

Requirement for Adequate Funding Public Education

Number: PETITION

Date: March 05, 1997

The Honorable Gerald Kogan
Chief Justice, and
Justices of The Supreme Court
of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

Dear Chief Justice Kogan and Justices:

In accordance with the provisions of Article IV, section 10, Florida Constitution, and section 16.061, Florida Statutes, it is my responsibility 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 11, 1997, the Secretary of State submitted to this office an initiative petition seeking to amend the Florida Constitution to require adequate public provision for funding public education. The full text of the proposed amendment states:

"1) The Constitution currently provides in Article IX, Section 1, for adequate provision to be made by law for public education. Adequate provision for funding public education shall be defined, in each fiscal year, as the required appropriation of at least a minimum percentage of total appropriations under Article III, not including lottery proceeds or federal funds. That minimum percentage (40%) is based upon the percentage appropriated for education by the Legislature for fiscal year 1986-87, prior to the appropriation of funds from Florida lotteries proceeds.

2) Article IX, Section 1 is amended by inserting '(a)' immediately before the current text, and adding a new subsection (b) at the end thereof, reading:

'(b) Adequate provision for funding public education shall be required in each fiscal year, and is defined as the appropriation of at least a minimum percentage (40%) for public education from the total appropriations under Article III in each fiscal year, not including lottery proceeds or federal funds. That minimum percentage (40%) is based upon the percentage appropriated for public education from total appropriations in fiscal year 1986-1987, not including federal funds and prior to the appropriation of funds from Florida lotteries proceeds.

(1) The Legislature may suspend the applicability of this subsection for any one fiscal year, or a portion of one fiscal year, by passage of a separate bill that contains no other subject in which the legislature finds a compelling public necessity to suspend this subsection. Passage of that bill shall require a vote of approval of two thirds of the membership of each house.

(2) Upon approval by the electors, this subsection shall take effect immediately following three

full fiscal years.'

3) If any portion or application of this measure is held invalid for any reason, the remaining portion or application, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application."

The ballot title for the proposed amendment is "Requirement for Adequate Public Education Funding." The summary for the proposed amendment provides:

"Adequate provision for funding public education each fiscal year requires appropriation of at least a minimum percentage of total appropriations under Article III, not including lottery or federal funds. That minimum percentage (40%) is based upon education's percentage of appropriations, excluding federal funds, for 1986-87 before state lotteries began.

May be suspended in any fiscal year by a bill adopted by 2/3 vote of each of legislative house. Effective following third fiscal year after approval."

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, Florida Statutes, provides in relevant part:

"Whenever a constitutional amendment . . . is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot 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 ballot title and summary substantially advise the voter as to the text of the amendment and the chief purpose of the measure. They advise the public that the purpose of the initiative is to require adequate public education funding by mandating that a minimum percentage of the appropriations be directed to education. While the initiative petition provides that the proposed amendment becomes effective immediately following three full fiscal year, the summary refers to three fiscal years. The absence of the word "full" in the summary, however, would not appear to be misleading to the voters.

As the ballot title and summary substantially advise the voters of the chief purpose of the proposed amendment, they appear to satisfy the requirements of section 101.161, Florida Statutes.

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

SINGLE SUBJECT LIMITATION

Section 16.061, Florida Statutes, requires the Attorney General, within 30 days after receipt of the proposed amendment to the Florida Constitution by citizens' initiative, 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."

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."

In *Advisory Opinion to the Attorney General--Funding for Criminal Justice*, 639 So. 2d 972 (Fla. 1994), this Court held that the Criminal Justice Trust Fund initiative that created a trust fund and provided for funding of the trust did not violate the single-subject requirement. The initiative specified that no funds would 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." In finding that the initiative complied with the single subject requirement, the Court stated:

"We find that the Criminal Justice Trust Fund amendment meets the single-subject requirement. The amendment affects only the legislative branch of Florida's government. While the initiative creates a trust fund, the funding of the trust and allocation of monies therein remains with the legislature. The legislature's discretion in allocating the funds is limited only by the provision that the funds be used for criminal justice purposes and may not replace or substitute for funding at a level less than that allocated to the criminal justice system in the 1993-1994 fiscal year. Further, the amendment does not augment or detract from any of the legislative powers enumerated in the constitution."

The initiative in the instant inquiry prescribes a minimum percentage for funding public education. The Legislature's discretion in allocating the funds for public education is limited only by the requirement that at least a certain percentage of the total appropriations be for public education. It does not, however, prescribe how such funds are to be allocated.

Unlike the *Funding for Criminal Justice* initiative, the proposed amendment does not impose a tax to fund public education. Thus, the requirement that education be funded at a minimum percentage may affect funding available for other governmental programs. This does not, however, necessarily invalidate the proposed amendment. As this Court in *Advisory Opinion to Attorney General--Limited Political Terms in Certain Political Offices*, 592 So. 2d 225, 227 (Fla. 1991), stated in upholding an initiative petition that imposed term limits on certain elected public officers:

Although the proposed amendment affects officeholders in three different branches of government, that fact alone is not sufficient to invalidate the proposed amendment. We have found proposed amendments to meet the single-subject requirement even though they affected multiple branches of government.

Thus, the proposed amendment does not appear violative of the single subject requirement.

Therefore, I respectfully request this Honorable Court's opinion as to whether the constitutional amendment, proposed by initiative petition, complies with Article XI, section 3, Florida Constitution.

Respectfully submitted,

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RAB/tgk

Enclosures

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