
IN THE SUPREME COURT OF FLORIDA

Case No. SC01-2421

Upon Request From the Attorney General
For An Advisory Opinion As To The
Validity Of An Initiative Petition

**ADVISORY OPINION
TO THE ATTORNEY GENERAL
RE: FLORIDA'S AMENDMENT TO REDUCE CLASS SIZE**

**ANSWER BRIEF OF INTERESTED PARTY
OPPOSING THE AMENDMENT,
CITIZENS FOR BUDGET FAIRNESS**

HOLLAND & KNIGHT LLP
Steven J. Uhlfelder
Susan L. Kelsey
Jennifer Parker LaVia
P.O. Drawer 810
Tallahassee, FL 32302
(850) 224-7000

Counsel for Citizens for Budget Fairness

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	3
I. THE BALLOT SUMMARY IS AMBIGUOUS	3
A. Does Not Clearly Establish Roles of Legislature and School Districts	4
B. Contains Undefined Terms	4
C. Contains Other Ambiguities	9
II. THE PETITION VIOLATES THE SINGLE-SUBJECT RULE	11
A. Affects Other, Undisclosed, Constitutional Provisions	11
B. Performs Multiple Government Functions	16
CONCLUSION	17
CERTIFICATE OF SERVICE	18
CERTIFICATE OF FONT	18

TABLE OF AUTHORITIES

CASES	PAGE
<u>Advisory Op. to Atty. Gen. re Tax Limitation,</u> 644 So. 2d 486 (Fla. 1994)	11
<u>Advisory Op. to Atty. Gen.—Save Our Everglades,</u> 636 So. 2d 1336 (Fla. 1994)	14
<u>Advisory Opinion to the Attorney General re People's Property Rights,</u> 699 So. 2d 1304 (Fla. 1997)	3, 4, 5, 12, 17
<u>Askew v. Firestone,</u> 421 So. 2d 151 (Fla. 1982)	10
<u>Evans v. Firestone,</u> 457 So. 2d 1351 (Fla. 1984)	4, 10
CONSTITUTIONS	
Art. VII, § 9(d), Fla. Const.	12
Art. IX, § 1, Fla. Const.	1, 12
Art. IX, § 2, Fla. Const.	12
Art. IX, § 4, Fla. Const.	12, 13

The ballot title for the proposed amendment is "Florida's Amendment to Reduce Class Size." The ballot summary for the proposed amendment states as follows:

Proposes an amendment to the State Constitution to require that the Legislature provide funding for sufficient classrooms so that there be a maximum number of students in public school classes for various grade levels; requires compliance by the beginning of the 2010 school year; requires the Legislature, and not local school districts, to pay for the costs associated with reduced class size; prescribes a schedule for phased-in funding to achieve the required maximum class size.

For ease of reference, the text of the amendment is reprinted below (new language being added to the constitution appearing in bold type):

Article IX, Section 1, Florida Constitution, is amended to read:

Section 1. Public Education.—

The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require. **To assure that children attending public schools obtain a high quality education, the legislature shall make adequate provision to ensure that, by the beginning of the 2010 school year, there are a sufficient number of classrooms so that:**

- 1. The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for prekindergarten through grade 3 does not exceed 18 students;**
- 2. The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for grades 4 through 8 does not exceed 22 students; and**

3. The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for grades 9 through 12 does not exceed 25 students.

The class size requirements of this subsection do not apply to extracurricular classes. Payment of the costs associated with reducing class size to meet these requirements is the responsibility of the state and not of local school districts. Beginning with the 2003-2004 fiscal year, the legislature shall provide sufficient funds to reduce the average number of students in each classroom by at least two students per year until the maximum number of students per classroom does not exceed the requirements of this subsection.

SUMMARY OF THE ARGUMENT

The class size amendment is "clearly and conclusively defective" and should be stricken from the ballot. The ballot summary, mirroring the amendment itself, is ambiguous in many important respects. The amendment fails to clearly establish the roles of the Legislature and the school districts in the reduction of class size. It is not clear whether the Legislature is to provide funding only, or is to enact legislation as well. Additionally, the amendment is ambiguous because it contains several undefined operative terms. The effect of this ambiguity is to deprive the voters of the opportunity to make an informed decision on the merits of the amendment.

The petition also violates the single-subject rule because it affects other sections of the Florida Constitution without identifying such sections. The amendment will cause "precipitous" and "cataclysmic" changes in the constitution. The amendment also violates the single-subject rule by altering or performing the functions of multiple

branches of government, the legislative and the executive.

The amendment and its summary are ambiguous and the amendment violates the single-subject rule. Therefore, the amendment should be stricken from the ballot.

ARGUMENT

I. THE BALLOT SUMMARY IS AMBIGUOUS.

"[A] proposed initiative's ballot title and summary must state in clear and unambiguous language the initiative's primary purpose." Advisory Opinion to the Attorney General re People's Property Rights, 699 So. 2d 1304, 1307 (Fla. 1997). The sponsors of the class size amendment assert that "the ballot title conveys that the purpose of the amendment is to reduce the number of children in Florida's classrooms," and that "[t]he ballot summary advises voters of the ways in which the amendment accomplishes this purpose. . . ." [Initial Brief of Coalition at 5] Despite the sponsors' assertions, the ballot summary fails miserably in its attempt to provide adequate notice to the voters. The reason for this failure is simple. The amendment itself is not clear. The many ambiguities in the amendment violate "the fundamental right of the voter to be given fair notice so that he or she may make an informed decision on the merits of the provision." Evans v. Firestone, 457 So. 2d 1351, 1355 (Fla. 1984).

A. Does Not Clearly Establish Roles of Legislature and School Districts

The amendment does not clearly establish the roles of the Legislature and the

school districts in reducing class size. It is not clear in the amendment, and consequently in the summary, whether the intent is to require the Legislature merely to provide funding to local school districts, who would then have discretion in the use of the funds, or whether the intent is to require the Legislature to provide funding and legislation to implement the necessary changes. The first sentence of the amendment provides that the Legislature "shall make adequate provision to ensure that, by the beginning of the 2010 school year, there are a sufficient number of classrooms" The underlined language is not necessarily limited to requiring the Legislature to provide funding. The language in the summary, however, could lead voters to believe that the Legislature is only required to provide funding. The summary states that the Legislature must "provide funding for sufficient classrooms."

B. Contains Undefined Terms

Additionally, the amendment and its summary are constitutionally infirm because they contain terms that are not defined. See Property Rights, 699 So. 2d at 1309. In Property Rights, the initiative's summary referred to the owner of real property, but did not define "owner," the term "common law nuisance" was not defined and the initiative referred to "loss in fair market value, which in fairness should be borne by the public" without defining the term "in fairness." Id. The Court found that these failures were grounds to invalidate the amendment, because they rendered it misleading. Id.

1. "Costs associated with reducing class size"

Similarly, the class size amendment contains important operative terms that are undefined. A key phrase that is not defined in the amendment is "costs associated with reducing class size." The reduction of the student-to-teacher ratio contemplated by the amendment will clearly require the hiring of many additional teachers. Thus, the hiring of new teachers could be interpreted as a cost "associated with reducing class size." The amendment does not clearly state whether this enormous expense will be borne by the state or by the local school districts. Alternatively, the phrase "costs associated with reducing class size" could be interpreted to include only the costs of building and maintaining new classroom, which in places—but not consistently—seems to be the primary emphasis of the amendment. Without specifying the costs that the Legislature will fund, the amendment leaves utter ambiguity about what will be left to local funding. The ballot summary cannot adequately inform the voter of the impact at the local level, because the amendment itself does not clearly resolve this issue.

The summary states that the Legislature will be responsible for "costs associated with reduced class size." This wording is simply inadequate to inform the voter of exactly what is included. Funding of teachers is a major component of the proposal to reduce class size and yet, in the 75 or 76 words of the summary, the word "teacher" is conspicuously absent. The summary fails to inform the voter that while school districts will no longer be fiscally responsible for building sufficient

classrooms, they may be constitutionally mandated to provide a certain number of teachers per student. In the alternative, if the intent of the amendment is that the hiring of additional teachers be funded by the Legislature, then the summary fails to provide the voter with adequate notice of this intent. Thus, under either interpretation of the amendment, the summary fails to adequately advise voters that the amendment will require the hiring of new teachers, whether at the expense of the Legislature or of the local school districts.

The title of the amendment, "Florida's Amendment to Reduce Class Size," leads to the conclusion that the focus of the amendment is to reduce class size. This laudable goal involves components of capital construction as well as staffing issues. However, the text of the amendment and the ballot summary appear to be focused solely on the construction of additional classrooms. Indeed, the sponsors of the amendment appear to acknowledge that the amendment is limited to construction of classrooms:

The sole and exclusive purpose of the proposed amendment is to place a duty on the Legislature, and the Legislature only, to provide for funding public school classrooms. . . . "

[Initial Brief of Coalition at 4] (emphasis added); see also [Initial Brief of Coalition at 13, 25 & 27]. The sponsors assert that "specific levels for public school classroom funding need to be established in the State Constitution." [Initial Brief at 13] The sponsors then wax philosophical about the benefits of smaller classes. However, the

merits of the amendment are not at issue herein. And it is interesting to note that in the entire paragraph discussing the benefits of smaller classes, the sponsors never mention that smaller classes require more teachers.

2. "Assigned to each teacher"

The amendment limits the number of students "assigned to each teacher." But the amendment does not define "assigned," nor does it provide any logical connection between that phrase and physical classroom space, which otherwise seems to be a central theme of the amendment. "Assigned" could mean that no teacher can teach a class with more than a specified number of students physically present in the room at one time. It could also mean that no teacher can be "assigned" or "expected" to teach more than a specified number of students in a given school term. In high schools, for example, teachers who teach multiple sections of a subject are "assigned" more than one class of students, and may sometimes teach hundreds of different students in a given school term. It is not clear from the amendment whether this would be prohibited or not. The amendment itself is so ambiguous that it is impossible for the summary to adequately inform the voter of what the amendment will do. Another ambiguity in the amendment lies in the fact that the amendment limits the number of students per teacher, not students per classroom. Therefore, the amendment could be interpreted to allow a kindergarten class of 36 students in one classroom if there are two teachers. High school classes could have 50 students in one classroom. And it

is not clear whether teaching assistants will count in the determination of the ratios.

3. "Average number of students in each classroom"

Another troublesome phrase in the text of the amendment refers to reducing "the average number of students in each classroom." The summary does not refer to the use of average numbers of students at all, and thus is inconsistent with the text of the amendment in a way that is materially misleading to the voter. It is not clear whether this average will be determined on a schoolwide, districtwide, or even on a statewide basis. If it is determined on a statewide basis, then the number of students in one area of the state could be greatly lowered, thereby reducing the state average, without any reduction in other areas of the state. Thus, although the amendment purports to promise reduced class size to all students in public schools, the amendment does not include any provision to ensure that every class in every school district is reduced in size, making the overall promise of the amendment illusory. At best, interpreting the amendment to require that every class in every district achieve the reduced size levels by 2010, the amendment and the summary fail to inform the voters that in the interim they may not see any results in their home districts.

4. "Extracurricular classes"

The amendment also fails to define "extracurricular classes." The term "extracurricular" is usually used to refer to activities, such as sports and clubs, outside the regular school curriculum. The term "extracurricular" is not generally used to

refer to classes. Thus, it is unclear how "extracurricular classes" would impact the calculation of average class sizes.

C. Contains Other Ambiguities

The amendment contains other ambiguities. For example, it is not clear whether the amendment will require the building of additional schools or simply more classrooms in existing schools. The amendment does not specify who will be responsible for making this determination.

Another problem is that the ballot summary could be construed as giving the voter the impression that the amendment will be effective only until the beginning of the 2010 school year, when in fact the amendment requires legislative expenditures in perpetuity to maintain the constitutionally required student-to-teacher ratios. The summary states that the amendment "requires compliance by the beginning of the 2010 school year." It appears from this statement that as of the beginning of the 2010 school year, the Legislature will have met its constitutional obligations. The summary does not reveal that the Legislature will be responsible in perpetuity for the "costs associated" with class reduction. The amendment requires the Legislature to forever bear the fiscal responsibility for providing enough classrooms to meet the constitutionally mandated ratios. It could also include maintenance costs for the new classrooms for the life of the classrooms. The amendment does not specify who will be responsible for these continuing costs.

Another problem "lies not with what the summary says, but with what it does

not say." Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982). In Askew, the court found defective a ballot summary that "represented an amendment as granting citizens greater protection against conflicts of interest in government without revealing that it also removed an established constitutional protection." Evans, 457 So. 2d at 1355. Similarly, the amendment herein fails to inform the voter that discretion is being removed from local school districts to determine the appropriate student-to-teacher ratios. If the ballot summary were accurate it would provide, in part: "Removes all discretion from local school boards to determine the appropriate student-to-teacher ratios."

Another problem with the summary is that it fails to advise the voter of a significant effect of the amendment. Because of the uniformity requirement of article IX of the constitution, those school districts that have done the least on their own to reduce class sizes will be rewarded with the most funding from the state. Voters are entitled to be informed of this significant effect before they vote.

In sum, the ballot summary fails to advise the voter of the chief purpose of the amendment, both by failing to track the amendment itself accurately, and by reflecting the unsolvable ambiguities in the amendment itself. It falls far short of the standards this Court has always enforced for ballot summaries in initiative cases. It is "clearly and conclusively defective" and should be stricken from the ballot.

II. THE PETITION VIOLATES THE SINGLE-SUBJECT

RULE.

A. Affects Other, Undisclosed, Constitutional Provisions

One of the ways that the Court has adopted for determining whether an amendment violates the single-subject rule is whether it modifies or substantially affects other sections of the Florida Constitution without disclosing that impact. Advisory Op. to Atty. Gen. re Tax Limitation, 644 So. 2d 486, 490 (Fla. 1994). The class size amendment affects numerous provisions of the constitution, including the following: article IX, section 1 (system of public education); article. VII, section 9(d) (school district taxing authority); article. IX, section 2 (state board of education); and article. IX, section 4 (local school boards). The initiative does not, however, in either the text of the amendment or in the summary, identify any of these sections except article IX, section 1. The failure to identify the constitutional provisions affected is fatal to the validity of the initiative petition:

It is important for an initiative to identify the provisions of the constitution substantially affected by the proposed amendment in order for the public to understand the contemplated changes in the constitution and to ensure that the initiative's effect on other unnamed provisions is not left unresolved and open to various interpretations.

Property Rights, 699 So. 2d at 1307.

The class size amendment also encroaches significantly on the power of the local school districts. The constitution provides: "The school board¹ shall operate,

¹ Article IX, section 4(a) provides: "Each county shall constitute a school district. . . . In each school district there shall be a school board composed of five or more

control and supervise all free public schools within the school district and determine the rate of school district taxes within the limits prescribed herein." art. IX, § 4(b), Fla. Const. The proposed amendment strips the school boards of much of their authority, including the determination of appropriate student-to-teacher ratios and possibly the ability to choose between adding on to existing schools or building new schools. The amendment requires the Legislature to provide funding for new classrooms, but it does not specify whether these classrooms will be additional classrooms in existing schools or whether it requires new schools to be built. It is predictable that in some instances it will be impossible to simply add on to existing school facilities and that new schools will have to be constructed.

The amendment does not allocate the decisionmaking between the Legislature and the local school districts. The amendment could be interpreted as merely requiring the Legislature to provide funding, leaving the rest of the decisionmaking up to the local school districts. However, certain language in the amendment supports an alternate interpretation. The first sentence of the amendment provides that the Legislature "shall make adequate provision to ensure that, by the beginning of the 2010 school year, there are a sufficient number of classrooms" The underlined language is in contrast to the language of the summary, which provides that the Legislature must "provide funding for sufficient classrooms." The summary implies

members chosen by vote of the electors in a nonpartisan election. . . . "

that the Legislature's only involvement will be to provide the funding, leaving the school districts with discretion in spending the money. The language of the amendment, though, states that the Legislature is to make "adequate provision" which does not appear to be limited to providing funding.

The sponsors of the amendment assert that "the proposed initiative in no way substantially alters or performs a function of the district school boards." [Initial Brief of Coalition at 20] On the contrary the amendment will cause "precipitous" and "cataclysmic" changes in the constitution. See Advisory Op. to Atty. Gen.—Save Our Everglades, 636 So. 2d 1336, 1339 (Fla. 1994). The sponsors' citation to section 236.687, Florida Statutes is disingenuous at best. That statute establishes a goal of 20 students per teacher in kindergarten through third grade, except in critically low-performing schools where the goal is a ratio of one teacher per 15 students. The amendment does not further this goal—it creates a separate goal of 18 students per teacher and makes no distinction between critically low-performing and other schools. The sponsors' reference to this section does point out an important aspect of the amendment—it removes from the school boards the right to determine appropriate student-to-teacher ratios and to distinguish between critically low-performing and other schools.

The sponsors assert that "[d]istrict school boards, as a function of the amendment will not be compelled to construct new classrooms or schools in

accordance with any particular model or educational theory." [Initial Brief of Coalition at 20-21] This assertion ignores the fact that the amendment requires the Legislature to "make adequate provision" for reducing class size, thereby potentially authorizing legislation which *will* compel construction of new classrooms or schools in accordance with a particular model. Furthermore, whether in accordance with any particular model or not, new classrooms are mandated.

Construction of classrooms has heretofore been a function of the school districts. However, if this amendment becomes a part of the constitution, a predictable result is that some school districts may cease construction of new classrooms, no matter how large their student populations become, secure in the knowledge that the Legislature will be constitutionally mandated to build schools. It is hard to imagine a more "cataclysmic" or "precipitous" change in the constitution. Yet the summary fails to advise the voters of this drastic change.

The class size amendment may have many unanticipated collateral effects, including a significant and disturbing impact on Florida's equitable statewide funding formula. In accordance with the uniformity requirement of article IX of the constitution, the Florida Education Finance Program provides state funds to offset disparities in property tax revenues among school districts. The funding program for K-12 schools requires a minimum local effort by school districts. The class size amendment would require the state to provide significant funding increases without

required local effort, to bring class sizes in all school districts to the required levels. Thus, districts that have made the least effort in reducing class size will be rewarded with more annual funding.

Additionally, the class size amendment may have a significant impact on the budgeting practices of school districts. Some school districts have chosen to fund staffing patterns using the number of adults rather than certified teachers per classroom. These districts have adopted the philosophy that the effect of smaller classes can be obtained by placing a teacher and a non-degreed teacher aide in a larger classroom. These staffing pattern policies will have to be abandoned, creating a major funding impact. The undisclosed and substantial impact on other sections of the Florida Constitution causes the class size amendment to violate the single-subject rule.

B. Performs Multiple Government Functions

The class size amendment also violates the single-subject rule by substantially altering or performing the functions of multiple branches or levels of government. The sponsor appears to concede that the amendment performs a legislative function [Initial Brief of Coalition at 16], which it surely does by substantially altering the specifics of the statewide system of public education placed within the Legislature's jurisdiction under article IX, section 1, Florida Constitution. In addition, the amendment will substantially affect the executive branch function of providing public schools and classrooms, because, far beyond merely requiring local governments to comply with

the amendment, the amendment wrests all discretion away from local governments as to the many policy and planning decisions that must be made at the local level. As this court has noted, "[t]he state, special districts, and local governments have various legislative, executive and quasi-judicial functions which are applicable to land use including comprehensive planning, zoning, and controlling storm-water drainage and flood waters." Property Rights, 699 So. 2d at 1308. Thus, much more than merely "affecting" local government or requiring local government compliance, the amendment completely usurps the local government functions in a way connected to the implementation of the amendment. This constitutes a violation of the single-subject rule.

CONCLUSION

The proposed amendment is "clearly and conclusively defective" and should be stricken from the ballot.

Respectfully submitted this 18th day of December, 2001.

HOLLAND & KNIGHT LLP

Steven J. Uhlfelder (FBN 013581)
Susan L. Kelsey (FBN 772097)
Jennifer Parker LaVia (FBN 699608)
P.O. Drawer 810
Tallahassee, FL 32302
(850) 224-7000
Counsel for Citizens for Budget Fairness

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by United States mail to counsel for the sponsor, Mark Herron, PA, 215 S. Monroe St., Suite 701, Tallahassee, FL 32301-1858; and to Louis F. Hubener, III, Office of the Attorney General, Louis F. Hubener, III, 400 S. Monroe St., Tallahassee, FL 32399-6536, this 18th day of December, 2001.

Attorney

CERTIFICATE OF FONT

I HEREBY CERTIFY that this brief was prepared using Times New Roman 14 point type, a font that is proportionately spaced.

Attorney

TAL1 #244456 v1

