



Take Action: Say “No” to Proposal #40 to Amend Florida’s Constitution

On Thursday, January 25, in Tallahassee, the Declaration of Rights Committee of the Florida Constitution Revision Commission will review Proposal #40. ***The Children’s Campaign joins other child welfare agencies in opposition. This is NOT a measure that should go to voters.***

Some may wonder why a child advocacy group like The Children’s Campaign would oppose providing a constitutional right to counsel for foster kids in dependency hearings. It’s understood that The Children’s Campaign has worked for years to improve the child welfare system, taking on a multitude of issues, private and public agencies, and calling out the shortfalls of both the executive and legislative branches of government.

The Policy Team of The Children’s Campaign has reviewed Proposal #40 thoroughly, the talking points and letters to the editor published by the proposal’s well-organized proponents, and documents which they have cited to bolster their case. There are many problems, questions unanswered, and overreach. Worse, this proposal could actually lead to unintentional consequences that are not in the best interest of children.

Question: In cases where the child’s stated preference and best interest of the child differ, which will the attorney represent? How does client confidentiality relate to the child revealing abuse previously unknown to the state?

Proposal #40 attempts to shift far away from best interest representation of the child under current statutes to direct representation, which allows for an attorney-client relationship. We question those who believe a child could and should direct an attorney! How would a 7-month old, 3-year-old, or 10-year-old with special needs be able to articulate their needs for safety, well-being and what is in their best interest? Worse yet, what if a child wanted to keep something secret, perhaps they’d run away, and no one knew where they were. Under this scenario and this proposal, an attorney could not be compelled by the Court or anyone else to override the child’s wish to keep something secret – that information would be withheld from the Court, the parents, and DCF. Further, how would the child’s legal counsel determine the best interest of the child, and thus faithfully represent that interest, if the child is nonverbal?

Question: It has been stated by some of the proposal’s proponents that the GAL attorney is in the proceedings to represent the GAL. According to F.S. 39.822 (1) a guardian ad litem “represent(s) the child in any child abuse, abandonment, or neglect judicial proceeding, whether civil or criminal.” Following statute, the GAL represents the child and the GAL attorney represents the GAL, how does the proposed Attorney ad Litem (AAL) improve on that model?

It doesn’t. Presently, when a child comes into foster care, the judge orders a Guardian ad Litem appointment, which in turn assigns a Child Advocate Manager, a trained and certified volunteer and a Child’s Best Interest Attorney. What is Child’s Best Interest? The Legislature enacted guidelines, which include among other things, “individual dignity, liberty, pursuit of happiness, and the protection of their civil and legal rights as persons in the custody of the state.” Best Interest Attorneys focus on expediting permanency for children, advocate for proper access or against the administration of psychotropic medications, initiate and appear at administrative hearings regarding denial of services for the child, appeal decisions that are not favorable to the child’s safety, welfare or best interest, and the list goes on.

There’s another important consideration not taken into account by Proposal #40. Shouldn’t we consider children in dependency proceedings victims? Just like many domestic violence or human trafficking victims don’t want to place blame on their perpetrators and many times return to that

situation, children are no different. Children inherently want to be with their parents or parent figures. Under this proposal, if a child wanted to return to their abusive or neglectful home or situation, would that child direct their attorney to represent accordingly? This puts a terrible burden on vulnerable children, their service providers and binds the Courts as well.

Question: Could Proposal #40 harm Florida's highly successful Guardian ad Litem program?

Absolutely. According to talking points which have appeared in the public dialogue, some proponents have stated that this constitutional amendment, if passed, would combine with the existing GAL program and provide children with the best possible representation in the country. **This is a guarantee that can't be made.** The amendment if passed would appear in the Florida Constitution. The GAL program exists in statute. It would be left up to the Florida legislature to determine the method of implementation. In reality, great harm could come to the GAL program if resources are shifted to implement the proposal or other changes made which would have the same or similar impact. Not only is it a massive shift in how children are currently represented, but this proposal takes away any control by the Legislature who has responsibility for child welfare issues. While it is understood that policy-makers have not provided sufficient resources to Florida's underfunded and overwhelmed system, this proposal does not address those shortcomings and could actually make it worse.

Question: Do cases exist where the expertise of other counsel is needed to augment representation already provided to the child, especially those with special needs?

Yes. Consider, however that in 2014 the Legislature created and funded a special needs registry, which provides a right to appointment of an attorney for children with certain special needs – like victims of human trafficking, children who have defined developmental disabilities, those children prescribed psychotropic medications and those who currently live in or are being considered for placement in a skilled nursing facility or residential treatment. To our understanding this registry is working. Further, in a law soon to be passed by the Florida legislature, pro bono attorneys will have their due process costs covered, with the outcome being more attorneys making themselves available to provide additional assistance when needed.

Question: A Palm Beach study is cited by the proposal's backers that implementation of the amendment would be cost neutral. Savings in the child welfare system would cover the additional expected cost of \$40-million to implement the amendment. Is this credible?

Hardly. The study was conducted in 2008, a decade ago, and the "savings" of moving children out of foster care two months earlier in one county have been extrapolated statewide. Why would the appointment of an attorney change which placement option would best for a child? Are they saying that the attorney will have enough oversight to keep a child safe at home that would otherwise be removed? Further, there are serious questions about re-abuse rates and subsequent return to foster care that haven't been addressed to any degree of satisfaction.

Further, the Palm Beach report is transparent in its limitations: where there is limitation in data or other restrictions in methodology, the report acknowledges it. When concrete findings about the impact of the program cannot be made, or when the validity of inferences and presumptions are questionable, the report makes note of this and makes recommendations for further study to answer remaining questions about the program's efficacy or implications on current work. **When the report is read closely, it becomes clear that the blanket efficacy of FCP is not definite by any measure, and that the impact of FCP on parts of the dependency process or its success in other efficacy measures is unknown.**

There are many other questions and concerns in addition to the above. For these and many other reasons, Proposal #40 is not recommended by The Children's Campaign.