

University system, Local Trustees/Statewide Board

Number: PETITION

Date: March 05, 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 Office 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 February 12, 2002, this office received from the Secretary of State an initiative petition seeking to amend the Florida Constitution by adding section 7 to Article IX to establish local trustees and a statewide governing board to manage Florida's university system. The full text of the proposed amendment states:

"State University System.--

(a) Purposes. In order to achieve excellence through teaching students, advancing research and providing public service for the benefit of Florida's citizens, their communities and economies, the people hereby establish a system of governance for the state university system of Florida.

(b) State University System. There shall be a single state university system comprised of all public universities. A board of trustees shall administer each public university and a board of governors shall govern the state university system.

(c) Local Boards of Trustees. Each local constituent university shall be administered by a board of trustees consisting of thirteen members dedicated to the purpose of the state university system. The board of governors shall establish the powers and duties of the boards of trustees. Each board of trustees shall consist of six citizen members appointed by the governor and five citizen members appointed by the board of governors. The appointed members shall be confirmed by the senate and serve staggered terms of five years as provided by law. The chair of the faculty senate, or the equivalent, and the president of the student body of the university shall also be members.

(d) Statewide Board of Governors. The board of governors shall be a body corporate consisting of seventeen members. The board shall operate, regulate, control, and be fully responsible for the management of the whole university system. These responsibilities shall include, but not be limited to, defining the distinctive mission of each constituent university and its articulation with free public schools and community colleges, ensuring the well-planned coordination and

operation of the system, and avoiding wasteful duplication of facilities or programs. The board's management shall be subject to the powers of the legislature to appropriate for the expenditure of funds, and the board shall account for such expenditures as provided by law. The governor shall appoint to the board fourteen citizens dedicated to the purposes of the state university system. The appointed members shall be confirmed by the senate and serve staggered terms of seven years as provided by law. The commissioner of education, the chair of the advisory council of faculty senates, or the equivalent, and the president of the Florida student association, or the equivalent, shall also be members of the board."

The ballot title for the proposed amendment is "Local Trustees and Statewide Governing Board to Manage Florida's University System." The summary for the proposed amendment states:

"A local board of trustees shall administer each state university. Each board shall have thirteen members dedicated to excellence in teaching, research, and service to community. A statewide governing board of seventeen members shall be responsible for the coordinated and accountable operation of the whole university system. Wasteful duplication of facilities or programs is to be avoided. Provides procedures for selection and confirmation of board members, including one student and one faculty representative per board."

BALLOT TITLE AND SUMMARY

Section 16.061, Florida Statutes, requires the Attorney General's Office 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).

The purpose of this initiative is to establish a local board of trustees for each state university and a statewide governing board to manage the state university system. The ballot title and summary appear to express this chief purpose. However, the ballot title and summary, as well as the text, refer to a "local" board of trustees. The amendment places no residence requirement on members of either the boards of trustees or the statewide board other than a mandate that they

be "citizens." A voter may not understand that the term "local" as used in the amendment does not require that members of the board be residents of, or affiliated with, a particular locale or region of the state. In addition, the term "citizen" is not limited to state citizenship but may be read to mean national citizenship.

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's Office 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).

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."

As this Court stated in *Advisory Opinion to the Attorney General--Save Our Everglades*, 636 So. 2d 1336, 1340 (Fla. 1994), although a proposal may affect several branches of government and still pass muster, it cannot substantially alter or perform the functions of multiple branches:

"The test . . . is functional and not locational, and where a proposed amendment changes more than one government function it is clearly multi-subject. . . . We recognize that all power for each branch of government comes from the people and that the citizens of the state have retained the right to broaden or to restrict that power by initiative amendment. But where such an initiative performs the functions of different branches of government, it clearly fails the functional test for the single-subject limitation the people have incorporated into article XI, section 3, Florida Constitution."

The proposed amendment appears to substantially affect both the executive and the legislative branches of government. It creates a system of governance for the state university system

located within the executive branch of government. In addition, it elevates the university board of trustees to a constitutional office and appears to remove a significant portion of the Legislature's authority to enact legislation regulating the duties and responsibilities of the local boards of trustees as well as the statewide governing board. For example, the proposed amendment provides in section 7(c) that it is the board of governors which establishes the powers and duties of the boards of trustees. In addition, section 7(d) would limit the Legislature's powers over the management of the statewide board of governors to the appropriation of funds.

This Court has previously recognized that it is important for an initiative to identify the provisions of the Constitution substantially affected by it so that the public will understand the contemplated changes in the Constitution and the initiative's effect on other unnamed provisions is not left unresolved and subject to various interpretations. *Advisory Opinion to the Attorney General—People's Property Rights Amendment*, 699 So. 2d 1304, 1307 (Fla. 1997); *Advisory Opinion to the Attorney General—Tax Limitation*, 644 So. 2d 486 (Fla. 1994).

Article IX, section 1, Florida Constitution, provides that "[a]dequate provision *shall be made by law* . . . for the establishment, maintenance, and operation of institutions of higher learning" (e.s.) The proposed amendment would appear to affect this constitutional provision but fails to advise the voters of its impact. See *Grapeland Heights Civic Association v. City of Miami*, 267 So. 2d 321, 324 (Fla. 1972) ("law" in Florida Constitution means an enactment by the state Legislature); *Broward County v. Plantation Imports, Inc.*, 419 So. 2d 1145 (Fla. 4th DCA 1982). Further, Article IX, section 3, Florida Constitution, provides that "[m]embers of any appointive board dealing with education may serve terms in excess of four years *as provided by law*." (e.s.) The proposed amendment establishes a five year term for the local boards of trustees and a seven year term for the statewide board of governors without informing the voter that the Legislature's authority in this matter has been usurped.

Therefore, I respectfully request this Honorable Court's opinion as to whether the proposed amendment violates the single subject restriction in 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. Robin Gibson
Chair, Law and Drafting Committee
Education Excellence Initiative
Gibson, Valenti, and Ashley
212 East Stuart Avenue
Lake Wales, FL 33853