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IN THE SUPREME COURT OF FLORIDA

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IN RE: ADVISORY OPINION TO
THE ATTORNEY GENERAL

ENGLISH - THE OFFICIAL
LANGUAGE OF FLORIDA

Case No. 71,431

BRIEF OF RESPONDENTS
FLORIDA ENGLISH CAMPAIGN AND
U. S. ENGLISH LEGISLATIVE TASK FORCE, INC.
PROponents OF THE INITIATIVE MEASURE

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TABLE OF CONTENTS

Table of Citations-----	ii
INTRODUCTION-----	1
STATEMENT OF THE CASE-----	2
SUMMARY OF ARGUMENT-----	3
ARGUMENT-----	4
 <u>Point I</u>	
THE PROPOSAL ENCOMPASSES ONLY ONE SUBJECT.-----	5
 <u>Point II</u>	
THE BALLOT SUMMARY MEETS THE TESTS OF §101.61, FLA. STAT. (1987).-----	10
CONCLUSION-----	12
CERTIFICATE OF SERVICE-----	13

TABLE OF CITATIONS

Cases

<u>Askew v. Firestone</u> , 421 So.2d 151 (Fla. 1982)-----	7
<u>Carroll v. Firestone</u> , 497 So.2d 1204 (Fla. 1986)-----	5, 6, 7
<u>City of Coral Gables v. Gray</u> , 19 So.2d 318 (Fla. 1944)-	8
<u>Evans v. Firestone</u> , 457 So.2d 1351 (Fla. 1984)-----	7
<u>Fine v. Firestone</u> , 448 So.2d 984 (Fla. 1984)-----	7, 9
<u>Floridians Against Casino Takeover v. Let's Help Florida</u> , 363 So.2d 337 (Fla. 1978)-----	6, 8
<u>Goldner v. Adams</u> , 167 So.2d 575 (Fla. 1964)-----	7
<u>Grose v. Firestone</u> , 422 So.2d 303 (Fla. 1982)-----	10
<u>Weber v. Smathers</u> , 338 So.2d 819 (Fla. 1976)-----	7, 8

Constitutional Provisions

Article II, Florida Constitution-----	10
Article IV, §10, Florida Constitution-----	2
Article XI, §3, Florida Constitution-----	2, 5, 7

Statutes

§16.061, Fla. Stat. (1987)-----	2
§101.161, Fla. Stat. (1987)-----	2, 4

INTRODUCTION

This brief is filed for the Florida English Campaign and the US English Legislative Task Force, Inc., in response to the Attorney General's request set forth in In re: Advisory Opinion to the Attorney General. English--The Official Language of Florida, Case No. 71,431, Filed November 18, 1987.

These two entities are real parties in interest, having been the moving force behind obtaining the necessary signatures for the matter at issue to be placed before the electorate.

STATEMENT OF THE CASE

The Attorney General, pursuant to Article IV, §10, Florida Constitution, and §16.061, Fla. Stat. (1987), requested the Court's opinion as to whether the proposed revision of the Florida Constitution making English the official language of Florida complies with Article XI, §3 of the Florida Constitution, and whether the ballot title and substance summary comply with §101.161, Fla. Stat. (1987).

SUMMARY OF ARGUMENT

The language of the proposed constitutional provision addresses only one subject--the official language of the state of Florida.

The ballot title and summary are clear, unambiguous and free from double entendre or misleading language.

If the proposal passes, the Constitution of Florida will only be changed to add the provision that English is the official language of Florida.

ARGUMENT

Introduction

The pertinent proposal reads:

"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 reads:

"Ballot Title and Summary:

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."

The matters for opinion before the Court are the questions as to whether the proposed constitutional amendment is limited to one subject (Point I), and as to whether the ballot title and summary meet the tests of §101.161, Fla. Stat. (1987) (Point II).

POINT I

THE PROPOSAL ENCOMPASSES ONLY ONE SUBJECT.

The applicable part of Article XI, §3, provides:

"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 shall embrace but one subject and matter directly connected therewith."

In the instant proposal there is but one subject which is that English is the official language of Florida. That is set forth in Section (a). Section (b) merely provides that the Legislature shall have the power to enforce this section by appropriate legislation.

The last case dealing with the one subject requirement was Carroll v. Firestone, 497 So.2d 1204 (Fla. 1986), (herein called the Lottery case), being the amendment authorizing a state lottery which was adopted by the people at the last general election. That case fully reviewed the previous cases dealing with the one subject requirement.

The Court has consistently stated that the relationship of the enacting parts of the proposed amendment determines whether the amendment contains one subject and matter directly connected therewith. The legislative implementation is directly connected to the part amending the Constitution prescribing the official state language and therefore passes the one subject test.

When the language here is contrasted with that in

the Lottery case, one immediately wonders how any argument could be made that this amendment involves more than one subject.

In the Lottery case, there were three separate sections--- Section (a) which stated that lotteries may be operated by the state; Section (b) which said that if any of the subsections being (c) and perhaps sub-section (1) of (c), were declared unconstitutional, then section (a) would survive; Section (c) stated the amendment shall be implemented and set forth a name for the lottery until changed by the Legislature; sub-section (1) was considered a schedule which could be amended by General Law.

The Court held that the only subject addressed in the amendment was the lottery and the incidental language providing the Legislature with the authority to implement the lottery and appropriate the proceeds did not make it a two-subject consideration. The Court also held that the severability clause, Section (b), did not violate Article V by impinging on the authority of the courts, nor did it create a separate subject.

With that in mind we have the English language proposal which simply states that English is the official language of Florida and the Legislature shall have the power to enforce it. It would be utterly impossible to imagine a case where a single subject is so definite. Elementary, non-arguable concepts defy the support of convoluted, exhaustive argument and that is the case with this straightforward English proposal.

When the earlier initiative cases such as Floridians Against Casino Takeover v. Let's Help Florida, 363 So.2d 337 (Fla. 1978), are reviewed, we find that the Court held the casino amendment had only a single subject even though the proposal provided for casino gambling in certain parts of the state, and inextricably linked the revenue from casino gambling to funding education and law enforcement.

At least one member of the Court, Mr. Justice Ehrlich, in the Lottery case felt this was "log rolling" and violated the single subject requirement of Article XI, §3. In his concurring opinion he made this clear and thereby illuminated the majority's holding that leaving something to the implementation of the Legislature as well as making a binding disposition of revenue did not create more than one subject rendering a proposed amendment invalid.

None of this complication exists in the "Official English" initiative.

Suffice it to say because of the single purpose of the proposal in this case, it is somewhat redundant to deal extensively with the prior cases of Goldner v. Adams, 167 So.2d 575 (Fla. 1964); Weber vs. Smathers, 338 So.2d 819 (Fla. 1976); Fine v. Firestone, 448 So.2d 984 (Fla. 1984); and Evans v. Firestone, 457 So.2d 1351 (Fla. 1984).

Perhaps the instruction by the Court in Askew v. Firestone, 421 So.2d 151 (Fla. 1982), which stated that the Court has a duty to act with extreme care, caution and restraint

before removing an amendment from the vote of the people, should be unnecessary in this case since indeed the only possible interpretation of the amendment is designating an official language for the state of Florida.

While Justice England observed that the one subject rule "obviously means different things to different reasonable people," Weber v. Smathers, 338 So.2d 819 (Fla. 1976), in the "Official English" proposal, there is no room for reasonable or unreasonable people to differ, so even that truism can remain closeted on this occasion.

While the parade of cases on initiative petition ballots have produced a large number of dissenting, concurring and special concurring opinions, the Court has unanimously recognized that when it finds a single subject involved, the people will be allowed to vote on the amendment.

As stated in Floridians, supra:

"If a proposed amendment has but one main purpose and all else is incidental and reasonably necessary to effectuate the main object and purpose contemplated, it is not susceptible to the charge that it contains more than one amendment."

Floridians, at 339.

Even the doctrine set forth in City of Coral Gables v. Gray, 19 So.2d 318 (Fla. 1944), holding the proper test is one of function, is immaterial, because in this case there is nothing involved to invoke the Gray test. The real purpose of the Gray test, and the significance of the function as used in the various cases as stated by Justice Overton, ". . . was

to point out that the one subject limitation dealt with the logical and natural oneness of purpose, as opposed to the prior limitation on initiative proposals affecting multiple sections of the Constitution." Fine, at 990.

From the Gray opinion to the 1986 Lottery opinion, the Court has emphasized the logical and natural oneness of purpose affecting one governmental function, as being the hallmark of a valid single subject amendment. By that standard, or any other standard that could be imagined, this amendment deals solely with the the one issue whether English will be the official language of Florida.

POINT II

THE BALLOT SUMMARY MEETS THE TESTS OF §101.61, FLA. STAT. (1987).

The only attack here that might be made on the ballot summary and title possibly could center on the use of the word "article" instead of the word "Section" in the summary.

This was an inadvertent use of the word "article," and the word "section" would have been a more desirable selection.

The use of the word "article" creates no confusion nor does it mislead anyone since it is clear that the constitution will make English the official language and give the Legislature the power to implement the section of the article involved.

It is hard to argue that this one possibly inappropriate use of words could in any way be misleading or ambiguous to a voter deciding to vote yes or no on whether English will be the official language of Florida.

As was the result in Grose v. Firestone, 422 So.2d 303 (Fla. 1982), where a ballot summary was held to be in compliance with the statute when it adequately disclosed the chief purpose of the proposed amendment (in that case the right to be free from unreasonable searches and seizures), English will be the official language of Florida is the only purpose that can be gleaned from this summary. The requirements prescribed by law are satisfied.

As a matter of fact, Article II is the "catch all" article and deals with, among other things, state boundaries, the state seal, the seat of government, and the "Sunshine

Amendment." It would be ludicrous to assert that any person could conclude from the summary that these matters in Article II were being amended. The only possible interpretation is that this Article is being amended by adding Section 9 which is that English will be the official language of Florida.

In the Appendix (Page 2), Hamilton, Frederick & Schneiders' summary of poll results shows the question:

"It has been proposed that Florida adopt an amendment to the state constitution to make English the official language of Florida. Do you strongly favor, somewhat favor, somewhat oppose, or strongly oppose this?"

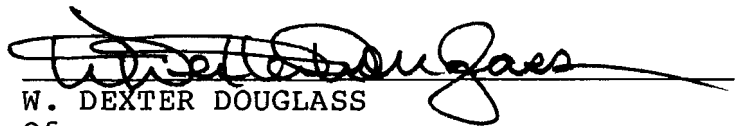
was understood by 800 adult Floridians surveyed and 74% strongly favored the amendment, 12% somewhat favored, 6% strongly opposed, 4% somewhat opposed and 4% had no opinion.

The sense of the question asked is substantially the same as the ballot. It was clear then and it is clear now.

CONCLUSION

The "English is the official language of Florida" initiative satisfies all constitutional and statutory requirements for being submitted to a vote of the people. It is therefore requested that the Court advise the Attorney General that the proposal should be submitted to the people for a yes or no vote.

Respectfully submitted,



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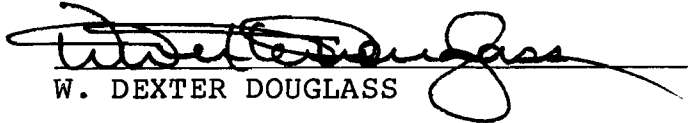
AND

U. S. ENGLISH LEGISLATIVE TASK

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing brief has been furnished to The Hon. Robert A. Butterworth, Attorney General, Plaza Level, Room 1, The Capitol, Tallahassee, FL 32399-1050 by delivery, and to Barnaby W. Zall, Suite 525, 1156 Fifteenth Street, N.W., Washington, D.C. 20005, by overnight delivery service this 10th day of December, 1987.


W. DEXTER DOUGLASS

DEL:ENGBRIEF