IN THE FLORIDA SUPREME COURT

CASE NO.: SC02-1624

KATHERINE HARRIS, in her capacity as SECRETARY OF STATE and as head of the DEPARTMENT OF STATE; and STATE OF FLORIDA DEPARTMENT OF STATE,

Petitioners,

v.

COALITION TO REDUCE CLASS SIZE, and PRE-K COMMITTEE (PARENTS FOR READINESS EDUCATION FOR OUR KIDS) (PAC),

Respondents.
_____/

BRIEF OF AMICUS CURIAE JEB BUSH, GOVERNOR OF THE STATE OF FLORIDA

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INTEREST OF THE AMICUS CURIAE

Amicus curiae Jeb Bush, Governor of the State of Florida, submits this brief in support of the constitutionality of chapter 2002-390, Laws of Florida. The Governor has an interest in preventing any efforts to restrict the Legislature's authority and duty to maintain the integrity and reliability of the state's election processes. Additionally, under Florida's constitution, the Governor is "the chief administrative officer of the state responsible for the planning and budgeting for the state." Art. IV, § 1, Fla. Const. As such, he is particularly concerned that Florida's citizens be fully informed about the budgetary effects of proposed constitutional amendments.

STATEMENT OF THE CASE AND FACTS

The Governor adopts the Secretary of State's and Department of State's statement of the case and facts.

STANDARD OF REVIEW

Generally, an order imposing an injunction is presumed correct, and, to the extent it is based on factual matters, will not be disturbed absent a showing of abuse of discretion. See Operation Rescue v. Women's Health Center, Inc., 626 So. 2d 664 (Fla. 1993), rev'd in part on other grounds by Madsen v. Women's Health Center, Inc., 512 U.S. 753 (1994). However, to the extent the order is based

on legal matters, a *de novo* standard of appellate review is employed. Id. In the instant case, the trial court deemed chapter 2002-390, Laws of Florida, unconstitutional and enjoined Petitioners without resort to fact finding. The Order Granting Preliminary Injunction thus rests entirely on legal matters and should be reviewed *de novo*. See Operation Rescue.

SUMMARY OF THE ARGUMENT

The citizen initiative process for amending the Florida Constitution is fundamental to our scheme of government. Precisely because the initiative process is so important, the Florida Legislature has broad authority to enact laws protecting its integrity and reliability. Chapter 2002-390, Laws of Florida, provides such protection by requiring that a fiscal impact statement accompany every proposed constitutional amendment on the ballot.

The scope of the Legislature's authority to regulate the initiative process, whether or not defined as protecting "ballot integrity," encompasses enforcing the implicit mandate of Article XI, section 5, of the Florida Constitution that proposed amendments be accurately presented to the voters. The ballot title and summary requirements set forth in section 101.161(1), Florida Statutes, which implement the constitutional accuracy requirement, have repeatedly been sanctioned by this Court. Chapter 2002-390, Laws of Florida, also implements the accuracy

requirement, by informing voters of the estimated impact proposed measures, if approved, will have on the state's budget. That this is sound public policy and responsible self-government cannot be denied. When voters step into the voting booth to decide whether to approve the class size and universal pre-kindergarten measures, they should be able to consider the combined $3 billion yearly price tag.

ARGUMENT

I. THE LEGISLATURE IS AUTHORIZED TO ENACT LAWS ENSURING THE INTEGRITY AND RELIABILITY OF THE INITIATIVE PROCESS.

The initiative amendment process provided for in Article XI, section 3, of the Florida Constitution is a fundamental part of this state's scheme of government. It is the power "reserved to the people" to effect governmental change without legislative action when they see fit to do so. See Art. XI, § 3, Fla. Const.; see also, State ex rel. Citizens Proposition for Tax Relief, 386 So. 2d 561 (Fla. 1980) (citing Gray v. Bryant, 125 So. 2d 846 (Fla. 1980)). Nevertheless, a state has "broad discretion in administering its initiative process." Biddulph v. Mortham, 89 F.3d 1491, 1500 (11th Cir. 1996), cert. denied, 519 U.S. 1151 (1997). Indeed, the United States Supreme Court has recognized that states "have considerable leeway to protect the integrity and reliability of the initiative process, as they have with

respect to election processes generally." Buckley v. American Const'l Law Found., Inc., 525 U.S. 182, 191 (1999) (citing Biddulph with approval) (emphasis added).

The Class Size Coalition and Pre-K Committee,[1] and the trial court, assert that chapter 2002-390, Laws of Florida ("fiscal impact law"), is not necessary for "ballot integrity" and is therefore impermissible under the Florida Constitution. Although Respondents and the trial court rely on Tax Relief, supra, nothing in that opinion indicates any intention by this Court to convey that the Legislature is relegated only to protecting "ballot integrity." There, the Court invalidated an administrative rule that had the effect of limiting the people's ability to obtain the requisite number of signatures for placing an initiative on the ballot. Reasoning that "any restriction on the initiative process would . . . weaken the power of" that process, the Court held any such restriction "should only be allowed when necessary to ensure ballot integrity." Tax Relief, 386 So. 2d at 566.

The Court continued, "We do, however, recognize that the legislature, in its legislative capacity, and the secretary of state, in his executive capacity, have the duty and obligation to ensure ballot integrity and a valid election process. Ballot

[1] Respondents, Coalition to Reduce Class Size and Pre-K Committee (Parents for Readiness Education for Our Kids) are referred to herein as "Class Size Coalition" and "Pre-K Committee," respectively, or "Respondents," collectively.

integrity is necessary to ensure the effectiveness of the constitutionally provided initiative process." Id. at 566-67 (emphasis added). Thus, protecting ballot integrity is but a part of the Legislature's overall duty and authority; it does not define the scope of the Legislature's ability to enact laws concerning the initiative process. The Legislature has no less authority to ensure the reliability of Florida's initiative process than does any other state that has granted such a right to its citizens. See Buckley; Biddulph.

This Court failed to define "ballot integrity" in Tax Relief, and no subsequent case uses that standard to determine the propriety of laws governing the initiative process. However, this Court has sanctioned section 101.161(1), Florida Statutes, which, although restricting the initiative process, ensures that the initiative is fairly presented on the ballot. In Armstrong v. Harris, 773 So. 2d 7 (Fla. 2000), this Court reiterated that Article XI, section 5, of the Florida Constitution, which requires submission of any proposed constitutional amendment to the voters, implicitly requires "that the proposed amendment be accurately represented on the ballot; otherwise, voter approval would be a nullity." Id. at 12 (emphasis original). Section 101.161(1) codifies and implements this accuracy requirement by setting parameters for the content of ballot summaries and titles for all proposed constitutional amendments.

As this Court has recognized repeatedly, "[t]hese requirements make certain that the 'electorate is advised of the true meaning, and ramifications, of an amendment.'" Advisory Op. to the Att'y Gen. re Local Trustees, 27 Fla. L. Weekly S512, S514 (Fla. May 23, 2002) (quoting Advisory Op. to the Att'y Gen. re Tax Limitation, 644 So. 2d 486, 490 (Fla. 1994)). "The purpose of section 101.161(1) 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. Id. (quoting Advisory Op. to the Att'y Gen. re Term Limits Pledge, 718 So. 2d 798, 803 (Fla. 1998)) (emphasis added). Section 101.161(1) prevents "hiding the ball" as to the true effect of proposed constitutional amendments. See Armstrong.

Thus, even if the Legislature may only restrict the initiative process to protect ballot integrity, that authority clearly encompasses informing voters of the ramifications of proposed constitutional amendments. The myopic view of the Legislature's authority adopted by Respondents and the trial court simply has no foundation. The Governor therefore concurs with the persuasive arguments by the Secretary of State, the Department of State, and *amicus curiae* Florida House of Representatives that the fiscal impact law is reasonably designed to ensure ballot integrity.

In any event, the validity of the fiscal impact law should not turn on whether it meets Respondents' narrowly-defined "ballot integrity" requirement. Rather, the fiscal impact law simply must fall within the Legislature's broad overall authority to ensure the reliability of the initiative and voting processes. See Buckley; Biddulph; Tax Relief. First, while Tax Relief indicates that laws restricting the people's ability to put an initiative on the ballot must protect ballot integrity, laws that otherwise ensure a "valid election process" are subject to no such proviso. The fiscal impact law neither directly nor indirectly hinders the people's right to put an initiative before the voters, as Respondents claim. Unlike the ballot summary and title requirements in section 101.161(1), the fiscal impact statement is not the responsibility of initiative proponents; the Revenue Estimating Conference drafts the statement. See ch. 2002-390, §§ 2, 3, 5, Laws of Fla. Further, if an initiative's ballot title and summary violate the statutory requirements, this Court disapproves it for placement on the ballot. If the fiscal impact statement is nonconforming, it is remanded to the Revenue Estimating Conference to be redrafted. See ch. 2002-390, §§ 2, 3, Laws of Fla. There is no effect on the related initiative, if otherwise approved for the ballot.

Further, as fully discussed below, the fiscal impact law implements the accuracy requirement implicit in Article XI, section 5, of the Florida Constitution.

That provision ensures that voters are fully informed of the ramifications of all proposed constitutional amendments, not only citizen initiatives. This Court has never held that the Legislature is limited to protecting ballot integrity with regard to amendments proposed by revision commission, constitutional convention, or the Legislature itself. See Art. XI, §§ 1, 2, 4, Fla. Const. Rather, ensuring that all amendment proposals are accurately presented to the voters is part of Legislature's overall authority and duty to ensure the reliability and integrity of the amendment process. The fiscal impact law falls within this authority.

II. BY ENABLING VOTERS TO CAST INFORMED BALLOTS, THE FISCAL IMPACT LAW FULFILLS THE LEGISLATURE'S DUTY TO ENSURE THE RELIABILITY OF THE INITIATIVE PROCESS.

The right to amend the state constitution by citizen initiative is fully realized only when the people are "advised of the true meaning, and ramifications, of an amendment." See Local Trustees, 27 Fla. L. Weekly at S514. Responsible self-government requires more than a simple "yes" or "no" vote on a measure considered in a vacuum. The potential immediate and future effects of a proposed amendment on the state's fiscal resources – if such effects can be determined – should be contemplated by voters as they decide whether to add the measure to their constitution.

This Court has recognized the need to inform voters about the potential fiscal impact of a proposed constitutional amendment. In Advisory Opinion to the Attorney General re Tax Limitation, 644 So. 2d 486 (Fla. 1994), the Court considered, *inter alia*, an initiative that would have required the government to compensate individuals for property damaged during the exercise of the police power. The Court found the proposed ballot summary inaccurate and uninformative because it failed to advise voters of certain consequences, including

the "substantial" fiscal impact the amendment would have. Id. at 495. In other words, putting that amendment to a vote without disclosing its potential fiscal impact would have undermined the integrity of the entire initiative process.

In keeping with its authority under Article XI, section 5, of the Florida Constitution to ensure that all proposed amendments be accurately presented to the voters, see Local Trustees, Armstrong, the Florida Legislature has determined that every ballot containing a proposed amendment "shall include a separate fiscal-impact statement concerning the measure prepared by the Revenue Estimating Conference." Ch. 2002-390, §5 at ____, Laws of Fla. The wisdom of this policy decision is not subject to review by this Court. See State v. Bales, 343 So. 2d 9 (Fla. 1977) (noting that when a court passes on constitutionality of statute, questions of wisdom, need or appropriateness are for the Legislature). Even so, the soundness of the policy cannot be denied.[2] Florida's budget concerns are well documented. And it is elementary that requiring the state to fund a particular program affects the state's ability to fund all its programs and governmental functions.

[2] As detailed by *amicus curiae* Florida House of Representatives, several states similarly require that cost estimates be attached to all proposed constitutional amendments.

The initiative to reduce class sizes in Florida's public schools mandates maximum class sizes for pre-kindergarten through grade 3, grades 4 through 8, and grades 9 through 12. See Advisory Op. to the Att'y Gen. re Florida's Amendment to Reduce Class Size, 816 So. 2d 580 (Fla. 2002). Voters should know that implementation of the proposed maximum class size requirements will cost $20 billion to $27.5 billion over the next eight years, and that once achieved, yearly operating costs will be an estimated $2.5 billion. The class size initiative mandates that those costs be borne solely by the state. See id. The universal pre-kindergarten initiative requires the state to provide a high quality pre-kindergarten child development and education program to every four-year-old child in Florida. See Advisory Op. to the Att'y Gen. re Voluntary Universal Pre-Kindergarten Education, 27 Fla. L. Weekly S663 (Fla. July 11, 2002). Voters should know that the estimated annual cost to do so will be between $425 million and $650 million.

Consider these estimates in context. The state's budget for fiscal year 2002-2003 is approximately $ 50.3 billion. General revenue comprises 41% of the budget; federal funds and state trust funds comprise 29% and 30%, respectively. Approximately $14 billion are allocated to education. Nearly $11 billion of that allocation come from general revenue, which amounts to 52% of the almost $22 billion general revenue budget. Adding over $3 billion (for both initiatives) to the

education allocation means cutting that amount from other parts of the general revenue budget. Certain budget items, such as entitlement programs and constitutionally dedicated funds, cannot be raided. Some programs cannot be unfunded or underfunded without legal ramifications. These are the constraints the Legislature will face should these initiatives be approved.

That the Class Size Coalition and Pre-K Committee seek to preclude voters from considering the substantial financial impact of these measures is astounding. They charge that the fiscal impact statements constitute impermissible comment on the merits of the proposed amendments. This Court's ruling in Tax Limitation proves otherwise. There, the Court acknowledged that, in reviewing the ballot summary, it had no authority to rule on the merits of the proposed amendment. See Tax Limitation, 644 So. 2d at 489. Thus, in requiring voters to be informed of the measure's substantial fiscal impact, the Court did not comment on the virtue of the measure. The Court's only consideration was whether voters would be adequately informed of the measure's ramifications. Placing a fiscal impact statement on the ballot answers this concern. Fully informed, the voters – and only the voters – will decide whether a proposed amendment merits their approval.

CONCLUSION

The Legislature has considerable leeway in protecting the integrity and reliability of the initiative process, and it has both the authority and duty under the Florida Constitution to ensure that Florida voters are fully informed of the ramifications of all proposed constitutional amendments. Chapter 2002-390, Laws of Florida, fulfills that duty by requiring every proposed amendment to be accompanied on the ballot by a fiscal impact statement. The trial court erred in ruling otherwise, and the Order Granting Preliminary Injunction should be reversed.

Respectfully submitted,

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I CERTIFY that a copy hereof has been furnished to the individuals listed below, by United States mail on August 5, 2002.

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