Honorable Kendrick Meek
Chairperson, Coalition to Reduce Class-size