NO. 71, 431

IN THE SUPREME COURT

OF FLORIDA

In re Advisory Opinion

to the

Attorney General

on the

Proposed Initiative to Make

English the Official Language of Florida

BRIEF of the

MEXICAN AMERICAN LEGAL DEFENSE

AND EDUCATIONAL FUND, and the

PUERTO RICAN LEGAL DEFENSE

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SUMMARY OF THE ARGUMENT

The issue presented before this Court concerns the validity of a proposed initiative which would add to the Florida Constitution a provision making the English language the sole language of official use in Florida. (The proposed initiative will hereinafter be referred to as the English-only initiative.) Without more, the proposed initiative states only that (a) English is the official language of the state of Florida, and (b) the Legislature shall have the power to enforce this section by appropriate legislation. No attempt is made in either the initiative or the ballot summary to define the term "official." Furthermore, no attempt is made to designate what aspect of language -- whether in education, political participation, or judicial administration -- would be affected by this constitutional amendment.

In his November 10, 1987 letter to the Chief Justice and the Justices of this Court to petition for an advisory opinion on this matter, Attorney General Butterworth raised significant questions about the validity of this initiative in light of the Florida Constitution and laws.

The relevant areas of inquiry as outlined by the Attorney General include: (1) whether the ballot title and summary fail to inform the public of the chief purpose of the measure enabling the voter to intelligently cast his ballot; (2) whether the ballot title and summary fail to inform the public of the chief

purpose of the measure enabling the voter to intelligently cast his ballot; (3) whether the failure of the initiative to define the term "official" will mislead the voting public; and (4) the extent to which voters may be misled by the failure of the ballot summary to accurately reflect the language of the initiative.

In light of the many areas of communication and civic participation embraced within the subject of language, and in view of the failure of the initiative's proponents to state the chief purpose of the measure in clear and unambiguous language, the proposed English-only initiative must be declared invalid under the single-subject requirement of Article XI, section 3 of the Florida Constitution, and under section 101.161 of the Florida statutes.

In addition, the Court should consider the arguments of UNIDOS in its Position Paper In Response to English-Only Proposition since Article IV, section 10 of the Florida Constitution provides for the Attorney General to request the Supreme Court for its opinion as to the validity of the initiative petition generally and does not limit the request to whether the petition is properly drawn.

INTEREST OF THE AMICI

The Mexican American Legal Defense and Education Fund is a national civil rights organization established in 1967. Its principal object is to secure, through litigation and education, the civil rights of Hispanics living in the United States.

The Puerto Rican Legal Defense & Education Fund is also a national civil rights organization. Founded in 1972, its principal object is to secure, through litigation and education, the civil rights of Puerto Ricans and other Hispanics living in the United States.

The American Civil Liberties Union Foundation of Florida, Inc., is a Florida civil rights and liberties organization. It supports and joins with the Mexican American Legal Defense and Education Fund and the Puerto Rican Legal Defense & Education Fund in this brief.

Because the adoption of the proposed English-only initiative at issue in this case would have a negative impact upon the civil rights of Hispanics living in Florida, amici respectfully submit this Brief Amici Curiae.

ARGUMENT

I. The Proposed English-only Initiative Is Unconstitutional Because It Violates the Single-Subject Requirement of Article XI, Section 3 of the Florida Constitution

A crucial issue before this Court is whether the proposed initiative to make English the official language of the State of Florida is unconstitutional because it contains multiple subjects, in violation of Article XI, Section 3 of the State Constitution.

Section 3 of Article XI authorizes "the revision or amendment of any portion or portions" of the Florida Constitution by initiative provided that the revision or amendment is limited to "one subject and matters directly connected therewith." See Weber v. Smathers, 338 So.2d 819 (Fla. 1976).

The term "one subject" was not explicitly defined in the majority opinion in Weber. However, Weber established a number of judicial considerations which, as refined through subsequent case law, provide a framework for determining the unconstitutionality of a proposed initiative. First, a proposed initiative cannot constitute an attempt to "logroll" or to "enfold[ ] disparate subjects within the cloak of a broad generality" thereby attracting the support of diverse groups to assure passage. Evans v. Firestone, 457 So.2d 1351, 1354 (Fla. 1984) Second, the proposed initiative cannot affect more than one government function. Id. at 1354; Fine v. Firestone, 448 So.2d. 984, 990 (Fla. 1984); see also Weber v. Smathers, 338 So.2d 819 (Fla. 1976) (England, J., concurring). Third, the proposed amendment must not conflict with other articles or sections of the Florida Constitution. Fine v. Firestone at 990. Finally, the wording of the proposed amendment must be specific and well-defined in scope, directing the voters' attention to one change which may affect only one subject and matters directly connnected therewith." Id. at 989.

In order to be constitutional under Section 3 of Article XI, a proposed initiative must satisfy all four of the foregoing

tests. Not only does the proposed English-only initiative not meet all four of the tests, but it fails to satisfy every one of them.

A. The Proposed English-Only Initiative Is Unconstitutional Because It Fuses Differing Interests in an Attempt To "Logroll" the Initiative

This Court has held that in order for a proposed initiative to pass constitutional muster, it must be complete within itself, requiring no other amendment to effect its purpose. Fine v. Firestone, 448 So.2d 984, 990 (Fla. 1984); Evans v. Firestone, 457 So.2d 1351, 1354 (Fla. 1984). In refining this rule, this Court has consistently struck down initiatives which are an aggregation of multiple subjects, holding that such initiatives place voters with different views on the subjects contained in the proposals in a position of having to choose which subject they feel most strongly about. Fine v. Firestone at 988. Thus, the fundamental concern of the single-subject limitation is the prevention of "logrolling," the aggregation of dissimilar provisions designed to attract support of diverse groups to assure passage of the initiative. Id.

This constitutional doctrine protects the people's interest in allowing only specific and unambiguous initiatives to be placed on the ballot. In the Fine litigation, for example, this Court struck down a request to place on the ballot an initiative which would have accomplished several objectives. The Fine initiative encompassed a revenue proposal to limit how the

governments could tax, a proposal to restrict all government user-fee operations, and a proposal affecting the funding of capital improvements through revenue bonds. Fine v. Firestone, 448 So. 2d at 986. This Court held that this proposed initiative allegedly affecting only the single subject of "revenue" in fact contained multiple objectives and thus violated the single-subject rule. Reasoning that the proposed initiative failed to allow the citizens to vote on "singular changes in the functions of governmental structure," this Court exercised itslegal and official duty to disapprove overbroad initiatives. Id. Nowhere has this Court approved an initiative simply because the proponents have avoided informing the public how the initiative will function.

In applying the precedent in Fine to the pending English-only initiative, this Court must inquire beyond the contentions of the proponents that the initiative will address a singular purpose. From the face of the initiative, the "singular changes in the function of governmental structure" are not apparent. Instead, this Court must speculate as to what changes are intended by the initiative, just as the voters of Florida will necessarily speculate as to the intent of the proposed initiative.

The pending English-only proposal is the epitome of logrolling. Under the cloak of a broad generality -- language -- it encompasses dissimilar areas which would necessarily require further legislative enactments and amendments. Respondents

themselves provide the evidence demonstrating the disparate areas of support for the initiative. In the Appendix to Respondents' Brief, Respondents describe their own analysis of the four principal groups of persons who support the English-only initiative. Persons in the first group (45%) gave as their reason an interest in health and safety. Persons in the second group (38%) gave as their reason for supporting the initiative an interest in the economic advancement of English speakers. The persons in the third group (9%) responded that they did not know their reason for supporting the initiative. The fourth group (8%) related a desire to stop the use of languages other than English. Respondents' Appendix at 5. None of these groups has any clear idea of what the amendment will do because the amendment itself does not enunciate any of these four alleged purposes. For example, there is no provision in the amendment to provide for the health and safety of limited-English-proficient people; nor are there assurances that existing health and safety programs for limited-English-speaking persons will be preserved. Similarly, the proposed initiative gives no details as to how it will promote the economic well-being of Floridians. Indeed, a significant percentage of persons surveyed by the Respondents stated that their sole interest in the proposed initiative was to prevent non-English speakers from using their native tongue.

This Court should note that none of these groups, on its own, constitutes a majority. As this court has held, it is

unconstitutional for an initiative to build its support on aggregated minorities. Adams v. Gunter, 238 So.2d 824, 831 (Fla. 1970)("Minorities favoring each proposition severally might, thus aggregated, adopt all"), citing McFadden v. Jordan, 196 P.2d 787, 797 (Cal. 1948). Accord, Evans v. Firestone, 457 So.2d 1351, 1354 (Fla. 1984).

While each separate minority may understand its own motivations for supporting its interest in the initiative, the combination of a minimum of four separate agendas for supporting the English-only initiative deprives the electorate of the level of understanding required by the Supreme Court in Fine v. Firestone at 989. In other words, the electorate will not be apprised of the specific changes that will be produced by its vote. Id.

B. The Proposed English-Only Initiative is Unconstitutional Because It Affects More Than One Government Function

Where a proposed amendment changes more than one government function, this Court has held it is clearly multi-subject. Evans v. Firestone, 457 So.2d 1351 (Fla. 1984) (government functions include both legislative and judicial functions). This is important to a consideration of the pending English only initiative because a reading of the proposed initiative logically leads to the conclusion that the initiative is multi-subject.

In Fine v. Firestone, 448 So.2d 984 (Fla. 1984), this Court found multiplicity of subject matter because the proposed revenue

amendment, among other things, would have substantially affected all user-fee services operated by a governmental agency. User-fee services, such as utility, water, and sewage fee services would all have been restricted by the revenue cap in the proposed initiative. This interference with multiple government functions violated Article XI, Section 3.

The respondents in Fine v. Firestone case contended that the restrictions "deal with government revenue and are of a common and consistent theme." Id. at 990. Nevertheless, this Court looked beyond the contentions of the Respondents and held that affecting multiple government functions was constitutionally prohibited.

The proponents of the English-only initiative make identical claims that their initiative follows a single theme. Despite these claims, their initiative is similarly prohibited from effecting broad restrictions on multiple government functions. This Court cannot ignore that the proposed English-only initiative is so expansive that it may regulate the conduct of local elections, may restrict the provision of education to limited-English-proficient children, and may intrude into the provision of vital health and safety services. The proposed English-only initiative also carries the potential for imposing a burden on the judicial function of the state by constantly requiring the courts to determine the meaning of substantial portions of the constitution through judicial construction. Fine at 989.

C. The Proposed English-Only Initiative Unconstitutionally Requires This Court To Interpret Other Constitutional Provisions Which May Be In Conflict With It

In Fine v. Firestone, 457 So.2d 1351 (Fla. 1984), this Court ruled that one of the biggest dangers in permitting broad and vague initiative petitions to be effectuated lies in giving this Court "the broad discretionary authority in determining the effect of a proposed amendment or revision of the existing constitution." Fine v. Firestone at 989. The English-only initiative at issue herein authorizes the legislature to enact appropriate legislation. However, it does so with no specific enumeration of the limits of this delegation. Thus, Carroll v. Firestone, 497 So.2d 1204 (Fla. 1986), is not inapposite. In Carroll, the initiative contained specific directives on the implementation and expenditure of lottery proceeds. The English-only initiative, in contrast, gives no specifics. Consequently, this Court will be called upon to interpret its effect on other constitutional provisions.

Numerous constitutional guarantees are implicated by this proposed initiative. By its very nature, the language that government is required to use, and conversely prohibited from using, in providing services to all Floridians permeates every level of government.

For example, Article I of the Constitution proclaims that the courts of this state are open to all persons to redress any and all injuries suffered. Legislation prohibiting the use of

interpreters in all court and administrative proceedings would seriously impinge upon these guarantees. Yet, such legislation may be appropriate under this initiative. Similarly, Article I, Section 16 incorporates the legal principles in criminal proceedings of the right to confront witnesses and the right to the assistance of counsel. Thus, legislation prohibiting interpreters in all courts unlawfully dilutes these constitutional guarantees for some residents of this state. See, e.g., United States ex rel. Negron v. State of New York, 434 F.2d 386 (2d Cir. 1970)(U.S. Constitution's Sixth Amendment guarantees require assistance of a translator for a non-English-speaking defendant).

Article I, Section 2 of the Constitution provides that all persons have the right to the equal protection of the laws. Legislation that, in keeping with this initiative, prescribes the existing utilization of languages other than English by state and local agencies implicates not only matters of home rule and local deference (see discussion below), but may also raise equal protection concerns. Thus, residents of the state who have access to governmental services and instructions in other languages would be disproportionately affected by legislation outlawing such access. In fact, it is this inability to speak or read the English language that earmarks these residents for differential treatment especially in situations throughout the state, e.g., in Dade County, where they are benefitting from existing services in other languages. Non-English speaking

communities are often the subject of antipathy and at times bias. The enactment of appropriate legislation under this initiative may very well incorporate private biases in law. Accordingly, the equal protection clause may be affected by this initiative.

Article VIII of the Constitution speaks to powers, duties, and the form of city and county government. Legislation which may be appropriate under this initiative but which, nevertheless, restricts the powers of these local governments (e.g., home rule concerns) will trigger, once again, a battle between this initiative and a separate constitutional provision.

Finally, Article IX of the Constitution provides the constitutional basis for free and appropriate public education to the residents of this state. Localities which have interpreted these constitutional guarantees to provide equal opportunitites to non-English speakers in the form of transitional native-language instruction may well be in danger. This is particularly so if the legislature enacts measures pursuant to this initiative which restrict or eliminate these instructional programs. Thus, the constitutional guarantee of a free and appropriate public education may be pitted against the constitutional prohibition of government's use of other languages that forms the basis of this initiative.

D. The Proposed English-Only Initiative Is Unconstitutional Because It Fails To Provide Fair Notice To The Voters Of Its Intended Effect

The single-subject requirement in Article XI, Section 3 is

intended to "direct the electorate's attention to one change which may affect only one subject and matters directly connected therewith." Fine v. Firestone at 989 (emphasis added). Strict compliance with this requirement is necessary both to allow the public to understand the contemplated changes in the Constitution, and to avoid placing this Court in the position of second-guessing the electorate. That is, the Supreme Court should not be placed in the position of redrafting substantial portions of the constitution by judicial construction. Id. at 989. While a laundry list of possible effects of the proposed initiative is not required by this Court, proponents fail to give the electorate even the barest inkling of what an English-only constitutional mandate may require.

A helpful example of the potential effects of English-only legislation is evidenced by the Dade County English-only ordinance, Sec. 2-11.18 Dade County Code. (The language of the ordinance is set forth in the Appendix at the end of this Brief.) Apart from stating that English shall be the official language of Dade County, the ordinance contains specific sections outlining the effects of the ordinance. For example, section (c) provides that all county government meetings, hearings and publications shall be in the English language only. Section (d) of the ordinance exempts the application of the ordinance to (1) medical services, (2) essential services to the elderly , (3) the handicapped, (4) emergency services and (4) worldwide tourism. Despite this somewhat clearer delineation of the effects of an

English-only mandate, the County Attorney has issued opinions on subjects ranging from the effect of this ordinance on County-performed marriage ceremonies to the denial of County funds to print bilingual fire prevention literature. The attached Appendix contains a sampling of County Attorney Opinions issued to address some of the matters raised as a result of this ordinance.

The proposed initiative provides even less guidance to the voting public. Such an initiative was rejected in Fine v. Firestone as an "empty vessel" which serves to transfer power to the judiciary. Fine at 998 (Shaw, J., concurring) (rejecting a "revenue" initiative because the limits of the initiative were not clear and the scope was too broad).

Furthermore, as noted by Attorney General Butterworth in his November 10, 1987, letter to this Court, no effort is made on behalf of the proponents to inform the voter of the meaning or effect of the term "official language". Letter from the Attorney General at 5. Such a glaring omission can only confuse and mislead the electorate, inviting each individual to supply his or her own interpretation or connotation of this vague distinction.

Because the proposed initiative fails to advise the voter sufficiently to enable him intelligently to cast his ballot, Hill v. Milander, 72 So.2d 796 (Fla. 1954), it must be stricken in accordance with Florida law.

II. The Proposed Ballot Title and Summary Violates Section 101.161 By Failing To Provide A Clear And Unambiguous Explanation Of The Initiative's Chief Purpose

Section 101.161 of the Florida Statutes requires a clear and unambiguous explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure (emphasis added). The purpose of this section is to advise the voter of the true meaning and ramifications of an amendment. Askew v. Firestone, 421 So.2d 151, 156 (Fla. 1982) (striking down an initiative which failed to inform the public that the chief effect of the measure was to abolish an existing complete prohibition on lobbying by legislators).

The proposed English-only ballot title and summary is a clear exercise in avoidance. Although Respondents argue that they have complied with the technical requirements of describing the initiative, they have failed to provide the substance necessary to give the voter fair notice of the decision he must make. See, Miami Dolphins, Ltd. v. Metropolitan Dade County, 394 So.2d 981 (Fla. 1981).

In Askew v. Firestone, 421 So.2d 151 (Fla. 1982), this Court struck down an amendment to require financial disclosure from former Senators and state officers as a condition of lobbying before any state government body. The crucial issue for this Court was not what the ballot summary said, but what it failed to say. Id. at 156. Indeed, the initiative in Askew was struck because the proponents failed to inform the public that the proposed initiative would abolish the then-existing, two-year

total prohibition on such lobbying activities.

Similarly, the proposed English-only initiative ballot summary poses a great danger for misleading the public because of its failure to provide an explanation of what it means to elevate the English language to constitutional status. While it is not necessary to explain every ramification of a proposed amendment, merely stating that the chief purpose of the initiative is to "establish English as the official language of Florida" explains nothing. At minimum, the voter must be apprised of the chief purpose of the initiative. Carroll v. Firestone, 497 So.2d 1204 (Fla. 1986).

An additional matter which may mislead the public is the discrepancy between the language of the initiative and the language of the ballot summary. The initiative provides that the "Legislature shall have the power to enforce this section by appropriate legislation. The ballot summary provides that the initiative "enables the legislature to implement this article by appropriate legislation" (emphasis added). As is apparent, the ballot summary provides a broader interpretation than the actual language of the initiative warrants. The word "implement," for example, is a very expansive term. According to the Oxford English Dictionary (Oxford University Press 1971), Compact Edition at 1387 (94), "implement" means to "complete, perform, carry into effect; to fulfill," and also to "fill up, supplement." Such a term comprehends an affirmative duty on behalf of the legislature to carry out the vague and ill-defined

mandate to make English the official language of Florida. Such a term also misleads the voter into believing that the legislature will be required to do something, and it thus creates the image of positive action in the direction of whatever the voter has determined official English means. The term "enforce," on the other hand, which is the actual language of the initiative, has a much narrower definition. This term comprehends an already existing set of circumstances which are maintained or perpetuated. See Oxford English Dictionary at 865 (171) ("To compel the observance of; to support by force"). Moreover, by informing the public that this initiative enables the legislature to implement an article, the public may be misled into believing that but for this initiative, the legislature would not have the ability to enact legislation contemplated by English-only proponents. This view is patently false and misleading. The legislature does not need an amendment to the state Constitution to effect changes in language policy. Rather, such an amendment may actually impede the ability of the legislature to enact laws in this area.

Because the ballot title and summary mislead the public, the proposed initiative must be declared invalid.

III. The Proposed English-Only Initiative Should Be Invalidated Because It Is Unconstitutional In Its Language And Substance

Article IV, section 10 of the Florida Constitution directs the Attorney General to request this Court to issue its opinion as to the "validity of any initiative petition circulated pursuant to Section 3 of Article XI." While the request of the Attorney General in this case specifies concerns about the validity of the petition under the single-subject rule and the requirement of adequate notice to voters in the summary, the constitution does not limit the determination of validity by this Court to any particular grounds. The position paper submitted by UNIDOS argues numerous United States constitutional defects in this proposed amendment. In the interest of judicial economy as well as the enforcement of the spirit and letter of Article IV, section 10 of the Florida Constitution, these arguments should be considered by the Court. Should a proposed amendment to the Florida Constitution not pass constitutional muster under any provision of the federal or state constitution, it should be invalidated under this provision. Amici support the arguments raised by UNIDOS and contend that the proposed amendment should be struck on these grounds as well.

CONCLUSION

For all the reasons stated above, amici respectfully urge this Court to advise the Attorney General that this initiative is unconstitutional under Florida law.

DATED: January 20, 1988

Respectfully submitted,

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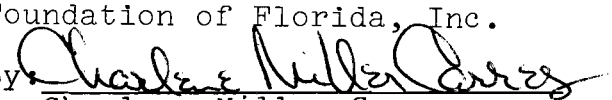
By 
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CERTIFICATE OF SERVICE

I, Charlene Miller Carres, a member of the bar of this Court, hereby certify that a copy of the attached Brief Amici Curiae was served by U. S. Mail, first-class postage prepaid, this 20th day of January 1988 upon counsel of record as follows:

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