

Voluntary Universal Pre-Kindergarten Education

Number: PETITION

Date: May 03, 2002

The Honorable Charles T. Wells
Chief Justice, and
Justices of The Supreme Court of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

Dear Chief Justice Wells and Justices:

In accordance with the provisions of Article IV, section 10, Florida Constitution, and section 16.061, Florida Statutes, it is the responsibility of the Attorney General to petition this Honorable Court for a written opinion as to the validity of an initiative petition circulated pursuant to Article XI, section 3, Florida Constitution.

On April 17, 2002, this office received from the Secretary of State an initiative petition seeking to amend the Florida Constitution to provide for voluntary universal pre-kindergarten education in Florida. The full text of the proposed amendment states:

"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 prekindergarten 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 of 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.

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 ballot title for the proposed amendment is "VOLUNTARY UNIVERSAL PRE-KINDERGARTEN EDUCATION." The summary for the proposed amendment states:

"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 all Florida four-year-olds without taking away funds used for existing education, health and development programs."

BALLOT TITLE AND SUMMARY

Section 16.061, Florida Statutes, requires the Attorney General to petition this Honorable Court for an advisory opinion as to whether the proposed ballot title and summary comply with section 101.161, Florida Statutes.

Section 101.161(1), Florida Statutes, provides in relevant part:

"Whenever a constitutional amendment . . . is submitted to the vote of the people, the substance of such amendment . . . shall be printed in clear and unambiguous language on the ballot The wording of the 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 stated on several occasions "that the ballot [must] be fair and advise the voter sufficiently to enable him intelligently to cast his ballot." *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982), *quoting*, *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954). While the ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, they need not explain every detail or ramification of the proposed amendment. *Carroll v. Firestone*, 497 So. 2d 1204, 1206 (Fla. 1986); *Advisory Opinion to the Attorney General--Limited Political Terms in Certain Elective Offices*, 592 So. 2d 225, 228 (Fla. 1991). However, the ballot must give the voter fair notice of the decision he must make. *Askew v. Firestone*, *supra* at 155. This Court has stated that the purpose of section 101.161, Florida Statutes, is to ensure that the voters are advised of the true meaning of an amendment.

The purpose of this initiative is to require the State to offer pre-kindergarten education to every four-year-old child in Florida. The ballot title and summary appear to express this chief purpose. While the title refers to universal pre-kindergarten education, clearly the amendment can have no application outside of the State of Florida; the summary makes clear that the program is to be available to children in Florida.

Therefore, I respectfully request this Honorable Court's opinion as to whether the ballot title and summary of the proposed constitutional amendment comply with section 101.161, Florida Statutes.

SINGLE SUBJECT LIMITATION

Section 16.061, Florida Statutes, requires the Attorney General to petition this Honorable Court for an advisory opinion as to whether the text of the proposed amendment complies with Article XI, section 3, Florida Constitution.

Article XI, section 3, Florida Constitution, provides in relevant part:

"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."

The single-subject provision "is a rule of restraint designed to insulate Florida's organic law from precipitous and cataclysmic change." *Advisory Opinion to the Attorney General--Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994). And see *Advisory Opinion to the Attorney General--Tax Limitation*, 644 So. 2d 486, 490 (Fla. 1994).

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). This Court stated in *Advisory Opinion to the Attorney General--Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1020 (Fla. 1994), that "[t]o ascertain whether the necessary 'oneness of purpose' exists, we must consider whether the proposal affects separate functions of government and how the proposal affects other provisions of the constitution."

The proposed amendment appears to embrace a single subject and matters directly connected therewith. The amendment requires the implementation of the program by the beginning of the 2005 school year and limits the Legislature's discretion in making value choices as to appropriations among the various vital functions of state government. The initiative now before this Court does not point to any specific fee or tax from which the revenues will come. While the proposed amendment does not identify a specific percentage of the budget or a specific amount to accomplish the amendment's purpose, it does require the Legislature to fund such a program without resort to those funds currently allocated to existing education, health and development programs. However, this Court in *In Re Advisory Opinion to the Attorney General-Florida's Amendment to Reduce Class Size*, Case No. SC01-2421 (Fla. April 25, 2002), recently stated that the petition to reduce class size, which did not specify a certain percentage of the budget or a specific amount to be spent on reducing class size, "does not substantially alter or perform multiple functions of State government."

The initiative contains several "Whereas" clauses presented as factual conclusions that are designed to appeal to the emotions of the voter. These clauses are not part of the actual proposed amendment to Article IX, section 1, Florida Constitution. The inclusion of such factual conclusions in the instant petition, however, is unlike the situation in *Advisory Opinion to the Attorney General--Save Our Everglades*, 636 So. 2d 1336, 1340 (Fla. 1994), where the Court determined that the fact-finding language in the body of the amendment performed a judicial function.

Therefore, I respectfully urge this Honorable Court to consider whether the constitutional amendment, proposed by initiative petition, complies with Article XI, section 3, Florida Constitution.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

cc: The Honorable Katherine Harris
Secretary of State

The Honorable Jeb Bush
Governor, State of Florida

The Honorable John McKay
President, Florida Senate

The Honorable Tom Feeney
Speaker, Florida House of Representatives

Mr. Alex Penelas
Chairman, Pre-K Committee