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

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

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STATEMENT OF THE CASE AND FACTS

The Court has for review a proposed constitutional amendment sponsored by a political committee called "Coalition to Reduce Class Size." The Attorney General has concluded that several aspects of both the ballot summary and the text of the amendment may be misleading and may violate the single-subject rule. This brief opposing the class size amendment is submitted by Citizens for Budget Fairness, a Florida political committee formed for the principal purpose of opposing ballot initiatives and other measures that have the potential to create fiscal unfairness by Florida government.

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.

The text of the amendment provides as follows (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 standard of review is de novo. The Court must pass on whether the ballot title and summary inform the voter of the chief purpose of the amendment,

and whether the amendment complies with the single-subject requirement. An amendment that is "clearly and conclusively defective" must be stricken from the ballot.

The ballot summary of the class size amendment fails to satisfy the governing legal requirements in several respects. It hyphenates two words that are not customarily used as a single word, and if they are counted as separate words, the summary exceeds the word limit. The summary is substantively defective because it uses language that is misleading, and because it fails to track the text of the amendment so as to disclose provisions of the amendment. The Attorney General's concerns and others illustrate that the voter cannot be assured of making a fairly informed decision about this amendment based on the summary language that will appear on the ballot, and thus the summary is clearly and conclusively defective. The Court should not allow it to be submitted to the voters.

The class size amendment also violates the single-subject rule because it engages in blatant logrolling. It requires voters who may favor a reduction in class sizes in Florida, to vote as well for whatever unspecified and unlimited expenditure of state funds may be necessary to construct or purchase additional classrooms for public schools, to the exclusion of other potential means of accomplishing the goal of reducing class sizes (such as providing additional teachers, additional school alternatives, utilizing technology or electronic-assisted educational methods, or

restructuring the physical or operational functions of public school facilities). The amendment substantially alters or performs the functions of multiple branches and levels of government, and it substantially impacts other sections of the Florida Constitution without disclosing that impact to the voter. The Court should strike it from the ballot.

ARGUMENT

***Standard of Review*.** The standard of review is de novo. An initiative petition must be removed from the ballot if it is "`clearly and conclusively defective.´" Weber v. Smathers, 338 So. 2d 819, 822 (Fla. 1976) (quoting Goldner v. Adams, 167 So. 2d 575, 575 (Fla. 1964)).

I. THE BALLOT SUMMARY FAILS THE GOVERNING LEGAL REQUIREMENTS.

Section 101.161(1), Florida Statutes (2001) requires that a summary containing a maximum of 75 words be prepared for any constitutional amendment submitted to the electorate, and that the summary appear on the ballot. The ballot summary must explain the "chief purpose of the measure." Id. The Court has ruled that the purpose of this statute is "to provide fair notice of the content of the proposed amendment so that the voter will not be misled as to its purpose, and can cast an intelligent and informed ballot." Advisory Op. to Atty. Gen. re Term Limits Pledge, 718 So. 2d 798, 803 (Fla. 1998). The Court has said that the language disclosing the chief purpose must be clear, unambiguous, and not misleading. Advisory Op. to Atty. Gen. re:

Prohibiting Pub. Funding of Political Candidates' Campaigns, 693 So. 2d 972, 976 (Fla. 1997); Askew v. Firestone, 421 So. 2d 151, 154-55 (Fla. 1982).

As a threshold matter, the summary connects the two words "phased" and "in" as a hyphenated adjective phrase, and if each of those two connected words is counted separately, the summary exceeds the length limitation. The summary is exactly 75 words only if the phrase "phased-in" is counted as only one word. It would appear, however, that "phased-in" is more properly counted as two words, being joined here only pursuant the grammatical rule that two or more separate words joined together to form a compound adjective should be hyphenated, whereas a phrase that in common usage is more properly considered a single word should not be hyphenated. See W. Strunk & E.B. White, The Elements of Style at 34-35 (3d ed. 1979). In such cases the experts advise that common sense (based on common usage) and the dictionary are the best resources for determining whether the potentially hyphenated words should be considered separate words or one word. Id. Readily available dictionaries do not list "phased-in" as a single word, nor does common sense suggest that the phrase is one that has fallen into such common usage as to be properly considered one word. Therefore, it appears that it should be counted as two words, and thus that the ballot summary of the class size amendment exceeds the word limit established by statute.

Significant substantive defects also exist in the text of the ballot summary. As

the Attorney General points out, the ballot summary of the class size amendment is not a fair disclosure to the voter, and is not unambiguous. The ballot summary is confusing as to whether the point of the amendment is to maximize class size, or to establish a cap on class size. The summary says the Legislature is required to provide funding for sufficient classrooms "so that there be a maximum number of students in public school classes." The primary definition of the word "maximum" is "the greatest quantity or value attainable." Webster's New Collegiate Dictionary (1980 ed.). Thus, the summary's use of "maximum" could be construed to mean, not a limitation on class size, but rather a requirement that the educational resources of the state be utilized to their fullest capacity by packing as many students as possible into public school classes. For the same reason, there is an apparent inconsistency between the ballot title, which says "reduce class size," and the summary, which requires "maximum" class size. This imprecise language is much more than a mere draftsmanship issue, because the voter, who will be presented with only the ballot summary to rely upon in the voting booth, cannot be certain what the amendment itself means. This problem rises to the level of a clear and conclusive defect justifying the striking of this amendment from the ballot.

The summary neglects to inform the voter of either the existence or nature of an exception for so-called "extracurricular classes," which itself is an undefined term. At a minimum, the summary could easily have stated that the amendment includes an

exception, but it does not do so. The voter, therefore, will be unaware from the summary that this exception exists. Further, as the Attorney General notes, the fact that the term "extracurricular classes" is undefined in the text creates an ambiguity that leaves the voter with no means to be sure what classes would be excepted from the scope of the amendment. Without knowing this, and without even being advised in the ballot summary that such an exception exists, the voter cannot make an informed decision on the merits of the amendment.

The summary is also misleading for failing to advise the voter that building or buying additional classrooms will also require the hiring of additional teachers and related additional support staff, and other additional expenses for the furnishing, supplying, and maintenance of those classrooms. The summary says that the Legislature must fund "sufficient classrooms," and then says that the Legislature, and not local school districts, must pay for the "costs associated with reduced class size." Reading these provisions together suggests that the only "costs" contemplated are those directly related to construction or acquisition of additional classrooms, and thus all other collateral costs are not mandated as Legislative responsibility. The summary does not disclose that, lacking a mandate for state-level funding of these related and necessary expenditures, funding for them will be required to come from the local level. The summary does not disclose that, with funding coming from the local level, the end result is an increase in individual tax burdens. To the contrary, the summary's

only specific mention of what the Legislature will fund is classrooms creates a misleading reassurance that the individual voter will not directly bear the costs of the amendment. Further, the summary fails to caution the voter that the amendment would cause some counties or school districts to receive disproportionate amounts of state funds.

The summary fails to explain how the phase-in will work sufficiently to enable the voter to make an informed decision, and is inconsistent with the text. The summary says that the "funding" will be phased-in, whereas the only phasing-in process mentioned in the text is that the "average number of students in each classroom" will be reduced by "at least two students per year." Those are two different things.

Further with respect to the phasing-in process, "phase-in" is never defined, and so it is impossible to tell from the summary (or, indeed, from the text), what it means. It could mean that in any given school, one "classroom" could contain 60 students so long as other classrooms in the school contain few enough to make the average come out to two fewer per classroom than in the previous year. Or perhaps it means the average is calculated on a school district basis, or a county basis, or a statewide basis. This is important to determining whether any given citizen will receive the apparently intended benefit of smaller class sizes. One cannot tell from the text at all, and therefore the ballot summary cannot possibly accurately disclose this vitally important

aspect of the amendment. The Court should strike it from the ballot.

II. THE PETITION VIOLATES THE SINGLE-SUBJECT RULE.

With one exception not applicable here, Article XI, Section 3, Florida Constitution, restricts citizens' initiatives to "one subject and matter directly connected therewith." The law requires that, when viewed as a whole, the amendment "'may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme.'" Advisory Op. to Atty. Gen. re Fla. Locally Approved Gaming, 656 So. 2d 1259, 1263 (Fla. 1994) (quoting City of Coral Gables v. Gray, 154 Fla. 881, 883-884, 19 So. 2d 318, 320 (1944)). The single-subject rule is intended to prevent "logrolling," which is the combining of different issues into one initiative so that people have to vote for something they might not want, in order to gain something different that they do want. Advisory Op. to Atty. Gen. re: Florida Transp. Initiative for Statewide High Speed Monorail, Fixed Guideway or Mag. Levitation System, 769 So. 2d 367, 369 (Fla. 2000); Advisory Op. to Atty. Gen.—Save Our Everglades, 636 So. 2d 1336 (Fla. 1994). A second reason for the single-subject rule is to prevent one initiative from "substantially altering or performing the functions of multiple aspects of government." High-Speed Rail, 769 So. 2d at 369.

Perhaps the most blatant single-subject violation of the class size amendment is its logrolling defect. It combines key central concepts that are not at all naturally

or logically related. It requires a voter who may wish to vote for a reduction in class size to also vote for the unlimited and unspecified expenditure of state funds for the sole purpose of building or acquiring more classrooms. Voters finding this path to the goal distasteful are faced with precisely the kind of Hobson's choice that the single-subject rule was intended to prevent.

The class size amendment also violates the single-subject rule by substantially altering or performing the functions of multiple branches and levels of government. As the Attorney General points out, the amendment would usurp the discretionary local government functions related to local construction, including land-use and permitting functions. The amendment would usurp the local governmental responsibility for operating schools to the extent of requiring the hiring of additional teachers and staff and all the other myriad local-level expenditures that would be required to implement the amendment. In addition to usurping these local government functions, the amendment would perform the legislative planning and appropriation functions and would substantially affect the executive policy and regulatory functions associated with school and classroom construction, expansion, and acquisition.

Finally, the amendment would substantially affect multiple sections of the Florida Constitution without advising the voter that it does so. In addition to its impact on Article IX (education), it would significantly impact existing constitutional provisions with respect to taxation, millage rates, issuance of bonds, and local

referenda for such fiscal issues. Fla. Const. art. VII, ss. 2 & 9 (millage rate limitations), s. 12 (local bonds), s. 18 (protecting local governments from fiscal responsibility for unfunded mandates). The amendment is so far-reaching and cataclysmic in effect, particularly its effect on local governmental units, that it violates the single-subject rule and should be stricken from the ballot.

CONCLUSION

The class size amendment fails the governing legal requirements and should be stricken from the ballot.

Respectfully submitted this 28th day of November, 2001.

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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 28th day of November, 2001.

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CERTIFICATE OF FONT

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

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