

REASONS I OPPOSE AMENDMENT 8-SCHOOL BOARD TERM LIMITS, ALLOW STATE TO OPERATE NON-BOARD ESTABLISHED SCHOOLS, AND CIVIL LITERACY AMENDMENT

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What Florida voters will read on their November ballot is:

CONSTITUTIONAL AMENDMENT
ARTICLE IX SECTION 4, NEW SECTION
ARTICLE XII, NEW SECTION

SCHOOL BOARD TERM LIMITS AND DUTIES; PUBLIC SCHOOLS.---Creates a term limit of eight consecutive years for school board members and requires the legislature to provide for the promotion of civic literacy in public schools. Currently district school boards have a constitutional duty to operate, control, and supervise all public schools. The amendment maintains a school board's duties to public schools it establishes, but permits the state to operate, control and supervise public schools not established by the school board.

I have carefully studied proposed Amendment 8, and reviewed Florida statutes and case law in respect to amending the Florida Constitution. Based upon this study and review I conclude that the title and description of proposed Amendment 8, and the grouping of the three amendments which comprise amendment 8, are misleading and deceptive. What will be on the ballot does not advise Florida voters of what the voters have to decide sufficiently for the voter to cast an informed vote for or against the three amendments to the Florida Constitution which comprise Amendment 8. I conclude that the result of

the referendum election plainly will not be an accurate vote of the will of a majority of Florida voters on whether each of these three proposed amendments should be part of the Florida Constitution.

It is my opinion that Amendment 8 conflicts with Florida Supreme Court precedent in respect to proposed amendments to the Florida Constitution. The Florida Supreme Court has clearly set out in three decisions reviewing proposed amendments to the existing 1998 Constitution the exacting standards for all proposed amendments. The standards are straight forward and directly stated: “any proposed constitutional amendment must be accurately represented on the ballot; otherwise voter approval would be a nullity. A ballot title and summary cannot ‘fly under false colors’ or ‘hide the ball’ with regard to the true effect of the amendment” *Armstrong v Harris* 773 So2d 7,12,16 (Fla. 2000); “ what the law requires is that the ballot be fair and advise the voter sufficiently to enable him [her] intelligently to cast his [her] ballot” *Florida Department of State v Slough* 992 So2d 142,146 (Fla. 2008); “This evaluation also includes consideration of the amendment’s true meaning and ramifications. In practice, the accuracy requirement in Article XI, Section 5, functions as a kind of truth in packaging law for the ballot”. *Florida Department of State v Florida State Conferences of NAACP Branches* 43 So3d 662,668 (Fla. 2010), citing again to *Armstrong* 773 So2d 13,16.

It is plain that Amendment 8 does not meet the exacting standards required for amending the Florida Constitution. The first fatal defect in Amendment 8 is that the Amendment packages three amendments on three distinct subjects which will have unrelated effects on education in Florida. A voter is made to vote for or against the three amendments in the package even though the voter may be for one or two of the proposals, but against one or two of the other ones. This packaging presents a voter dilemma, and will mask the true result of the referendum of any single amendment. Without question the proposed amendment package violates the standard of being fair and advising the voter sufficiently for the voter to intelligently cast the voter's ballot.

The packaging of the three revisions to the Constitution in Amendment 8 is a blatant example of "logrolling". "Logrolling" is defined as a practice by which a constitutional amendment is proposed which contains unrelated provisions, some of which electors might wish to support in order to get an otherwise disfavored provision passed. 10 Fla. Jur section 16 "Logrolling" in constitutional amendments placed on referendum ballots has been repeatedly condemned by the Florida Supreme Court, Advisory Opinion to Attorney General 926 So. 2d 1218. (Fla. 2006).

The Florida Supreme Court made absolutely clear in its opinions in Armstrong, a legislative proposed amendment, NAACP, a legislative proposed amendment and Slough , a Taxation and Budget

Commission proposed amendment that proposed amendments to the Florida Constitution regardless of their source cannot be on a referendum ballot and cannot become a part of the Florida Constitution if the Title and Summary of the Amendment which appears on the ballot referendum misleads the voters and hides the true meaning and ramifications of the proposed revision to the Constitution. *Armstrong* 773 So. 2d at 16 as quoted in *NAACP* 43 So3d at 667.

Amendment 8 must be examined as an amendment package. The proposal packages an amendment which will eliminate the existing constitutionally based exclusive authority of local non-partisan elected county school boards to operate, control and supervise all free public schools in their school districts with two amendments which are wholly unrelated to the operation, control and supervision of free public schools. This significant change from local county school board control and operation of **all** free public schools is hidden by packaging the change with what are thought to be attractive proposals for term limits and civics education. In reality, the terms limits and civics education proposals are only bait to attract voters to vote yes for Amendment 8. It is plain to me that the meat part of Amendment 8 is the elimination of the exclusive operation, supervision and control of all free public schools by non-partisan elected county school boards. The packaging of these three amendments in Amendment 8 without question fails the truth in packaging requirement applied in *Armstrong v Harris*.

The deceptive packaging of the three amendments is not the only flaw which causes me to oppose Amendment 8. In addition to that flaw, I conclude even if the revision to the existing constitutional provision as to the county school board operation, control and supervision of all free public schools with the school district is isolated, the title and summary for that part of Amendment 8 are plainly inaccurate and misleading. The text of the existing constitutional provision in Article IX, Section 4 (b) is:

The school board shall operate, control and supervise all free public schools within the school district and determine the rate of school taxes within the limits prescribed herein. Two or more school districts may operate and finance joint educational programs.

The text of the proposed revision is:

The school board shall operate, control, and supervise all free public schools *established by the district school board* within the school district and determine the rate of school district taxes within the limits prescribed herein. Two or more school districts may operate and finance joint educational programs.

*proposed revision

The title and relevant part of the summary are:

SCHOOL BOARD TERM LIMITS AND DUTIES;
PUBLIC SCHOOLS.....Currently, district school boards have a constitutional duty to operate, control and supervise all public schools. The amendment maintains a school board's duties to public schools it establishes, but permits the state to operate, control and supervise public schools not established by the school board.

It is plain that the added language of the actual proposed revision eliminates the existing authority of local non-partisan elected school boards to operate, control and supervise all public schools in their school districts. If adopted the local school boards authority would be limited to public schools "established by the school board." What the proposed text of the revision and the summary of the revision do not explain or define is what a "public school established by the school board" is? This phrase is not in the existing Florida Constitution, Article IX. There is simply no way for a voter to know which schools, if any, will remain under the operation, control and supervision of the non-partisan elected county school boards, and which schools will be operated, controlled and supervised by some other undesignated and undisclosed entity. I conclude that use of this unexplained, undefined phrase is inherently misleading.

The defect of the unexplained and undefined text of the proposed revision and initial phrase of the last sentence of the summary

is compounded by the second phrase of the last sentence of the summary which states “but permits the state to operate, control and supervise public schools not established by the school board”. The revision does no such thing. There is nothing in the text of the revision or the existing constitution that “permits the state to operate, control and supervise public schools.” This phrase in the summary is plainly a misrepresentation.

Finally, what is on the referendum ballot in respect to Amendment 8 hides from the voters that the amendment is intended to overrule a decision of the First District Court of Appeal. In 2006, the Florida legislature enacted Florida Statute 1002.335 which established the “Florida Schools of Excellence Commission” as an independent state-level entity with the power to authorize charter schools throughout Florida. Under the statute district school boards could exercise authority over charter schools in their districts only if the State board of Education granted them such power. The Duval County School Board challenged the constitutionality of section 1002.335 alleging it violated Article IX of the Florida Constitution. The First District Court of Appeal agreed with Duval County and held that the statute was unconstitutional in violation of the power of the school board to operate, control and supervise all public schools within the Duval County school district. Not to explain that overruling this decision is what is intended by Amendment 8 misleads the voters.

The first sentence and principal of the Florida Constitution expressed in Article I, Section 1 is “All power is inherent in the people”. The Florida constitution is a grant by Florida’s people of their power to their government for the purpose of governance. The Florida Constitution is the fundamental law by which Florida’s people direct that governance. It is to carry out this fundamental principal that the Florida Constitution is adopted by a direct vote of Florida’s people in a referendum. This is unlike other laws which are adopted by representatives of the people in state and local legislative bodies. Thus, amending what Florida’s people adopted by direct vote as their Florida Constitution can only be done by a direct vote of the people in a referendum. As explained by the Florida Supreme Court in the decisions to which I have referred it naturally follows that the voter referendum for a revision to the constitution must reliably reflect the informed decision of a majority of Florida voters. When what is on the ballot in respect to a proposed amendment is inaccurate, misleads or is deceptive the result of voter referendum cannot be relied upon as a reliable reflection of the voters’ decision as to a proposed amendment.

My conclusion is that Amendment 8 fails these exacting requirements. For all these reasons I oppose Amendment 8.