IN THE SUPREME COURT OF FLORIDA

Case No. SC02-868

ADVISORY OPINION TO THE ATTORNEY GENERAL

RE: VOLUNTARY UNIVERSAL PRE-KINDERGARTEN EDUCATION

INITIAL BRIEF OF THE COMMITTEE ON PRE-K

(SUPPORTING THE INITIATIVE PETITION)

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INTRODUCTION

The Committee on Pre-K (the "Committee") is sponsoring an initiative petition titled "Voluntary Universal Pre-Kindergarten Education" (the "Petition"), seeking to amend Article IX, Section 1, of the Florida Constitution, to rename existing section 1 as section 1(a) and to add sections 1(b) and 1(c) thereto, in order to require the State to provide every child in Florida the opportunity for a high quality pre-kindergarten education by the year 2005. The Petition has been forwarded to this Court by the Attorney General for an advisory opinion on the issue of one-subject as required by Article XI, Section 3, Fla. Const. and compliance of the ballot title and summary with Section 101.161, Fla. Stat. (2002).

STATEMENT OF THE CASE AND FACTS

The Committee, recognizing that infancy and early childhood development set the stage for a child's ability to interact socially and achieve academically, has put forth this initiative petition to assure that all of the children in Florida will have access to pre-kindergarten education by the year 2005. It is clearly stated in the Petition that participation in pre-kindergarten

education will be voluntary. The proposed amendment will simply insure that four-year-old children will have access to a high quality pre-kindergarten learning "opportunity."

The ballot title as set forth in the Petition is:

VOLUNTARY UNIVERSAL PRE-KINDERGARTEN EDUCATION

The ballot summary is:

> Every four-year-old child in Florida shall be offered a high quality pre-kindergarten learning opportunity by the state no later than the 2005 school year. This voluntary early childhood development and education program shall be established according to high quality standards and shall be free for Florida four-year-olds without taking away funds used for existing education, health and development programs.

The "WHEREAS" clauses in the Petition provide a clear statement of its purpose. The clauses embody the recognition of a widely held and extensively researched proposition that from birth to age 5, children rapidly develop the cognitive skills which provide the foundation for all subsequent intellectual and social development.

The "WHEREAS" clauses are set forth in the Petition as follows:

> WHEREAS, infancy and early childhood development set the stage for a child's future ability to interact socially and achieve academically, and extensive research on the human brain shows that from birth to age 5 children rapidly develop the language and cognitive capabilities and emotional,

social, regulatory and moral capacities upon which child development proceeds. To this end, these critical dimensions must be nurtured in early, high quality, active learning pre-kindergarten programs for all Florida four-year-old children to provide both short and long-term benefits, including later school success.

WHEREAS, it is not advisable to mandate such pre-kindergarten programs for all children, but rather to require such programs to be available to all children who wish to participate therein, and thus to permit the parents, custodian, guardian or other caregiver to make the individual determination on behalf of each of Florida's four-year olds whether to participate therein.

WHEREAS, existing resources of public institutions are limited in their ability to support additional demand, and therefore a range of pre-kindergarten settings, including school sites, childcare facilities and homes, both public and non-public, should house pre-kindergarten programming, so that parents, custodians, guardians, or other caregivers may have choices among school settings, curricula and services in order to preserve their role as the primary protector of the welfare of the children.

WHEREAS, current available knowledge accepts three primary essentials for school readiness: 1) that children are physically healthy, rested and well nourished; 2) that they are able to communicate needs, wants and thoughts verbally; 3) and that they are enthusiastic and curious in approaching new activities; accordingly, high quality pre-kindergarten programs should reflect an understanding of how children learn by providing appropriate preschool experiences emphasizing basic skills including growth in language, literacy, math concepts, science

arts, physical development and personal and social competence.

WHEREAS, current knowledge dictates that a high quality pre-kindergarten learning opportunity must operate according to standards that require a core curriculum and interactive, age appropriate, individualized programming delivered according to children's unique scheduling needs and which promote and enhance children's feelings of comfort and self-esteem, and further dictates the importance of appropriate staffing ratios, teacher qualifications and professional development, physical environment, and the protection of child health and safety, and therefore, it is necessary to operate the Florida early childhood development and education program according to professionally accepted standards.

WHEREAS, Florida currently has many fine education, development and health care programs that seek to address the needs of children and adults but current resources do not meet the full demand for such programs, and therefore the early childhood education and development program described herein must be implemented in such a way as not to remove any funds from any existing education, development or health care program.

For the reasons expressed in the "whereas" clauses, the Petition seeks to amend Article IX, Section 1, Fla. Const. by renaming Article IX, Section 1 to Section 1(a) and adding two new sections 1(b) and (c):

NOW THEREFORE, Article IX, Section 1 of the Florida Constitution is hereby amended to renumber Section 1 as Section 1(a) and to add the following Sections 1(b) and (c):

> (b) Every four-year old child in Florida shall be provided by the State a high quality pre-kindergarten learning opportunity in the form of an early childhood development and education program which shall be voluntary, high quality, free, and delivered according to professionally accepted standards. An early childhood development and education program means an organized program designed to address and enhance each child's ability to make age appropriate progress in an appropriate range of settings in the development of language and cognitive capabilities and emotional, social, regulatory and moral capacities through education in basic skills and such other skills as the Legislature may determine to be appropriate.
>
> (c) The early childhood education and development programs provided by reason of subparagraph (b) shall be implemented no later than the beginning of the 2005 school year through funds generated in addition to those used for existing education, health, and development programs. Existing education, health, and development programs are those funded by the State as of January 1, 2002 that provided for child or adult education, health care, or development.

The Committee obtained approval of the format of the Petition from the Secretary of State, then began the process of collecting the requisite number of signatures pursuant to Section 15.21 Fla. Stat. (2002) to allow the Secretary of State to "immediately submit" an initiative petition to the Attorney General.

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The Attorney General, pursuant to Article IX, section 10, Fla. Const. and Section 16.061, Fla. Stat. (2002) then petitions this Court for an advisory opinion regarding compliance of the text of the proposed amendment with Article XI, Section 3, Fla. Const. and compliance of the proposed ballot title and summary[1] with Section 101.161, Fla. Stat. The Attorney General received the Petition from the Secretary of State on April 17, 2002, and, accordingly, petitioned this Court for an advisory opinion. (Att. Gen. Advisory Letter at 1, Appendix 1)

The Court set May 28, 2002 as the date for filing of the initial briefs. Answer briefs must be filed on or before June 7, 2002. This brief is filed by the Committee in support of the Petition.

SUMMARY OF THE ARGUMENT

The people's right to self-determination is embodied in the citizens' initiative proceedings to amend the constitution. This Court has traditionally been reluctant to interfere with that right. Here, the Committee has put forth a Petition that meets the requirements for inclusion on the ballot of its proposed

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1 Section 101.161(1), Fla. Stat., uses the term "substance" to describe what is commonly referred to as the "summary." The term "summary" will be used throughout this brief to describe the 75 word explanatory statement that describes the substance of the amendment.

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constitutional amendment, and the Attorney General does not conclude that the Petition violates any of the required tests.

In an advisory opinion proceeding, the Court determines only if an initiative petition complies with two requirements: first, a proposed constitutional amendment must embrace only one subject matter and matters directly connected therewith. Second, the ballot title and summary must accurately reflect the substance and effect of the proposal in clear and unambiguous language so as to give electors fair notice of the proposal's purpose. This Petition satisfies these two requirements.

The Attorney General states that the proposed amendment appears to embrace a single-subject and matters directly connected therewith. (Att. Gen. Advisory Letter at 6, Appendix 1). This satisfies the requirement that the Petition must manifest a logical and natural oneness of purpose. The proposed amendment requires the implementation of a voluntary pre-kindergarten program by the year 2005. The Petition points to no specific fee or tax from which the program will be funded. The Attorney General correctly concludes that this does not substantially alter or perform multiple functions of state government. (Att. Gen. Advisory Letter at 7, Appendix 1). The Petition to provide voluntary pre-kindergarten education manifests a logical and natural oneness of purpose.

The ballot title and summary in the Petition express the chief (and sole) purpose of the amendment—to provide voluntary pre-kindergarten education. The ballot title and summary must state in clear and unambiguous language the chief purpose of the proposed amendment, but need not explain its every detail or ramification. The Attorney General believes that the ballot title and summary express the chief purpose of the proposed amendment. (Att. Gen. Advisory Letter at 5, Appendix 1)

The inclusion of the "whereas" clauses in the Petition performs the important function of providing an informational background as to the rationale for adoption of the amendment. This Court has previously allowed petitions that include "whereas" clauses, provided they do not perform a judicial function. As the Attorney General has correctly noted in his letter, the "whereas" clauses in the Petition do not perform a judicial function.

The Petition meets the requirements set forth in the Florida Constitution and Florida Statutes as interpreted by this Court. Accordingly, the Petition seeking to amend the Constitution to offer voluntary pre-kindergarten education should be approved for submission to the electorate.

ARGUMENT

I. Standard of Review

This Court has traditionally been reluctant to interfere with the right of self-determination afforded to citizens by the Florida Constitution. Advisory Opinion To The Attorney General Re: Right To Treatment And Rehabilitation For Non-Violent Drug Offenses, No. SC01-1950, p. 5 (Fla. May 16, 2002) ("Right to Treatment"). This deference applies with special force in the case of amendments arising through the citizen initiative process. The Court recognizes that such amendments, initiated by ad hoc groups of concerned lay persons, should be reviewed under a forgiving standard and should be submitted to the voters if at all possible. Id. at 6. "When reviewing a proposed constitutional amendment for the ballot, we have noted that each proposed amendment is to be reviewed with 'extreme care, caution and restraint.'" Advisory Opinion To The Attorney General Re: Tax Limitation, 673 So. 2d 864, 867 (Fla. 1996) ("Tax Limitation") (quoting Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982)). "Our 'duty is to uphold the proposal unless it can be shown to be clearly and conclusively defective.'" Tax Limitation, 673 So. 2d at 867; (quoting Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337 (Fla. 1978). Moreover, the Court will not address the merits of the amendment. Right to Treatment, No.

SC01-1950 at 6 ("We do not address the merits of the amendment."); also Advisory Opinion to the Attorney General Re: Amendment to Bar Gov't From Treating People Differently Based on Race in Public Education, 778 So. 2d 888, 891 (Fla. 2000) (reasoning that the Court does not have the authority or responsibility to rule on the merits or the wisdom of proposed initiative amendments).

The Court's review is limited to the following issues:

> When determining the validity of an amendment arising via citizen initiative petition, our inquiry is limited to two issues: (1) whether the petition violates the single-subject requirement of article XI, section 3, Florida Constitution; and (2) whether the ballot title and summary violate the clarity requirement of section 101.161(1), Florida Statutes (2000).

Right to Treatment, No. SC01-1950 at 6.

II. The Petition Meets The Single-Subject Requirement Of Article XI, Section 3, Florida Constitution.

Article XI, section 3 of the Florida Constitution provides:

> The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith…

(emphasis added).

In light of this Court's previous articulations of the reasons and standards for the single-subject requirement, the Petition currently before the Court should be found to meet the single-subject requirement of Article XI, section 3 of the Florida Constitution.

A. The Reasons And Standards For The Single-Subject Requirement Of Article XI, Section 3, Have Been Clearly Articulated By This Court.

1. No "logrolling" or substantial alteration of purpose.

The reasons for the single subject requirement are twofold: (i) to prevent what is known as "logrolling," a practice wherein several separate issues are rolled into a single initiative in order to aggregate votes or secure approval of an otherwise unpopular issue, In Re Advisory Opinion To The Attorney General—Save Our Everglades, 636 So. 2d 1336 (Fla. 1994) ("Save Our Everglades"); (ii) to insulate Florida's organic law from precipitous and cataclysmic change. Id.

2. Oneness of purpose.

This Court utilizes a "oneness of purpose" standard in applying the single-subject rule. Right To Treatment, No. SC01-1950 at 1 (quoting Fine v. Firestone, 448 So. 2d 984, 990 (Fla. 1984)). This standard is measured by the following test:

> [T]he test should include a determination of whether the proposal affects a function of government as

> opposed to whether the proposal affects a section of the constitution…[T]he one-subject limitation …was selected to place a functional as opposed to a locational restraint on the range of authorized amendments.

Fine, 448 So. 2d at 990.

"Although a proposal may *affect* several branches of government and still pass muster no single proposal can substantially alter or perform the functions of multiple branches." Save Our Everglades, 636 So. 2d. at 1340.

B. The Petition Embraces Only One Subject.

The Petition complies with the requirements as set forth by this Court. The proposed amendment contains no language that can be interpreted as an attempt to "logroll," it seeks only the singular purpose of providing pre-kindergarten educational opportunities to Florida four-year-olds. There is no likeness here to Save Our Everglades, where the popular goal of protecting our wetlands was combined with the requirement that the sugar industry foot the bill for the restoration. 636 So. 2d. at 1341.

The Petition does not substantially alter or perform the functions of multiple branches of government. In the opinion of the Attorney General: "[t]he proposed amendment appears to embrace a single subject and matters directly connected therewith." (emphasis added). (Att. Gen. Advisory Letter at 6, Appendix 1).

C. The Petition Does Not Substantially Alter Or Perform Multiple Functions of Government Because It Does Not Specify Or Identify The Amount Or Source Of The Funds Required.

This Court held in Advisory Opinion to the Attorney General Re: Florida's Amendment to Reduce Class Size, Case No. SC01-2421, p. 8 (Fla. April 25, 2002) that "the proposed amendment…does not specify a certain percentage of the budget or a specific amount to be spent on reducing class size. 2/ Therefore, we conclude that the proposed amendment does not substantially alter or perform multiple functions of State Government." The Court reasoned from Advisory Opinion to the Attorney Gen. Re: Fla. Tranp. Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation System, 769 So. 2d 367, 370 (Fla. 2002) ("High Speed Monorail"). There this Court explained:

> Although the proposed amendment does not point to a specific tax or fee from which the revenues for the project would come, it also does not require the Legislature to spend a specific percentage of the budget or even a specific amount on the development of this system. Additionally, assuming the amendment would place some restrictions or limits on the veto power regarding the budget for money to build the high-speed ground rail system, we do not find this to be the type of "precipitous" or "cataclysmic" change prohibited by the single

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2/This Court struck down an effort to require that a certain percentage of the budget be directed to a specific purpose in Advisory Opinion to the Attorney General Re: Requirement for Adequate Public Education Funding, 703 So.2d 446 (Fla. 1997) ("Public Education Funding").

> subject restriction. Such a restriction, unlike the adequate public funding amendment, would not in any event "substantially alter" the Governor's powers or "perform multiple functions of government." Indeed, it appears the branches of government are left with wide discretion in determining the details and funding of the project.

Id. at 370.

Similarly, the Petition does not point to any specific tax or fee from which the revenues for pre-kindergarten educational opportunity would come, nor require the Legislature to spend a specific percentage of the budget or any specific amount on its development. The Petition merely provides that the funds generated to subsidize the pre-kindergarten program should be "funds generated in addition to those used for existing education, health, and development programs." (Text of the amendment proposed in the Petition, Article IX, section 1(c)). Additionally, the text of the proposed amendment specifically defines what constitutes an "existing program" as "those funded by the State as of January 1, 2002 that provided for child or adult education, health care, or development." Id. This limitation on the source of funds that can be accessed does not substantially alter or perform the functions of multiple branches of government, but merely requires the funding of pre-kindergarten education be from new or additional sources. 3/ This hardly

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3/ In this Court's most recent opinion, Advisory Opinion to the Attorney General Re: Local Trustees and Statewide Governing Board To

rises to the level of significant, much less "precipitous" or "cataclysmic," change in Florida's organic law.

In Advisory Opinion to the Attorney General Re: Funding For Criminal Justice, 639 So. 2d 972 (Fla. 1994) ("Criminal Funding"), the Court approved a petition creating a trust fund subject to appropriation by the legislature for criminal justice purposes. There, the proposed amendment contained a limitation on the use of the funds:

> [P]rovided, however, that no such funds shall be used to replace or substitute funding at a level less than that allocated to the criminal justice system in the budget for the 1993-1994 fiscal year.

Id. at 973. This parallels the language of the proposed amendment presently before the Court to this extent: here, the funds used for pre-kindergarten education may not be drawn from "existing education, health, and development" programs. (Text of the amendment proposed in the Petition, Article IX, section 1(c)). This Petition should thus be approved, as was, the petition in Criminal Funding. Public Education Fund, supra, struck down that which is not valid - allocation of a specific percentage of the budget to a

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Manage Florida's University System, No. SC02-449 (Fla. May 23, 2002), the proposed amendment creates a statewide system of governance over state universities. The Court acknowledged that the proposed amendment affected more than one branch of government, but nonetheless found that the amendment did not substantially alter or perform functions of multiple branches of government.

specific purpose. <u>Criminal</u> <u>Funding</u> authorized a requirement to use new or additional funding without specification of amount or percentage.

The Attorney General has concluded that the Petition's language on funding "does not substantially alter or perform multiple functions of State Government." (Att. Gen. Advisory Letter at 7, Appendix 1). His Advisory Opinion approving the petition should be accepted by this court.

D. The "Whereas" Clauses Do Not Perform A Judicial Function And Are Not Part Of The Proposed Amendment.

The "whereas" clauses in the Petition are not part of the proposed amendment and would not appear in the Constitution if the amendment were adopted. Accordingly, the clauses do not perform the judicial function of adjudicating specific facts. Rather, the clauses provide an informational backdrop against which the amendment may be evaluated by the electorate. The clauses include such information as: the importance of pre-kindergarten schooling; the reasons why the program is optional in nature; the variety of settings in which the pre-kindergarten schooling can be offered; how it will contribute to the school readiness of children; the importance of having a professionally-run program that is individualized according to the child's needs; and the reasons for not allowing the uses of funds currently allocated to other programs.

The inclusion of these "whereas" clauses is consistent with Florida law and practice. The administrative rules governing preparation of the initiative petition specifically authorize material supporting the amendment to be included in the petition:

> (5) **Additional materials supporting the proposed amendment** or providing a method by which the petition form may be returned by mail **may be printed on the form**. The division shall not review the accuracy or content of such material, but will review the petition to determine that other information does not interfere with required material.

Fla. Admin. Code R. 1S 2.009(5) (emphasis added).

The Attorney General concludes that unlike Save Our Everglades, 636 So. 2d. 1336, where the Court found that the fact-finding language in the body of the amendment performed a judicial function, here the "whereas" clauses "are not part of the actual amendment to Article IX, section 1, Florida Constitution." (Att. Gen. Advisory Letter at 7, Appendix 1). In Save Our Everglades, the Court was addressing facts specifically contained in the amendments[4]. In Advisory Opinion To Attorney General Re: Protect People

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[4] In Save Our Everglades the petition initiative performed a judicial function by setting forth findings of fact in the amendment that the sugar cane industry had polluted the Everglades and imposing a flat fee on that industry to cover the cleanup cost. This Court found this provision rendered a judgment of wrongdoing and de facto liability and thus performed a quintessential judicial function. 636 So. 2d at 1340.

From the Health Hazards of Second-Hand Smoke By Prohibiting Workplace Smoking, No SC01-2422 p. 15 (Fla. March 28, 2002), this Court allowed the inclusion of "whereas" clauses that were not part of the actual proposed amendment and did not perform a judicial function.[5] There, this Court expresses agreement with the Attorney General that the language contained in the "whereas" clauses of the proposed initiative "[does] not appear to be part of the actual proposed amendment…" Id. at 15, n. 8 (quoting the Letter from Attorney General Robert Butterworth to Chief Justice Charles T. Wells and Justices of the Supreme Court of Florida at 7 (November 7, 2001), Appendix 2). Here, the "whereas" clauses included in the Petition are not a part of the proposed amendment, and the information set forth therein performs no

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[5] This Court also allowed prefatory language to be included in an initiative petition in Advisory Opinion To The Attorney General—Limited Political Terms In Certain Elective Offices, 592 So. 2d 225, 226 (Fla. 1991). There, the initiative petition contained a preamble the equivalent of a "whereas" clause (although not specifically titled as such) that contained factual assertions explaining the reasons for the constitutional amendment. The preamble, was not part of the proposed constitutional amendment; it contained the following language:

> The people of Florida believe that politicians who remain in office too long may become preoccupied with re-election and become beholden to special interests and bureaucrats, and that present limitations on the President of the United States and Governor of Florida show that term limitations can increase voter participation, citizen involvement in government, and the number of persons who will run for elective office.

judicial function. Indeed, it would be difficult to describe the "whereas" clauses as anything other than a benign explanation of the importance of pre-kindergarten education.

III. The Ballot Title And Summary Give Fair Notice Of The Content, And Accurately Reflect The Chief Purpose Of The Proposed Amendment.

Here, the ballot title and summary are clear and accurate statements that provide fair notice of the content of the proposed amendment. The requirements for the ballot title and summary are set forth in Section 101.161(1), Fla. Stat. (2002). The pertinent part is as follows:

> Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment…shall be printed in clear and unambiguous language on the ballot…[T]he substance of the amendment…shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

This Court has crystallized this statutory language to mean that a ballot title and summary must be drafted "so the voter will have fair notice of the content of the proposed amendment, will not be misled as to its purpose, and can cast an intelligent and informed ballot." Advisory Opinion to the

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Id.

Attorney General Re: Stop Early Release of Prisoners, 661 So. 2d 1204, 1206 (Fla. 1995). The title and summary need not explain every detail or ramification of the proposed amendment, Carroll v. Firestone, 497 So. 2d 1204, 1206 (Fla. 1991), but must be accurate and informative. Advisory Opinion to the Attorney General Re: Term Limits Pledge, 718 So. 2d 798, 803 (Fla. 1998). Additionally, "[t]his Court has always interpreted section 101.161(1) [Fla. Stat.] to mean that the ballot title and summary must be read together in determining if the ballot information properly informs the voter." Advisory Opinion to Attorney General Re: Ltd. Casinos, 644 So. 2d 71, 75 (Fla. 1994) Here, when read together, the ballot title and summary provide fair notice of the content of the proposed amendment, and are not misleading. The ballot title and summary plainly comply with the principles set forth by this Court. This is confirmed by the Attorney General in his letter, expressing his view that the ballot title and summary "appear to express" the chief purpose of the Petition.[6] (Att. Gen. Advisory Letter at 5, Appendix 1). That purpose is to offer the opportunity for a high quality pre-kindergarten

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[6] The Attorney General is correct in concluding that the use of the term "universal" in the title is not misleading. When the title and summary are read together it is clear that the use of the word "universal" applies only to children within the State. (Att. Gen. Advisory Letter at 5, Appendix 1).

education to every four-year-old in Florida on a voluntary basis by the year 2005 without using funds for certain existing designated programs.

CONCLUSION

For the reasons stated herein, and the reasons set forth by the Attorney General in his letter requesting an advisory opinion, this Court should find the Petition fully meets the requirements of Article XI, section 3, Fla. Const., and of Section 101.161, Fla. Stat., for submission to the electorate upon obtaining the requisite number of signatures.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was served via Federal Express this 25th day of May, 2002 to: Robert A. Butterworth, Jr., Attorney General, The Capitol, Tallahassee, FL 32399-0001.

____
Carol A. Licko, Esq.

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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Carol A. Licko, Esq.

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Appendix

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A 2: Attorney General's request for an advisory opinion Re: Protect People From the Health Hazards of Second Hand Smoke By Prohibiting Workplace Smoking.

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Carol A. Licko, Esq.