IN THE SUPREME COURT OF FLORIDA
CASE NO. SC10-1784

THE FLORIDA EDUCATION ASSOCIATION,
ANDY FORD, and LYNETTE ESTRADA,

Appellants,

v.

DEPARTMENT OF STATE, an agency of
the State of Florida; and DAWN K. ROBERTS,
in her official capacity as the Secretary of State,

Appellees.

APPELLEES' ANSWER BRIEF

On Appeal from a Decision of the Second Judicial Circuit,
in and for Leon County, Case No. 2010 CA 002537,
Certified by the First District Court of Appeal, Case No. 1D10-4808

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE AND FACTS 1

SUMMARY OF ARGUMENT 9

ARGUMENT 11

I. Standard of Review. 11

II. Amendment 8's Ballot Title And Summary Fairly Notify Voters Of Its Chief Purpose To Revise Class Size Requirements For Public Schools. 13

A. Legal Standard 13

B. Amendment 8's Ballot Title and Summary Clearly and Fairly Describe the Proposed Amendment in Accordance with Legal Standards 14

C. No Set Funding Rate, Formula, or Level Exists in the Class Size Amendment, Nor Does the Constitution Contain Any Right to a Specific Level of Funding. 16

D. Appellants' *Ad Hoc* Calculations are Wholly Speculative and Unsupported. 19

E. Amendment 8's Uncertain Fiscal Impact Need *Not* Be Disclosed in the Ballot Title and Summary 20

CONCLUSION 22

CERTIFICATE OF COMPLIANCE/SERVICE 23

APPENDIX

TABLE OF AUTHORITIES

Cases

Advisory Op. to the Att'y Gen. - Fee on the Everglades Sugar Prod., 681 So. 2d 1124 (Fla. 1996)....................13

Advisory Op. to the Att'y Gen. re Florida's Amendment to Reduce Class Size, 816 So. 2d 580 (Fla. 2002)....................10, 15, 17, 20

Advisory Op. to the Att'y Gen. re Fla. Marriage Protection Amendment, 926 So. 2d 1229 (Fla. 2006)....................11

Advisory Op. to the Att'y Gen. re Patients' Right to Know, 880 So. 2d 617 (Fla. 2004)....................13

Advisory Op. to the Att'y Gen. re Repeal of High Speed Rail Amendment, 880 So. 2d 624 (Fla. 2004)....................21

Advisory Op. to the Att'y Gen. re Right of Citizens to Choose Health Care Providers, 705 So. 2d 563 (Fla. 1998)....................13

Advisory Op. to the Att'y Gen. re Right to Treatment & Rehab. for Non-Violent Drug Offenses, 818 So. 2d 491 (Fla. 2002)....................12

Armstrong v. Harris, 773 So. 2d 7 (Fla. 2000).................... 11, 12, 13

Askew v. Firestone, 421 So. 2d 151 (Fla. 1982).................... 11, 18

Fla. Dep’t of State v. Fla. State Conf. of NAACP Branches, No. SC10-1375, slip op. (Fla. Aug. 31, 2010)....................11

Ford v. Browning, 992 So. 2d 132 (Fla. 2008)....................1

Grose v. Firestone, 422 So. 2d 303 (Fla. 1982).................... 21, 22

Gray v. Golden,
89 So. 2d 785 (Fla. 1956)..12

Pope v. Gray,
104 So. 2d 841 (Fla. 1958)..11

Smith v. Coal. to Reduce Class Size,
827 So. 2d 959 (Fla. 2002)... 10, 20

State Law Provisions

Art. IX, § 1, Fla. Const. (Class Size Amendment) .... *passim*

Art. IX, § 4, Fla. Const...3

Art. IX, § 5(c), Fla. Const 10, 20

Ch. 2010, SJR 2, Laws of Fla. ("Amendment 8") .... *passim*

Other Authorities

Fla. Dep't of State, Committee Tracking System Page for Amendment
Sponsor, "Coalition to Reduce Class Size," http://election.dos.state.fl.us/
committees/ComDetail.asp?account=34393 15

Fla. Dep't of State, *Florida's Amendment to Reduce Class Size, 01-02*,
Initiatives/Amendments/ Revisions List, http://election.dos.state.fl.us/
initiatives/initiativelist.asp 15

Fla. Dep't of State, http://election.dos.state.fl.us/initiatives/initiativelist.asp?
year=2010&initstatus=ALL&MadeBallot=Y&ElecType=GEN..........................1

Fla. Senate, *Senate 0002: Relating to Class Size Requirements for Public
Schools*, 2010 Regular Session, Legisl. Bill Info. ("Fla. SJR-2 Bill Info."),
www.flsenate.gov...1

STATEMENT OF THE CASE AND FACTS

Early in its 2010 session, the Florida Legislature proposed a joint resolution (SJR-2) to revise Florida's Class Size Amendment, enacted in 2002 and located in article IX, section 1, Florida Constitution.[1] The purpose of the joint resolution was to revise and relax class size standards and alleviate hardships that public school districts are facing in implementing the Class Size Amendment's 2010 requirements. [R1-49-52][2] The Senate filed SJR-2, its first bill of the session, on February 2, 2010; the bill passed on March 25, 2010. Fla. SJR-2 Bill Info. The House, which had its own proposed joint resolutions pending, soon thereafter on April 8, 2010, voted to adopt SJR-2. Id. Legislative officers jointly signed SJR-2 and filed it with the Secretary of State on May 19, 2010. Id. It was subsequently certified for placement on the ballot as "Amendment 8."[3]

Appellants, who are experienced challengers of proposed constitutional amendments (*see, e.g.*, Ford v. Browning, 992 So. 2d 132 (Fla. 2008)), waited until

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[1] *See* Fla. Senate, *Senate 0002: Relating to Class Size Requirements for Public Schools*, 2010 Regular Session, Legisl. Bill Info., www.flsenate.gov ("Fla. SJR-2 Bill Info.").

[2] Citations to the record on appeal are [R*- #], where * is the volume number and # is the page number; Appellants' initial brief is cited as [IB #] where # is the page number.

[3] *See* Fla. Dep't of State, http://election.dos.state.fl.us/initiatives/initiativelist.asp?year=2010&initstatus=ALL&MadeBallot=Y&ElecType=GEN (last visited Sept. 27, 2010).

July 23, 2010, to challenge Amendment 8's ballot title and summary. [R1-4] They claim that, although Amendment 8 "purports to be a revision of class size requirements for public schools," it is "in reality" chiefly about reducing the state's obligation to fund public schools. [R1-10 (Compl. ¶ 17)] The trial court rejected Appellants' belated and erroneous attempt to strike Amendment 8 from the ballot, concluding that the ballot title and summary clearly and fairly describe its chief purpose and effect, which is to revise class size standards. [R1-94]

A. Florida's Class Size Amendment

In 2002, Floridians approved what is known as the Class Size Amendment to Florida's Constitution, which restricted the maximum number of students that could be assigned per teacher in Florida's public school classrooms. Art. IX, § 1, Fla. Const. Beginning in the 2003-2004 fiscal year, it required districts to begin reducing the average number of students per classroom by at least two per year until the specified maximum class sizes targets were met by the beginning of the 2010 school year. Id. It stated in pertinent part:

> [T]he legislature shall make adequate provision to ensure that, by the beginning of the 2010 school year, there are a sufficient number of classrooms ….
>
> Payment of the costs associated with reducing class size to meet these requirements is the responsibility of the state and not of local school districts. Beginning with the 2003-2004 fiscal year, the legislature shall provide sufficient funds to reduce the average number of students in each classroom by at least two students per year until the

> maximum number of students per classroom does not exceed the requirements of this subsection.

Id. The Class Size Amendment contained no specific funding rate, formula, or appropriation for meeting the requisite class sizes; instead, it was silent on the methodology the Legislature might use to provide for class size reduction. Id. The Legislature subsequently appropriated billions of dollars to help school districts meet the phased-in class size goal by 2010. [R1-47] It appropriated divergent amounts each year and *more* than was necessary to reach the constitutional targets. [Id.; R1-83-84 (between fiscal years 03-04 and 08-09, districts spent about $2 billion in class size funds for non-class size purposes)]

For the 2010-11 school year, districts that operate, control, and supervise local schools (*see* art. IX, § 4, Fla. Const.) must comply fully with the Constitution's ultimate class size goal at the *classroom* level (versus school or district levels). Art. IX, § 1, Fla. Const. This stringent requirement forces districts to make burdensome and disruptive choices that "may adversely affect student learning." [R1-51-52; R1-54-68 (reporting district hardships related to class size)]

B. The Legislature Proposed Amendment 8 to Give Flexibility to Local School Districts.

Legislators proposed and passed SJR-2 to revise and relax the Class Size Amendment's rigid classroom-based standard and give school districts flexibility to avoid having to take burdensome and disruptive actions. [R1-45, 50-52] Absent

such an amendment, the Legislature identified various possible adverse consequences for district operations and student learning, including:

- Reducing or eliminating the number of non-core courses offered for students, such as music, art, and physical education;
- Limiting the availability of certain courses for students;
- Reducing a student's flexibility to schedule certain required or elective courses;
- Eliminating courses that have small enrollments;
- Changing student attendance zones and requiring students to be moved from their current home school, in some cases to a school outside the community;
- Revising and restructuring classes, students, and teachers in mid-semester if additional students enroll;
- Reassigning teachers to different courses and different grades;
- Transferring teachers to schools that have excess classroom space;
- Moving district employees with certification back into the classroom;
- Increasing the number of classrooms utilizing team teaching and co-teaching;
- Making significant reductions in non-classroom staffing and programs;
- Increasing the number of students enrolled in virtual instruction;
- Using facilities not currently used for student instruction;
- Increasing the number of students in exceptional student education classrooms;
- Recruiting and employing additional teachers; and

- Using double sessions or year-round schools.

[R1-51-52]

Amendment 8 would alter the Class Size Amendment by: 1) substituting the current classroom-specific method of measuring class size with an *average* across grade-groupings and providing higher maximum caps for specific classrooms; 2) exempting virtual classes from the class size requirements; and 3) informing voters to the Legislature's responsibility to provide funds sufficient to "maintain" class size standards. Ch. 2010, SJR 2, Laws of Fla. Amendment 8 would amend the Class Size Amendment in relevant part as follows:

> **ARTICLE IX - EDUCATION**
>
> **SECTION 1.** Public education.--
>
> ***
>
> To assure that children attending public schools obtain a high quality education, the legislature shall make adequate provision to ensure that, by the beginning of the 2010-2011 ~~2010~~ school year and for each school year thereafter, there are a sufficient number of classrooms so that:
>
> (1) Within each public school, the average ~~maximum~~ number of students ~~who are~~ assigned per class to each teacher who is teaching ~~in public school classrooms for~~ prekindergarten through grade 3 does not exceed 18 students and the maximum number of students assigned to each teacher in an individual classroom does not exceed 21 students;
>
> (2) Within each public school, the average ~~maximum~~ number of students ~~who are~~ assigned per class to each teacher who is teaching ~~in public school classrooms for~~ grades 4 through 8 does not exceed 22 students and the maximum number of students assigned to each teacher in an individual classroom does not exceed 27 students; and

> (3) Within each public school, the average ~~maximum~~ number of students ~~who are~~ assigned per class to each teacher who is teaching ~~in public school classrooms for~~ grades 9 through 12 does not exceed 25 students and the maximum number of students assigned to each teacher in an individual classroom does not exceed 30 students.
>
> The class size requirements of this subsection do not apply to extracurricular or virtual classes. Payment of the costs associated with meeting ~~reducing class size to meet~~ these requirements is the responsibility of the state and not of local school ~~schools~~ districts. ~~Beginning with the 2003-2004 fiscal year,~~ The legislature shall provide sufficient funds to maintain ~~reduce~~ the average number of students required by ~~in each classroom by at least two students per year until the maximum number of students per classroom does not exceed the requirements of~~ this subsection.

Id. The ballot title and summary accompanying Amendment 8 informs voters of its purpose and effect as follows:

> REVISION OF THE CLASS SIZE REQUIREMENTS FOR PUBLIC SCHOOLS – The Florida Constitution currently limits the maximum number of students assigned to each teacher in public school classrooms in the following grade groupings: for prekindergarten through grade 3, 18 students; for grades 4 through 8, 22 students; and for grades 9 through 12, 25 students. Under this amendment, the current limits on the maximum number of students assigned to each teacher in public school classrooms would become limits on the average number of students assigned per class to each teacher, by specified grade grouping, in each public school. This amendment also adopts new limits on the maximum number of students assigned to each teacher in an individual classroom as follows: for prekindergarten through grade 3, 21 students; for grades 4 through 8, 27 students; and for grades 9 through 12, 30 students. This amendment specifies that class size limits do not apply to virtual classes, requires the Legislature to provide sufficient funds to maintain the average number of students required by this amendment, and schedules these revisions to take effect upon

> approval by the electors of this state and to operate retroactively to the beginning of the 2010-2011 school year.

Id.

C. Appellants' Complaint and the Circuit Court's Decision that Validates Amendment 8's Ballot Title and Summary

On July 23, 2010, many months after the Legislature adopted and passed SJR-2, Appellants sued to remove Amendment 8 from the ballot. [R1-4] Appellants claim that the ballot title and summary fail to disclose Amendment 8's chief purpose and effect, which is, in their view, to reduce state funding to local school districts. [R1-9-10 (¶¶ 16-18)]

On September 10, 2010, after the parties filed cross motions for summary judgment and a hearing was held before Chief Judge Charles A. Francis, the trial court entered final summary judgment in favor of Appellees, the Florida Department of State and Interim Secretary of State Dawn K. Roberts ("Department"). [R1-94] The court found that: (a) the ballot title and summary "clearly and unambiguously advises the voter of the new class size limits and attendant funding obligations"; (b) both the Class Size Amendment and Amendment 8 aim to establish maximum class sizes and to allocate responsibility to the Legislature to fund whatever maximum class size the voters elect; (c) Amendment 8 is not confusing or misleading regarding the decision that voters must make; (d) Amendment 8, if passed, would not alter the Legislature's funding

duty, nor shift any funding obligation to district school boards; and (e) Amendment 8 is not misleading in that it specifically "requires the legislature to provide sufficient funds to maintain the average number of students required by this amendment." [R1-92-93]

Appellants appealed to the First District on September 13, 2010. [R1-95] The First District transferred the case to this Court, certifying that it involved an issue requiring immediate resolution and of great public importance. Case No. 1D10-4808 (order filed September 16, 2010). This Court accepted jurisdiction and ordered an expedited briefing and argument schedule.

SUMMARY OF ARGUMENT

This Court should affirm the trial court's order because Amendment 8's ballot title and summary give voters fair and sufficient notice of the choice they must make to cast an intelligent ballot. The title and summary are unambiguous, clearly state the amendment's chief purpose and effects, and do not "hide the ball" or "fly under false colors."

Contrary to Appellants' allegations, Amendment 8's chief purpose and effect is not to reduce the state's funding obligation; instead, it is to revise and relax current class size requirements. Amendment 8 will also excuse virtual classes from the standard and allocate responsibility to the Legislature to provide sufficient funds to maintain the state's class size goals. Amendment 8's title and summary disclose these purposes and effects, thereby allowing voters to cast an informed vote.

Appellants claim that Amendment 8 only "purports" to be about class size, but "in reality targets to reduce State-provided school funding." [R1-10 (Compl. ¶ 17)] Their argument fails, not only because Amendment 8's plain and obvious purpose is to revise "class size" standards, but also for three other reasons. First, Appellants' funding reduction claim is pure speculation based on meaningless calculations that lack any record support. Second, the current language of the Class Size Amendment, by its own terms and in the view of this Court, *see* Advisory Op.

to the Att’y Gen. re Fla.’s Amendment to Reduce Class Size, 816 So. 2d 580, 584-85 (Fla. 2002), fixes *no* prescribed or funding rate, formula, or level that the Legislature must meet or that is threatened by Amendment 8. Third, the fiscal impact of a legislatively proposed amendment is not required in the ballot title and summary. *See* Smith v. Coal. to Reduce Class Size, 827 So. 2d 959, 964 (Fla. 2002) (rejecting argument that a fiscal impact statement is necessary for ballot integrity); Art. XI, § 5(c), Fla. Const. (requiring a fiscal impact statement only for amendments proposed *by initiative*).

Given Amendment 8’s plain and obvious purpose and effect, which is to revise and relax class size standards, Appellants’ speculations provide no legal grounds for the relief they seek. This Court should affirm the trial court’s well-reasoned order and allow Floridians to vote on Amendment 8 in November’s general election.

ARGUMENT

I. Standard of Review

This Court reviews orders granting summary judgment and involving the validity of proposed constitutional amendments *de novo*. Fla. Dep't of State v. Fla. State Conf. of NAACP Branches, No. SC10-1375, slip op. at 7 (Fla. Aug. 31, 2010) (citing Armstrong v. Harris, 773 So. 2d 7, 11 (Fla. 2000)).

Appellants bear a substantial burden to remove a proposed constitutional amendment from the voters' consideration because the amendment process is "the most sanctified area in which a court can exercise power." Pope v. Gray, 104 So. 2d 841, 842 (Fla. 1958). As this Court stated, "[s]overeignty resides in the people and the electors have a right to approve or reject a proposed amendment to the organic law of this State, limited only by those instances where there is an entire failure to comply with a plain and essential requirement of the organic law." Id. Courts must act with "extreme care, caution, and restraint" before removing a constitutional amendment from the vote of the people. Advisory Op. to the Att'y Gen. re: Fla. Marriage Prot. Amendment, 926 So. 2d 1229, 1233 (Fla. 2006) (quoting Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982)).

Because of the "extreme" degree of "care, caution, and restraint" with which amendments must be evaluated, judicial review is extremely deferential. If "any reasonable theory" exists for approving an amendment for ballot placement, it

should be upheld. Armstrong, 773 So. 2d at 14 (quoting Gray v. Golden, 89 So. 2d 785, 790 (Fla. 1956)). Florida courts will not interfere with the amendment process "unless the laws governing the process have been 'clearly and conclusively' violated." Advisory Op. to the Att'y Gen. re: Right to Treatment & Rehab. For Non-Violent Drug Offenses, 818 So. 2d 491, 498-99 (Fla. 2002).

This high threshold for removing an amendment proposal from the ballot is stringent, particularly for legislatively-proposed amendments. As this Court stated over fifty years ago:

> [S]overeignty resides in the people. It is their Constitution that we are construing. They have a right to change, abrogate or modify it in any manner they see fit so long as they keep within the confines of the Federal Constitution. The legislature which approved and submitted the proposed amendment took the same oath to protect and defend the Constitution that we did and our first duty is to uphold their action if there is any reasonable theory under which it can be done. This is the first rule we are required to observe when considering acts of the legislature and *it is even more impelling when considering a proposed constitutional amendment which goes to the people for their approval or disapproval*.

Gray, 89 So. 2d at 790 (emphasis added). Because extreme deference is required in the Court's evaluation, all doubts concerning the validity of Amendment 8 must be resolved in favor of allowing Floridians to vote on the proposal.

II. Amendment 8's Ballot Title And Summary Fairly Notify Voters Of Its Chief Purpose To Revise Class Size Requirements For Public Schools

The circuit court's final judgment should be affirmed because it correctly concluded that Amendment 8's ballot title and summary clearly and fairly state its chief purpose and effect, which is to revise and relax current class size standards.

A. Legal Standard

The purpose of a ballot title and summary 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." Advisory Op. to the Att'y Gen. re Right of Citizens to Choose Health Care Providers, 705 So. 2d 563, 566 (Fla. 1998) (quoting Advisory Op. to the Att'y Gen. – Fee on the Everglades Sugar Prod., 681 So. 2d 1124, 1127 (Fla. 1996)). The ballot title and summary must "state in clear and unambiguous language the chief purpose of the measure." Health Care Providers, 705 So. 2d at 566. The ballot summary, however, is not required "to explain every detail or ramification of the proposed amendment." Advisory Opinion to the Att'y Gen. re Patients' Right to Know, 880 So. 2d 617, 621 (Fla. 2004). But the title and summary cannot "fly under false colors" or "hide the ball" as to the proposed amendment's true effect. Armstrong, 773 So. 2d at 16.

B. Amendment 8's Ballot Title and Summary Clearly and Fairly Describe the Proposed Amendment in Accordance with Legal Standards.

The circuit court correctly ruled that Amendment 8's ballot title and summary clearly and fairly inform voters of the chief purpose and effect of Amendment 8; they do not mislead voters or "hide the ball."

Appellants' argument is faulty because it is based on the incorrect premise that Amendment 8 merely "purports to be a revision of class size requirements for public schools." [R1-10 (Compl. ¶ 17)] In fact, Amendment 8 would revise and relax the Constitution's class size requirement in substantial ways that will give school districts added flexibility to avoid burdensome and disruptive choices that could adversely affect student learning. [R1-51-52] Specifically, Amendment 8 will revise and relax current Class Size Amendment requirements by changing from the current classroom-based maximum caps to averages across grade groupings with slightly higher maximum classroom caps; excuse virtual classes from the requirement; and require the Legislature to provide sufficient funds to maintain the revised class size targets.

Appellants make clear they "do not dispute that the ballot summary sufficiently discloses the change in class size calculations" [IB 10]; they believe, however, that numeric class size requirements are secondary features of Amendment 8 and its predecessor, the Class Size Amendment. This view

contradicts this Court's own view regarding the goal of the Class Size Amendment itself. *See* Advisory Op. to the Att'y Gen. re Florida's Amendment to Reduce Class Size, 816 So. 2d 580, 584-85 (Fla. 2002) (referring variously to "class size," "maximum classroom size," and "reduced classroom size" as the Class Size Amendment's goal). Moreover, the ballot title and summary of the Class Size Amendment confirm that the chief purpose and effect of the original provision was to set maximum class sizes. The initiative sponsor of the Class Size Amendment listed its "purpose" as to "Reduce Class Size in Public Schools"; its chief purpose was *not* to increase funding for local school districts.[4] In addition, the ballot title accompanying the Class Size Amendment did not address funding: "Florida's Amendment to Reduce Class Size."[5] Likewise the ballot summary focused on class size, while also describing the means of attaining class size goals by allocating responsibility to the Legislature to provide necessary capital and operating funds:

> Proposes an amendment to the State Constitution to require that the Legislature provide funding for sufficient classrooms so that there be a maximum number of students in public school classes for various grade levels; requires compliance by the beginning of the 2010 school year; requires the Legislature, and not local school districts, to pay for

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[4] Fla. Dep't of State, Committee Tracking System Page for Amendment Sponsor, "Coalition to Reduce Class Size," http://election.dos.state.fl.us/committees/ComDetail.asp?account=34393 (last visited Sept. 27, 2010).

[5] Fla. Dep't of State, *Florida's Amendment to Reduce Class Size, 01-02*, Initiatives/Amendments/Revisions List, http://election.dos.state.fl.us/initiatives/initiativelist.asp (last visited Sept. 27, 2010).

> the costs associated with reduced class size; prescribes a schedule for phased-in funding to achieve the required maximum class size.

Id. Taking the same approach as the original Class Size Amendment, Amendment 8's title and summary communicate the chief purpose and effect of revising and relaxing class size standards while also providing that the Legislature will supply funding to maintain the revised class size requirements.

For these reasons, the circuit court correctly concluded that Amendment 8's ballot title and summary pass legal muster because they fairly and clearly describe that the amendment's chief purpose and effect involve class size, not a specific level of funding.

C. No Funding Rate, Formula, or Level Exists in the Class Size Amendment, Nor Does the Constitution Contain Any Right to a Specific Level of Funding.

Appellants' principal argument is that the Class Size Amendment contains a constitutional right to funding that fixes a "base funding rate," or "funding formula," or "level of funding" that Amendment 8 would reduce. [IB 5, 9-10]

In fact, no "base funding rate," "funding formula," or other specific level of funding exists in the Class Size Amendment or the Constitution generally; the only specific numerical figures that exist in the plain language of article IX, section 1, are classroom size parameters, which Amendment 8 clearly informs voters would be amended. In fact, Appellants' funding argument directly contradicts this Court's view that *no* set funding requirements exist in the Class Size Amendment:

> The proposed amendment in this case does *not* specify a certain percentage of the budget or a specific amount to be spent on reducing class size. … Although, as a result of the amendment, *the Legislature may choose* to fund the building of new schools to achieve the *maximum classroom size set as a goal* of the proposed amendment, this is not the only method of ensuring that the number of students meets the numbers set forth in the amendment. Rather than restricting the Legislature, the proposed amendment *gives the Legislature latitude* in designing ways to reach the *class size goal* articulated in the ballot initiative.

Advisory Op. re Class Size, 816 So. 2d at 584-85 (emphasis added). As highlighted, no fixed funding percentage or amount exists in the proposed amendment that binds the Legislature, which retains funding latitude and discretion. Because no fixed rate, formula, or level currently exists, Appellants' claim to the contrary rests on a wholly unsupportable premise.

The plain language of the Class Size Amendment also belies Appellants' speculation about reduced funding from fixed, predetermined levels. Article IX, section 1 only requires that the Legislature provide funds sufficient "to reduce" class sizes "*beginning with* the 2003-2004 school year … *until* the maximum number of students per classroom does not exceed the [class size] requirements." Under these terms, funding keyed to reducing class sizes by two students per year by 2010 would be expected to cease once the goal is reached and not held constant at a fixed rate or level. Here, again, the constitutional language indicates that there is no constitutionally required funding rate, formula, or level that is threatened by Amendment 8.

Appellants' claim is further undermined by the fact that the Legislature has never appropriated a set amount for class size; indeed, its appropriations have varied substantially since the Class Size Amendment was enacted in 2002. [R1-47] The high-water mark for state class size funding occurred in the 2006-07 and 2007-08 school years, when the Legislature appropriated more than $3.2 billion, or *three times* the amount of funding compared to some other years. [Id.] For 2009-10, the Legislature appropriated 16% less than this peak funding. [Id.] Furthermore, the Legislature has often appropriated significantly more funds than necessary to meet class size targets. [R1-83-84] Districts have spent more than $2 billion of appropriated class size funds for purposes other than class size. [Id.] For the additional reason that class size funding has always varied, and been increased or reduced annually at the Legislature's discretion, Appellants have no plausible claim that a constitutionally fixed funding rate, formula, or level exists that Amendment 8 would affect.[6]

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[6] Appellants' citation to Askew v. Firestone [IB at 11-12] is misplaced because the instant case involves no deception or replacing a stringent standard with a lesser one without alerting the voters. Instead, both the Class Size Amendment and Amendment 8 allocate responsibility to the Legislature to fund the state's class size efforts. No funding rate, formula, or level is established in article IX, section 1 that Amendment 8 would upend. As the trial court concluded: "the ballot title and summary clearly and unambiguously advise the voter that the Legislature is still obligated to provide the funding required to meet the class size approved by the voter if the amendment passes." [R1-92-93]

D. Appellants' *Ad Hoc* Calculations are Wholly Speculative and Unsupported.

Beyond its faulty premise, Appellants' present insupportable calculations to bolster their allegation that "Amendment 8, if enacted, would reduce the level of funding which the state is obligated to pay for class size reduction." [R1-10 (Compl. ¶ 16.B, 17)] Their initial brief recites speculative and unsupported "minimal base funding" calculations that are found nowhere else in the record and rest on unrealistic and faulty assumptions. [IB 9] They claim that Amendment 8 will require the reduction of "minimal base funding" for pre-K to 3, 4-8, and 9-12 class levels by 17%, 23%, and 20%, respectively. [Id.]

These are meaningless calculations because they assume that the size of *every* class under Amendment 8 will increase to the new hard-cap maximum class size, which would be strictly forbidden. Amendment 8 requires that *average* class sizes not exceed the current classroom-based *maximum* class size standards. For example, all classes in the preK-3 grade level currently have *maximum* caps of 18 students per class; if Amendment 8 passes, these classes must maintain an *average* of 18 students per class (no class to exceed 21 students). Under Amendment 8, no school would be allowed to maintain an average class size of 21 in the pre-K to 3 grade level, as Appellants' miscalculations assume. This would violate

Amendment 8's maximum class size standards. Thus, Appellants present a faulty and misleading calculation that should be rejected.[7]

In contrast to Appellants' wrong assertions that the Class Size Amendment sets some constitutionally required funding rate, formula, or level that is threatened by Amendment 8, this Court's prior observation regarding legislative flexibility with respect to class funding (*see* Advisory Op. re: Class Size, 816 So. 2d at 584-85), will remain true if Amendment 8 passes: the Legislature will be free to increase, decrease, or hold the line on class size funding from year-to-year or to use non-funding strategies as it sees fit to meet its obligation.

E. Amendment 8's Uncertain Fiscal Impact Need *Not* Be Disclosed in the Ballot Title and Summary.

Finally, Appellants' case must fail for the additional reason that the ballot title and summary need not describe Amendment 8's fiscal impact. Ballot titles and summaries need not describe potential fiscal consequences as a means of ensuring ballot integrity so long as the chief purpose of the amendment is accurately and fairly stated. Smith v. Coal. to Reduce Class Size, 827 So. 2d 959, 964 (Fla. 2002) (rejecting an argument that a fiscal impact statement is necessary for ballot integrity); Art. XI, § 5(c), Fla. Const. (requiring a fiscal impact statement *only* for

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[7] In fact, because the average class size under Amendment 8 is equal to the current classroom-based maximum, schools whose current average class size is at or near the current maximum should expect to see little or no impact from Amendment 8 in terms of class size or numbers of classes.

amendments proposed *by initiative*). This Court in 2004, for example, validated and permitted Floridians to vote to repeal the "High Speed Rail Amendment," which had large fiscal consequences for the state. That Amendment's title and summary omitted any reference to a fiscal purpose or impact:

> REPEAL OF HIGH SPEED RAIL AMENDMENT: This amendment repeals an amendment in the Florida Constitution that requires the Legislature, the Cabinet and the Governor to proceed with the development and operation of a high speed ground transportation system by the state and/or by a private entity.

Advisory Op. to the Att'y Gen. re: Repeal of High Speed Rail Amendment, 880 So. 2d 624 (Fla. 2004). Just as in High Speed Rail, Amendment 8 lawfully states its chief purpose and effect and need not include speculative statements concerning its potential fiscal impacts. *See* Grose v. Firestone, 422 So. 2d 303, 305 (Fla. 1982). Indeed, no ballot summary could foresee, list, and explain every possible outcome of an amendment. Any attempt to do so would clutter and undercut the ability and usefulness of a ballot summary to communicate an amendment's *chief* point to voters in the booth on Election Day.[8]

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[8] Appellants raise a new argument, not alleged in their Complaint, that the ballot title and summary are defective for not informing voters that local school districts currently are not responsible to fund class size requirements. [IB 13] This new argument lacks merit because Amendment 8 merely retains the status quo as to allocating funding responsibility to the Legislature; districts have never funded class size. Appellants themselves concede that the current Class Size Amendment "expressly and importantly requires that the *maintenance* of class size levels be funded by the state" [IB 8 (emphasis added)], which mirrors Amendment 8's (Continued…)

CONCLUSION

The circuit court correctly upheld Amendment 8 against Appellants' belated ballot title and summary challenge. Amendment 8's ballot title and summary accurately state and communicate the chief purpose and effect of the proposal and do not mislead voters. Like the adoption of the Class Size Amendment in 2002, Amendment 8's title and summary fairly capture the amendment's chief purpose and effect, which is to revise and relax class size standards. Voters will therefore be able to cast an informed vote as to whether they prefer current class size standards or those of Amendment 8. The Department respectfully requests that this Court affirm the circuit court's order.

Respectfully Submitted,

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allocation of responsibility to the Legislature to "maintain" class size levels. There is no obligation to clarify for voters a *non-existent* funding responsibility that has never existed and would not exist if Amendment 8 passed. *See* Grose, 422 So. 2d at 305 (ballot summaries need not address subjective interpretations or list each and every effect — or non-effect in this instance).

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CERTIFICATE OF COMPLIANCE/SERVICE

I certify that this brief is prepared in Times New Roman 14-point font consistent with Florida Rule of Appellate Procedure 9.210, and that a true copy of the foregoing has been furnished this 27th day of September, 2010, by U.S. Mail and e-mail to:

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