

**IN THE SUPREME COURT  
OF FLORIDA**

**Advisory Opinion to the  
Attorney General re: Voluntary,  
Universal Pre-Kindergarten Education**

**Case No: SC02-868**

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AMENDED BRIEF OF AMICI CURIAE, CHILDREN FIRST PROJECT  
SHEPARD BROAD LAW CENTER, NOVA SOUTHEASTERN UNIVERSITY,  
AND THE EARLY CHILDHOOD INITIATIVE FOUNDATION, ET. AL.  
On Review of Attorney General's Petition for Written Opinion  
on Validity of Initiative Petition

CHRISTINA A. ZAWISZA  
Florida Bar Number 241725  
CHILDREN FIRST PROJECT  
Nova Southeastern University  
Shepard Broad Law Center  
3305 College Avenue  
Ft. Lauderdale, Fl. 33314-7721  
Telephone: 954-262-6027

*Attorney for Amici*

Theresa Kraft  
Law Clerk  
On the Brief

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**INTEREST OF AMICI CURIAE****1.Children First Project, Nova Southeastern University**

The Children First Project at Nova Southeastern University's Shepard Broad Law Center is a statewide advocacy project funded largely by the Florida Bar Foundation's Interest on Trust Accounts Program to advance children's legal rights consistent with their medical and educational needs. In existence since 1991, Children First has received recognition in the courts, the legislature, and other public policy arenas. Its goal is to achieve significant improvements in all of the systems affecting children's lives, including the dependency and delinquency systems, the education system, and the health and mental health systems.

Children First has been granted leave to appear as Amicus Curiae numerous times before the appellate courts and the Supreme Court of Florida when important matters affecting the rights of children are being litigated. These cases have included: *Chiles v. Children*, 589 So. 2d 260 (Fla. 1991); *A.A. v. State*, 604 So. 2d 813 (Fla. 1992); *Cox v. Dept. of Health and Rehabilitative Services*, 656 So. 2d 902 (Fla. 1995); and *Coalition for Adequacy and Fairness of School Funding v. Chiles*, 680 So. 2d 400 (Fla. 1996). Lawyers for Children First have also represented hundreds of children in individual juvenile court cases in the Eleventh

Judicial Circuit.

Children First has been involved in the process of the initiative petition to provide a Universal Pre-Kindergarten Education to all 4 year olds in the State of Florida from its inception. At request of the Committee on Pre-K, Children First helped to research and prepare the ballot language to meet the legal criteria.

Children First participated in this project because it recognizes that in order for children to succeed in the education system, to stay out of the child welfare and mental health systems and to reach prosperous and healthy adulthoods, they must begin the process of school readiness in their earliest years.

## **2. Early Childhood Initiative Foundation**

The Early Childhood Initiative Foundation is a 501(c)(3) operating foundation, formed in 1999 to work on an early childhood education and development initiative in Miami-Dade County. The initiative seeks “universal school readiness” by making available and affordable high quality health, education, and nurturing for all of the Miami-Dade community’s 158,000 children between birth and age 5. The initiative supports the social, physical, emotional, and intellectual growth of all children so that they are ready and eager to be successful in first grade, and indeed, in life.

The Early Childhood Initiative Foundation has been instrumental in bringing

issues concerning the social, physical, emotional, and intellectual growth of children to the community's attention by: launching a public awareness campaign called Teach More/Love More to build community demand for high-quality basics; establishing partnerships with 14 birthing hospitals, 5 birthing centers, 38 neighboring clinics, and 39 community libraries; offering every new parent in the community the preview issue of an 11-times-per-year parent skill-building newsletter as well as information about how to connect the child to health insurance and a high-quality baby book accompanied by a message about the crucial nature of reading with your child; giving more than 10,000 women a video on the early years of life, mostly via hospitals and clinics; doubling the number of nationally accredited child care centers; producing under the banner of Teach More/Love More an hour-long high-quality television show focused on South Florida families and using the expertise of famed baby doctor T. Berry Brazelton; being selected as one of eight places in the country by the Kellogg Foundation to work with "vulnerable children ages 3 to 6" in seeking to get them fully ready for school; and producing 153,000 copies of a 200-page, three language Almanac.

The Early Childhood Initiative Foundation believes that among the most crucial elements in school readiness is a high-quality, voluntary pre-kindergarten experience for 4 year olds. Thus it has assisted in the preparation of the ballot

initiative at issue by providing its research and expertise.

### **3. Miami Dade Community College Early Childhood Education Program**

Miami Dade Community College Early Childhood Education Program is dedicated to providing the highest quality education for those who teach young children. The Miami-Dade Community College Early Childhood Education Program offers many options for training including an Associate in Arts Degree in Teaching Pre-Elementary/Early Childhood, an Associate in Science Degree in Child Development and Education, the Florida Child Development Associate (CDA) Equivalency Credential, coursework for the Florida Child Care and Education Program Administrator Credential, and a Vocational Credit Certificate in Early Childhood Education. The program emphasizes the characteristics of quality preschool education and quality early education teachers. It focuses on the social, emotional, cognitive and physical development of young children, and the course competencies follow the guidelines of the National Association for the Education of Young Children (NAEYC).

The Community College is interested in the Pre-kindergarten Initiative because its Early Childhood Coordinator was a member of the focus group assembled for the purpose of discussing the universal pre-kindergarten program. Her experience as a professor facilitated discussion of the issues of Early



Childhood Education from the perspective of a teacher educator. The College's Early Childhood Coordinator consults with many community leaders on the importance of supporting high quality, developmentally appropriate early education programs for our youngest citizens.

#### **4. Miami-Dade CAA Head Start/Early Head Start Program**

Miami-Dade Community Action Agency Head Start/Early Head Start Program delivers early childhood development and education services to financially eligible children in Miami-Dade County. Its support for the Pre-kindergarten Initiative arises from this experience. Head Start recognized over 37 years ago the importance of providing children with an early start, if they are expected to succeed. Early intervention contributes positively to the growth and development of children; thereby enabling a successful school experience, and the Miami-Dade Community Action Agency therefore has an interest in this ballot initiative.

#### **5. Florida Education Association**

The Florida Education Association ("FEA") is an unincorporated association comprised of public education employees who are employed by various school districts, the Community Colleges and the Universities throughout the State of Florida. The mission of FEA is to champion free, quality public education through

enhancing and supporting those who serve the students of Florida; to advocate the right to a free, quality public education for all students; and to engage FEA's constituents to ensure that all students learn and succeed.

### **STATEMENT OF THE CASE AND THE FACTS**

The case comes before this Court on the Pre-K Committee's initiative petition, "Voluntary Universal Pre-Kindergarten Education" (Pre-kindergarten Initiative) which seeks to amend the Florida Constitution by requiring the state to provide every child in Florida the opportunity for high quality pre-kindergarten education by 2005. Participation in the pre-kindergarten education will be voluntary and ensure that four-year-old children have access to high quality pre-kindergarten learning opportunities. In compliance with Section 16.061, Florida Statutes (2001), the Florida Attorney General has petitioned the Florida Supreme Court for an advisory opinion regarding the validity of the proposed amendment and its compliance with the single subject requirement of Article XI, Section 3, Florida Constitution and the ballot title and summary requirement of Section 101.161, Florida Statutes (2001). The Attorney General has concluded that the Pre-kindergarten Initiative meets these requirements. The Attorney General's petition was filed after the Pre-K Committee obtained approval of the format of the petition from the Secretary of State and collected the requisite number of

signatures.

## **SUMMARY OF ARGUMENT**

The Pre-kindergarten Initiative is constitutional because it meets the single subject requirement and because the ballot title and summary are clear, unambiguous and not misleading to Florida voters. The sole purpose of the proposed amendment is to create a universal, free, high quality pre-kindergarten program for all four year old children in Florida. The proposal has no effect on any other programs or governmental functions. The ballot title and summary were devised after extensive voter polling, research and consultation with experts and thus accurately and informatively reflect the initiative's primary purpose. The operative words are used within their general usage definitions or as currently used in Article IX, Section 1 of the Florida Constitution.

## **ARGUMENT**

This initiative comes before the Court upon the Petition of the Attorney General to review the validity of a proposed amendment to Article IX, Section 1 of the Florida Constitution to provide for Voluntary Universal Pre-Kindergarten Education for all 4 year old children in Florida by 2005. The key legal issues before the court are two: 1) whether the ballot language embraces a single subject; and 2) whether the ballot title and summary are clear and not misleading.

According to the opinion of the Attorney General, the ballot language suffices to meet both of these tests. Letter of Attorney General Robert A. Butterworth to Chief Justice Charles T. Wells and Justices of the Supreme Court of Florida (undated).

Amici, all organizations with a stake in the education of Florida’s children, seek to inform this court about universal pre-kindergarten education for four year old children, the subject matter of this ballot, and its importance to the people of Florida. They further argue that the ballot language is constitutional.

**I. BACKGROUND: PRE-KINDERGARTEN EDUCATION AND ITS IMPORTANCE TO FLORIDA**<sup>1</sup>

The courts have long been deeply involved with education in America. Mills and McIendon, *Setting a New Standard for Public Education: Revision 6 Increases Duty of the State to Make “Adequate Provision” for Florida Schools*, 52 Fla. L. Rev. 329, 330 (2000). Whether the question was who may go to what school, *Brown v. Board of Education*, 347 U. S. 483 (1954), what may be taught in school, *Meyer v. Nebraska*, 262 U. S. 390, 403 (1923), how students should behave in school, *Tinker v. Des Moines Independent School District*, 393 U. S. 503, 504

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<sup>1</sup>Although not part of the ballot summary or ballot language, the “whereas” clauses prefacing the constitutional amendment summarize much of this background information.

(1969), or how large classes should be, *In re Advisory Opinion to the Attorney General-Florida's Amendment to Reduce Class Size*, Case No. SC01-2421, 27 Fla. L. Weekly S367 (Fla. April 25, 2002) (*Florida Class Size*), courts have been called upon to referee large societal issues regarding the education of our children. Courts, including this Court, have recognized the need for education and knowledge in a democratic free society and the need of the government to provide for a literate, knowledgeable population as a means to protect our freedom. *Coalition for Adequacy of Education v. Chiles*, 680 So. 2d 400, 409 (Fla. 1996) (Justice Overton, concurring).

As our society becomes more complex, more global, more mobile, and more dependent on technology, the challenge of building a knowledgeable, literate electorate arises not at the age a child turns six but at the moment she or he is born. It is at this early juncture that issues concerning the social, physical, emotional and intellectual growth of children begin to confront not only parents but policy makers, all in an effort to assure that children are “ready” to start school at age six. It is toward this “school readiness” imperative that the universal, voluntary pre-kindergarten ballot initiative is directed.

Of the more than 3.5 million children in the state of Florida, over 950,000 are under the age of 5. *Pre-Kindergarten Education: Our Future Depends On It*,

<http://www.co.miami-dade.fl.us/4prek/> (May 18, 2002). Twenty-six percent of those live in poverty. Id. It is estimated that as many as 30 percent of Florida's children are not ready for school by the time they reach first grade, unprepared intellectually, socially, emotionally, and/or physically. Id. A national study by the American Reading Association shows that if 100 children emerge from first grade not knowing how to read well, 88 of them will still not read well by the fourth grade. Id.

It is estimated that 6 out of 10 children under the age of 5 spend part of their waking day in the care of people other than their parents. *In Early-Childhood Education and Care: Quality Counts* ,

[http://www.teachmorelovethe.com/Articles\\_Details.asp?articlid=956](http://www.teachmorelovethe.com/Articles_Details.asp?articlid=956) (May 11,2002). *See also*, Linda Jacobson, *Defining Quality*, Education Week, at <http://edweek.org/sreports/qc02/templates/article.cfm?slug=17quality.h21> (January 10, 2002).

The quality of the early care and education lays the building blocks for future academic success. Young children exposed to high-quality settings exhibit better language and mathematics skills, better cognitive and social skills, and better relationships with classmates than do children in lower-quality settings. It is believed that children who receive the benefits of high-quality early education are

less likely to drop out of school, repeat grades, need special education, or get into future trouble with the law than similar children who did not have such exposure.

Id.

Traditional notions of “quality” in early-childhood education focused on a safe and nurturing environment. *In Early-Childhood Education and Care: Quality Counts*, [http://www.teachmorelovemore.com/Articles Details.asp?articlid=956](http://www.teachmorelovemore.com/Articles%20Details.asp?articlid=956) (May 11,2002). *See also*, Linda Jacobson, *Defining Quality*, Education Week, at [http://edweek.org/sreports/qc02/templates/article.cfm?slug= 17quality.h21](http://edweek.org/sreports/qc02/templates/article.cfm?slug=17quality.h21) (January 10, 2002). Recent research in the area has focused on the importance of early learning and the quality of instruction that should occur in early childhood education. Id. A high quality program does not water down elementary education. Emphasize in high quality programs is placed on developing social skills through activities that strengthen a child’s cognitive abilities and knowledge. Standards for early childhood education should include academic areas such as physics and statistics, but on a preschooler’s level using experimentation, exploration, and observation. Play time is important to stretch a child’s imagination and provide him or her with the social and self-regulatory skills needed for learning complex information. Creating an environment that encourages reading is most important in early childhood education. Reading to a child and allowing the child to read back

and expand the story are essential activities. Id.

The universal pre-kindergarten program of high-quality envisioned by this ballot initiative would give every child the opportunity to be ready for school. To date, of the 42 states that offer some form of pre-kindergarten education, Georgia's program is considered the model as it is one of the most extensive programs in the nation. Linda Olson, *Georgia, New York, and Oklahoma Move Toward "Universal" Preschool*, Education Week, January 10, 2002, at <http://www.edweek.org/sreports/qc02/templates/article.cfm?slug=17intro-s1.h21> (May 14, 2002). *See also*, James J. Gallagher, Jenna R. Clayton, Sarah E. Heinemeier, *Education for Four-Year-Olds: State Initiatives Technical Report #2*, 17, at [www.ncedl.org](http://www.ncedl.org) (May 15, 2002). Georgia offers a universal pre-kindergarten program serving approximately 62,500 four-year-olds (this number represents approximately 63% of the four year olds in the state). It is called a "universal" program because there are no eligibility criteria other than the child's age. Ga. Code Ann. Section 20-1A-4 (2001). In other words, a child is eligible to attend the universal pre-kindergarten program once he or she reaches the required age; eligibility is not determined by his or her parents income, from a determination that he or she is "at-risk," or by the need for special education. The Georgia program is considered voluntary; the parents' retain the decision of whether or not they want



their four-year-old to attend the pre-kindergarten program. Olson Id.

In order for a pre-kindergarten program to be considered high-quality, high-quality classroom standards, learning goals, age appropriate teaching and assessment, and teacher qualifications are essential *Pre-Kindergarten Education*, supra. An appropriate pre-kindergarten experience emphasizes growth in language, literacy, math concepts, science, arts, physical development, and personal and social competence. Id. The pre-kindergarten program should supplement, not supplant, existing state education programs. Additionally, the program should be offered in both the public and private setting and available to all four-year-old children by 2005. Id.

Amending the Florida Constitution to offer every four-year-old child in Florida a high-quality pre-kindergarten learning opportunity will provide short and long-term benefits, including success in school. A high-quality pre-kindergarten program would pave the way for school readiness and success by taking advantage of a child's natural hunger for learning. A high-quality pre-kindergarten program would promote later success for all children.

## **II. THE BALLOT LANGUAGE COMPRISES A SINGLE SUBJECT.**

To comply with the single-subject requirement, an initiative must manifest a “logical and natural oneness of purpose.” *Fine v. Firestone*, 448 So. 2d 984, 990

(Fla. 1984). The proposed amendment complies with the single-subject requirement as it for the sole purpose of creating a universal pre-kindergarten program for four-year-olds. The proposed amendment does not require that a certain percentage of funding come from a specific tax or revenue. The proposed amendment does require the Legislature to fund the universal pre-kindergarten program without diverting funds from already existing education, health, and development programs.

The proposed amendment is similar to that approved by this court in *Florida Class Size*, supra. There this Court held that the fact that a ballot initiative requires funding does not constitute impermissible logrolling, but rather simply provides the details of how the ballot initiative will be implemented. *Florida Class Size* at S368. In contrast this court held in *Advisory Opinion to the Attorney General Re Requirement for Adequate Public Education Funding (Public Education Funding)*, 703 So. 2d 446 (Fla. 1997) that a requirement in the amendment that 40% of state appropriations be allocated to education violated the single subject rule because it substantially altered the operation of Florida's finance and taxation law and state mandates to local government. *Public Education Funding* at 449. However, the Pre-kindergarten Initiative has no such consequences on other programs.

A second reason for the single subject rule is to prevent a single

constitutional amendment from substantially altering or affecting the performance of the functions of multiple government entities, such as the school boards at issue in *Florida Class Size*. There this Court found that the ballot language did not interfere with a school board's authority to operate, control or supervise all free public schools within a school district. *Florida Class Size* at S368. The Pre-kindergarten Initiative likewise contains no directives which affect school board functions in any way. Thus the proposed amendment complies with the single subject requirement.

**III. BALLOT TITLE AND SUMMARY ARE CLEAR AND UNAMBIGUOUS.**

The Ballot Title and Summary must be clear and unambiguous. Fla. Stat. Section 101.161(1). Furthermore, they must be accurate and informative so that the voter will not be misled as to the amendment's primary purpose. The initiative title and summary, however, need not explain every detail or ramification of the amendment. *Florida Class Size* at S368-69. The primary purpose of this initiative is to require a voluntary, high quality, free pre-kindergarten learning opportunity for every four year old child in Florida. Its title and summary clearly, accurately and informatively reflect that primary purpose.

The Committee on Pre-K went to great lengths to craft such clear and

unambiguous language through the use of a national polling and research firm, Frederick polls, which tested various possible phrases among Florida voters. (See Poll Results in Appendix). Phraseology that was best understood by the voters was chosen for the Petition Form. In addition, attention was paid to using phraseology from current Article IX, Section 1 of the Florida Constitution and to researching the statutes of other states, most notably that of Georgia.

Operative words in the ballot summary are the following: “pre-kindergarten learning opportunity,” “high quality,” “free”, “voluntary” and “universal.” “Pre-kindergarten learning opportunity” is a phrase easily used without discomfort among early childhood and education program providers as well as parents and caregivers. It was coined after a review of the literature discussed in the Background section at pp. 11-12 and after consultation with Amici Early Childhood Foundation and Miami-Dade Community College Early Childhood Program.

The terms “high-quality” and “free” appear in Article IX, Section 1 as it already exists. An education program is considered high-quality when it not only meets the standards set by the Legislature, but also as compared to other states’ education programs as the term appears in other states’ constitutions. Mills and Mclendon at 375-76. The earmark of a high-quality education program is one that

exceeds the minimum requirements of an “adequate education” as described in numerous Supreme Court cases throughout the country.<sup>2</sup> “High quality” is also subject to ready interpretation due to the extensive legislative history on the enactment of Article IX, Section 1. Mills and McLendon at 359-76.

The terms “free” and “voluntary” are understood according to their plain meaning as defined in Webster’s New World Dictionary. “Free” is defined as “open to all” “without cost or payment.” *Webster’s New World Dictionary, Second*

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<sup>2</sup>For example, *Rose v. Council for Better Education, Inc*, 790 S.W. 2d 186, 212 (Kentucky 1989) provides the minimum requirements a school must meet to be adequate.

The school must have as its goal to provide each and every child with at least the seven following capacities: (i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (vi) sufficient training or preparation for advanced training in either academic or vocational field so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient level of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.

Footnote 22 explains that “these seven characteristics should be considered as *minimum* goals in providing an adequate education.”

*College Edition*, 556 (1980). “Voluntary” refers to the fact that the parent may make the choice to enroll the child in the pre-kindergarten program. Attendance in a pre-kindergarten program is not mandatory. The plain meaning of “voluntary,” according to Webster, is “freely chosen or undertaken.” *Webster’s New World Dictionary, Second College Edition*, 1592 (1980).

The term “universal” refers to the fact that the only criteria the child must meet in order to be eligible for the program is his or her age. No other criteria, such as parents’ income, a determination that the child is “at-risk,” or that the child is in need of special education is necessary for the child to be eligible for entrance into the pre-kindergarten program. This term was chosen to coincide with the language of the Georgia program, which is generally understood by the people of Georgia. See pp.

11-12 in the Background section.

Because the terms contained in the Ballot Title and Summary are used within their general usage definitions or as used in the current Florida Constitution, the terms are easily understood by the general public and are not misleading. Additionally, polls were conducted to determine the public’s understanding of the proposed amendment language. Thus the Pre-kindergarten Initiative meets the “clear and unambiguous” test and is not misleading.

## **CONCLUSION AND RELIEF REQUESTED**

Because the proposed initiative meets the single subject test and is clear, unambiguous and not misleading, Amici ask this Court to issue an advisory opinion to the Attorney General that approves the ballot language.

Although the merits of the proposal are not at issue here, Amici want to assure the court that universal pre-kindergarten program for four-year-olds would benefit all children in the state of Florida by offering the child the opportunity to become school ready. As a voluntary program, parents would retain decision making authority over the best interests of their child and family. The program would offer age appropriate education geared towards preparing a child for school and the future.

Experience and research underscore how vital pre-kindergarten classes are, not only as a matter of intellectual growth but also social and emotional growth. In a state where up to 30% of our children begin first grade significantly behind, and so many do not catch up, a high quality pre-kindergarten experience could make a difference in getting a child ready for success in school and in life.

Respectfully submitted,

CHRISTINA A. ZAWISZA  
*Attorney for Amici*  
Children First Project  
Nova Southeastern University  
Shepard Broad Law Center  
3305 College Avenue  
Ft. Lauderdale, Fl. 33314

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Brief of Amici was served by mail on this 11<sup>th</sup> day of June, 2002 on:

The Honorable Robert A. Butterworth  
Attorney General,  
The Capitol, PL-01  
Tallahassee, FL 32399-1050

Parker Thomson  
Attorney for Committee on Pre-K  
Hogan and Hartson, LLP  
Barclay's Financial Center  
1111 Brickell Avenue, Suite 1900  
Miami, FL 33131

with courtesy copies to:

The Honorable John Ellis Bush  
Governor  
The Capitol, PL-05  
Tallahassee, FL 32399-0001



The Honorable Katherine Harris  
Secretary of State  
The Capitol, PL 02  
Tallahassee, FL 32399-0250

The Honorable John McKay  
President of the Senate  
The Capitol, Room 409  
Tallahassee, FL 32399-1100

The Honorable Tom Feeney  
Speaker of the House  
The Capitol, Room 420  
Tallahassee, FL 32399-1300

Erica K. McKinney, Esq.  
Senior Advisor  
Office of Mayor Alex Penelas  
111 N.W. 1<sup>st</sup> Street, Suite 2910  
Miami, FL 33128

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CHRISTINA A. ZAWISZA

### **CERTIFICATE OF TYPE SIZE AND STYLE**

I hereby certify that this brief has been prepared in 14 point Times New Roman.

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CHRISTINA A. ZAWISZA