IN THE SUPREME COURT OF FLORIDA

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

CASE NO.: SC01-2421

ORIGINAL PROCEEDING

REPLY BRIEF OF COALITION TO REDUCE CLASS SIZE

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SUMMARY OF ARGUMENT

In accordance with Rule 9.210(d), Florida Rules of Civil Procedure, The Coalition to Reduce Class Size, the sponsor of the proposed initiative petition, submits this reply brief in response and rebuttal to the arguments presented by the declared opponents of the amendment, Citizens for Budget Fairness.

The proposed initiative complies with the single-subject requirement of Article XI, Section 3, Florida Constitution. The intent of the proposed initiative, to reduce the number of students in public school classes, is accomplished by placing a duty on the Legislature to provide funding for public school classrooms at the levels specified in the amendment. Consistent with this Court's rulings relating to "logrolling," the proposed amendment does not require that voters accept part of an initiative proposal that they oppose in order to accept part that they approve. The proposed amendment does not supplant or alter any function of the district school board or any other entity of government.

Likewise, the ballot title and summary comply with the requirements of Section 101.161, Florida Statutes. The ballot title and summary accurately and unambiguously convey the purpose and effect of the amendment. Both the text of the amendment and the summary make it clear that it will be the Legislature's responsibility to pay for the costs associated with reducing class

size as required by the amendment, by the beginning of the 2010 school year, with phased-in implementation prior to that date. The ballot summary complies with the 75-word limitation set forth in Section 101.161, Florida Statutes, inasmuch as it was reviewed and approved as to form by the Division of Elections consistent with statutory and rule requirements, prior to being circulated to the electorate for signatures.

ARGUMENT

I. The Proposed Initiative Petition Meets the Single Subject Requirements of Article XI, Section 3 of the Florida Constitution

Opponents[*] argue that the proposed initiative engages in "logrolling," because "[i]t combines key central concepts that are not at all naturally or logically connected." Brief of Citizens for Budget Fairness at p. 10. Opponents state that the proposed initiative "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." Brief of Citizens for Budget Fairness at p. 10. Opponents' argument manufactures two subjects out of the single purpose and effect of the proposed initiative which is to place a duty on the Florida Legislature to provide for funding public school classrooms at certain levels, measured by standards set forth in the proposed initiative.

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[*] The brief filed by Citizens for Budget Fairness was filed in this Court on November 28, 2001. At that time, no such political entity existed. On November 30, 2001, a political committee named "Citizens for Budget Fairness" filed organizing papers with the Division of Elections. Counsel for Opponents, Steven J. Uhfelder, was designated as the Chair of that political committee. Previously a political committee called "Citizens for Budget Fairness" was registered with the Division of Elections, but that committee was closed more than a year prior to the submission of the brief in this cause.

The single-subject requirement of Article XI, Section 3, Florida Constitution, prevents "logrolling," a practice that combines separate issues into a single proposal to secure passage of an unpopular issue. *See, Advisory Opinion to the Attorney General Re: Amendment to Bar Government from Treating People Differently Based on Race in Public Education,* 778 So.2d 888 (Fla. 2000). "This requirement avoids voters having to accept part of an initiative proposal which they oppose in order to obtain a change in the constitution which they support." *Fine v. Firestone,* 448 So.2d 984, 988 (Fla. 1984).

In its jurisprudence, this Court has described an initiative petition that engages in "logrolling" as follows:

> The proposal is offered as a single amendment but it is obviously multifarious. It does not give people the opportunity to express the approval or disapproval severally as to each major change suggested; rather does it, apparently, have the purpose of aggregating for the measure the favorable votes from electors of many suasions who, wanting strongly enough any one or more propositions offered, might grasp at that which they want, tacitly accepting the remainder. Minorities favoring each proposition severally might, thus aggregated, accept all.

Adams v. Gunter, 238 So.2d 824, 831 (Fla. 1970) (quoting *McFadden v. Jordan*, 32 Cal.2d 330, 196 P.2d 787, 796-797 (1948)). *See also, In re Advisory Opinion – Save Our Everglades*, 636 So.2d 1336 (Fla. 1994). Consistent with this understanding of "logrolling", this Court in *In re Advisory Opinion to the*

Attorney General - Restricts Laws Related to Discrimination, 632 So.2d 1018 (Fla. 1994) invalidated a proposed amendment that enumerated ten classifications of people who were entitled to protection against discrimination as "logrolling" in violation of the single-subject requirement. Likewise, this Court invalidated a proposed amendment that contained three separate and distinct subjects – public education, public employment, and public contracting – in *Advisory Opinion to the Attorney General Re: Amendment to Bar Government from Treating People Differently Based on Race in Public Education, supra.*

The proposed amendment does not link separate and disparate subjects in an effort gain support for an unpopular issue. The intent of the proposed amendment is to reduce the number of students in public school classrooms by placing a duty on the Legislature to provide funding for public school classrooms at levels specified in the amendment for various grade levels.

Opponents argue that the proposed initiative "violates the single-subject rule by substantially altering performing the functions of multiple branches or levels of government." Brief of Citizens for Budget Fairness at p. 10. Opponents claim that several local government functions are usurped by the proposed initiative. For example, Opponents state "the amendment would usurp the discretionary local government functions related to local construction,

including land-use and permitting functions." Brief of Citizens for Budget Fairness at p. 10. In addition they state "[t]he amendment would usurp the local government responsibility for operating schools to the extent of requiring the hiring of additional teachers and staff and all the myriad local-level expenditures that would be required to implement the amendment." Brief of Citizens for Budget Fairness at p. 10.

Opponents' argument that the proposed initiative "would usurp the discretionary local government functions related to local construction, including land use and permitting functions" finds no support in any provision of the proposed amendment or in the petition of the Attorney General forwarding the petition to this Court for review. The proposed initiative amendment does not compel the construction of any school or classroom in accordance with any particular model or code. Nor does the proposed initiative require the construction of any classroom in any particular part of the state or in any county in derogation of any land use regulation.

As Opponents suggest the amendment does not require that the local school districts actually limit class size to the levels set forth in the amendment. Brief of Citizens for Budget Fairness at pp. 8-9. The limitations of the single-subject rule of Article XI, Section 3, Florida Constitution, would, in the opinion of the sponsor, prohibit the performance this additional function of government.

In the event district school boards elect to operate schools with class sizes in excess of the levels set forth in the amendment, the remedy will lie in the political process either through electoral challenge to the members of the school board or through amendment to the statutory or constitutional duties of the district school boards.

Sponsors of the amendment acknowledge that the proposed initiative amendment, if adopted by the people, may have an effect on the operation of public schools by the district school boards. Depending on how the local school district decides to spend the funds appropriated by the Legislature to reduce class size to levels provided in the amendment, the district school will be faced with a number of decisions, including the hiring of additional teachers. When funds appropriated by the Legislature consistent with the requirements of the amendment are received by the school district, it will decide whether to construct new schools or to expand existing schools. The proposed initiative does not bestow upon the school district any power or function that it does not already have. It does not change or perform any of the functions of the district school boards. *See, Advisory Opinion to the Attorney General Re: Fish and Wildlife Conservation Commission,* 705 So.2d 1351, 1354 (Fla. 1998). The proposed initiative falls well within this Court's recognition that it is "difficult to conceive of a constitutional amendment that would not affect other aspects

of government to some extent." *Advisory Opinion to the Attorney General Re: Limited Casinos*, 644 So.2d 71, 74 (Fla. 1994).

The proposed initiative amendment is intended to establish a benchmark for legislative action in providing funding for public school classrooms. The proposed initiative solely and exclusively alters Legislature powers and prerogatives. It is intended to be an express statement in the State Constitution defining and measuring, in part, what constitutes "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." *See,* Article IX, Section 1, Florida Constitution (1998).

Opponents argue that the proposed initiative would significantly impact several constitutional provisions relating to taxation, millage rates, issuance of bonds, and local referenda relating to such fiscal issues. Brief of Citizens for Budget Fairness at p. 11. Opponents' arguments miss the mark. The proposed initiative amendment provides that "[p]ayment of the costs associated with reducing class size to meet [the] requirements [of the amendment] is the responsibility of the state and not local school districts." The ballot summary provides that the amendment " requires the Legislature, and not local school districts, to pay for the costs associated with reduced class size."

II. The Ballot Title and Summary Comply with Section 106.161, Florida Statutes.

Opponents advance several arguments as to why the ballot and title and summary of the proposed initiative are defective and, hence, should be stricken from the ballot. Each of these arguments will be addressed in turn.

Opponents argue that the ballot summary exceeds the 75 word limit established by Section 101.161(1), Florida Statutes (2001), which provides in part as follows:

> Except for amendments and ballot language proposed by joint resolution, 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 amendment.

Brief of Citizens for Budget Fairness at p. 5. Opponents argue that the "phased-in" should be counted as two words and not as one word. Brief of Citizens for Budget Fairness at p. 5.

Section 101.161(2), Florida Statutes, provides that the ballot title "shall be prepared by the sponsor of initiative and approved by the Secretary of State in accordance with rules adopted pursuant to s. 120.54." Pursuant to administrative rules adopted by the Department of State,

> [a]ny proposed amendment to the state constitution to be placed on the ballot by initiative shall be submitted to the Division of Elections for approval as to format prior to circulation of the proposed amendment. Such submission shall be in writing and shall include a copy or a facsimile of the form proposed to be circulated. The Division shall review the form for sufficiency of the format only and render a decision within seven (7) days following receipt. The Division shall not review the form for legal sufficiency.

Rule 1S-2.009, Florida Administrative Code. Among the items reviewed by the Division of Elections in terms of format is whether the ballot title exceeds 15 words and whether the ballot summary exceeds 75 words. By approving the proposed initiative as to format, the Division of Elections has made the determination that the ballot summary does not exceed 75 words in length. The sponsor of the amendment should be entitled to rely on the Division's determination of whether or not a ballot summary exceeds 75 words in length.

The proposed initiative places a duty on the Legislature to provide for funding public school classrooms at certain levels, measured by standards set forth in the proposed initiative – in pre-kindergarten through grade 3, at no more than 18 students; in grades 4 through 8, at no more than 22 students; and in grades 9 through 12, at no more than 25 students. Opponents question the use of "maximum" in the summary with respect to these funding levels. Brief of Citizens for Budget Fairness at p. 6. Inasmuch as the amendment establishes

a requirement "that the Legislature provide funding for sufficient classrooms so that there be a maximum number of students in public school classrooms for various grade levels," the amendment leaves open the possibility that the Legislature provide funding for classrooms so that there are less than the maximum number of students in public school classrooms for various grade levels than specified in the amendment. The ballot title and summary do not convey any intent "that the educational resources of the state be utilized to their fullest capacity by packing as many students as possible into public school classes," as asserted by the Opponents. Brief of Citizens for Budget Fairness at p. 6.

Opponents argue that the failure of the summary to set forth the exception for "extracurricular classes" and to apprise 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" makes the summary misleading. Brief of Citizens for Budget Fairness at p. 7. This Court has stated, "the title and summary need not explain every detail or ramification of the proposed amendment." *Advisory Opinion to the Attorney General Re: Prohibiting Public Funding of Political Candidates' Campaigns,* 693 So.2d 972, 975 (Fla. 1997). Nor are they "required to include all possible effects… nor to 'explain in detail what the proponents hope to accomplish.'" *Advisory Opinion to the Attorney General Re: Tax Limitation,* 673 So.2d 864, 868 (Fla. 1996). "The seventy-five word limit placed on the ballot summary as required by statute does not lend itself to an explanation of all a proposed amendment's details." *Advisory Opinion to the Attorney General – Limited Casinos, supra* at 75. The ballot title and summary accurately and unambiguously convey the purpose and effect of the amendment.

The proposed initiative amendment provides that "[p]ayment of the costs associated with reducing class size to meet [the] requirements [of the

amendment] is the responsibility of the state and not local school districts." The ballot summary provides that the amendment " requires the Legislature, and not local school districts, to pay for the costs associated with reduced class size." Both the text of the amendment and the summary make it clear that it will be the Legislature's responsibility to pay for the costs associated with reducing class size as required by the amendment. Such costs include costs associated with the hiring of teachers and the furnishing and supplying of the classrooms. Contrary to the assertions of Opponents, the amendment does establish a mandate for payment of these "collateral costs" by the Legislature. The language of the amendment does not allow the Legislature to shift the costs of complying with the requirements of the amendment to local school districts and taxpayers.

Opponents argue that the summary does not sufficiently nor adequately describe how the "funding" will be phased-in. Brief of Citizens for Budget Fairness at pp. 7-9. The ballot summary sets forth the operative requirements of the proposed amendment to reduce class size in public school classrooms: a requirement that the Legislature provide sufficient funding for classrooms keyed to size depending on grade level; a requirement that the Legislature comply with these funding levels be the beginning of the 2010 school year; a requirement that the Legislature, and not local school districts, pay for the costs

associated with the amendment; and to prescribe a schedule for phased-in funding to achieve the required maximum class size funding levels.

As noted by this Court:

> [I]t is sufficient that the ballot summary clearly and accurately sets forth the general rule to be applied and informs the voters of the chief purpose of the proposal so that an informed decision is possible.

Advisory Opinion to the Attorney General Re: Tax Limitation, supra at 868. The text of the amendment requires that by the beginning of the 2010 school year that the Legislature provide funding for public school classrooms keyed to class size depending on grade level, that payment of the costs associated with meeting these requirements is the responsibility of the state and not of the local school districts, and that, beginning in the 2003-2004 school year, the Legislature shall provide sufficient funds to reduce the number of students in each classroom by at least two students per year until the maximum number of students complies with funding levels established by the amendment. The ballot title and summary provide an accurately reflect and describe these provisions of the amendment.

CONCLUSION

For the reasons stated herein, this Court should find that the initiative petition presented to the Court for its review meets the requirements of Article IX, Section 3, Florida Constitution, and Section of Section 101.161, Florida Statutes, for submission to the electorate.

Dated: December 18, 2001.

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CERTIFICATE OF SERVICE

I hereby certify that U.S. Mail to has forwarded a true and correct copy of this Reply Brief on this 18th day of December 2001:

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing Reply Brief of Appellant has been prepared in Times New Roman 14 point font in compliance with Rules 9.210(a)(2) and 9.100(l), Florida Rules of Appellate Procedure.

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