ORIGINAL

IN THE SUPREME COURT OF FLORIDA

ADVISORY OPINION TO THE
ATTORNEY GENERAL

RE: REQUIREMENT FOR ADEQUATE
PUBLIC EDUCATION FUNDING

CASE NO. 89,962

INITIAL BRIEF OF CITIZENS FOR BUDGET FAIRNESS IN OPPOSITION TO INITIATIVE PETITION

ORIGINAL PROCEEDING

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INTRODUCTION

Citizens For Budget Fairness is an organization comprised of parties who are strongly committed to adequate funding of education. However, they believe that the proposed amendment is a precipitous and cataclysmic alteration of the functions and relationships of multiple state agencies that would have highly undesirable consequences for the State. They also believe that the ballot title and summary are misleading and fail to give the voter fair notice of the chief purpose and substantial effects of the proposed amendment. For these reasons, Citizens For Budget Fairness submits this brief in opposition to the initiative petition.

STATEMENT OF THE CASE AND FACTS

In 1996, a group calling itself Coalition To Reclaim Education's Share submitted to the Secretary of State an initiative petition to place a proposed amendment to the Florida Constitution on the ballot. The ballot title and summary contained on the petition read as follows:

> REQUIREMENT FOR ADEQUATE PUBLIC EDUCATION FUNDING
>
> Adequate provision for funding public education each fiscal year requires appropriation of at least a minimum percentage of total appropriations under Article III, not including lottery or federal funds,
> That minimum percentage (40 %) is based upon education's percentage of appropriations, excluding federal funds, for 1986-87 before state lotteries began.
> May be suspended in any fiscal year by a bill adopted by 2/3 vote of each legislative house. Effective following third fiscal year after approval.

On February 26, 1997, the Attorney General filed a petition with this Court pursuant to Article IV, Section 10 of the Florida Constitution seeking an opinion as to the validity of the above initiative petition. The Attorney General expressed the opinion that the petition met the single-subject requirement of Article XI, Section 3 of the Florida Constitution, and complied with the ballot requirements of Section 101,161, Florida Statutes. This Court issued its order inviting interested parties to file briefs on March 3, 1997

SUMMARY OF ARGUMENT

I

The petition violates the single-subject limitation of Article XI, Section 3 of the Florida Constitution. The amendment would substantially alter several basic functions of the Legislature, The current broad power of the Legislature to appropriate funds at its discretion among all state agencies would be drastically curtailed. The percentage of state revenue available for appropriation to local government pursuant to Article VII, Section 8 of the Florida Constitution would be significantly reduced. The Legislature's ability to impose new spending or regulatory functions upon local government would be greatly burdened because of the requirement of Article VII, Section 18 of the Florida Constitution that the Legislature fund such spending or regulatory requirements or authorize new local funding sources.

The proposed amendment would detract from the Governor's veto power. If the amendment is adopted, the Governor would be unable to veto any educational appropriation item in the general appropriation bill or any independent educational appropriation measure that would reduce the percentage of educational appropriations to less than 40% unless he vetoes non-educational appropriations sufficient to strike a balance.

The Governor and Cabinet would be limited in the exercise of their constitutional function to reduce the state budget in the event of a revenue shortfall as provided by Article IV, Section 13 of the Florida Constitution

The amendment would have a significant impact upon the ability of state and local agencies to fund fixed capital outlay projects through the use of state bonds pledging the full faith and credit of the state, as authorized by Article VII, Section 11 of the Florida Constitution, because of the reduction of available funds to secure such bonds.

The proposed amendment would significantly enhance the power of the Board of Education which would be guaranteed a perpetual percentage of appropriations and would no longer be dependent upon the Legislature or Governor for its funding.

The amendment would substantially alter the budgetary function of virtually every state funded agency by creating a funding quota system.

The proposed amendment constitutes the type of logrolling that the single-subject restriction was intended to avoid. Persons desiring more funds for education would be required to accept a fundamental change in the balance of state power and the state's funding mechanism as the price of such increase.

II

The ballot title is defective, It tells the voter that the amendment does nothing more than require "adequate" public education funding, something which the Constitution already requires. In fact, the amendment imposes a

minimum percentage which the sponsors believe is necessary to constitute adequate funding.

The summary not only fails to clarify the title, but is itself defective. It is impossible to tell which sentences are statements of current law and which are descriptions of the amendment's purpose and effect. A voter could reasonably conclude from the summary that the only change in current law is to permit the Legislature to waive a current minimum percentage requirement.

Even if understood, the ballot summary includes subjective statements of the sponsor's political motivation and is designed to persuade the reader of its reasonableness. Such editorializing is inappropriate and requires that the provision be removed from the ballot.

I

THE PETITION VIOLATES THE SINGLE-SUBJECT LIMITATION OF ARTICLE XI, SECTION 3 OF THE FLORIDA CONSTITUTION.

The rules for determining whether or not a petition meets the single-subject requirement have been clearly set out by this Court in its series of decisions in recent years. An analysis of those decisions discloses that the question of validity rests upon three simple maxims:

> 1. An amendment may not substantially affect more than one government function.
>
> 2. An amendment substantially affects a government function if it augments or detracts from any constitutional power.
>
> 3. While an amendment may validly affect more than one article or section of the Constitution, the manner in which it does so is an appropriate factor in determining whether it includes more than one subject.

Advisory Opinion to the Attorney General Re: Funding for Criminal Justice, 639 So.2d 972 (Fla. 1994); *In re Advisory Opinion to the Attorney General-Restricts Laws Related to Discrimination,* 632 So.2d 1018 (Fla. 1994);. *Evans v. Firestone, 457* So.2d 1351 (Fla. 1984); *Fine v. Firestone,* 448 So.2d 984 (Fla. 1984).

An analysis of the current petition in light of those principles discloses a clear violation of the single-subject requirement. Except in exceptional circumstances, the amendment would require that at least 40% of total state

appropriations in each fiscal year, not including lottery proceeds or federal funds, be allocated to public education. At first glance, one might read the amendment, as did the Attorney General, as embracing but one subject. However, this Court has cautioned that "enfolding disparate subjects within the cloak of a broad generality does not satisfy the single-subject requirement," and we must look beyond the surface to determine the true impact of the proposed amendment. *In re Advisory Opinion to the Attorney General -Restricts Laws Related to Discrimination, supra* at *1020; Evans v. Firestone, supra* at 1353. A glance below the surface of the current amendment discloses that it is unique among all those reviewed by this Court in its fundamental alteration of the basic functions of multiple government branches and agencies, and its continuing impact upon them.

It is immediately apparent that the amendment would substantially alter several basic functions of the Legislature. With certain narrow exceptions, the Constitution currently grants to the Legislature plenary power to allocate state revenue among such branches, agencies, and Article III program areas as it deems appropriate. Indeed, the broad power to appropriate money is the Legislature's primary instrument for implementing public policy and for sustaining its weight in the balance of power among branches.

The proposed amendment would drastically curtail that discretion. State revenues available for legislative allocation to any functions other than educational would be reduced to less than 60%.[1]

The amendment would also have a substantial impact upon the Legislature's functions with respect to local government. On the one hand, it would significantly reduce the percentage of state revenue available for appropriation to counties, municipalities, and special districts pursuant to Article VII, Section 8 of the Florida Constitution, On the other hand, it would substantially curtail the Legislature's ability to impose new spending or regulatory functions upon local government. Article VII, Section 18 of the Florida Constitution currently prohibits the Legislature from requiring a county or municipality to spend funds or take actions which require the expenditure of money unless the Legislature appropriates to such counties or municipalities a sufficient amount to cover such expenditures, or authorizes such entities to enact new funding sources.

The proposed amendment's effect upon a function integral to the balance of powers is not limited to legislative appropriations. It also detracts in a concrete and significant way from the Governor's veto power. Pursuant to Article III, Section 8 of the Florida Constitution, the Governor is empowered to veto any specific appropriation in a general appropriation bill. There is no limit

[1] Article III, Section 19(g) already requires that 5% of the previous year's net revenue collections for the general revenue fund be retained in a budget stabilization fund.

upon the exercise of that power with respect to the subject matter or funding allocation of such vetoes. As was made clear in the recent Presidential debates over the line item budget power, it is the Chief Executive's most potent instrument to advance his fiscal policy. If the proposed amendment were enacted, the Governor would be unable to veto any educational appropriation item in the general appropriation bill (or any independent education appropriation) that would reduce the percentage of educational appropriations to less than 40% unless he also vetoes non-educational appropriations sufficient to strike a balance.

The Governor and cabinet would be similarly limited in the exercise of their constitutional function to reduce the state budget in the event of a revenue shortfall as provided by Article IV, Section 13 of the Florida Constitution.

The proposed amendment would have a significant impact upon the ability of state and local agencies to fund fixed capital outlay projects through the use of state bonds pledging the full faith and credit of the state **as** authorized by Article VII, Section 11 of the Florida Constitution. It is self-evident that a constitutional 40% reduction on available funds to secure such bonds would make it more difficult and costly to market such obligations. This, in turn, affects two other specific sections of the Constitution: Article VII, Section 17 of the Florida Constitution which authorizes the issuance of state full faith and credit bonds for acquiring transportation right-of-way or for constructing bridges, and Article VII, Section 14 of the Florida Constitution which authorizes such bonds to

fund the construction of air and water pollution abatement facilities, The latter limitation will undoubtedly affect the constitutional mandate in Article II, Section 7 of the Florida Constitution that the Legislature make adequate provision for the abatement of air and water pollution. This Court has held that a substantial effect upon the constitutional scheme for funding capital improvements with government bonds constitutes a separate subject within the meaning of Article XI, Section 3 of the Florida Constitution. Fine *v. Firestone, supra* at 991.

While the proposed amendment significantly diminishes the powers of the Legislature and the Governor, it significantly enhances the power of the State Board of Education. Educational agencies would perpetually be guaranteed 40% of all appropriations, in addition to lottery and federal funds, regardless of need or efficiency. With the passage of the amendment, the Board would become a virtual fourth branch of government, no longer dependent upon the Legislature or the Governor for funding of agencies under its jurisdiction.

To the extent that the proposed amendment alters the government functions discussed above, it is conceptually the same as those which this Court has previously declared invalid as a violation of the single-subject requirement. What makes the proposed amendment unique, however, is its impact upon the functions of all state funded agencies. As this Court has noted, it is likely that every constitutional amendment will affect more than one aspect of government to some extent. *Advisory Opinion to the Attorney General Re: Limited Casinos, 644*

So. 2d 71 (Fla. 1994). The proposed amendment, however, would have more than an incidental effect upon some other agencies. It would substantially alter the budgetary function of *every* state funded agency by creating a virtual funding quota system in which educational agencies sit on one side of the scales and all other agencies sit on the opposite side. Any appropriation which would upset the precise 60/40 balance at any point in the budget year would render the entire appropriations process unconstitutional. Every appropriation to every agency would affect every other agency, not in an indirect and theoretical sense, but directly and immediately.

The Attorney General concluded that the proposed amendment meets the single-subject requirement based upon his reading of *Advisory Opinion to the Attorney General Re: Funding for Criminal Justice*, 639 So.2d 972 (Fla. 1994). That amendment authorized a new tax to be placed in a trust fund and provided that none of the funds could be used to replace or substitute funding at a level less than that allocated to the criminal justice system for the 1993-94 fiscal year. This Court held the provision valid, finding that it affected only the legislative branch, that the Legislature's discretion was limited only with respect to the allocation of the trust funds, and that the amendment did not augment or detract from any of the Legislature's constitutional powers.

The Funding for Criminal Justice amendment was distinguishable from the amendment currently under review in several material respects. First, as detailed above, the current amendment does detract from the Legislature's

constitutional powers as well as those of the Governor and other government agencies. Second, as this Court noted, the Funding for Criminal Justice amendment limited legislative discretion only with respect to the use of the trust funds created by the new tax. The amendment actually placed no limit upon legislative discretion because it only *authorized* the levy of a tax of "up to 1%" sales tax "as provided by law."

The current amendment, however, is not limited to any specific funding source. While the text of the amendment makes reference to lottery funds, there is nothing in the amendment that ties the funding allocation to the availability of lottery money. If the lottery funds were to dry up entirely, the proposed amendment would still mandate the allocation of 40% of all appropriations to education.

This Court has recognized that the single-subject limitation was designed to serve two purposes; first, to insulate the state's organic law "from precipitous and cataclysmic change." *Adviso y Opinion to the Attorney General Re: Funding for Criminal Justice, supra,* at *973; In Re: Adviso y Opinion to the Attorney General Re: Save Our Everglades Trust Fund,* 436 So.2d 1336, 1339 (Fla. 1994) and second, to avoid logrolling, The proposed amendment illustrates both concerns.

With no study or debate by any deliberative body, the powers, functions and relationship among multiple branches and agencies is significantly and permanently altered.

The Court has defined "logrolling" as a practice whereby voters are required to accept part of an initiative proposal which they oppose in order to obtain a change in the constitution which they support. *Advisory Opinion to the Attorney General Re: Limited Casinos, supra; Fine v. Firestone, supra.* A voter desiring to see an increase in educational funding would be required by the proposed amendment to accept a fundamental alteration in the functions and relationships of Florida government as part of the package.

II

THE BALLOT TITLE AND SUMMARY VIOLATES THE PROVISIONS OF SECTION 101.161, FLORIDA STATUTES.

Section 101.161, Florida Statutes requires that the substance of a proposed constitutional amendment "be printed in clear and unambiguous language on the ballot ***." This Court has interpreted the provision to require that the title and summary give the voter a "clear and unambiguous explanation of the measure's chief purpose," *Askew* v. Firestone, 421 So.2d. 151 (Fla. 1982), and its "true meaning and ramifications." *In re Adviso y Opinion to the Attorney General – Restricts Laws Relating to Discrimination, supra.* The title and summary must enable the voter "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." *Askew v. Firestone, supra* at 156; *Smathers v. Smith, 338* So.2d 825, 829 (Fla. 1976). The voter, this Court has declared, has a "fundamental right" to such notice. *Evans v. Firestone, supra* at 1355,

A. The Title

On at least two occasions, the Court has warned initiative sponsors that its reluctance to remove measures from the ballot will not deter it from doing so when the above principles are violated. *In re Advisory Opinion to the Attorney General – Restricts Laws Related to Discrimination, supra* at 1021; *Smith v. American Airlines,* 606 So.2d 618 (Fla. 1992). In the last cited case, the Court admonished

initiative sponsors not to "provide an abbreviated, ambiguous statement in the hope that this Court's reluctance to remove issues from the ballot will prevent us from insisting on clarity and meaningful information." Id. At 620. Despite the Court's clear instructions regarding ballot titles and summaries, and its demonstrated willingness to remove from the ballot those that ignore such instructions, petitions continue to appear which are ambiguous, misleading, and biased. The current petition is one of them.

The ballot title reads:

Requirement For Adequate Public Education Funding

The use of the word "adequate" in the title is misleading for two reasons. First, it indicates that the Constitution does not currently require adequate funding for education, which is untrue. Article IX, Section 1 of the Florida Constitution expressly so requires. Second, it is deceptive as to what the proposed amendment does. The title has been worded to state an indisputable proposition; education should be sufficiently funded. Who can argue with that statement? In reality, the amendment would not simply require that the state adequately finance education as does Article IX, Section 1 of the Florida Constitution, It would impose upon the state the minimum percentage of funding which the sponsors believe is adequate.

The titles which this Court has held valid follow a simple standard. They are entirely neutral and accurately reflect the subject of the proposed amendment

without patent or subtle editorial comment. E.g., *"Tax Limitation, " 673 So.* 2d 864 (Fla. 1996); " Locally *Approved Gaming,"* 656 So. 2d 1259 (Fla. 1995); *"Funding for Criminal Justice, "* 639 So. 2d 972 (Fla. *1994);; "Limited Marine Net Fishing," 620 So.* 2d 997 (Fla. 1993); *"Limited Political Terms in Certain Elective Offices," 592 So.* 2d 225 (Fla. 1991); *"Homestead Valuation Limitation,"* 581 So. 2d 586 (Fla. 1991); *"Limitation on Non-Economic Damages in Civil Actions,"* 520 So. 2d 284 (Fla. 1988). The title in the current petition could easily have been made equally neutral and informative: "Required Minimum Percentage of Funding for Education,': or "Required Education Funding," or simply "Education Funding." The use of the word "adequate" makes a statement which is biased, editorial, and misleading+ A title does not itself have to provide a complete summary of the proposed amendment. However, in the words of this Court, "it cannot fly under false colors; this one does. " *Askew v. Firestone, supra* at 156.

B. The Summary

The Court has held that the title cannot be read in isolation, but must be considered together with the ballot summary to determine whether it is fair and accurate. The summary in the current petition, however, is even less clear than the title. It is impossible to tell from its language which parts of the summary are statements of currently existing law, and which describe the effect of the amendment. The summary is composed of the following four sentences:

> **Adequate provision for funding public education each fiscal year requires appropriation of at least a minimum percentage of total appropriations under Article III, not including lottery or federal funds.**

That minimum percentage (40%) is based upon education's percentage of appropriations, excluding federal funds, for 1986-87 before state lotteries began.

May be suspended in any fiscal year by a bill adopted by 2/3 vote of each legislative house. Effective following third fiscal year of approval.

The first two sentences read as though they are statements of current law, A voter reading the ballot summary might reasonably conclude that the only thing the proposed amendment does is allow the Legislature to suspend the operation of the provision as stated in the third sentence.

This Court has consistently declared invalid summaries so worded that they could be misread in a way that would mislead the voter. Thus, in In *Re: Adviso y Opinion to the Attorney General Re: Save the Everglades, supra,* the Court declared insufficient a summary which stated that the amendment required the sugarcane industry "to help pay to clean up pollution," when the amendment required no other industry to share in the expense. The Court stated that a voter perusing the summary "could well be mislead on this material point," *Id.* at 1341. In *In re Adviso y Opinion to the Attorney General – Restricts Laws Related to Discrimination, supra,* the Court found fault with the summary's statement that the amendment "restricts laws related to discrimination." The Court stated that, "a voter might conclude from the summary that the amendment would restrict *existing* laws when in fact the amendment would restrict the power of governmental entities to enact or adopt any law in the future that protects a

group of discrimination, if that group is not mentioned in the summary." Id. at 1021. In Smith v. ***American Airlines,*** *Inc., supra,* the Court found that several sentences in the summary could be misread by voters because of their ambiguity. Ambiguity alone, the Court concluded, was sufficient to require that the measure be removed from the ballot. The ballot summary in the case at bar is, at best, ambiguous.

The primary reason for the summary's ambiguity is that two-thirds of it is devoted to advancing the sponsor's political motivation. It would not have been difficult for the sponsors to have stated the chief purpose of the proposed amendment in clear and unambiguous language:

> Requires that a minimum of 40% of total appropriations, excluding lottery proceeds and federal funds, be devoted to public education each fiscal year, Allows the Legislature to suspend applicability for all or a portion of a fiscal year by 2/3 vote of the membership upon a finding of compelling public necessity.

Instead, the sponsors attempt to persuade the voter of the reasonableness of their proposal by expressing their opinion that 40% is the minimum amount which is adequate, and by explaining that it is nothing more than the percentage already spent in the 1986-87 fiscal year.

The sponsors have repeated much of the wording of the first two lines of the summary in the text of the amendment itself. The fact that the wording is almost the same does nothing to save the summary. Even the printing of an entire measure on the ballot will not ensure its validity if it fails to clearly and

unambiguously inform the voter of the true meaning and ramifications of the amendment. *Wadhams v.* Board of *County* Commissioners, 567 So. 2d *414* (Fla. *1990).*

Even if the voter understood that the first two sentences were not statements of current law, they would be inappropriate in the summary. The inclusion in the summary of statements of fact rather than a description of the measure's primary purpose and effect creates an inherent inaccuracy. It states conclusively that 40% of appropriations excluding federal and lottery money will be the minimum necessary to adequately fund education not only three years after adoption of the amendment, but forever thereafter. The summary suggests that there has been some objective determination that 40% is the minimum adequate amount. The voter is entitled to assume that statements of fact included in a ballot summary are accurate. This very process gives voters assurance that such accuracy has been affirmed by the Attorney General and this Court.

The accuracy of the statement in the summary that education comprised 40% of appropriations excluding federal funds in 1986-87 is itself subject to question. Regardless of the accuracy of the figure, it cannot be denied that the conclusion that 40% is the minimum necessary for adequate education funding is a subjective evaluation. This Court has stated that, "The ballot summary is no place for subjective evaluation of special impact. *"Evans v. Firestone, supra* at 1355.

It is undoubtedly because of concerns over just such problems as discussed above that the Court has insisted that the ballot summary must tell the voters "the legal effect of the amendment, *and no more.*" [emphasis supplied] *Id.*

At best, the affirmative statements in the summary are editorial efforts to persuade the voter that the amendment is reasonable and desirable. If there is anything that this Court has made clear in this respect, it is that "political rhetoric" and "the political motivation behind a given change" has no place in the ballot summary. *Evans v. Firestone, supra* at 1355; *In Re: Advisory Opinion to the Attorney General Re: Save the Everglades, supra* at 1342; *In Re: Advisory Opinion to the Attorney General Re: Casino Authorization, Taxation and Regulation, 656* So.2d 466,469 (Fla. 1995). The sponsors of the current petition have failed to heed that message.

CONCLUSION

The Court is respectfully urged to order that the proposed amendment be removed from the ballot,

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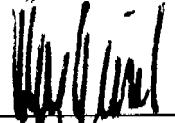
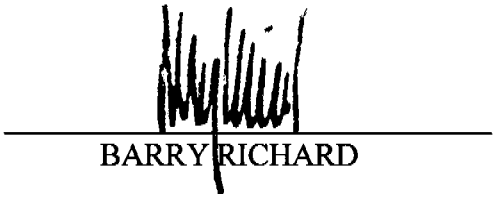


BARRY RICHARD
FLORIDA BAR NO. 105599

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail this 24th day of March, 1997 to Honorable Robert A. Butterworth, Attorney General, The Capitol, Tallahassee, Florida 32301 and Pam Cooper, Coalition to Reclaim Education's Share, 2 13 South Adams Street, Tallahassee, Florida 3230 1.



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