

S U P R E M E C O U R T O F F L O R I D A

NO. 71,431

IN RE:

ADVISORY OPINION TO THE
ATTORNEY GENERAL ON
ENGLISH THE OFFICIAL LANGUAGE OF FLORIDA

FILED
JAN 15 1963
CLERK OF THE COURT
By: *[Signature]*
Deputy Clerk

BRIEF IN REPLY TO ENGLISH FIRST'S BRIEF
IN SUPPORT OF THE FLORIDA INITIATIVE PETITION
FOR AN ENGLISH LANGUAGE AMENDMENT
TO THE FLORIDA CONSTITUTION.

The LEAGUE OF UNITED LATIN AMERICAN CITIZENS, (LULAC), and CALIXTO ANAYA, its President in the State of Florida, submit that the proposed English Language Amendment and its initiative petition violate Florida law because: 1) the proposal is clearly and conclusively defective since it fails to meet the intent and purpose of the single-subject requirement of Article XI, Section 3, FLORIDA CONSTITUTION; and 2) both, the proposed amendment and ballot title and summary fail to meet the intent and purpose of Section 101.161, FLORIDA STATUTES, in that they are unclear, ambiguous and confusing, thereby substantially affecting other sections and articles of the Florida Constitution.

BACKGROUND

The proposed amendment originated with an initiative petition for a constitutional amendment entitled, "English is the Official Language of Florida."

The proposed amended section to Article II specifies:

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:

(Title)

English is the Official Language of Florida .

(Summary)

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

The foregoing proposed initiative would add a new section, No. 9, to Article II of the Florida Constitution, providing that English be the official language of the State of Florida, and that the legislature shall have the power of enforcing the section by appropriate legislation. The summary states, "Enables the legislature to implement this article by appropriate legislation, indicating that there will be other legislation needed to implement the Amendment, if passed. [Emphasis supplied].

ENGLISH FIRST, the national organization committed to making English the official language of the federal and state governments, claims in its Brief, that the proposed amendment "addresses only one subject ---the official language of the State of Florida," and that the question put to the voters is very clear and gives fair notice to the voters.

Petitioners disagree and submit the following Memorandum of Law in support of the invalidity and unconstitutionality of the proposed initiative, and ballot title and summary of English the Official Language of Florida.

I

PROPOSAL IS CLEARLY AND CONCLUSIVELY DEFECTIVE SINCE IT FAILS TO MEET THE INTENT AND PURPOSE OF THE SINGLE-SUBJECT REQUIREMENT OF ARTICLE XI, SECTION 3, FLORIDA CONSTITUTION.

Article XI, s. 3, Fla. Const., which specifies that "The power to propose amendments to any section of this constitution by initiative is reserved to the people..." in effect, reserves to the people the power to amend the Constitution by initiative, provided that certain requirements be met.

One of the requirements in addition to the prescription of the manner and number of signatures required, which is not an issue in this proceeding, is that "any such revision or amendment shall embrace but one subject and matter directly connected therewith." See Fine v. Firestone, 448 So.3d 984, 989 (Fla. 1984), where this Court stated:

...[T]he single-subject restrain on constitutional change by initiative proposals is intended to direct the electorate's attention to one change which may affect only one subject and matters directly connected therewith, and that includes an understanding by the electorate of the specific changes in the existing constitution proposed by any initiative proposal.

The single-subject requirement in the proviso language of this section is a rule of restrain. Fine, 448 So.2d, at 988.

The Petitioners submit that the instant proposed amendment will affect other articles and sections of the state and federal constitution; and, therefore, it is critical for this Court to determine whether the single-subject requirement is met. Further, this Court has recognized the importance of a two prong test in the one-subject limitation on initiative petitions, specifically:

1. Ensuring that initiatives are sufficiently clear so that the reader, whether layman or judge, can understand what it purports to do and perceive its limits.

2. Ensuring that there is logical and natural unity of purpose in the initiative so that a vote for or against the initiative is an unequivocal expression of approval or disapproval of the entire initiative.

Fine v. Firestone, 448 So.2d at 998.

The Petitioners submit that the initiative fails on both prongs. The limits of the initiative are not clear and the scope of the single word "enforce" is so broad and vague that citizens are basically transferring that unknown and unlimited power to the legislature "to enforce, and/or implement" the amendment. Furthermore, this Court again addressed the single-subject issue and concluded that "enfolding disparate subjects within the cloak of a broad generality does not satisfy the single-subject requirement." Evans v. Firestone, 457 So.2d 1351, 1353 (Fla. 1984).

Based on the foregoing, Petitioners submit that the proposed amendment, ballot title and summary do not meet the requirements of a single-subject matter. Further, Petitioners submit that its broad generality which affects various sections and articles

of the Constitution; and its vagueness and transfer of unrestricted power to the legislature, violate Section 101.161, Florida Statutes.

II.

PROPOSED AMENDMENT, AND BALLOT TITLE AND SUMMARY
FAILS TO MEET THE INTENT AND PURPOSE OF SECTION
101.161, FLORIDA STATUTES.

The Petitioners submit that the proposed amendment does not comply with Section 101.161, Florida Statutes., in that the ballot title and summary does not provide the voter with the true meaning of the proposed amendment.

Section 101.161, Florida Statutes (1983) provides in pertinent part that the substance of a constitutional amendment "shall be printed in clear and unambiguous language on the ballot...The substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure... [Emphasis supplied].

By adoption of a constitutional amendment, people may establish law which legislature is inhibited to enact by other provisions of the Constitution. The legislature is a creature of the Constitution and should never be superior in power to the will of the people, as written by them in the Constitution. See Coleman v. State ex rel. Race, 159 So. 504 (Fla. 1935).

Of paramount importance is the federal and state constitutional relationship. Principles proclaimed in the Declaration of Rights in the State Constitution and in the due

process and equal protection clauses of the United States Constitution are insuperable commands. Therefore, applicable provisions of the United States Constitution are superior authority to state Constitution provisions, Gray v. Winthrop, 115 Fla. 721, 156 So.270, (Fla. 1934).

This Court held in Fine, supra. that " ... as long as the proposal contains a single subject, [it] should identify the articles or sections of the constitution substantially affected." This Court reasoned that compliance with this requirement was necessary in order that the public be able to comprehend the proposed changes in the constitution and the responsibility of interpreting the proposal to determine what sections and articles are substantially affected.

Accordingly, the Petitioners submit that the proposed amendment in this instant cause substantially affects multiple sections and articles of our present Constitution which are not in any way identified to the voters.

The Petitioners submit that violation of the "single-subject" restraint commences with its adverse effect on the Declaration of Rights, Article I of the Florida Constitution which specifies:

All natural persons are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property....No person shall be deprived of any right because of race, religion, or physical handicap.

In addition the Petitioners submit that the proposed amendment violates several Sections and Articles of the Florida Constitution. Not only does it violate the Declaration of Rights in Article I, but also other Sections and Articles such as Article I, s. 2, Basic Rights; Article 1, s. 9, Due Process; Article 1, s. 21, Access to Courts; and, Article I, s. 22, Trial by Jury, not excluding others. The initiative could and most logically would, delete the requirement of court appointment interpreters; prohibit the printing of educational and informational materials in other than the English language; limit accessibility to 911 and other emergency assistance programs; and end bilingual information on public transportation and other public facilities critical to the safety and well being of those persons non-fluent in the English language.

To buttress this position, Petitioners refer to ENGLISH ONLY'S Brief before this Court wherein it states:

"[T]he fact is that 'official language' means only that the government of Florida will be under no obligation to use language other than English in the provisions of services to Floridians."

ELA Brief, p. 3, para.1.

The proponents of English as the official language actually propose that in providing services to Floridians, including emergency and critical services, the states nor the federal government shall be concerned with an individual's well being or of the protection of life, liberty or property. Such a position is callous and contrary to all that our fore fathers carefully carved for us in their drafting of the United States Constitution

to ensure that "...in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity," ordained and established the Constitution for the United States.

In addition to the proposed amendment not meeting the single-subject restraints, such non-compliance is contingent on, and augments the further non-compliance of the Ballot's summary, since it does not give a true meaning, and the simplistic explanation only reveals the tip of the iceberg. Thereby the ballot fails to give the electorate fair notice of what he/she is voting on.

The language in both the initiative and in the ballot's title and summary is unclear, vague, and misleading in what it purports to do and its limits are not perceivable.

The proposal, ballot title and summary fail to meet the first prong of the two-prong test enunciated by this Court in *Fine*, that of Ensuring that initiatives are sufficiently clear so that the reader, whether layman or judge, can understand what it purports to do and perceive its limits.

The language in the proposed amendment is unclear and its purpose is too vague, and the summary of the proposed amendment which would appear on the ballot violates §101.161, Florida Statutes, in that it is inadequate to inform the public of the substantial shift in legislative power which it would create.

Proposed Section 9 (b) is ambiguous in that it states that the legislation shall "enforce" that English is the Official

Language of Florida. The word "enforce", in the Amendment, and "implement" in the Ballot summary are so broad, vague and its limits so imperceivable that they violate Section 101.161, Florida Statutes. The word "enforce" as defined in Black's Law dictionary is as follows:

ENFORCE: To put into execution; to cause to take effect; to make effective; as to enforce a particular law...to compel obedience to. Black's Law Dictionary, 474 (5th Rev.Ed. 1979).

The word "implement" as defined in American Heritage Dictionary of the English Language, New College Edition, (1981) is as follows:

IMPLEMENT: v. 1. to provide a definite plan or procedure to ensure the fulfillment of;

How can the law which would establish English as the official language for the State of Florida be enforced and or made effective, or how would "obedience be compelled," if it would not be by additional legislation placing restrictions and sanctions and promulgating rules and regulations which could be used to deprive the public who may not be proficient in the English language. of their life, liberty, or property rights which are guaranteed by both, the Florida Constitution and the United States Constitution. The people of Florida have a right to put such a provision in the constitution, but they have demanded, through legislative enactment to be told the chief purpose in clear and unambiguous language.

There is no chief purpose in "establishing" English as the official language, since it is already "established." Our United States Constitution and all State Constitutions are in the

English language. All administrative and judicial proceedings are in the English language. This is the reason that we are communicating with this Court in the English language, because English is already the official language in the United States. To attempt to include it as a Constitutional Amendment is unnecessary and will only take away rights and privileges guaranteed by our Florida State Constitution and the United States Constitution, including, but not limited to the due process and equal protection clauses.

The single-subject requirement mandates that the electorate's attention be directed to a change regarding one specific subject of government to protect against multiple precipitous changes in our state constitution. 488 So.2d at 988.

The very broadness of the proposal makes it impossible to state what it will affect and effect and therefore, violates the requirement that proposed amendments embrace only one subject.

In Evans v. Firestone, 457 So.2d 1351 (Fla. 1984), at 1353, this Court expounded:

Fine, supra. stands for the axiomatic proposition that enfolding disparate subjects within the cloak of a broad generality does not satisfy the single-subject requirement.

The power reserved to the people to amend any section of the State Constitution includes only the power to amend any section in such a manner that such amendment, if approved, would be complete within itself, relate to one subject, and not substantially affect any other section or article or require further amendments to accomplish its purpose. Adams v. Gunter, 238 So.2d 824 (1970).

CONCLUSION

WHEREFORE, based on the foregoing, the Petitioners submit that approval of the proposed amendment, ballot title and summary, would place in jeopardy the right of the people to be knowledgeable about how the proposed amendment would affect the constitution, and respectfully request that this Honorable Court consider the foregoing brief in issuing its advisory opinion in this matter.

Dated this 15th day of January, 1988.

Respectfully submitted,

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By *Edna E. Canino*
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CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing has been mailed to: Robert A. Butterworth, Attorney General, State of Florida, Office of the Attorney General, Department of Legal Affairs, the Capitol, Tallahassee, Florida 32399-1050 this 15th day of January, 1988.

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