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IN THE SUPREME COURT OF FLORIDA

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LOREAN S. EVANS; HENRY McDERMOTT; LUCILLE McDERMOTT; and CHERYL LEE HARRISON,

Appellants,

vs.

Case No. 65,898

GEORGE FIRESTONE, as Secretary of State of Florida; and REASON '84: THE COMMITTEE FOR CITIZENS RIGHTS IN CIVIL ACTIONS, a political action committee,

Appellees.

On Certified Appeal from the First District Court of Appeal

ANSWER BRIEF OF APPELLEE

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Introduction

> We find ourselves obliged to approve the placement of this amendment on the November ballot only because there exists a reasonable basis to view the new sentence as germane to the provision it amends. If the amendment should be adopted by the voters, it may then become our responsibility, in an appropriate case, to harmonize its reach and meaning with other provisions of the Constitution. To attempt at this time an interpretation of the proposal as it relates to other constitutional provisions would be premature.
>
> Smathers v. Smith, 338 So.2d 825, 831 (Fla. 1976) (England, J.)(emphasis added)
>
> Obviously, this language is vague and ambiguous and will require subsequent judicial interpretation, should the Amendment be adopted. The inherent right of the people to adopt amendments to the Constitution permit(s) them to adopt vague and ambiguous amendments, as well as those which are easily understood.
>
> Id. (Boyd, J., concurring specially)(emphasis added)

Placing almost total reliance on this Court's recent decision in Fine v. Firestone, 448 So.2d 984 (Fla. 1984)[1] -- the "Proposition One" case -- appellants urge this Court to deprive the people of Florida of their "inherent right" to amend their Constitution in accordance with the citizens' initiative sponsored under the title "Reason '84."

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[1]Although the majority opinion in Fine expressly receded from certain language in Floridians Against Casino Takeover v. Let's Help Florida, 363 So.2d 337 (Fla. 1978), see 448 So.2d at 988, 989, 990, it cast no doubt whatever on the continuing vitality of the holding in Smathers v. Smith that premature, unnecessary challenges to a proposed constitutional amendment will not be entertained by the Court. Indeed, Smathers v. Smith is not even cited in Fine.

The result in Fine v. Firestone seems to have been largely based on the articulated premise that the one-subject limitation requires a determination "whether the proposal affects a function of government" and the unarticulated premise that an approving vote for Proposition One prior to a legal test of its validity would have created chaos in governmental fiscal planning. The present case involves neither of those considerations.

In Point I of this brief, appellee will address appellants' argument that the Reason '84 initiative violates the "one subject and matter directly connected therewith" restriction imposed by article XI, section 3, of the Florida Constitution. Appellee will further argue that the "function of government" test is not involved here because the proposal amends only the Declaration of Rights and does not substantially affect other portions of the constitution. Finally, appellee will demonstrate the absence of any compelling need to test the constitutionality of the Reason '84 proposal in advance of its submission to the people for approval or rejection; rather, the arguments against the proposed amendment can best be weighed "in an appropriate case"[2] and not in a vacuum.

In Point II appellee will answer appellants' contention that the initiative should be removed from the ballot because the title and ballot summary are deceptive under the test announced by this Court in Askew v. Firestone, 421 So.2d 151 (Fla. 1982).

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[2]338 So.2d at 831.

Point III responds to appellants' due process challenge, which the trial court declined to pass upon.

ARGUMENT

I. THE PROPOSED CONSTITUTIONAL INITIATIVE FULLY COMPLIES WITH THE "ONE SUBJECT" LIMITATION OF ARTICLE XI, SECTION 3.

History of the Initiative Provision

Appellants introduce their argument to the Court by saying that "it insults the Court's intelligence to iterate here facts or commentary regarding the evolution of Article XI, Section 3 in the scheme of Florida's history." Solely because of that preface, appellee introduces its submission to the Court with the next observations.

Article XI, section 3, in its present form, was approved by the people of Florida in November, 1972. For the next four years, this Court had no occasion to address the people's purpose in amending the initiative section of article XI. Then, in October of 1976, Weber v. Smathers, 338 So.2d 819 (Fla. 1976), presented the first opportunity for the Court to evaluate that purpose. On that occasion, the concurring opinion of Justice England offered mild rebuke because the parties offered no historical data:

> Neither offers us any precise historical data as to why this limiting phraseology was selected when it was adopted by the Legisla-

> ture and submitted to the people for their approval in 1972.[3]

Appellee has reviewed the Court's subsequent opinions through Fine v. Firestone construing the 1972 amendment to the initiative section and does not find that any prior party has made the 1972 historical materials available to the Court. Because of their obviously important bearing on the first issue argued in this brief, appellee tenders them to the Court.[4]

* * *

Prior to the 1968 revision of the Florida constitution, there was no provision for amending the Constitution by a citizens' initiative.[5] The Revision Commission's proposal for an initiative, omitting the method to be followed, was succinctly stated:

> The power to propose amendments to any section of this constitution by initiative is reserved to the people.

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[3]Justice England tempered his rebuke, in footnote, by pointing out that "the time available to develop arguments and resource material germane to this case was extremely limited." 338 So.2d at 822. Since that time, the same judicial reprieve has not been available. All counsel in Floridians and Fine had unlimited time to present that resource material. Strangely, none did.

[4]Appellee has filed with the Court a certified copy of all Archives material preserved with the file of the 1972 amendment and has reproduced significant excerpts in its appendix to this brief.

[5]D'Alemberte, commentary to Art. 11, §3, 26A F.S.A. at 548.

The initiative section was thought to have been a major factor in the support the 1968 constitution received at the polls.[6] One group that supported the 1968 revision emphatically stated: "This inclusion of an initiative procedure in the proposed Constitution was one of the major reasons for the Florida League's enthusiastic support and work for its successful passage."[7]

Nonetheless, the first judicial interpretation of the initiative section severely limited its usefulness. In Adams v. Gunter, 238 So.2d 824 (Fla. 1970), this Court held that an initiative proposal for a unicameral legislature was invalid because it required amendment of numerous other sections of the constitution. Writing in dissent, Chief Justice Richard Ervin deplored the restrictive interpretation placed on the initiative process by the Court, admonishing:

> The great danger here to public morale is in denying to the people what plainly was indicated to them in the proposed 1968 Constitution: that they were given the power to initiate substantial germane changes to any section or sections of the Constitution, not merely watered-down minuscule ones which would never substantially affect any other section or article of the Constitution. Such a judicial delimitation upon the power of the

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[6]Memorandum to Florida news media from Representative Sandy D'Alemberte, October 4, 1972 (A 20). Contemporaneous writings submitted to the voters are useful in determining intent. In Re Advisory Opinion, 343 So.2d 17, 22 (Fla. 1977).

[7]Statement of The League of Women Voters of Florida to the Judiciary Committee, Florida House of Representatives, in support of an initiative amendment to the Florida Constitution, January 10, 1972 (A 18).

> people to meaningfully exercise the initiative function ties their hands in making any material changes in the Constitution.
>
> * * *
>
> The great pity produced in the majority opinion is that the people believed in adopting the 1968 Constitution they had the power to initiate major changes in the Constitution; that they had a "club in the closet", so to speak, to use when all other instrumentalities and sources for organic change failed to materialize.

238 So.2d at 834-35.

The 1972 session of the Florida Legislature moved swiftly to write Justice Ervin's views and those of the other dissenter, Justice Joseph Boyd, into the Constitution. On February 24, 1972, Representative D'Alemberte explained the purpose of House Joint Resolution 2835 on the floor of the House:

> MR. D'ALEMBERTE: Mr. Speaker, ladies and gentlemen, one of the points on which the 1968 Constitution was sold to the people of Florida was that they would have the right to amend the Constitution themselves, that it would not have to go through the cumbersome procedure. If you go back and read the comments that many of us made to the people through the press or individually in speeches, you'll find that we, many of us thought that the people had the right to revise the Constitution. A circuit judge in Orlando thought the same thing and ruled on the first attempt to use the initiative procedure that this could be done. The Supreme Court disagreed, however; there were several dissenting opinions, and Justice Ervin expressed the opinion which I now express to you, that the people thought they were getting this right. Here's the way to give them the right to amend the Constitution, and I urge you to vote for

House Joint Resolution 2835. (Emphasis added)[8]

As proposed by the legislature and approved by the people at the 1972 general election, House Joint Resolution 2835 provided in relevant part as follows:

> 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 shall embrace but one subject and matter directly connected therewith.

The foregoing history amply shows that the people's purpose in 1972 was to establish their reserved right to initiate constitutional changes without regard to their effect upon other portions of the constitution so long as each change related to a single subject "and matter directly connected therewith."[9]

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[8]Transcript of floor debate tape of the House of Representatives dated February 24, 1972 (A 10).

Rep. D'Alemberte later gave further explanation of the purpose of the 1972 amendment to article XI, section 3, in a memorandum to the news media (A 20-21):

> "In 1970, the Florida Supreme Court ruled that under the present wording of Article XI, Section 3, the people cannot, by petition, initiate amendments which change more than one section of the new constitution. This interpretation largely nullifies the use of the initiative procedure since most changes in the constitution affect more than one section of the constitution.
>
> "To restore the full use of the initiative procedure to the Florida Constitution, the 1972 Legislature adopted the proposed language that appears on the ballot as question number three. This proposed change passed the Senate 32-9 and the House of Representatives 97-0."

[9]This Court has not yet been called upon to establish parameters for "matter directly connected therewith." For example, in Weber v. Smathers, 338 So.2d 819, 823 (Fla. 1976), Justice England's concurring opinion noted that the issue before the

The Present Case and Prior Precedents

In the present case, appellants contend that the Reason '84 proposal is not confined to related matters and therefore violates article XI, section 3. Reason '84 maintains that the proposed amendment fully complies with the related matter requirement because: (a) it merely adds one provision to the Declaration of Rights of the Florida Constitution and (b) it contains a logical and natural unity of purpose that allows a voter to make an unequivocal expression of approval or disapproval of the entire initiative.

The proposed amendment is simple and straightforward in content.[10] It contains one elementary concept dealing with the rights of parties in civil litigation: (1) it provides that a party in a lawsuit shall not be required to pay more damages than he is responsible for personally; (2) it requires the trial courts to enter summary judgment when there is no genuine dispute of material fact; and (3) it limits the noneconomic damages that may be awarded to a party to a maximum of $100,000.00. In short,

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Court involved "the number of 'subjects' in the proposal before us and not its peripheral 'matters.'"

[10]The initiative provides:

> In civil actions: a) no party can be found liable for payment of damages in excess of his/her percentage of liability; b) the Court shall grant a summary judgment on motion of any party, when the Court finds no genuine dispute exists concerning the material facts of the case; c) noneconomic damages such as pain and suffering, mental anguish, loss of consortium, and loss of capacity for enjoyment of life shall not be awarded in excess of $100,000 against any party.

the single subject addressed by the proposed amendment, as determined by the trial court, is "Citizen's Rights in Civil Actions," and the matters directly connected therewith impose limitations upon the right to recover damages in civil actions. All three subparts are directly connected with the single subject.

The recent case of Fine v. Firestone, 448 So.2d 984 (Fla. 1984), expresses the governing law to be applied in determining whether the proposed amendment violates article XI, section 3. In that case this Court held that the proposed "Citizens Choice on Government Revenue" amendment clearly violated the "single subject" requirement and ordered it removed from the ballot. The Court found that the proposal included at least three different subjects (tax revenue, user-fee services, revenue bonds), each of which would affect a separate existing function of government. It thus violated the "rule of restraint" incorporated in the initiative amendment process by proposing multiple changes in the functions of our governmental structure. In reaching its conclusion on the merits, the Court receded from certain language in the earlier case of Floridians Against Casino Takeover v. Let's Help Florida, 363 So.2d 337 (Fla. 1978), where the Court rejected a similar challenge to a proposed initiative authorizing state-regulated casino gambling and allowed that proposal to be considered by the electorate on its merits.

Fine represented the latest in a series of decisions construing article XI, section 3 in its present form. There are two important cases prior to Fine: Weber v. Smathers, 338 So.2d

819 (Fla. 1976) and Floridians Against Casino Takeover v. Let's Help Florida, supra.

In Weber v. Smathers the majority upheld a proposed initiative amendment providing for financial disclosure by public officials and candidates (the "Sunshine Amendment"). The Court concluded with little analysis that the proposed Sunshine Amendment was sufficiently complete within itself and required no other amendment to effect its purpose. In his concurring opinion, Justice England stated that the one subject limitation was designed to place a "functional" as opposed to "locational" restraint on the range of authorized amendments.

The second pre-Fine case was Floridians Against Casino Takeover v. Let's Help Florida, supra, in which the majority upheld a proposed casino gambling amendment challenged as being in violation of the "single subject" requirement. The majority expressly adopted the functional test proposed earlier by Justice England and concluded that the gambling initiative possessed the requisite functional unity to pass muster under the "single subject" requirement even though the text of the proposed amendment itself concerned two different subjects, gambling and revenue.

Finally, in Fine v. Firestone, supra, the Court held that the proposed revenue amendment affected separate, distinct functions of the existing governmental structure of Florida and was therefore invalid. The majority went on to explain that the single subject requirement was primarily intended to allow the citizens to vote on singular changes in government that are iden-

tified in the proposal and to avoid "logrolling," i.e., requiring voters to accept part of a proposal they oppose to obtain a change they support. The majority expressly receded from language in Floridians that the Court had no role in assessing whether an initiative proposal conflicts with other parts of the constitution.

Although Fine is the latest expression of this Court on the meaning and proper application of the "single subject" requirement, the concurring opinions reflect the difficulty in applying its rationale to specific initiative proposals. Whereas the majority opinion reaffirmed the Court's earlier conclusions that both Weber and Floridians dealt with single subjects,[11] the concurring opinions expressed concern that the very broadness of a proposal might violate the spirit of article XI, section 3. [12]

The difficulty here is that virtually anything can be cast as one subject capable of semantic definition.[13] The spon-

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[11] The single subject in Weber was "ethics in government;" in Floridians, it was "legalized casino gambling."

[12] "The very broadness of the proposal makes it impossible to state what it will affect and effect and violates the requirement that proposed amendments embrace only one subject." McDonald, J., concurring, 448 So.2d at 995. "The limits of the initiative are not clear and the scope of the single word 'revenue' is so broad that citizens might well approve of limitations on one source of revenue while contrarily disapproving of limitations on other sources." Shaw, J., concurring in result only, 448 So.2d at 998.

[13] One is reminded of the spoof about the speedreader who had just finished "War and Peace" and was asked what the book was about. He responded: "It's about Russia."

Justice Shaw's opinion, concurring only in the result in Fine, made essentially the same point: "The subject of the

sors of Proposition One defined their single subject as government revenue, but the Court found the proposal to encompass three distinct subjects (tax revenue, user-fee services, revenue bonds).

In the present case, the trial judge correctly characterized the Reason '84 proposal as being limited to a single subject, saying:

> The title or the subject that's given is "Citizens' Rights in Civil Actions." Citizens' rights include both those who initiate lawsuits, and those who are defending them, and those who are brought in by some other method. It means their rights.
>
> And then it delineates three things that are defined as rights in civil actions. First, that no party can be found liable for payment of damages in excess of his or her percentage of liability. That is a definition of a limitation upon the damages that one may be required to respond to in proportion to the extent of their liability.
>
> Second, that the court shall grant a summary judgment on motion of any party when the court finds that no genuine dispute exists concerning the material facts in the case. That does take what has been an existing rule and puts it into a constitutional setting. There is a right to a summary judgment if there is no genuine dispute concerning material facts.
>
> And third, that it would be a limitation upon the recovery of what they call noneconomic damages, to the extent that it could not be in excess of $100,000 against any party.

Constitution, for example, might be described as government or political science. If we were faced with an initiative so broadly titled which extensively revised our governmental structure, could we in good conscience hold that the initiative met the one-subject limitation?" 448 So.2d at 998 n.1.

> That is the objective that the proposed amendment would do. It would accomplish those three things. They are all related to citizens' rights in civil actions. And I think that they are matters that -- that it is a single subject and matters directly connected to it. (A 2-3).

Thus, the trial judge found that the proposed amendment fully complies with the law developed in Fine and prior decisions and is significantly distinguishable from the Revenue Amendment removed from the ballot in Fine.

First, the Reason '84 amendment would simply add a new section to Article One, Declaration of Rights.[14] It would leave unchanged all other portions of the constitution; its purpose is to define rights placed in the constitution for the first time. Even the summary judgment provision only reflects the current law of summary judgments and would constitutionalize a procedure now provided for by the Rules of Civil Procedure.

Next, the proposed amendment does not affect any function of government; it merely defines the criteria by which damages are to be determined in civil actions and continues the courts' present authority to issue judgment prior to trial in certain cases where no genuine dispute exists. Significantly,

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[14] In the trial court counsel for appellants argued that a citizens' initiative could not propose repeal of article I, section 9, of the Declaration of Rights in the Florida Constitution because that section deals with more than one subject (Tr. 90). If that argument is correct, then a fraud of massive proportions has been committed against the people of Florida. Such an initiative was clearly permissible under article XI, section 3, of the 1968 Constitution, and the 1972 amendment has been found by this Court to have enlarged the right to amend the Constitution by initiative petition. See footnote 16, infra.

the proposed amendment is not intended to alter the existing functions or structure of government in any meaningful way.

Finally, and most importantly, the proposed amendment evinces a logical and natural unity of purpose and simplicity of meaning clearly perceptible by the average voter. It is designed to accomplish substantive changes limiting the recovery of damages in civil actions and directing courts to make an expeditious determination of the merits of an action where there is no genuine issue of material fact. In other words, the proposed amendment possesses the requisite unity of purpose of materially altering the recovery of damages in civil actions and says so in easily understood language.[15]

Disagreeing, appellants condemn the Reason '84 initiative as a logrolling amendment. At page 16 of their initial brief, they construct an example they say illustrates the "Hobson's choice" presented by Reason '84. But the example is both contrived and fallacious. The best evidence that Reason '84's proposal is not logrolling comes from the daily tirade directed at it. Its vocal opponents want no part of it -- a), b) or c). This is not a case, as Floridians, in which one might conclude (although this Court did not) that an opponent of casino gambling would vote for its proposal to gain tax revenues for schools and law enforcement. The present initiative daily

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[15]The "unity of purpose" requirement has played the most significant role in amending the Florida Constitution since City of Coral Gables v. Gray, 19 So.2d 318, 320 (Fla. 1944), was decided 40 years ago.

displays a oneness of purpose that divides the constituencies of two different professions. It is the antithesis of logrolling.

The Reason '84 initiative meets the more restrictive test imposed by former section 3 of article XI as construed in Adams v. Gunter;[16] it passes muster under this Court's opinions in Weber and Floridians; and it fully complies with the rationale of Fine v. Firestone.[17] In short, its proposal at any time between 1969 and 1984 would have squared with constitutional requirements for a citizens' initiative.

Unlike the revenue proposal in Fine, the Reason '84 proposal involves no compelling reason for testing its constitutionality in advance of its submission to the people for approval or rejection. In Fine, Justice McDonald's concurring opinion notes that "during oral argument, counsel admitted that he had no idea of what would be the extent of the effects of the proposed amendment, either now or in the future." 448 So.2d at 995. But the petitioner's brief in the Fine case supplies the

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[16]This Court has held that the purpose of the 1972 amendment after Adams v. Gunter was to "enlarge the right to amend the Constitution by initiative petition." Floridians, 363 So.2d at 340.

[17]Indeed, the Reason '84 proposal serves both purposes expressed in Justice Shaw's concurring opinion in Fine: "1. Ensuring that initiatives are sufficiently clear so that the reader, whether layman or judge, can understand what it purports to do and perceive its limits. 2. Ensuring that there is a logical and natural unity of purpose in the initiative so that a vote for or against the initiative is an unequivocal expression of approval or disapproval of the entire initiative." 448 So.2d at 998.

real urgency there present, unarticulated in the Court's majority opinion:

> The Court needs no fact-finding tribunal to know what everyone in the state knows, namely that governments at all levels in Florida are either paralyzed or plagued with the imminence of the November vote, and that expense, time and human resources are being marshalled not to carry on the orderly functions of government, but to deal with the prospect of its possible passage. For example, the Court can take judicial notice that Governor Graham and legislative leaders have announced that no new taxes will be proposed for the 1984 Regular Session of the Legislature, not because the fiscal needs are absent but because of the overhanging threat of this proposed revenue-limiting amendment.[18]

So, too, can the Court take judicial notice that no governmental planning is being affected by the current public debate between the political action committees of the Academy of Florida Trial Lawyers and the Florida Medical Association.

This case more closely resembles Smathers v. Smith than it does Fine v. Firestone. In the former case, citizen Smith asserted multiple reasons why a legislatively proposed constitutional amendment should not be allowed to go to a popular referendum. The Court's portrayal of the issues presented is quoted as follows:

> Smith asserts several reasons why the proposed amendment is improper. He suggests that its language is unclear, its meaning obscure and its purpose too vague; that the Legislature lacks power to propose as a constitutional amendment a revision of

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[18]Brief of Petitioner Martin Fine, Case No. 64,739, at 9.

> governmental powers as sweeping and broad as he contends this amendment contains; that the amendment would violate the 'one person-one vote' guarantee of the Fourteenth Amendment of the United States Constitution; that the notice of the contents of the amendment which would appear on the ballot violates Section 101.161, Florida Statutes (1975); and that the amendment is inadequate to inform the public of the substantial shift in governmental power which it would effect. . . .
>
> * * * *
>
> The Attorney General, of course, refutes all of Smith's contentions, and further suggests that the defects alleged are in any event not the proper subject for judicial intervention at this stage. This admonition cannot be ignored, and we approach the subject matter of the case mindful of our limited role in reviewing constitutional proposals which have been adopted by the Legislature for direct submission to the people.[19]

338 So.2d at 826 (emphasis added).

The charges leveled by citizen Smith at the proposed amendment involved there are not dissimilar from those brought by the present appellants against the Reason '84 initiative. For example, appellants' counsel argued below that the Reason '84 proposal is to be condemned for its impact on four existing sections of the present Constitution.[20]

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[19]Emphasis of the words "which have been adopted by the legislature" -- an obvious distinguishing characteristic between that case and this one -- has been purposely omitted because the quotation is intended for a different focus.

[20]Article V, section 2(a); article I, section 21; article I, section 22; article X, section 13.

As to the first of those existing constitutional provisions, citing Sherrod v. Franza, 427 So.2d 161 (Fla. 1983), appellants argue that subpart b) of the Reason '84 proposal would create a right to seek review of an order denying summary judgment.

But those potential and incidental effects of a proposed amendment are precisely the kind that was called premature in Smathers v. Smith. The Court said so:

> If the amendment should be adopted by the voters, it may then become our responsibility, in an appropriate case, to harmonize its reach and meaning with other provisions of the Constitution. To attempt at this time an interpretation of the proposal as it relates to other constitutional provisions would be premature.

338 So.2d at 831 (emphasis added).

The same commentary is appropriate in this case, and the same result should be reached.

II. THE BALLOT SUMMARY MEETS THE REQUIREMENTS OF §101.161, FLORIDA STATUTES.

Appellants further contend that the Reason '84 initiative should be removed from the ballot because it fails to summarize the substance of the amendment in clear and unambiguous language as required by section 101.161, Florida Statutes. The statute provides in relevant part:

Because Sherrod v. Franza involved the propriety of a writ of prohibition to remedy denial of a constitutional right, that argument is dubious at best, but surely premature.

As to the second (article I, section 21), appellants complain that subpart c), imposing a $100,000 cap on noneconomic damages, would collide with Kluger v. White, 281 So.2d 1 (Fla. 1983), which required a reasonable alternative form of redress upon abolition of certain rights. The short answer to that criticism is that a cap on damages abolishes nothing. Jetton v. Jacksonville Electric Authority, 399 So.2d 396 (Fla. 1st DCA 1981); see also Cauley v. City of Jacksonville, 403 So.2d 379, 385 n.12 (Fla. 1981). But that argument is equally premature.

> "Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of each 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....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. 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...." (emphasis added)

This Court has considered the same argument that a ballot summary did not adequately give notice of the chief purpose of a proposed constitutional amendment in two recent cases, Askew v. Firestone, 421 So.2d 151 (Fla. 1982), and Grose v. Firestone, 422 So.2d 303 (Fla. 1982). The results reached in those cases support the judgment now being reviewed.

In Askew v. Firestone, the Court considered a proposed change in the Sunshine Amendment, article II, section 8, to the Florida Constitution.[21] The proposal, originated by the legislature, included both an addition to and a repeal of part of the existing amendment prohibiting legislators and other public officers from lobbying their former governmental bodies or agencies for two years after vacating office. The new amendment would have authorized such lobbying, but only after financial disclosure. The ballot summary neglected to advise the public that

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[21]The Sunshine Amendment itself was the subject of this Court's consideration in Weber v. Smathers, supra.

there was an existing two-year ban on lobbying and that the chief purpose of the amendment was to abolish the total prohibition. This Court held the title and ballot summary deficient for those reasons, stating that the summary was misleading and did not give the electorate fair notice of the actual change in the existing constitution.[22]

In one sense, Askew v. Firestone was the reverse of the Reason '84 situation. There it was a citizens' initiative that caused the people to adopt the Sunshine Amendment as part of the state constitution and it was the legislature that sought to dilute what the people had earlier approved without fairly stating the chief purpose of the new measure. Here, another citizens' initiative seeks to overcome legislative inertia[23] within the realm of citizens' rights in civil actions.

The result in this case should be controlled by Grose v. Firestone. There the ballot summary was held to be in compliance with the statutory requirement in that it adequately

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[22]The majority opinion states an important distinction between the proposal in Askew v. Firestone and the one sponsored by Reason '84: "Had SJR 1035 not been an amendment to an existing provision, if it had been a totally new provision, its ballot summary and title would probably have been permissible." 421 So.2d at 156.

[23]The Court judicially knows that the subject matter of the Reason '84 proposal was presented to the legislature at the 1983 and 1984 sessions without positive results. Thus, this case presents a classic illustration of the circumstance spoken of by Justice Ervin in his dissenting opinion in Adams v. Gunter: "(T)he people believed. . .that they had a 'club in the closet', so to speak, to use when all other instrumentalities and sources for organic change failed to materialize." See discussion at pp. 5-6, supra.

disclosed the chief purpose of the proposed amendment, i.e., the right to be free from unreasonable searches and seizures. The challengers to the ballot summary contended it was defective because it did not adequately describe all possible future effects of the amendment. The Court held the ballot summary valid because the chief purpose was clearly stated, giving the voters fair notice of the meaning and effect of the proposal. The Court held that inclusion of all possible future effects is not required.

Reason '84's ballot summary clearly sets forth the chief purpose of the proposed initiative: constitutional recognition, for the first time, of citizen's rights in civil actions. Appellants have detailed each area of the law which they believe might be affected by the passage of this amendment. Even assuming their concerns were valid, it is clear that the Court does not require that all possible effects of the proposed amendment be included in a ballot summary. Obviously, if that were required, the summary would not be limited to 75 words in length as prescribed by section 101.161.

The rationale for the "chief purpose" requirement and the Court's strong position that all possible effects of a proposed initiative are not required to be enumerated is expressed in two cases cited by the Court in Askew. In Hill v. Milander, 72 So.2d 796 (Fla. 1954), the Court found that inclusion of the whole proposal was not mandatory because a voter might be apprised of all issues through the media and other means of communication. In Miami Dolphins v. Metropolitan Dade County,

394 So.2d 981 (Fla. 1981), the Court again emphasized that not every aspect of a proposal need be explained in the voting booth because:

> It is a matter of common knowledge that many weeks are consumed, in advance of elections, apprising the electorate of the issues to be determined and that in this day and age of radio, television, newspaper and the many other means of communicating and disseminating information, it is idle to argue that every proposition on a ballot must appear at great and undue length.

394 So.2d at 987 (quoting Hill v. Milander, 72 So.2d at 798).

By their Point II, appellants essentially argue that the ballot summary must do more than advise voters of the amendment's chief purpose, even to the point of addressing particular effects. This is not the law of Florida. In Smathers v. Smith, supra, the Court refused to speculate on future implications of a proposed amendment in advance of its adoption, holding that "(i)f the amendment should be adopted by the voters, it may then become our responsibility, in an appropriate case, to harmonize its reach and meaning with other provisions of the Constitution." 338 So.2d at 831. Although that decision disposes of appellants' specific criticisms in their Point II, Reason '84 will briefly respond to each one.

(a) Appellants argue that the ballot summary erroneously states that the amendment "establishes citizen's rights in civil actions" when in fact it would curtail citizen's rights in civil actions. This is untrue. At the present time, any rights the citizens possess with respect to civil actions have developed from common law and statute, not constitutional

mandate. That which the legislature and courts grant, they may also take away. Fla. Stat. §2.01. See also, Sibley v. Board of Supervisors of Louisiana State University etc., 446 So.2d 760 (La. App. 1st Cir. 1983). Thus, causes of action and citizen's rights in civil actions, which are creatures of statute and common law, are subject to change at the discretion of the legislature and the courts.[24] The proposed constitutional initiative for the first time freezes the enumerated rights in constitutional concrete. These rights, unlike legislative enactments or court decisions, cannot later be limited or abrogated by statute or judicial decision. The constitutional initiative would elevate these rights to a constitutional level, in effect guaranteeing citizens greater rights than they now enjoy.

(b) Appellants argue that the ballot summary is misleading in that it refers to a jury awarding damages (rather than a judge). Whether a judge or jury renders the damage award is totally irrelevant and insignificant. Certainly it cannot matter to a voter and it is not misleading or ambiguous.[25]

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[24]E.g., Hoffman v. Jones, 280 So.2d 431 (Fla. 1973) (Court supplanted the common law doctrine of contributory negligence with rule of comparative negligence); Gates v. Foley, 247 So.2d 44 (Fla. 1971)(Court modified common law to allow wife to recover damages for loss of consortium).

[25]The trial judge found as follows in announcing his ruling:

> "Perhaps it would have been better if they hadn't put 'jury' in, but I don't think that's misleading. I think that's merely what it does do." (A 3-4)

(c) The ballot summary correctly states that the amendment will require courts to dispose of lawsuits when no dispute exists over any material fact, thus avoiding unnecessary costs.

While the current Rule of Civil Procedure adopted by this Court, Rule 1.510, does require that summary judgment be granted when there is no dispute over material facts, one purpose of enacting this provision into a constitutional amendment is to require greater control by the judiciary over litigation. By mandating the application of summary judgment where there are no disputes over material facts, the early termination of what might otherwise be unnecessarily lengthy and costly litigation is guaranteed.

An analogous movement can be seen in the recent adoption by the federal courts of a rule requiring a pre-trial conference within 90 days after suit is filed. At this conference, the parties must define the issues which are to be litigated, set a timetable for discovery, and discuss the possibility of settlement. This rule gives the judge much greater control over the litigation process, and is designed to hasten disposition of the case where there are no material facts in dispute. The end result of both the federal rule and the proposed constitutional amendment is to streamline litigation in an overworked court system. This, of course, would cut down on "unnecessary costs," as the ballot summary language states.

(d) The ballot summary accurately states that the amendment "allows full recovery of all actual expenses such as

lost wages, accident costs, medical bills, etc. but limits noneconomic damages to a maximum of $100,000."

Appellants assert that use of the word "allow" in the ballot summary is misleading because the amendment itself says nothing about allowing full recovery of expenses and would not affect situations in which recovery is now proscribed by law. To have stated that there was a limitation on noneconomic damages without also indicating that economic damages are "allowed" and unaffected would have been to mislead the public. See, Askew v. Firestone, supra.

Moreover, there can be no confusion about the use of the word "allow". To "allow" something to be done is "to acquiesce in or tolerate...." City of Eastlake v. Ruggiero, 220 N.E. 2d 126 (Ohio Ct. App. 1966). The proposed amendment places a ceiling on the recovery of noneconomic damages in a civil action. Reason '84 therefore found it imperative that the ballot summary make clear that the amendment places no ceiling on the recovery of actual expenses and that the amendment will fully acquiesce in or tolerate the law as it presently exists in that regard. The word "allow" has no rigid or precise meaning and its meaning will vary according to the context in which it is used. Id.; see also Johnson v. State, 251 N.W. 2d 834, 836 (Wis. 1977) (holding that the word "allow" denotes "acquiescence or toleration of a given situation" (emphasis added)); State v. American Alkyd Industries, 107 A.2d 830 (N.J. Super. 1954) (citing to Webster's and approving the use of the word as a synonym for "approve" or "acquiesce" or "does not prohibit"). The concept of

economic damages being "allowed" in the summary enlightens rather than misleads the public.[26] The public is given notice of the amendment's acquiescence in the state of the law as it exists with regard to the recovery of actual expenses.

Some of appellants' other criticisms -- that "noneconomic damages" are not defined and that the summary does not state whether punitive damages are recoverable in excess of the $100,000 cap -- are questions to be determined in a proper case if the amendment is adopted.

Finally, the Court should note that appellants' real purpose is not to assure that the voters are accurately advised of the purpose of this constitutional initiative; what they seek by this litigation is to deprive the voters of expressing their choice.

In the trial court, Reason '84 counterclaimed for alternative relief in the event the court found the ballot summary to be misleading, asking that the entire 79-word amendment be substituted on the ballot in place of the 75-word summary. Incredibly, appellants opposed that suggestion, maintaining their position that striking the initiative from the ballot was the only appropriate relief. The trial judge's finding that the ballot summary was not misleading effectively mooted the counter-

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[26]The trial judge so found: "It goes (on) and says it allows full recovery of all actual expenses, such as lost wages, accident costs, medical bills, and so forth. I think that is really enlightening, because the amendment itself does not mention that you could recover this. And I think this makes it clear that those are not being disturbed, but that it limits noneconomic damages to a maximum of $100,000." (A 4)

claim; but the point made here is the same as that made by Justice Overton's concurring opinion in Askew v. Firestone: the correction of misleading language is a preferable alternative to the "extraordinary power of striking an amendment from the ballot." 421 So.2d at 157.

III. APPELLANTS' DUE PROCESS CHALLENGE IS NOT A JUSTICIABLE ISSUE IN THIS CASE.

Both in the trial court and here, appellants have argued that the Reason '84 initiative should be removed from the November ballot because the substance of the proposal violates the due process clause of the federal constitution.[27] Reason '84 countered that such a challenge is premature at this time. The trial judge agreed, stating:

> THE COURT: I guess we should put in there that I'm not passing on due process and equal protection. I don't think it's necessary for me to pass on due process and equal protection.
>
> MR. SHEVIN: Can we just put that you're deferring that at this time?
>
> THE COURT: Just say I don't think it's necessary for proceeding. (A 5)

The precise issue was presented in Grose v. Firestone, supra. There opponents of a proposed constitutional amendment relating to the right to be free from unreasonable searches and seizures brought an action seeking to enjoin the

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[27]Below, appellants also asserted an equal protection challenge but have not argued that ground in this Court.

secretary of state from placing the proposal on the ballot. One of the grounds for challenge was that the proposed amendment was unconstitutional because it unlawfully delegated legislative authority. The same trial judge refused to entertain that argument, and this Court affirmed, holding:

> Appellants' argument that the substance of the amendment is unconstitutional is not a justiciable issue in this case and may be raised in an appropriate proceeding in due course when the issue is property presented.

422 So.2d at 306. Concurring, Justice Adkins made the same point:

> Appellants have also tried to argue that the proposed amendment is unconstitutional. No judgment may be made by this Court on the wisdom of the proposed measure and the trial court was correct in refusing to examine the measure on this basis.[28]

The wisdom of the Court's ruling in that regard appeared in the epilogue to Grose. In State v. Lavazzoli, 434 So.2d 321 (Fla. 1983), after the people approved the amendment to article I, section 12, which the Court had refused to strike from the ballot, the Court held that the amendment would not be retroactively applied. The present appellants have the same problem in trying to show that they are presently affected by a proposed constitutional amendment. A denial of due process can occur only within the context of present or past litigation.

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[28] Id. Similarly, in Smathers v. Smith, supra, the Court limited its review to the question whether an amendment was proposed in conformity with article XI of the Florida Constitution and refused to consider other alleged defects.

Because appellants' due process argument is clearly foreclosed at this time by the holding in Grose, and because the trial court did not pass on the argument, appellee will omit argument on the merits of Point III.[29]

IV. UNLESS THIS COURT ORDERS A CHANGE IN THE BALLOT LANGUAGE, THERE IS NO COMPELLING REASON TO PASS UPON THE ISSUES PRESENTED PRIOR TO NOVEMBER 6.

The appeal papers lodged here reflect that both sides have cooperated in urging expedited consideration by this Court. But the parties have different reasons for seeking expedited treatment.

Appellants, of course, understandably seek an expedited decision ordering the Reason '84 initiative off the November ballot -- a result not normally possible under conventional appellate scheduling.

Appellee, on the other hand, perceives no need for a swift ruling unless the Court reverses the trial judge's determination that the ballot summary complies with the requirements of law. In that event, appellee has suggested that any deficiency in the summary can be corrected by an order to replace the summary with the language of the amendment itself.

The other points raised by appellants simply do not justify a fast track of appellate review. The due process chal-

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[29]Appellee's response to the due process argument on its merits is set forth at pages 15-17 of its memorandum of law filed with the trial court.

lenge clearly presents no justiciable issue at this time. While the single subject argument just as clearly is justiciable now, no compelling reason has been advanced to show why that issue should be resolved now instead of being raised in an appropriate case when the potential effects of this amendment on other portions of the constitution can be evaluated in more deliberate fashion. That was the route considered appropriate in Smathers v. Smith; it is equally appropriate here.[30]

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[30]As noted above, at page 13, this case does not present the urgency suggested by Fine v. Firestone, where the petitioner importuned that "governments at all levels in Florida are either paralyzed or plagued with the imminence of the November vote." It should also be noted that the Fine case presented adequate time for briefing and argument in this Court before the drastic sanction of removing an initiative from the ballot was ordered.

CONCLUSION

Applying the tests required by Fine v. Firestone, the trial judge concluded that the present initiative satisfies all constitutional and statutory requirements for being submitted to a vote of the people. His judgment is correct and should be affirmed.

Alternatively, should this Court find the ballot summary to be ambiguous or misleading, the Court should order that the language of the amendment be substituted for the summary.

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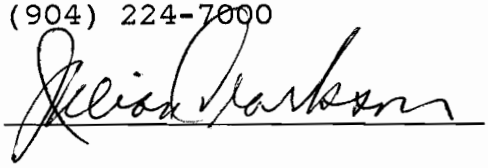

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to Barry Richard, ROBERTS, BAGGETT, LaFACE, RICHARD & WISER, 101 East College Avenue, Tallahassee, FL 32302; and Arthur England, FINE, JACOBSON, BLOCK, ENGLAND, KLEIN, COLAN & SIMON, 2401 Douglas Road, Miami, FL 33134, this 28th day of September, 1984.

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