

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA

THE FLORIDA EDUCATION
ASSOCIATION, ANDY FORD and
LYNETTE ESTRADA,

Plaintiffs,

CASE NO.: 2010 CA 002537
Judge Charles A. Francis

vs.

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

Defendants.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

1. This is an action for declaratory and injunctive relief challenging the legal sufficiency of a proposed amendment to the Florida Constitution submitted by the Florida Legislature for placement on the November 2, 2010 ballot, hereinafter referred to as Amendment 8. Amendment 8 cannot be lawfully submitted to Florida voters because its ballot title and summary fail to advise voters of the chief purpose and true effect of the amendment and constitute a classic case of "hiding the ball" or "flying under false colors."

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CLERK CIRCUIT COURT
LEON COUNTY, FLORIDA

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Jurisdiction and Venue

2. This Court has subject matter jurisdiction over this action pursuant to Article V, Section 5(b), Florida Constitution, and Section 26.012, Florida Statutes.

3. This Court has jurisdiction to grant declaratory relief pursuant to Article V, Section 5(b), Florida Constitution, and Section 86.011, Florida Statutes, and to grant injunctive relief pursuant to Article V, Section 5(b), Florida Constitution, and Section 26.012(3), Florida Statutes, and Rule 1.610, Florida Rules of Civil Procedure.

4. Venue is proper in Leon County pursuant to Section 47.011, Florida Statutes.

Parties

5. Plaintiff the FLORIDA EDUCATION ASSOCIATION (hereinafter referred to as "FEA"), is a Florida association that meets the requirements for associational standing in that a substantial number of its members would be affected if Amendment 8 were to be adopted; the subject matter of Amendment 8 is within the general scope and interest and activities of the FEA and the requested relief is the type of relief for the FEA to receive on behalf of its members.

6. Plaintiff ANDY FORD is the President of the FEA. He is a resident of Duval County, Florida, and is a registered voter and taxpayer. He has

regularly voted in Florida general elections and on ballot proposals and intends to vote in the November 2010 general election.

7. Plaintiff LYNETTE ESTRADA is a resident of Miami/Dade County, Florida, and a registered voter and taxpayer. She has regularly voted in Florida general elections and on ballot proposals and intends to vote in the November 2010 general election. She is the parent of a child who is enrolled in public school in Miami/Dade County, Florida.

8. Defendant DAWN K. ROBERTS is the Interim Secretary of State of the State of Florida. She is the chief election officer of the state and the head of the Defendant DEPARTMENT OF STATE. Defendant Roberts is sued in her official capacity.

9. Defendant DEPARTMENT OF STATE is an agency of the State of Florida and it is responsible for placing proposed constitutional amendments that are legally sufficient on the ballot. Pursuant to Section 101.161(1), Florida Statutes:

(1) Whenever a constitutional amendment or other public measure 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 wording of the substance of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the joint resolution... Except for amendments and ballot language proposed by joint resolution, the substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. (Emphasis added.)

The Florida Constitution

10. Article XI of the Florida Constitution provides five methods through which the Constitution can be amended, each of which involves placement of proposed amendments on the ballot for a general election, at which a vote of three-fifths of the electors voting on the measure is required to approve the proposed amendment. The section of Article XI pertinent to this action is Section 1, which provides that the Legislature, upon a three-fifths vote of each house, may place proposed amendments to any part of the Constitution on the general election ballot.

11. Currently, Article IX, Section 1(a), Florida Constitution, provides, in relevant part, as follows with respect to the duty of the legislature to make adequate provision to fund smaller class sizes for public school students:

SECTION 1. Public education.--

(a) The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require. 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 school year, there are a sufficient number of classrooms so that:

(1) The maximum number of students who are assigned to each

teacher who is teaching in public school classrooms for prekindergarten through grade 3 does not exceed 18 students;

(2) The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for grades 4 through 8 does not exceed 22 students; and

(3) The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for grades 9 through 12 does not exceed 25 students. The class size requirements of this subsection do not apply to extracurricular classes. Payment of the costs associated with reducing class size to meet these requirements is the responsibility of the state and not of local schools 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.

(Emphasis added).

12. The provision referred to above, requires the state to provide the funding to local school districts necessary for them to be able to meet the numeric class size goals specified in the constitution. It is a state funding imperative.

AMENDMENT 8

13. During the 2010 legislative session, the Legislature passed by the constitutionally mandated three-fifths vote of each house, SJR 2, a joint resolution to amend Article IX, Section 1(a). The joint resolution has been placed on the 2010 general election ballot by the Secretary of State as Amendment 8. A true and exact copy of the joint resolution is appended hereto as Exhibit A.

14. The ballot title and summary for Amendment 8 read 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.

15. The summary of Amendment 8 is misleading and fails to inform the voter of the chief purpose and effect of the amendment. It provides a classic case of "flying under false colors" or "hiding the ball."

16. The ballot summary fails to inform the voter that the chief purpose and effect of Amendment 8 is to reduce the funding obligation placed upon the state to ensure smaller classes.

A. The class size ballot initiative enacted in 2002 by the people of Florida was a funding imperative - it placed the obligation on the

Legislature to provide funding adequate to meet the class size numeric goals set forth in Article IX, Section 1(a)

B. Amendment 8, if enacted, would reduce the level of funding which the state is obligated to pay for class size reduction.

C. The ballot summary fails to adequately inform the voter that the passage of Amendment 8 will substantially reduce the state provided funding needed to maintain smaller classes.

17. The ballot title of Amendment 8 is misleading in that it purports to be a revision of class size requirements for public schools by permitting class sizes to be averaged at a school-wide level rather than at the classroom level. However, the Amendment in reality reduces the funding required to be provided by the State of Florida to local school districts to ensure smaller class sizes. In effect, it reduces the class size reduction funding required presently by giving to the Legislature the ability to reduce the funding to public schools without advising the voter of such funding reduction.

18. Because the ballot title and summary of Amendment 8 are misleading and fail to adequately inform the voter of the chief purpose of the Amendment, placement of Amendment 8 on the ballot violates Article XI, Section 5, Florida Constitution, and Section 101.161(1), Florida Statutes.

19. Plaintiffs will suffer immediate and irreparable harm if Amendment 8 with the accompanying ballot title and summary language is placed on the ballot for the 2010 general election.


20. Plaintiffs have no adequate remedy at law, and it is in the public interest to ensure that Florida's electorate is accurately informed as to the true effect of proposed amendments to the Florida Constitution.

WHEREFORE, Plaintiffs seek judgment declaring that Amendment 8 does not meet the constitutional and statutory requirements for placement on the ballot and an injunction enjoining Defendants from placing Amendment 8 on the 2010 general election ballot.

Respectfully submitted,

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1
2 A joint resolution proposing an amendment to Section 1
3 of Article IX and the creation of Section 31 of
4 Article XII of the State Constitution to revise class
5 size requirements for public schools and to provide an
6 effective date.

7
8 Be It Resolved by the Legislature of the State of Florida:

9
10 That the following amendment to Section 1 of Article IX and
11 the creation of Section 31 of Article XII of the State
12 Constitution are agreed to and shall be submitted to the
13 electors of this state for approval or rejection at the next
14 general election or at an earlier special election specifically
15 authorized by law for that purpose:

16 ARTICLE IX

17 EDUCATION

18 SECTION 1. Public education.—

19 (a) The education of children is a fundamental value of the
20 people of the State of Florida. It is, therefore, a paramount
21 duty of the state to make adequate provision for the education
22 of all children residing within its borders. Adequate provision
23 shall be made by law for a uniform, efficient, safe, secure, and
24 high quality system of free public schools that allows students
25 to obtain a high quality education and for the establishment,
26 maintenance, and operation of institutions of higher learning
27 and other public education programs that the needs of the people
28 may require. To assure that children attending public schools
29 obtain a high quality education, the legislature shall make

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30 adequate provision to ensure that, by the beginning of the 2010-
31 2011 2010 school year and for each school year thereafter, there
32 are a sufficient number of classrooms so that:

33 (1) Within each public school, the average ~~maximum~~ number
34 of students ~~who are~~ assigned per class to each teacher who is
35 teaching ~~in public school classrooms for~~ prekindergarten through
36 grade 3 does not exceed 18 students and the maximum number of
37 students assigned to each teacher in an individual classroom
38 does not exceed 21 students;

39 (2) Within each public school, the average ~~maximum~~ number
40 of students ~~who are~~ assigned per class to each teacher who is
41 teaching ~~in public school classrooms for~~ grades 4 through 8 does
42 not exceed 22 students and the maximum number of students
43 assigned to each teacher in an individual classroom does not
44 exceed 27 students; and

45 (3) Within each public school, the average ~~maximum~~ number
46 of students ~~who are~~ assigned per class to each teacher who is
47 teaching ~~in public school classrooms for~~ grades 9 through 12
48 does not exceed 25 students and the maximum number of students
49 assigned to each teacher in an individual classroom does not
50 exceed 30 students.

51
52 The class size requirements of this subsection do not apply to
53 extracurricular or virtual classes. Payment of the costs
54 associated with meeting ~~reducing class size to meet~~ these
55 requirements is the responsibility of the state and not of local
56 school ~~schools~~ districts. ~~Beginning with the 2003-2004 fiscal~~
57 ~~year,~~ The legislature shall provide sufficient funds to maintain
58 ~~reduce~~ the average number of students required by ~~in each~~

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59 ~~classroom by at least two students per year until the maximum~~
60 ~~number of students per classroom does not exceed the~~
61 ~~requirements of this subsection.~~

62 (b) Every four-year old child in Florida shall be provided
63 by the State a high quality prekindergarten ~~pre-kindergarten~~
64 learning opportunity in the form of an early childhood
65 development and education program which shall be voluntary, high
66 quality, free, and delivered according to professionally
67 accepted standards. An early childhood development and education
68 program means an organized program designed to address and
69 enhance each child's ability to make age appropriate progress in
70 an appropriate range of settings in the development of language
71 and cognitive capabilities and emotional, social, regulatory,
72 and moral capacities through education in basic skills and such
73 other skills as the Legislature may determine to be appropriate.

74 (c) The early childhood education and development programs
75 provided by reason of subsection ~~subparagraph~~ (b) shall be
76 implemented no later than the beginning of the 2005 school year
77 through funds generated in addition to those used for existing
78 education, health, and development programs. Existing education,
79 health, and development programs are those funded by the State
80 as of January 1, 2002, that provided for child or adult
81 education, health care, or development.

82 ARTICLE XII

83 SCHEDULE

84 SECTION 31. Class size requirements for public schools.—The
85 amendment to Section 1 of Article IX, relating to class size
86 requirements for public schools, and this section shall take
87 effect upon approval by the electors and shall operate

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88 retroactively to the beginning of the 2010-2011 school year.

89 BE IT FURTHER RESOLVED that the following statement be
90 placed on the ballot:

91 CONSTITUTIONAL AMENDMENT

92 ARTICLE IX, SECTION 1

93 ARTICLE XII, SECTION 31

94 REVISION OF THE CLASS SIZE REQUIREMENTS FOR PUBLIC
95 SCHOOLS.—The Florida Constitution currently limits the maximum
96 number of students assigned to each teacher in public school
97 classrooms in the following grade groupings: for prekindergarten
98 through grade 3, 18 students; for grades 4 through 8, 22
99 students; and for grades 9 through 12, 25 students. Under this
100 amendment, the current limits on the maximum number of students
101 assigned to each teacher in public school classrooms would
102 become limits on the average number of students assigned per
103 class to each teacher, by specified grade grouping, in each
104 public school. This amendment also adopts new limits on the
105 maximum number of students assigned to each teacher in an
106 individual classroom as follows: for prekindergarten through
107 grade 3, 21 students; for grades 4 through 8, 27 students; and
108 for grades 9 through 12, 30 students. This amendment specifies
109 that class size limits do not apply to virtual classes, requires
110 the Legislature to provide sufficient funds to maintain the
111 average number of students required by this amendment, and
112 schedules these revisions to take effect upon approval by the
113 electors of this state and to operate retroactively to the
114 beginning of the 2010-2011 school year.