

IN THE SUPREME COURT
OF FLORIDA

FILED

IN RE: ADVISORY OPINION
TO THE ATTORNEY GENERAL

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ENGLISH - THE OFFICIAL
LANGUAGE OF FLORIDA

CLERK OF THE SUPREME COURT CASE NO. 71,
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BRIEF OF THE AMICI CURIAE

- ASPIRA OF FLORIDA (MIAMI)
- BILINGUAL ASSOCIATION OF FLORIDA
- COALITION OF HISPANIC AMERICAN WOMEN
- CUBAN AMERICAN DEMOCRATIC ASSOCIATION OF FLORIDA
- GREATER MIAMI UNITED
- HAITIAN AMERICAN COMMUNITY ASSOCIATION OF DADE (HACAD)
- NATIONAL CONFERENCE OF PUERTO RICAN WOMEN - MIAMI CHAPTER

IN OPPOSITION TO THE INITIATIVE MEASURE

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STATEMENT OF THE CASE

Pursuant to Article IV, s. 10, Florida Constitution and s. 16.061, Florida Statutes (1987) the Attorney General petitioned this Court for a written opinion as to the validity of an initiative petitioned circulated pursuant to Article XI, s. 3, Florida Constitution.

The petition sought to add a new section to Article II of the State Constitution which would provide:

Section 9. English is the Official Language of Florida

(a) English is the official language of the state of Florida

(b) The Legislature shall have the power to enforce this section by appropriate legislation.

The ballot title and summary for the proposed amendment provides:

English is the Official Language of Florida

Establishes English as the official language of the State of Florida: Enables the legislature to implement this article by appropriate legislation.

INTEREST OF AMICI CURIAE

The seven organizations which have intervened as amici curiae and filed this brief are ASPIRA OF FLORIDA (MIAMI), the BILINGUAL ASSOCIATION OF FLORIDA, the COALITION OF HISPANIC AMERICAN WOMEN, the CUBAN AMERICAN DEMOCRATIC ASSOCIATION OF FLORIDA, GREATER MIAMI UNITED, the HAITIAN AMERICAN COMMUNITY ASSOCIATION OF DADE (HACAD), and the NATIONAL CONFERENCE OF PUERTO RICAN WOMEN - MIAMI CHAPTER. Each of these organizations has as a principal daily focus working to improve the lives and opportunities of members of Florida's minority community in various spheres of life and each strongly believes that passage of an English Official State Language Amendment would undercut efforts at community advancement and progress and sow the seeds of ethnic discrimination and discord in their communities. The promotion of education is a critical concern to several of these organizations. ASPIRA of FLORIDA, for example is a non-profit organization dedicated to leadership development among Hispanics and all minority youth. ASPIRA conducts a variety of programs including dropout prevention programs, tutoring, counseling for youth and youth-gang intervention. THE BILINGUAL ASSOCIATION OF FLORIDA with members in over ten counties consists largely of working teachers and educators who have devoted their professional lives to improving the educational opportunities of language minority students. HACAD, the HAITIAN AMERICAN ASSOCIATION OF DADE,

serves a large Haitian community of more than 100,000 persons, HACAD knows that many of its constituents do not speak or understand English and need translation and language help in order to gain access to public services. HACAD also has a focus on youth and conducts literacy training, English as a Second Language programs, youth employment training programs in addition to employment, legal services and food voucher programs. THE NATIONAL CONFERENCE OF PUERTO RICAN WOMEN too is deeply concerned with education of Hispanic youth and runs scholarships and similar programs. THE COALITION OF HISPANIC WOMEN seeks to provide a platform for Hispanic women to focus on issues of mutual concern and gain access to equal opportunities in all spheres of life for Hispanic women. THE COALITION is particularly concerned about the impact of an Official English law on elderly Hispanic women who clearly need translations of public notices and other forms of language assistance if they are to gain access to basic life services. GREATER MIAMI UNITED is a tri-ethnic community forum which seeks to promote inter-ethnic understanding. GREATER MIAMI UNITED believes that the proposed initiative is unnecessary and divisive. While recognizing the role of English as the basic language of our country, GREATER MIAMI UNITED also supports the right of language minority communities to use and maintain their own languages. The CUBAN AMERICAN DEMOCRATIC ASSOCIATION OF FLORIDA is a political and community organization with a base in the

Cuban American community. The Association believes that the English Official State Language initiative would put many Hispanics out of the mainstream of public life, cause cultural deprivation and inject an unnecessary and antagonistic element into Florida life.

These organizations believe that passage of the English Official State Language initiative would not only be extremely harmful to their members and those with whom they work but further that the full impact of such an initiative has been kept secret from the voters of Florida. Thus they have come before this Court to urge the declaration of the invalidity of the initiative as proposed.

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ARGUMENT

THE OFFICIAL LANGUAGE INITIATIVE HIDES A FAR REACHING SOCIAL, POLITICAL AND EDUCATIONAL AGENDA BEHIND A DECEPTIVELY BROAD GENERALITY AND THUS VIOLATES SECTION 101.161, FLORIDA STATUTES (1987) AND ARTICLE XI, SECTION 3, FLORIDA CONSTITUTION

This Court has stated on numerous occasions that: "the proposal of amendments to the Constitution is a highly important function of government, that should be performed with the greatest certainty, efficiency, care and deliberation." Crawford v. Gilchrist , 64 Fla. 41, 54, 59 So. 969,968 (1912). It is imperative therefore that if the people are to exercise their deliberations with the "greatest certainty" the people must first "be able to comprehend the sweep of each proposal from a fair notification in the proposition itself that is neither less nor more extensive than it appears to be." Smathers v. Smith , 338 So. 2d 825, 829 (Fla. 1976). What is required is fair notice. Thus an amendment unfairly misleads if it omits important changes in existing laws. Such changes must stand on their own merits "and not be disguised as something else". A proposed amendment "cannot fly under false colors" by failing to apprise voters of its "true meaning and ramifications" Askew v. Firestone, 421 So. 2d 151 (Fla. 1982).

Considered against these precepts of fair notice the proposed amendment is a disturbing bit of slight of hand

tampering with Florida's Constitution. To be sure the amendment and its explanation are brief. According to the simplistic summary the proposed amendment: "Establishes English as the official language of the State of Florida: Enables the legislature to implement this article by appropriate legislation." But just what does that mean? What other provisions of the Constitution and laws do the proponents intent to be changed by this amendment? What is the true meaning and ramifications of the proposed change?

A voter might think that the amendment has no real life impact at all but merely recognizes and honors the central and important role of English in our society. Indeed the Brief of the Respondent U.S. English argues at one point that the amendment simply "declares in law existing custom and practice." (p.12). Thus the implication is that the proposed amendment is of an honorific nature such as numerous "official state" object laws. (For example the sabal palmetto palm is the official state tree, Section 15.031, orange juice the state beverage, the horse conch the state shell, agatized coral the state stone, moonstone the state gem, "Cross and Sword" the official state play, the Florida panther the official state animal, the Florida Largemouth bass the official state freshwater fish and numerous similar designations found in Section 15.031 ff.)

But obviously U.S. English's agenda goes far beyond such harmless designations as is hinted at in the

enforcement clause in section (b) of the amendment. For while the ballot summary tells the Florida voter nothing of what is really at stake the proponents in their Appendix To Accompany Brief of Respondent U.S. English have obliquely acknowledged to this Court the full ramifications of what they propose.

Attachment D. to the Appendix is a statement from one Stanley Diamond on behalf of a similar Official English law in California. Indeed at page 14 of their Brief the respondent U.S. English cites Mr. Diamond's statement (footnote 14) to this Court as indicative of "the primary goal" of the initiative ^{FN} 1. While amici would take vigorous issue with the contention that Florida voters were somehow put on notice of the changes which would come in Florida by virtue of Mr. Diamond's statements to the California legislature, the radical sweep of the proponents intentions cannot be ignored. Thus we are told "many" bills affecting education, public services and official acts will have to be scrutinized. The bilingual education program is singled out as "one glaring example" of the need for this new English purity review. Court interpreters would allowed only if such were already guaranteed by a Constitutional provision as in California. All local government services would be in English except under undefined circumstances. Local contractors working on government contracts would be impacted and bilingual voting ballots would be targetted for extinction. Numerous additional subjects are involved here.

Attached to this Brief is a copy of a ballot petition circulated in conjunction with an earlier version of the Official Language amendment. That earlier effort, to its credit, was explicit in describing what it would mean including the conduct in English of licensing examinations, and English only publications and contracts of all state, county, municipal and other government offices and departments.

I. Numerous Provisions Of Existing Law Would Be Changed By The Amendment

(a) Taking the Appendix to Brief and the ballot summary of the earlier version of the Official State Language Amendment as indications of the range of subjects silently lurking behind the deceptively simple phrase "Official Language", it is clear that numerous changes will be brought to the Constitution and statutes. Certainly Article 9 concerning Education will be greatly impacted as will be discussed below. But while education is the clearest target of this amendment it is not the only subject embraced. Article 6 of the Constitution concerning Suffrage and Elections would apparently be amended to prevent bilingual ballots or explanatory materials to aid voters. Article 8 concerning Local government is directly impacted to the extent that a local body would, for example, be prohibited from publishing a notice to its local residents in a language other than English. Article 5 concerning the Judicial Department would also be impacted in the realm of

court interpreters except to the extent some other Constitutional provision explicitly guaranteed interpreters. Article 1, section 10 may well be involved where existing contracts for government services are now being carried out in more than one language. And foreign speaking professionals would presumably lose their right to practice their professions under Section 455.11 which has as a declared purpose encouraging "the use of foreign-speaking Florida residents duly qualified to become actively qualified in their professions so that all Florida citizens may receive better services".

(b) As the U.S. English proponents of this amendment have indicated, changing or terminating bilingual education is foremost in their mind as the purpose of their work. In Florida the ending of bilingual programs would have a profound impact on thousands of school children the structure of Florida's education laws. Article 9 Section 1 makes for "adequate provision...for...public education programs that the needs of the people may require". Section 4 of the Article mandates local school districts and school boards to "operate, control and supervise all free public schools".

In the exercise of this supervision and control Florida's school boards have implemented a variety of programs of instruction for bilingual students. (For the Fall of 1983 the Florida State Department of Education

reported 36,000 students enrolled in classes for bilingual students in more than 30 counties. While most students were Hispanic, significant numbers of Haitians and Asians were also covered by such programs).

Typically school districts have exercised their wisdom and discretion in selecting among certain models of bilingual education. Included would be the model of transitional bilingual education where children learn subject matter in their native languages while mastering English, combinations of intensive English instruction from English-as-a-Second Language specialists coupled with bilingual teacher aides and similar strategies. The matter before the court is, of course, not the wisdom of any particular educational strategy but rather the fact that until the proposed amendment local school boards, parents and teachers were left to decide the best methods of implementing bilingual programs. This is exactly what U.S. English has determined is to change through its simple little amendment.

Numerous sections of the Constitution and Education Laws would be subject to change. The basic school governance structure would be altered. Where now School Boards, Superintendants and Principals have specific Constitutional or statutory authority in the realm of school management and operation, the proposed amendment is apparently intended by its authors to take away the right to

introduce positive bilingual education models (See Article 9, Section 4 and Section 230.03, 230.022, 230.23 on school board powers and duties). Funds for bilingual programs authorized pursuant to Section 237.34 F.S. would be impacted.

Equally disturbing to many voters - if they were put on notice - would be the impact on incipient Drop-Out Prevention and parent involvement provisions of the Education laws. According to the 1986-87 Profiles of Florida School Districts-Student and Staff Data issued by the Florida State Department of Education, Hispanic linguistic minority students are the single group at greatest risk of dropping out of school (for example in Dade, Broward and Osceola counties the drop out ratio among Hispanics is 30%, 36% and over 60% respectively).

An exhaustive study of educational services for Limited English proficient students was conducted by the State Department of Education pursuant to Sections 230.2316 F.S. "The Drop-Out Prevention Act." The study makes numerous recommendations for further needed reform in this critical area of educational equity. All of these efforts stand to be undercut by the proposed amendment.

In an effort to reach out to language minority parents and encourage their involvement in their children's school lives several school districts make it a practice to send home school notices in the language of the parent. Such

public notices in a non-English language are precisely targetted by the English Only amendment's proponents. Thus the recent 1987 provision requiring school boards to notify parents when students are working at a skill level below grade would be significantly changed to the detriment of non-English proficient students. Section 233.051(2) F.S. 2/^{FN}

II. The Amendment As Worded Fails To Disclose The Subjects To Be Affected And Violates The One Subject Requirement of Article XI, s.3, Fla. Const.

As in Fine v. Firestone, 448 So. 2d. 984, 995 (Fla. 1984): "the very broadness of the proposed amendment amounts to logrolling because the electorate cannot know what it is voting on - the amendment's proponents' simplistic explanation reveals only the tip of the iceberg...The very broadness of the proposal makes it impossible to state what it will affect and effect and violates the requirement that proposed amendment embrace only one subject." (Justice McDonald, concurring).

The respondents answer to the obvious defect in their would be amendment is that only one subject is addressed - the supremacy of English - no matter how many sections of the Constitution and laws are to be changed thereby and furthermore that the cases do not require a point by point analysis of all possible ramifications of the new initiative. Their argument appears to rest almost entirely on the broadest possible interpretation of Weber v. Smathers and Floridians Against Casino Takeover v. Let's Help Florida.

This argument falls short of the mark. In the Weber case, 338 So. 2d 819 (Fla. 1976) the subject matter of the Sunshine Amendment was read broadly as "ethics in government" despite the several sections of the Constitution effected. In Floridian's the proposal was for casino gambling in a specified area with the tax revenues therefrom to be used for education and law enforcement. Neither Weber or Floridians contemplated significant changes to numerous subjects such as education, voting, licensing of professions, official publications and notices, judicial administration and the entire range of areas of the Constitution and laws to be reached by the English Only amendment. Since language can be said to touch every aspect of public life and every aspect of government the implications of the instant initiative are enormously broad and quite unlike those approved in Weber and Floridian's. Furthermore there is a nexus here between the fair notice issue and the single subject issue. At least in the earlier cases the electorate knew what it was voting on unlike the wholesale changes lurking beneath the surface of the Official Language amendment.

Furthermore, it is not at all clear that the legal basis for the Respondent's argument is still good law. In Fine v. Firestone, 448 So. 2d 984 (Fla. 1984) the majority reaffirmed the view of Adams v. Gunter, 238 So. 2d 824 (Fla. 1970) where the Court earlier "expressed concern that the proposal neither identified the section amended nor

specified how they would be amended." at 989. And the majority noted that: "We recede from Floridians to the extent that it conflicts with this view." In a concurring opinion Justice McDonald wrote: " We clearly should recede from that part of Floridians which states that the effect of a proposed amendment on the existing portions of the constitution cannot be considered as a basis for invalidating an initiative proposal." at 995. Also, concurring Mr. Justice Ehrlich wrote "I am troubled by the semblance of continued vitality surrounding Weber v. Smathers and Floridians Against Casino Takeover v. Let's Help Florida." at 995. And Mr. Justice Shaw too authored a concurring opinion in which he stated: "We should recede from the unrealistic standard of review in Weber and Floridians."

Given these expressions by members of this Court, the Respondents attempt to broaden even the broad rule of Floridians to somehow allow this silent but potentially drastic amendment of numerous subjects in the Constitution should not be given much weight.

CONCLUSION

The "English Official Language of Florida" initiative is a broad, vague and radical attempt to alter numerous sections of the Constitution and alter the lives of the people without fair notice of what hidden meanings lurk

behind the simplistic language of the initiative and unilluminating ballot summary. As such the initiative violates Article XI, s. 3 and Section 101.161 (1987 F.S.) and should not be allowed to move forward. The English Only proponents should tell the voters just what they mean to do before such a proposal can properly be considered.

Respectfully submitted,

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1. By their curious use of legal citations the Respondents give this court a mixed message as to the intentions not otherwise disclosed to the voters. Brief of Respondent U.S. English cites Puerto Rican Organization for Political Action v. Kusper, 490 F. 2d 575 (7th Cir. 1973) for the proposition that a challenge to the constitutionality of the official language law in Illinois was rejected by the Federal Courts. Actually what the Seventh Circuit rejected in Kusper was the idea that the Illinois official English law somehow precluded Spanish language assistance to Puerto Rican voters. The Court held that the statute making English the official language of the state of Illinois did not prevent

publication of official materials in other languages since the statute was analogous to statutes naming the state bird and state song. So too, the Respondent cites (p.8) Castro v. State. 2 Cal. 3d 223 (1970) for the proposition that there is a substantial state interest in a single language system. In fact while that notion appears in dicta in Castro the actual holding of the Castro case was that: "as applied to petitioners (and to all residents of Los Angeles County who are otherwise qualified to vote and literate in the Spanish language) the English literacy requirement of article II, section 1...violates their right to equal protection of the laws." As a matter of historical and legal analysis the court looked behind the simplistic terms of the English literacy requirement and found its true origin to be in nativistic attempts to wipe out the vote of foreign immigrants. The Court stated: "It is obvious that fear and hatred played a significant role in the passage of the literacy requirement." Notwithstanding the Respondents self serving and untested public opinion poll which they commissioned and attached to their Brief, this Court well knows of the backlash in some quarters against the recent Cuban, Haitian and Central American immigrants to Florida and elsewhere. It is precisely that climate of backlash which has spawned Official English referenda in Dade County, California and elsewhere together with similar efforts to restrict non-white immigration.

2. Again while the issue of how to instruct bilingual pupils is certainly not before this Court at this time the point is that voters who do support bilingual education are not informed of what the Official Language amendment would mean to that important educational effort. Thus we see the worst form of "combining meritorious and vicious legislation" and forcing the voter to vote for a proposition" which he would otherwise reject as bad or foolish. City of Coral Gables v. Gray, 19 So. 2d 318, 322 (Fla. 1944). This confusion undoubtedly was demonstrated in the purported public opinion poll which the Respondent would have this court believe shows that 64% of Hispanics supported the idea of the Official Language initiative although the impact on bilingual education was not brought to their attention. This may be compared, for example, to the recent electionary exit poll conducted by the Southwest Voter Registration Project which indicates that in Miami over 91% of Hispanics polled supported bilingual education programs.

**Floridians for the
ENGLISH LANGUAGE AMENDMENT**

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**Rep. Bob Melby, Honorary State Chairman
Pd. Political Advertisement**

Name _____ 13 0
(Last Name First, Please Print)
Address _____
City _____ Fl. Zip _____
County _____
Precinct # _____ Cong. Dist. # _____

**FLORIDA CONSTITUTIONAL AMENDMENT PETITION FORM
ENGLISH THE OFFICIAL LANGUAGE**

I am a registered voter of Florida and hereby petition the Secretary of State to place the following ballot title, summary and constitutional amendment, pursuant to Article XI, Section 3, of the Florida Constitution, on the ballot in the next general election held more than ninety days after this petition is filed with the Secretary of State. If any portion of this ballot title, summary and amendment is found to be invalidated, the remaining portions shall not be invalidated. If this amendment is found to contain multiple subjects, all references to such additional subjects, found after the first subject, shall be invalidated, but the remaining portions of the amendment shall not be invalidated.

Ballot title and summary: **ENGLISH THE OFFICIAL LANGUAGE**

Establishes English as the official language of the State of Florida which must be used in all governmental meetings, in the written laws, records, rules, licensing examinations, publications, and contracts of state and local governments, in contracts for the sale of real estate, and in documents to be recorded in the public records; makes exceptions to permit teaching and publishing in a non-English language and use of a non-English language in publications and contracts related to international trade and documents fostering good will among nations; prohibits any unit of government declaring itself to be bilingual or bicultural.

The following new section is added as Section 15 to Article X of the Florida Constitution.

SECTION 15. ENGLISH THE OFFICIAL LANGUAGE

- (a) English is the official language of the State of Florida and shall be used in the conduct of all governmental meetings, in the written laws, records, rules, licensing examinations, publications, and contracts of all state, county, municipal and other government offices, departments, boards, commissions and agencies, in all contracts made in Florida or the sale of Florida real estate, and in all documents to be recorded in the public records; except that there shall be no restrictions upon teaching or publishing educational and general information materials in a language other than English, or upon the translation into a language other than English of any publication or contract that is intended to promote international trade or any document that fosters goodwill among nations.
- (b) No municipal or other unit of government shall declare itself to be bilingual or bicultural.

Signature _____
(Please sign as it appears on voting roll)

According to Sec. 104.185 (Election Law) it is unlawful to knowingly sign a petition for particular issue or candidate more than one time.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing brief and motions attached therewith has been furnished to The Hon. Robert A. Butterworth, Attorney General, Plaza Level, Room 1, The Capitol, Tallahassee, FL 32399-1050, to Barnaby W. Zall, Suite 525, 1156 Fifteenth Street, N.W., Washington, D.C. 20005 and to W. Dexter Douglas, Douglas, Cooper, Coppins & Powell, Post Office Box 1674, Tallahassee, FL 32302 by deposit thereof with First Class postage prepaid in the United States Mail this 19th day of January, 1988.



Roger L. Rice