



# Florida School Boards Association

*The voice of education in Florida.*

## **Major Proposals Receiving a Second Hearing on January 26 (Vote taken for final approval):**

### Proposal 4 – Religious Freedom -- sponsored by [Roberto Martinez](#)

*This proposal revises Article I, Section 3 of the Florida Constitution. The proposal would remove the existing provision -- commonly known as the “No-Aid Provision” or Blaine Amendment” -- that prohibits the use of public revenues in aid of any church, sect, or religious denomination or any sectarian institution.*

### Discussion and Key Points

Article I, Section 3 of the Florida Constitution currently provides, in part, that “No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.” Florida is one of 37 states that has a No Aid Provision in the state constitution.

The Florida First District Court of Appeal (1<sup>st</sup> DCA) has considered a series of cases involving the use of public funds and has concluded that, *“In determining whether such programs violate the no-aid provision, the inquiry necessarily will be case-by-case and will consider such matters as whether the government-funded program is used to promote the religion of the provider, is significantly sectarian in nature, involves religious indoctrination, requires participation in religious ritual, or encourages the preference of one religion over another.”*

The 1<sup>st</sup> DCA applied this reasoning in finding that the Florida Opportunity Scholarship Program was unconstitutional because it used state revenues to aid sectarian schools. However, in a subsequent case involving government funded programs and services provided by a religious entity, the 1<sup>st</sup> DCA found that the No Aid Provision was not violated by public funding for those programs and services.

- Florida’s No Aid Provision, by itself, does not create a prohibition against public funding being available to religious entities for the provision of programs, goods, and services.
- Eliminating Florida’s No Aid Provision would remove an important constitutional safeguard that maintains an appropriate separation of church and state – a separation that protects religion from government interference and, at the same time, protects government from religious interference. This separation is a founding principal of our democracy.
- Publicly funded programs such as the VPK Program or health centers and correctional facilities operated by faith-based providers are not in danger of violating the No Aid Provision so long as the government-funded program does not advance religion.
- It has been suggested that a recent U.S. Supreme Court ruling is evidence that Florida’s No Aid Provision is unconstitutional. That ruling was specific to how Missouri has implemented their No Aid Provision to refuse to allow a church -- solely because it is a church -- to compete with secular organizations for a state grant and is not applicable to Florida. There has been no instance in which Florida has denied a generally available benefit solely on account of religious identity.
- A proposal similar to Proposal 4 was submitted to voters in the 2012 General Election, but it received only 44.5% of the vote and was not adopted.

[Proposal 45](#) – Public Education -- sponsored by [Erika Donalds](#)

*This proposal would amend Article IX, Section 1 of the Florida Constitution. The proposal would revise the text of this Article to provide that adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools “allowing the opportunity for each student” (rather than “that allows students”) to obtain a high quality education. In addition, the proposal specifies that no provision in Article IX may be construed to limit the Legislature from making provision for other educational services that benefit the children and families of this state that are in addition to the system of free public schools.*

Discussion and Key Points

Article IX, Section 1 currently provides, in part, that “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.”

Florida courts have ruled on several significant cases to limit the Legislature’s authority to enact education laws because these laws violated the authority of the school board “to operate, control and supervise all free public schools within a district” and/or the requirements for a “uniform, efficient, safe, secure, and high quality” system of free public schools. . .”

As examples:

In *Bush v. Holmes*, the Florida Supreme Court found that the Opportunity Scholarship Program was unconstitutional because it diverted public dollars into a separate private systems that did not use the same curriculum, assessments, or teacher qualifications. This created a separate system parallel to and in competition with free public schools. This parallel system violated the constitutional uniformity requirement.

In *Duval County School Board v. State Board of Education*, the Florida First District Court of Appeal ruled that a provision granting authority to the Department of Education to establish charter schools was unconstitutional because it impinged upon the constitutional authority of school boards to operate, control and supervise all free public schools within a district.

- This proposal seeks to circumvent existing constitutional safeguards and mandates in order to allow the Legislature to enact education laws that would, otherwise, violate the provisions in the same section of the Constitution.
- The proposal would authorize the Legislature to provide for other educational services that benefit children and families, but does not define what constitutes a “benefit”, does not identify how or when such a benefit would be determined, and does not prevent the offering of such a benefit when it may be detrimental to other educational programs and services.
- The proposal would expand educational services to children and families that are in addition to the system of free public schools. This would significantly expand the scope of the public education system to include unknown and ill-defined “benefits” and would significantly increase state costs.

[Proposal 71](#) – Charter School Authorization -- sponsored by [Erika Donalds](#)

*This proposal would amend Article IX, Section 4 of the Florida Constitution. The proposal would authorize the Legislature to enact laws providing alternative processes to authorize the establishment of public schools in the state.*

#### Discussion and Key Points

Article IX, Section 4 currently provides, in part, that “The school board shall operate, control, and supervise all free public schools within the school district and determine the rate of school district taxes within the limits prescribed herein.” This proposal would add to this Section to provide that “Nothing herein may be construed to limit the legislature from creating alternative processes to authorize the establishment of public schools within the state by general law.”

Florida law specifies that all charter schools in Florida are public schools which places them under the purview of the elected school board. As a result, the vast majority of charter schools must apply to, and be approved by, local school boards. It is evident that charter schools have thrived in Florida. Since the inception of charter schools in Florida, the number of charter schools has steadily increased from 5 charter schools in 1996-1997 to 654 charter schools in 2016-17. Currently, more than 283,000 students are enrolled in charter schools in 46 Florida districts. Florida ranks third, behind California and Texas, in both the number of charter schools and in the number of students served in charter schools.

Along with the success of charter schools in Florida, there have been legal challenges. In 2006, the Florida legislature enacted legislation to establish the “Florida Schools of Excellence Commission” as an independent, state-level entity with the power to authorize charter schools throughout the State of Florida. In ensuing litigation, the First District Court of Appeal (1<sup>st</sup> DCA) found that this legislation posed a total and fatal conflict with the constitutional authority of school boards to operate, control, and supervise all free public schools within the school district and declared the legislation to be unconstitutional. In addition, recent legislation establishing “schools of hope” to be established and operated by charter schools or similar entities without approval of the school board. This legislation is currently the subject of multiple legal challenges due to the same conflict with the constitutional authority of school boards. Thus, it seems evident that Proposal 71 is an effort to overcome these constitutional conflicts and circumvent the authority of school boards.

- Adding a sentence at the end of Article IX, Section 4(b) does not reduce, overcome, or eliminate the authority specifically reserved to the school board to operate, control, and supervise free public schools that is at the beginning of Section 4(b). Instead, this proposal creates, within the same paragraph, an untenable conflict between the constitutional authority of the elected school board and the authority of the legislature.
- This proposal would permit and encourage the creation of a parallel system of free public schools that escapes the operation and control of local elected school boards. This threatens the state’s ability to comply with the constitutional mandates for a uniform and efficient system of free public schools.
- The proposal would permit and encourage a process to establish a charter school, or other type of public school, without regard to the need or appropriateness of the new school. This could lead to the balkanization and re-segregation of the public school system.
- This proposal would create a labyrinth that will defy fiscal transparency and public accountability and will create multiple layers of bureaucracy.
- Given the success of charter school establishment and expansion in Florida, there is no evidence that an alternative process to authorize public schools is necessary or desirable.

**Other Proposals Receiving a Second Hearing on January 26** (*Vote taken for final approval. No testimony is planned.*):

[Proposal 89](#) – Public Education -- sponsored by [Nicole Washington](#)

*This proposal would amend Article IX, Section 1 of the Florida Constitution. This proposal adds to the existing text of Article IX, Section 1(a) to specify that the purpose and intent of the state's public education system is to develop the intellect of the state's citizens, to contribute to the economy, to create an effective workforce, and to prepare students for a job. In addition, the proposal adds Section 1(d) to provide that, in order to build Florida's talent pipeline for the careers of today and tomorrow and align the state's education, workforce, and economic development efforts, it is the intent of the people to provide high quality and affordable postsecondary education opportunities.*

*In addition to the above, the Committee will vote on three proposals relating to post-secondary education ([Proposal 25](#), [Proposal 44](#), and [Proposal 83](#)). No testimony is planned.*

## **Major Proposal Receiving a First Hearing on January 26** *(No final vote will be taken):*

### Proposal 59 – Religious Freedom – sponsored by [Marva Johnson](#)

*This proposal would revise Article I, Section 3 of the Florida Constitution. As amended, the proposal would require that this Section is construed in conformity with the First Amendment to the United States Constitution as interpreted by the United States Supreme Court.*

#### Discussion and Key Points

Article I, Section 3 currently provides, in part, “No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.” This provision -- commonly known as the “No-Aid Provision” or Blaine Amendment” -- is similar to provisions in the state constitutions of 36 other states.

Proposal 59 appears to be in response to a recent U.S. Supreme Court ruling in which the Court held that the denial of a state grant to a church affiliated daycare center for playground equipment pursuant to Missouri’s No Aid Provision violated the Free Exercise Clause of the U.S. Constitution. In this case, Missouri adhered to a strict state policy of denying grants to any applicant owned or controlled by a church, sect, or other religious entity. The Court found that the issue in this case was not the denial of a grant, but rather the refusal to allow the Church -- solely because it is a church -- to compete with secular organizations for a grant.

It has been suggested that this U.S. Supreme Court ruling is evidence that Florida’s No Aid Provision is unconstitutional. However, it is important to note that this ruling is specific to how Missouri has improperly interpreted and applied their No Aid Provision. There has been no similar instance in which Florida has denied a generally available benefit solely on account of religious identity.

As has been noted by the Florida First District Court of Appeal (1<sup>st</sup> DCA) – which has considered and ruled on a series of cases involving Florida’s No Aid Provision and the use of public funds by religious entities – has concluded that, *“In determining whether such programs violate the no-aid provision, the inquiry necessarily will be case-by-case and will consider such matters as whether the government-funded program is used to promote the religion of the provider, is significantly sectarian in nature, involves religious indoctrination, requires participation in religious ritual, or encourages the preference of one religion over another.”*

- Florida’s No Aid Provision is an important constitutional safeguard that maintains an appropriate separation of church and state – a separation that protects religion from government interference and, at the same time, protects government from religious interference. This separation is a founding principal of our democracy.
- Florida’s No Aid Provision, in and of itself, does not create a prohibition against public funding being available to religious entities for the provision of programs, goods, and services.
- Florida welcomed and encouraged a number of publicly funded programs and services that are offered by faith-based providers including, among others, the VPK Program, hospitals and health centers, and correctional facilities. These faith-based providers were not denied access to public funding and these programs are in no danger of violating the No Aid Provision so long as the programs do not advance religion.
- In the context of education, the No Aid Provision is an essential tool to safeguard the religious rights of children and to ensure that they do not become the victims of religious bullying and harassment.

**Other Proposals Receiving a First Hearing on January 26** (No final vote will be taken. No testimony is planned.):

[Proposal 10](#) – Civic Literacy – sponsored by [Don Gaetz](#)

*This proposal revises Article IX of the Florida Constitution. The proposal would add a new section that would provide that, as education is essential to the preservation of the rights and liberties of the people, the legislature shall provide by law for the promotion of civic literacy in order to ensure that students enrolled in public education understand and are prepared to exercise their rights and responsibilities as citizens of a constitutional democracy.*

[Proposal 15](#) – Basic Rights – sponsored by [Anna Marie Hernandez Gamez](#)

*This proposal revises Article I, Section 2 of the Florida Constitution. The proposal would repeal the Florida Alien Land Law which currently authorizes the Legislature to regulate or restrict property rights of aliens who are ineligible for citizenship. In addition, the proposal would amend the prohibited bases of government discrimination so that this provision would provide that no person shall be deprived of any right because of race, religion, national origin, or “physical or cognitive disability” (rather than “physical disability”). [NOTE: This proposal is scheduled for consideration by the CRC Declaration of Rights Committee on January 25. It will be heard by the CRC Education Committee on January 26 if received from the Declaration of Rights Committee.]*

[Proposal 30](#) – Basic Rights – sponsored by [Roberto Martinez](#)

*This proposal revises Article I, Section 2 of the Florida Constitution. The proposal would amend the prohibited bases of government discrimination so that this provision would provide that no person shall be deprived of any right because of race, religion, national origin, or “any” disability (rather than “physical disability”). [NOTE: This proposal is scheduled for consideration by the CRC Declaration of Rights Committee on January 25. It will be heard by the CRC Education Committee on January 26 if received from the Declaration of Rights Committee.]*

[Proposal 82](#) – Education – sponsored by [Brecht Heuchan](#)

*This proposal revises Article IX, Section 4 of the Florida Constitution. The proposal would prohibit a school board from setting the opening date for schools in the school district for earlier than seven days before Labor Day each year.*

[Proposal 93](#) – Education -- sponsored by [Roberto Martinez](#)

*This proposal would amend Article IX, Section 4 of the Florida Constitution. The proposal would authorize the school board of a high performing school district to choose to be designated as a charter district that would be exempt from all provisions of the Florida K-20 Education Code in the same manner as a charter school designated by Florida law. A charter district would remain under the governance of the school board.*

*In addition to the above, the Committee will consider one proposal relating to post-secondary education ([Proposal 70](#)). No vote will be taken. No testimony is planned.*