IN THE
SUPREME COURT OF FLORIDA

Case No. SC01-2421

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

REPLY BRIEF OF INTERESTED PARTY SUPPORTING THE AMENDMENT, FLORIDA EDUCATION ASSOCIATION

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PRELIMINARY STATEMENT

For many years, efforts to reduce class sizes in public schools have been the subject of public scrutiny by the state and national educational and political communities. Viewed by its proponents as an effective approach to increase achievement among public education students, its critics charged that the research underlying the premise of greater achievement was flawed. This controversy spawned several comprehensive programs designed to test the theory that smaller class sizes enhance student performance. Alex Molenar, Professor of the School of Education, University of Wisconsin-Milwaukee, noted that "there is no longer any argument about whether reducing class size in the primary grades increases student achievement. The evidence is quite clear: it does." Smaller Classes and Educational Vouchers: A Research Update, Alex Molnar, Keystone Research Center, June 1999. Studies, such as the Student Teacher Achievement Ratio, or STAR program, a longitudinal study of the effects of smaller class sizes instituted by the Tennessee legislature (. . . one of the few truly scientific experiments ever conducted in education . . . Molenar at pg. 27) and others suggest that small classes promote higher achievement for the following reasons:

- Children receive more individual instruction: one-on-one help, small-group help, class participation.
- Children misbehave less because of the family atmosphere and quick intervention by teachers.
- Teachers spend more time on direct instruction and less on classroom management.
- Classes include more "hands-on" activities although most

instruction remains teacher-not student-centered.

- Students become more actively engaged in learning than peers in large classes.
- Teachers of small classes "burn out" less often.

Molenar at page 34.

The conclusions drawn by this research are that students in smaller classes consistently outperform other students in regular size classes and in regular size classes that have an aide to assist the teacher. Regardless of the nature of the school district, whether it is inner city, urban, suburban, or rural, students from all of these sectors enjoyed significant gains from small classes. Minority students and students from inner-city schools enjoyed greater small-class advantages than white students on many measures. Most significantly, students from the smaller classes graduated in significantly higher percentages than their peers from regular classes and took college entrance exams in greater numbers.

The results of these programs correlate with the legislative objectives set forth in its comprehensive revision of Florida school's systems in Section 229.591, Florida Statutes. The asserted impetus for this legislation was to expand upon and give meaning to the constitutional imperative to make adequate provision by law for a uniform, efficient, safe, secure and high quality system of free public schools consistent with Article IX, section 1 of the Florida Constitution. In so doing, the Legislature first acknowledged its role in assuring school improvement and accountability but more so declared that the state as a whole would work toward the goals of student performance, enhanced learning environments and increased graduation rates.

The proposed amendment, no less than the vast legislative efforts over the past few years, seeks funding to support a proven approach to achieve Florida's educational goals. Grounded in empirical research, the initiative amplifies and further develops the constitutional terms in Article IX. More importantly, this amendment will permit the voters of Florida to determine the manner in which the constitutional requirement of a high quality system will be implemented. Because of these stated objectives, the FEA supports the policy inherent in this initiative and urges this Court to place the proposed amendment on the ballot for public consideration.

SUMMARY OF ARGUMENT

Education has long held a revered role in the Florida Constitution. The 1868 Constitution first declared that it was "the paramount duty of the state to make ample provision for the education of children". Article X, Florida Constitution (1868). Even with continuous modification over the years, education remained a constitutional priority. Indeed, as Justice Overton noted in his concurring opinion in Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles, 680 So. 2d 400, 410 (Fla. 1996) (Overton, J., concurring), ". . . the right to an adequate education is a fundamental right for the citizens of Florida under our Florida Constitution." Nonetheless, this Court in Coalition and in Advisory Op. to Atty. Gen. RE: Requirements for Adequate Public Education Funding, 703 So.2d 446, (Fla. 1997) grappled with the lack of measurable standards in the constitution to define "adequate provision". In an effort to remedy this, the Constitution Revision Commission proposed the language setting forth principles to be used in assessing the "adequacy" provision. Thereafter, the voters of Florida reinforced their support for public education by affirming the recommended amendment of the Constitution Revision Commission reintroducing the language making it the paramount duty of the state to provide a high quality system of free public schools. Against this backdrop of historical importance, the Coalition to Reduce Class Size seeks to expand upon the constitutional standards and provide further direction in defining adequate provision. It has as its sole objective the requirement to reduce class sizes in Florida's public schools and simply outlines a mechanism for achieving high quality schools. In so doing, the Amendment to Reduce Class Size meets both the constitutional and statutory requirements for placement on the ballot.

FEA supports the Coalition To Reduce Class Size and concurs that the initiative does not violate the single subject requirements of Article XI, Section 3 of the Florida Constitution. The initiative simply directs the Legislature over an extended period of time to fund the class size limits set forth in the body of the petition. The petition does not purport to curtail or abolish the role of any other state agency nor does it substantially impact other governmental functions. We disagree as opponents assert that the proposed amendment is defective in that it fails to articulate whether the Legislature is to provide only funding and/or legislation. The amendment quite clearly directs the Legislature to fund the class size requirements but does not usurp the Legislature's ability to enact legislation implementing this mandate. The legislative appropriation duties have not been substantially curbed nor has the legislative function to enact legislation been halted. Certainly, the adoption of the 1998 amendment declaring education to be a paramount duty of the state and mandated a high quality system of public schools did not preclude the legislature from enacting laws in this regard nor would the current proposed amendment before this Court. See Section 229.591, Florida Statutes.

The opponents further advance the argument that the proposed initiative unconstitutionally limits the powers and duties of the local school districts. To the contrary, the class size limitations are no more onerous or constitutionally infirm than the many state goals and mandates with which school districts must comply. The school districts retain the ability to provide a high quality system and meet the class size objectives consistent with the individualized curriculums and structures they define. The only difference is that the school districts will now have the funds to provide the

quality school systems that they have long desired and that the students of Florida deserve. No longer will school districts be compelled to follow unfunded mandates.

As noted earlier, one unique feature of the initiative, which we believe insulates it from the opponent's primary arguments, is the manner in which the Legislature is authorized to fund the class size requirements. Unlike in other states where the entire funding systems were found unconstitutional and the legislatures were immediately called upon to make redress, this proposed amendment provides for incremental funding over the course of eight years. This proposed funding structure will enable the Legislature to meet the goals without cataclysmic economic effects. There is no "radical effect on the state's funding mechanism" here. See Justice Anstead's dissent in Advisory Op. Adequate Public Education Funding at pg. 450. Any impact upon the annual budget would be minimal and measurable yearly.

Finally, the opponents urge this Court to declare that the initiative is defective because of alleged problems with the ballot summary and title. The ballot summary and title fully comply with the technical and notice requirements of Section 101.161, Florida Statutes. The initiative, contrary to the arguments advanced by the opponents, clearly puts the voters of Florida on notice that the Legislature will be required to fully fund the class size requirements over the course of the next eight years; assigns this duty exclusively to the Legislature and relieves local school districts of this responsibility. Consistent with the substantive requirements, the initiative informs the public of the purpose of the proposal and the manner in which it will be affected.

ARGUMENT

I. THE CLASS SIZE FUNDING INITIATIVE PRESENTS A SINGLE QUESTION TO THE VOTERS OF FLORIDA AND FULLY COMPLIES WITH THE SINGLE SUBJECT REQUIREMENT OF ARTICLE XI, SECTION 3 OF THE FLORIDA CONSTITUTION

The threshold analysis of a proposed constitutional amendment begins with an examination of the whether the proposed amendment meets the "single subject" test. Does the proposed amendment "embrace but one subject and matter directly connected therewith", in compliance with Article XI, section 3? FEA concurs with the Coalition to Reduce Class Size, in its assertion that the proposed amendment has a solitary purpose, which is consistent with and flows from the current language of the constitution mandating a "high quality system of free public schools". This initiative merely seeks to add a requirement for legislative funding for the reduction of class sizes over an extended period of time. In that the initiative provides for this graduated approach to reach its ultimate goal, it represents a minimal impact upon the Constitution and other aspects or functions of government. Further, every component of the initiative relates directly to its dominant theme of reducing class size.

Over a series of cases, this Court has articulated the essence of the single subject requirement of Article XI, Section 3. One primary consideration is whether the initiative performs or substantially affects multiple, distinct governmental functions. In re Advisory Op. to Atty. Gen.-Save Our Everglades, 636 So. 2d 1336, 1340 (Fla. 1994); In re: Advisory Op. to Attorney General - Restricts Laws Related to Discrimination, 632 So. 2d 1018 (Fla. 1994); Fine v. Firestone, 448 So.2d 984, 990 (Fla. 1984). This Court

will further analyze whether the amendment will cause substantial impact upon other sections of the constitution. Tax Limitation I, 644 So. 2d at 490; Fine, 448 So. 2d at 989-90. The "universal test" set forth by this Court is whether the initiative has "a natural relation and connection as component parts of a single dominant plan or scheme." Advisory Op to Atty. Gen. Re: Florida Locally Approved Gaming, 656 So. 2d 1259, 1263 (Fla. 1995).

The Amendment to Reduce Class Size meets the standards under the Court's single subject review. In requiring legislative funding over a course of years for the class size standards the amendment has but one function. The Legislative branch is the only governmental branch that is substantially affected by the initiative. While the initiative does set a minimal funding standard as it relates to class size, it does not irresponsibly intrude into the Legislature's appropriations prerogative. This amendment is drafted in such a manner so as not to remove or significantly alter legislative funding discretion. The Legislature remains able to effect the amendment in any manner deemed appropriate and to effect funding decisions relative to other governmental functions. The impact of the proposed initiative is one that can be reasonably calculated and measured on an annual basis. Its potential impact on the appropriation function is ascertainable over the course of the next eight years when full compliance is to be achieved. With these elements in the amendment, the initiative cannot reasonably be said to substantially alter the legislative appropriations function.

Opponents argue that the proposed amendment may possibly impact other areas of the Constitution and thus is irreparably flawed because it fails to identify and articulate the potential impact upon these areas. While the opponents themselves have

not specifically identified any substantive impact that the initiative may have, it is accurate that the initiative must be examined to determine if it does indeed substantially impact or affect other sections of the Constitution. The standard is not that an initiative may have a causal connection with other constitutional provisions, as a matter of fact, this Court has recognized that "the possibility that an amendment might interact with other parts of the Florida Constitution is not sufficient reason to invalidate the proposed amendment" Advisory Opinion to the Attorney General-Fee on the Everglades Sugar Production, 681 So. 2d 1124, 1128 (Fla. 1996). So, too, this Court has held that in order to comply with the "single-subject requirement the amendment must manifest a "logical and natural oneness of purpose." Fine v. Firestone, 448 So.2d 984, 990 (Fla. 1984). The question then is whether the proposal substantially changes more than one constitutional governmental function. The fact that a proposal may indirectly impact another provision standing alone is not enough to defeat this proposal. The opponent's efforts to elevate speculative impacts do not warrant a dismissal of the initiative. In this case, there is but one major theme, the funding of class size, which derogates exclusively to the Legislature. The initiative does not substantially alter or perform the functions of other governmental branches.

The seeming primary focus of opponent's arguments is that the initiative will unconstitutionally limit or impair the powers and duties of local school districts. The essence of the argument is that earmarked funding usurps the local school districts' statutory and constitutional authority. While it is accurate to say that the initiative would have an effect on local school districts, indeed every educational provision to the constitution and to the statutes has an effect, it would be inaccurate to assume that the

funding requirements have the effect of altering or performing the school districts' role in the assignment of teachers, the construction of new classrooms, or in any aspect of the districts' role in executing those activities and purposes as defined in the constitution. Earmarked or restricted state and federal funding to school districts is not a foreign concept to school districts. Indeed, earmarked or categorical funds for specific purposes are replete throughout the state and federal education structures. Under many of these programs school districts fiscal flexibility is strictly precluded. One example of this restricted funding is contained in the Florida School Recognition Program. Section 231.2905, Florida Statutes. Funding under this program is provided only to certain schools under criteria established solely by the Commissioner of Education. While distributed to the school districts, the districts are prevented from utilizing local criteria to reward achievement. The proposed amendment does not create such an onerous effect.

The proposed amendment is a legislative funding requirement. It specifically and clearly relieves the school districts from any funding responsibility in meeting the class size objectives. The responsibility for the operation of the schools as to who is hired, how classes will be staffed, the construction of new classes, the use of portables, etc. all remain exclusively within the school districts' jurisdiction. It is respectfully suggested that the school districts will welcome the proposed language in that it finally provides some protection against unfunded state mandates that too long have required the school districts to meet state standards without any fiscal support.

Finally, the opponents assert that the initiative will have a "precipitous" or "cataclysmic" impact on the governmental functions. This proposed initiative unlike

that proposed in the Adequacy amendment, does not have a "radical effect on the funding of state government". See Justice Anstead dissent Advisory Op to Atty. Gen. Re: Requirement for Adequate Public Education Funding at pg. 450. This measure is designed to give the Legislature an extended period of time to meet the class sizes requirements. Within its customary planning and budgetary processes, the Legislature can annually address the educational class size needs of the students without significantly impacting its duties to address other governmental functions. Clearly, the legislative discretion regarding appropriations will not be curtailed so as to substantially impact other areas of the functions of other areas of governments. Any change would be minimal and phased in over the period of time the Legislature is given to meet the class size requirements.

II: THE BALLOT SUMMARY AND TITLE OF THE CLASS SIZE REDUCTION INITIATIVE MEETS THE SUSTANTIVE AND TECHNICAL REQUIREMENTS OF SECTION 101.161, FLORIDA STATUTES

The "fair notice" requirements of Section 101.161 are the second prong of the analysis to be considered by the Court prior to placing an amendment on the ballot. The statute requires the proposed amendment to clearly state the primary purpose and effect of the proposed amendment, in an accurate and neutral manner. These requirements provide the voters with fair notice of the content of the proposed initiative so that the voter will not be misled as to its purpose and can cast an intelligent and informed ballot. Advisory Op. to the Atty. Gen. re People's Property Rights. 699 So.2d 1304,1307 (Fla.1997), quoting Fee on Everglades Sugar Production, 681 So.2d 1124 (Fla. 1996).

Floridians reading the title and ballot summary of Amendment to Reduce Class Size will be able to make a personal and informed decision as to the viability of the amendment. The information contained in the summary and title discloses the chief purpose and effect of the amendment and does so "free from political rhetoric". Tax Limitation, 644 So.2d at 490. The voters will easily be able to discern that the amendment is designed to require the legislature to specifically fund class size reductions so as to meet the class size mandate in the amendment. Unequivocally, the summary notifies the electorate that this duty rests exclusively with the legislature and not local school districts. Thus, voters reading this summary will understand that this funding requirement is for a specific purpose, to be implemented over an extended period of time and impacting only the appropriations function of the Legislature. For these reasons, the summary and title comply with the requirements of Section 101.161, Florida Statute.

CONCLUSION

The FEA respectfully requests that this Court place the Amendment to Reduce Class Size on the ballot and permit the voters of Florida to determine the propriety of reducing class sizes in Florida's public schools to advance the constitutional imperative of a high quality system of public schools.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the foregoing has been furnished by U. S. Mail to:

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on this the 8th day of January, 2002.

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing Reply Brief of Interested Party 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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ATTORNEY