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SUPREME COURT
STATE OF FLORIDA

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

Appellants,

vs.

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

Appellees.

CASE NO. 65,898

INITIAL BRIEF OF APPELLANTS

On Certified Appeal from the
District Court of Appeal for the First District.

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STATEMENT OF THE FACTS AND CASE

[Due to the abbreviated briefing schedule, this brief is being filed before the Record on Appeal has been prepared. Consequently, no references to the record are included. However, all representations in this Statement of the Facts and Case are undisputed.]

Defendant/Appellee, REASON '84, THE COMMITTEE FOR CITIZENS RIGHTS IN CIVIL ACTIONS, is a political action committee registered with the Secretary of State pursuant to Section 106.03, Florida Statutes. On April 2, 1984, Reason '84 submitted to the Secretary of State an initiative petition form for amendment of the Florida Constitution. The petition included the following amendment language:

CITIZEN'S RIGHTS IN CIVIL ACTIONS

> 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 anquish, loss of consortium, and loss of capacity for the enjoyment of life shall not be awarded in excess of $100,000 against any party.

The petition included the following ballot title and summary:

CITIZEN'S RIGHTS IN CIVIL ACTIONS

> Amendment establishes citizen's rights in civil actions: provides a party in a lawsuit shall not be required to pay more damages than the jury found him/her responsible for personally; requires courts to dispose of lawsuits when no dispute exists over the material facts thus avoiding unnecessary costs; and allows full recovery of all actual expenses such as lost wages, accident costs, medical bills, etc., but limits non-economic damages to a maximum of $100,000.

The Secretary of State approved the petition as to format, but expressly declined to review the petition for legal sufficiency and, on August 7, 1984, issued a certificate of ballot position for the title and summary of the proposed amendment.

On August 14, 1984, Plaintiffs filed a complaint challenging the constitutional validity of the amendment itself and of the ballot title and summary. Reason '84 filed a

counterclaim seeking declaratory judgment of the validity of the amendment and the ballot title and summary and final hearing was held before Judge Ben C. Willis on September 14, 1984. Judge Willis held the amendment and the ballot title and summary valid and denied relief to the plaintiffs.

Plaintiffs filed an appeal to the District Court of Appeal for the First District and, upon joint motion of Plaintiffs and Defendant Reason '84, the District Court certified the case to this Court as being one of great public importance requiring immediate resolution by the Supreme Court.

This brief is filed pursuant to a stipulation of the parties for an abbreviated briefing schedule.

ARGUMENT

I.

PROPOSITION 9 VIOLATES THE SINGLE-SUBJECT LIMITATION OF ARTICLE XI, SECTION 3 OF THE FLORIDA CONSTITUTION.

Article XI of the Florida Constitution establishes four methods for amending the Constitution. Only Section 3, which provides for amendment by initiative petition, includes a single-subject requirement. That limitation reads:

> [T]he 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. (emphasis added)

On April 23, 1984, this Court struck from the November ballot another initiative proposal — so-called Proposition One — on the ground that it violated the single-subject limitation of Section 3. Fine v. Firestone, 448 So.2d 984 (Fla. 1984). The Fine decision directly controls this Court's consideration of Proposition 9.

Fine v. Firestone is the Court's definitive pronouncement concerning the one-subject limitation on initiative petitions which seek to amend Florida's Constitution. A great deal could be said about prior court decisions on this issue, starting with the unicameral legislature case[1] and continuing through the Sunshine Amendment[2] and the casino gambling case.[3] Any discussion of those cases would be irrelevant in light of the Court's Fine decision, however, and unnecessary in light of the Court's obvious, current familiarity with them. In the same vein, it insults the Court's intelligence to iterate here

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[1] Adams v. Gunter, 238 So.2d 824 (Fla. 1970)

[2] Weber v. Smathers, 338 So.2d 819 (Fla. 1976)

[3] Floridians Against Casino Takeover v. Let's Help Florida, 363 So.2d 337 (Fla. 1978).

facts or commentary regarding the evolution of Article XI, Section 3 in the scheme of Florida's history. The Court well understands the who, what and when in the development of this constitutional "rule of restraint."

Accordingly, Appellants expressly pretermit discussion of these pre-Fine matters, in the sure knowledge that the Justices' thoughtful analysis of Article XI, Section 3 in the Fine decision were intended as beacons, both to illuminate the law on this subject and to signal the Court's clear commitment to a consistent method of evaluating future initiative proposals.

Before considering the applicability of the Fine decision to Proposition 9, it is well to consider that Appellee "Reason'84" submitted its proposed amendment to the Secretary of State on April 2, 1984.[4] Fine v. Firestone was decided and published one week earlier, on March 27. From the timing, it appears that the drafters of Proposition 9 actually waited for the Court's decision! In any event, the proponents of Proposition 9 knew quite clearly what Fine said and what the Court intended. They were not ignorant or unaware of the Court's views. They were, rather, the very first in the class of proposers to whom the Justices clearly addressed their opinions. Heaven and the proponents alone know why they chose to disregard the Court's clear guidance.

It is also well to consider as a preliminary matter, as it was in Fine, exactly what the Court is being asked to do. Appellants are not asking the Court to deny the electorate of Florida an opportunity to amend their Constitution, as Reason '84 argued elaborately below and will undoubtedly assert here. Rather, Appellants are asking the Court, as did the petitioner in Fine, to enforce a current constitutional protection

> which the people themselves have incorporated in our Constitution....

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[4] See, Complaint paragraph 7, which defendant Reason '84 admitted in its answer.

Fine v. Firestone, 488 So.2d at 993, quoting Justice Thornal in Adams v. Gunter, 328 So.2d 824 (Fla. 1970).

As the Court knows, the Fine case involved the so-called "Citizen's Choice" amendment limiting government revenue. A detailed analysis of Proposition One seems unnecessary in light of Fine's recentness. Several key principles were developed in Fine, however, which do bear restating. These define the role and purpose of the single-subject limitation on initiative proposals in Florida's Constitution, and prescribe the standards for judicial scrutiny.

(A) Role and purpose.

The one-subject limitation on home-grown constitutional amendments is a device to protect the Constitution for all of us against the excesses or eccentricities of any one or more of us. Individuals or groups working out of the sunshine, counseling only among themselves, and planning changes in the Constitution which reflect only their own interests, have been restricted by the authors of our existing Constitution, and by the electorate itself, in one sense only — the requirement that they undertake their changes one subject at a time.

> The single-subject requirement in the proviso language of this section is a rule of restraint. It was placed in the constitution by the people to allow the citizens, by initiative petition, to propose and vote on singular changes in the functions of our governmental structure.
>
> * * * *
>
> It is apparent that the authors of Article XI realized that the initiative method did not provide a filtering legislative process for the drafting of any specific proposed constitutional amendment or revision. The legislative, revision commission, and constitutional convention processes of sections 1, 2 and 4 all afford an opportunity for public hearing and debate not only on the proposal itself but also in the drafting of any constitutional proposal. That opportunity for input in the drafting of a proposal is not present under the initiative process and this is one of the reasons the initiative process is restricted to single-subject changes in the state constitution. The single-subject requirement in Article XI, Section 3 mandates that the

> electorate's attention be directed to a change regarding one specific subject of government to protect against multiple precipitous changes in our state constitution.

Fne v. Firestone, supra at 988.

(B) Standards for judicial scrutiny.

The essense of the Fine decision was that, for Section 3 initiative petition purposes, simplistic rubrics or labels will not determine the number of subjects which an initiative proposal contains. Before allowing a vote on an improper amendment, the courts will examine the breadth and actual effect of a proposed amendment by analyzing the words and context that are written into the amendment by its draftpersons.

This Court has held that more than one subject was embraced within the label "revenue limitation." The same screening test applied in Fine will lead the Court to conclude that the label "limitations on recoveries of damages in civil actions" (which Reason '84's counsel identified as "the subject" in their memorandum of law below on page 5), or the label "citizen's rights in civil actions" (which Judge Willis seemed to have approved), constitute more than one subject.

The Court in Fine sets forth three discreet standards to be applied for any Section 3 analysis, to determine if the proposed amendment is clearly and conclusively defective. First, the single-subject limitation of Section 3 is more narrow in its operation than the similar one-subject requirement which controls laws emanating from the legislature. While both are aimed at the evil of "logrolling"[5], the initiative limitation is more restrictive in application because there are no filtering processes of drafting and debate such as are available in the legislature. Initiative proposals, therefore, will be subject to close scrutiny by the courts.

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[5] Id.

Second, the effect of an initiative proposal on articles or sections of the Constitution other than the one which it purports to amend is an appropriate factor to be considered in determining whether it contains more than one subject.[6] In Fine, the Court specifically found from its analysis of Proposition One that it substantially affected multiple sections and articles of the Constitution which had not been identified to the electorate.[7]

Third, the components of an initiative proposal must have a logical and natural oneness of purpose.[8]

Applying the Fine tests to Proposition 9 leads to the conclusion that this proposal, like Proposition One's revenue-limiting amendment, clearly and conclusively violates Article XI, Section 3 of the Florida Constitution.

(1) Close scrutiny.

It is clear from Fine that the breadth of subjects suitable for legislative consolidation into a single bill is not suitable for an aggragation of dissimilar provisions into a single initiative proposal. With no opportunity for communal drafting, collegial deliberations, or public input and debate on an initiative proposal, close scrutiny by the judiciary is required.

A starting point for an analysis of Proposition 9, consequently, is the facial appearance of the amendment itself. This one contains three, separately numbered subsections, and to date, no explanation or comment on the proposal, including Judge Willis' Final Declaratory Judgment below, has been possible without a separate description of each of the three component subjects. Contrast the amendment

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[6] Id.

[7] Id.

[8] Id.

considered in Floridians. Whatever the Justices may think of the casino gambling proposal in that case[9], everyone knew its "subject" from that very phrase — "casino gambling." That label described its dominant purpose with unmistakable clarity; that is, the proposal dealt with, and would have authorized for the first time in Florida, "casino gambling".[10]

One cannot speak of Proposition 9 with any awareness of its one "subject". Judge Willis couldn't. He labeled it "citizens rights in civil actions," as the drafters had labeled it, but he was unable to describe its content without describing three component subjects. (App. 1 - 3). Even the able elocution of Proposition 9's current counsel has not to date, in writing or in voice, been able to say with a singleness of thought what the amendment stands for or does. Three descriptions are always needed. In fact, the contents of Proposition 9 remain as much a generic mystery as was the content of "revenue limitations."[11] Both are meaningless, overbroad generalities, like "motherhood".

A second way to scrutinize Proposition 9 under the close scrutiny test is available to the Court in this case, peculiarly, as a result of its unique development. This proposal did not emerge from the brains and the backroom of a handful of private, individual sponsors, as did the Sunshine Amendment considered in Weber, the casino gambling amendment considered in Floridians, and the revenue limitation proposal considered in

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[9] See, the dissenting opinions of Justices Ehrlich and Shaw, Fine v. Firestone at 996 and 998.

[10] Appellants recognize that a pure logrolling analysis of the amendment revealed that another constituency was seemingly attracted to vote for "casino gambling" because of the prescribed uses of gambling proceeds. But for purposes of preliminary facial analysis — a "smell test" as it were — the unity of purpose was crystal clear.

[11] The "subject" is not clarified by calling Proposition 9 a limitation on recoveries of damages in civil actions, as its proponents did in the trial court. In some ways that is worse because of its imprecision.

Fine. This proposal emerged from a package of proposed laws which were sponsored for the Florida Legislature in 1984 by the Florida Medical Association. Parts of the proposed amendment to the Consstitution began life in bills such as S. B. 842. They were not enacted, however.

What is key to this ssue, and unique among initiative proposals, is that Proposition 9 was a package of proposed laws, introduced for a special interest purpose, and considered as a whole. It may have been an acceptable potpourri for legislative "one subject" purposes. But this Court has said that the single-subject test for legislation (Article III, Section 6) does not apply to initiative proposals.

As legislative bills, the components of Proposition 9 were never a discreet attempt to treat "citizen's rights in civil actions." They were then, and remain now, several subjects designed to provide doctors with financial relief — a variety of remedial medicines ("subjects") seeking legislative prescriptions. When that prescription was not filled by the legislature, Reason '84 was formed to put some of the pills in the Constitution. Only then did the purported "subject" become "citizen's rights" in civil actions, a title with generic symbolism as appealing, but as broad and empty a vessel, as "Citizens Choice on Government Revenue."

A third approach to the Court's close scrutiny test is to see what the sponsors have said. The Court will find that there is a total lack of consistency in describing the proposal, even by its sponsors. Certainly there is no consistent identification such as attended "unicameralism" "casino gambling", or "ethics in government." In those instances, the description of the amendment never changed. What voters read was what they got (or chose not to have).

Proposition 9, in contrast, suffers from diversititleitis (pronounced "diverse-eye-title-itis"), a chameleon's disease. The ballot title and summary are labeled "Citizen's Rights in Civil Actions" (whatever that means). The campaign for signatures on the petition drive, and for votes in November, has spoken dominantly of "health care cost

containment."[12] Counsel for the proponents announced to the world in the trial court that, in reality, the subject of Proposition 9 is "limitation upon the recovery of damages in civil actions." Judge Willis seemingly decreed that the sole subject of the proposal is "citizen's rights in civil actions."

Appellants suggest that it takes only the most casual look, not even a close scrutiny, to see that Proposition 9 has more than one, in fact three, subjects: the elimination of joint and several liability (and perhaps other things); the elevation of this Court's summary judgment rule to constitutional stature; and the "capping" of certain damages at $100,000 per party. The concepts are legally and logically unrelated.

(2) Affect on other provisions of the Constitution.

Subsection (a) of Proposition 9 deals with the relative degree of liability among multiple individual defendants. It expressly restricts the liability for damages of any person to "his" or "her" percentage of liability.[13] Obviously this subsection affects the

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[12] [Pl. Exh. 1 - 10; App. 4].

[13] By dealing expressly with the gender of possile defendants ("his/her"), this subsection of Proposition 9 leaves unchanged the liability of corporate, or "its", defendants. The mention of one thing implies the exclusion of another. Thayer v. State, 335 So.2d 815, 817 (Fla. 1976).

The proponents of Proposition 9 will undoubtedly assert that the gender identification of subsection (a) is not intended to exclude corporate defendants. But it is they who wrote the amendment, and it is they who selected gender words which already have a precise meaning in the Declaration of Rights to Florida's Constitution. They are bound by what they did; not what they may now say. Myers v. Hawkins, 362 So.2d 926, 930 (Fla. 1978).

The words "his" or "her" in subsection (a) of Proposition 9 can only refer to natural persons. Equivalent personal pronouns are used elsewhere in Article I to mean only natural persons. See, Sections 9 (abrogating self-incrimination against "himself"), Section 16 (according the right to be informed of criminal charges against "him"), and Section 23 (providing persons with privacy from intrusions into "his" private life). Article I delineates the distinction even more clearly by employing the impersonal pronoun"it" to mean only entities other than natural persons. See Sections 18 (referencing administrative agencies), and 20. The differentiation between incorporated doctors and self-employed physicians is irrational and has no relationship to the avowed campaign objective for Proposition 9.

procedural burdens of a plaintiff as against multiple individual defendants, and to that extent directly affects civil proceedings.

Subsection (b) merely places in the Constitution the summary judgment rule which now appars in Rule 1.510 of the Florida Rules of Civil Procedure.[14] It has nothing to do with the relative liability of individual defendants, and it does not affect in any way a plaintiff's burden of proof. In its relationship to civil actions, it "establishes" nothing (which the ballot title erroneously suggests), but rather freezes the status quo in a constitutional straight jacket. Most importantly, it has nothing to do with damage limitations in any way, and in fact would operate on a host of civil actions which have no damage awards at all. Examples include mortgage foreclosures, will contests, partition suits, accountings, and injunctive actions. These matters are so unrelated to the cap on damages or the elimination of joint and several liability that in no way can be characterized as the same subject or as "matters directly connected" with the others.

Subsection (b) does, however, affect Article V, Section 2(a), of the Florida Constitution in a substantial and dramatic way. That provision allocates judicial power under the Constitution. It provides, in pertinent part, that:

> The Supreme Court shall adopt rules for the practice and procedure in all courts including the time for seeking appellate review. . . .

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[14] The relevant portion of the rule states:

> Rule 1.510 Summary Judgment (a) for Claimant. A party...may move for a summary judgment...(b) For Defending Party. A party...may move for a summary judgment...(c)...The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact.

Subsection (b) of Proposition 9 states:

> 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.

Subsection (b) of Proposition 9 sets Rule 1.510 in constitutional concrete, with the direct and intended effect of taking from the Supreme Court the now-authorized exclusive power to adopt procedural rules affecting non-factual disputes, and appellate procedure.[15]

Under the Court's current appellate rules, no appeal is available upon rendition of an order denying a summary judgment. See Rule 9.130(a)(3), Florida Rules of Appellate Procedure. This Court-promulgated rule will be substantially affected, indeed repealed, by subsection (b) of Proposition 9. The proponents would place Proposition 9 in the Declaration of Rights. There, quite clearly, the denial of this new constitutional right will surely be challengeable in some form as a matter of right. See Sherrod v. Franza, 427 So.2d 161, 163 (Fla. 1983), authorizing challenge by extraordinary writ and quoting with approval an earlier Court decision to the effect that:

> When a court by its affirmative action denies to the accused the rights guaranteed to him under [a section] of the Declaration of Rights, such action on the part of the court is in excess of its jurisdiction and, therefore, may be reached by prohibition.

A new right of appeal has to be created even without reference to Sherrod. If Proposition 9 were to be adopted, an immediate right to seek review from the denial of a summary judgment would be needed, or the constitutional right to a summary judgment would in fact be non-existent. The very act of requiring review of denials to await final judgment denies the right to summary judgment as expressed in Proposition 9. A denial without review, then, will on its own wipe away the "right" by forcing the moving party to trial.

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[15] A summary judgment rule may be time-honored and uniformly considered appropriate, but it is a rule of procedure only and as such is not an indispensible element of our civil justice system. See generally, Vol. 10 Wright and Miller, Federal Practice and Procedure, §2711 at pp. 555-63 (2d Ed.)

There can be no more direct affect on Article V of the Constitution, a subject wholly distinct from the Declaration of Rights in Article I, than its partial invalidation by subsection (b) of Proposition 9.

Subsection (c), which limits to $100,000 an award of so-called "noneconomic damages" against any party, is totally unrelated to either the first two subsections. It substantially affects Article I, Section 21, Article I, Section 22, and Article X, Section 13 of the Florida Constitution.

Article I, Subsection 21 provides that:

> The courts shall be open to every person for redress of any injury. . . .

In Kluger v. White, 281 So.2d 1 (Fla. 1973), the Supreme Court interpreted Section 21 to prohibit the legislature from abolishing a right which pre-dated the adoption of the Declaration of Rights of the Constitution, without providing a reasonable, alternative form or redress. Subsection (c) of Proposition 9, which relieves any defendant of paying more than $100,000 of non-economic damages, plainly alters Article I, Section 21 by eliminating, with no prescribed alternative, significant rights to redress which are presently available to plaintiffs in civil proceedings and which predate the adoption of the Declaration of Rights.[16]

Proposition 9 amends Article I, Section 22 of the Florida Constitution which provides:

> The right of trial by jury shall be secure to all and remain inviolate.

By limiting the awards which juries can give persons injured or killed by another, to pick an obvious class of jury trials, the right to a jury trial is no longer "inviolate."

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[16] Subsections (a) and (b) of Proposition 9 also change Article I, Section 21. The right of redress currently afforded by joint and several liability, and the right to a trial following denial of a summary judgment, without the interruption of an appeal or an extraordinary writ, would be abolished without any alternative.

While there may be no effect on the liability portion of such trials, a determination of damages is obviously a co-equal part of the exclusive role assigned to juries in trial process, and here directly violated.

> In tort cases damages are to be measuared by the jury's discretion.

Bould v. Touchett, 349 So.2d 1181, 1184 (Fla. 1977). In fact, a broad range of discretion is accorded juries in determining damages, and the curtailment of that portion of the trial certainly "violates" the right to trial by jury. The point is illustrated by considering the discretion a jury has historically enjoyed in just one class of case — wrongful death actions.

> The weight of authority supports the rules that more than ordinary discretion may be allowed the jury in assessing damages in actions for wrongful death. They are not limited to a consideration of the age and probable life expectancy of the dependents, neither are they limited to a consideration of the age, earning power, and probable life expectancy of the deceased. They may consider the probable increased needs of the dependents and the probabilities of the deceased contributing to such increased needs. They may also consider the degree or spirit in which the deceased responded to his obligation to contribute to the support of his dependents, the amount contributed in the past with probable future contributions, together with the likelihood of promotion, the relationship of those dependent on him, and increased income of the deceased. They may also consider the health, habits, morals, social adaptability, and possible other facts and circumstances, and then award damages that will reasonably compensate for the injury resulting from the wrongful death.

Bould v. Touchette, supra at 1185, quoting with approval Cudahy Packing Co. v. Ellis, 105 Fla. 186, 140 So. 918 (1932).

Proposition 9 also substantially affects Article X, Section 13, which waives sovereign immunity for the state in the following language:

> Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.

Subsection (c) of the proposed amendment places a $100,000 cap on certain kinds of damages, thereby directly restricting the ability of the state under Article X, Section 13

to waive sovereign immunity either without a dollar limitation or in excess of $100,000.[17]

(3) Oneness of purpose.

It is readily apparent from considering the well-known distinction between substance and procedure that Proposition 9 includes at least two subjects. The legislative branch of government has dominion over substance, while the judicial branch controls procedure. This initiative petition unmistakenly treats both categories in the same proposed amendment. Subsection (b), which re-enacts the summary judgment rule, is unquestionably procedural. Subsection (c), which limits certain recoveries in civil proceedings, is unquestionably substantive. See e.g., Florida Medical Center Inc. v. Von Stetina, 436 So.2d 1022, 1025 (Fla. 4th DCA 1983). The co-joinder of subjects assigned by the Constitution, one to the legislative branch and one to the judicial branch in an single initiative proposition, flaunts the very foundation of Article XI, Section 3, as articulated in Fine. It lacks "logical and natural oneness of purpose." Fine v. Firestone, supra.

In its Fine decision, the Supreme Court reaffirmed that:

> In determining whether a proposal addresses single-subject, the test is whether it "may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme."

Id. at 990. The provisions of Proposition 9 cannot logically be viewed as components of any dominant scheme in the constitutional sense. Limiting revenue was the generic objective of Proposition One, but that catch-phrase objective did not withstand constitutional scrutiny under the one-subject limitation of Article XI, Section 3. So, too,

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[17] Subsections (a) and (b) also change Article X, Section 13. The elimination of joint and several liability may eliminate most, if not all, vicarious liability. Governmental liability is frequently joint with individual tort feasors, and under Section 768.28, the sovereign immunity waiver statute, it is almost always vicarious.

the desire of Propostion 9's sponsors to curtail medical malpractice recoveries cannot overcome the fact that the amendment in fact affects multiple subjects having no natural connection, and affects diverse constitutional provisions.

The one-subject limitation of Section 3 addresses the evil of logrolling, as the Supreme Court noted in its Fine decision.

> This requirement avoids voters having to accept part of an intiative proposal which they oppose in order to obtain a change in the Constitution which they support. An initiative proposal with multiple subjects, in which the public has had no representative interest in drafting, places voters with different views on the subjects contained in the proposal in the position of having to choose which subject they feel most strongly about.

Id. at 998. It takes no stretch of imagination to identify those parts of Proposition 9 which might be simultaneously pleasing and offensive to Florida voters. Every parent of a teenage child worries about the liability which can result from a driving mishap, and in that regard might welcome a limitation on the family's joint liability with a product's manufacturer. That same parent, however, would in all likelihood oppose strongly the notion that his or her child, crippled for life at the hands of another driver, could recover no more than medical care costs plus another $100,000 no matter how reckless the car's driver or manufacturer. Yet parents in Florida will be required to accept the good with the bad if presented with Propostion 9 on November 6 — a Hobson's choice if ever one existed. The Legislature's divergence of opinion over precedessors of Propostion 9, in fact, graphically reflect the dualty (or triality) of subjects. Many legislators who favored a limit on joint and several liability simply could not accept a cap on recoveries, and vice versa. Oneness of purpose is gone when constituents for one aspect of the proposal have no natural propensity to support, and indeed may oppose, other features which they are required to accept.

The constitutional rights in civil action allegedly being established for Florida's citizens come from three separately-identified subsections of Proposition 9. One set of "rights", or more? Is it one subject, or is it more, to combine into one proposed

amendment a limitation on the finacial responsibility of defendants in multi-party suits and in tort litigation, and a mandate for the procedural rulings of trial courts in all forms of civil litigation? The obvious answer, as it was in Fine, is that more than one herring is wrapped in the constitutional tin can.

Ultimately, the test for single-subject compliance must be this: Do all parts of the amendment share a sufficient commonality of purpose and method so that support for one would logically dictate support for the others or vice versa?

For example, the summary judgment provision could clearly be included in one amendment with a provision constitutionalizing the right to dismiss of a complaint for failure to state a cause of action. Both share a common purpose: elimination of meaningless litigation. Both share a common method: early termination of proceedings. Support for one logically follows support for the other. Conversely, it would be illogical to support one and oppose the other. Clearly, the same cannot be said of summary judgment and a cap on damages. There is no logical connection whatsoever. Each involves a multitude of unrelated considerations bearing on the question of support or opposition. Support for a provision prohibiting a court from compelling a party to undergo a meaningless trial and simultaneous opposition to an arbitrary cap on damages does not offend logic in the least.

Proposition 9 clearly and conclusively violates Article XI, Section 3 of the Florida Constitution. Unless this Court so holds, the single-subject limitation on initiative petitions will be meaningless, [18] dissimilar adjustments to governmental and citizen's rights can be aggregated into a one-vote proposal, and the Fine decision, sad to say, will

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[18] In Fine, this Court said: "If the single-subject requirement means anything, it must apply in this instance." Id. at 993.

Appellants offer this syllogism to the Court's comment: "If the Fine decision means anything, it must apply in this instance."

appear more like a weathervane than a beacon.[19] Perhaps a clear example of the mischief is seen in the following illustration. If the court does not hold that Proposition 9 encompasses more than one subject, clearly the following illustration would also pass constitutional muster.

> Citizen's Rights in Civil Action -
>
> a) no party can be found to be liable for payment of damages to the estate or survivors of a decendent; (b) the Court shall grant review on application of any party when the Court finds an express and direct conflict of Florida appellate court decisions; and c) non-economic damages of any type shall not be awarded in excess of $1 against any party.

In sum, Appellants suggest that the sponsors of Propostion 9 assumed both the risk and the consequence of co-joining unrelated subjects after the Fine decision enunciated the limitations on such attempts. They could have put forward three separate petitions, and marketed their package as health care cost containment, or whatever. This Court must vindicate the electorate's right to select and reject among the three subjects. Equally important to the voters, to the people of Florida and to the Court itself, is the need for consistent constitutional construction.

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[19] See Weber v. Smathers, 338 So.2d 819, 824 (Fla. 1976). (Roberts, J., dissenting).

II.

PROPOSITION 9's TITLE AND BALLOT SUMMARY ARE DECEPTIVE AND AMBIGUOUS AND FAIL TO GIVE FAIR NOTICE AS REQUIRED BY SECTION 101.161, FLORIDA STATUTES.

The statutory procedure for the placement of an initiative proposition on the ballot creates an ever present hazard of deception. Two factors combine to bring about this hazard. First, the actual amendment does not appear on the ballot. The voter sees only a ballot title and summary.[20] Second, the title and summary are prepared by the group that sponsors the amendment and prepares the petition.[21] The risks involved in permitting the party which is bent on passage to prepare the ballot summary are readily apparent. As will be illustrated, Proposition 9 is a classic example of the resulting distorted ballot summary which can result.

This Court recently recognized the importance of a fair and accurate ballot summary. In Askew v. Firestone, 421 So.2d 151 (Fla. 1982), the Court struck a proposed constitutional amendment from the ballot because the summary was deceptive and failed to give the voters fair notice of the effect of the amendment. The Court was then considering a proposed amendment to Article II, Section 8(e) of the Florida Constitution, which prohibited former office holders from lobbying before state governmental bodies for a period of two years after leaving office. The proposed amendment would have revised Section 8(e) to permit lobbying within the two-year period, on the condition that former office holders file a financial disclosure form. The ballot title and summary were worded to convey the impression that new restrictions were being imposed on former office holders rather than telling voters that existing restrictions were being relaxed. The title and summary read:

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[20] Section 101.161, Florida Statutes.

[21] Id.

> FINANCIAL DISCLOSURE REQUIRED BEFORE LOBBYING BY FORMER LEGISLATORS AND STATE-WIDE ELECTED OFFICERS.
>
> Prohibits former legislators and state-wide elected officers from representing other persons or entities for compensation before any state government body for a period of 2 years following vacation of office, unless they file full and public disclosure of their financial interests.

The court struck the amendment from the ballot, holding that the ballot title and summary were deceptive. The Court found that neither adequately advised the public that there existed a provision which completely prohibited lobbying and that the chief purpose of the amendment was in fact disguised. The Court explained the need for clear communication to the voters:

> Simply put, the ballot must give the voter fair notice of the decision he must make. * * * We reiterate that ... "the people who are asked to approve [constitutional changes] must be able to comprehend the sweep of each proposal from a fair notification in the proposition itself that is neither less nor more extensive than it appears to be."
>
> * * * * *
>
> The burden of informing the public should not fall only on the press and opponents of the measure — the ballot title and summary must do this.
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> * * * * *
>
> Fair notice in terms of a ballot summary must be actual notice consisting of a clear and unambiguous explanation of the measure's chief purpose.

Id. at 155, 156.

The ballot title and summary for Proposition 9 is equally, if not more misleading, than the ones before the Court in Askew. A clear attempt at deception is transparently evident here.

Before analyzing the ballot summary, it is informative to consider the extent to which the amendment has been unnessarily re-written by the sponsors. The statutory provision for a ballot summary is necessitated because amendments are often too long to

be included verbatim on the ballot. Hence, Section 101.161, Florida Statutes, provides for the substance of the amendment to be printed "in clear and unambiguous language" in a ballot summary not exceeding seventy-five words. The entire text of Proposition 9 is only seventy-nine words. Had the sponsors been truly interested in presenting the voters with an accurate notice of the contents of the amendment, they could easily have made minor revisions and otherwise printed the exact text of the amendment. Instead, they treated Section 101.161 not as a requirement for fair notice, but as an invitation to manipulate the ballot in the manner most favorable to them. The amendment was substantially re-written for the obvious purpose of making it appear more palatable to the voters. The result is a summary that fails to give fair notice of major provisions of the amendment, suggests that the amendment does things which it does not do, and generally misleads the voter in significant, prejudicial ways.

In Askew, the lifting of an absolute prohibition (against lobbying) was disguised to appear as the imposition of a new restriction (financial disclosure). An easing of office holders duties was transformed into an apparent tightening. The summary and title of Proposition 9 is similarly recast in opposites, from a restriction on citizens' recoveries in civil suits (which the proponents now concede is the chief purpose) to appear as a seeming increase in "rights" in civil actions.

The ballot title reads: "Citizen's Rights in Civil Actions" and the first line of the summary reads: "Amendment establishes citizen's rights in civil actions". The commonly understood meaning of the word "establish" is defined in Webster's New Collegiate Dictionary: "to make firm or stable; to institute (as a law) permanently by enactment or agreement; to bring into existance". The clear impression given to voters by the ballot title and the first line of the summary is that the amendment will create new rights or will guarantee existing rights. In fact, the effect of two-thirds of the amendment is precisely the opposite, severely limiting important rights that have existed for hundreds of years. The effect of the other one-third is to do nothing substantive at all.

Significantly, Reason '84 represented to the trial court that the true subject of the proposed amendment is "limitation upon the recovery of damages in civil actions." Clearly, that definition comes closer to signaling the chief purpose of the amendment than "citizens' rights". The trial judge concluded that the title and first line were not deceptive because "...citizens rights include both those who initiate lawsuits and those who are defending them." Just as in Askew, the trial Court failed to consider the factor which was the basis for this Court's reversal in that case: "The problem ... lies not with what the summary says, but, rather, with what it does not say."[22] Even if the title and opening line can be read as referring to "rights" of defendants, they clearly fail to alert the voter that such rights are granted at the sacrifice of substantial, long-standing rights of injured victims.

The following comparison of the operative provisions of the actual amendment and the ballot summary shows the treacherous differences between them:

ACTUAL AMENDMENT	BALLOT SUMMARY
"(a) no party can be found liable for payment of damages in excess of his/her percentage of liability.	"provides a party in a lawsuit shall not be required to pay more damages than the jury found him/her responsible for personally;"

The ballot summary on Section (a) refers solely to "jury" findings. If the actual amendment had been worded the same way, it would have required a construction limiting its application to jury trials. However, the actual amendment makes no reference to juries, as does the summary, and clearly applies to all trials, non-jury as well as jury. A voter reading the ballot summary, however, might well decide that the

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[22] Askew v. Firestone, supra at 156.

ballot summary is acceptable because a plaintiff not wishing to waive joint and several liability could avoid doing so by simply electing to have a bench trial.[23]

ACTUAL AMENDMENT	BALLOT SUMMARY
"(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;"	"requires courts to dispose of lawsuits when no dispute exists over the material facts thus avoiding unnecessary costs;"

The summary of subsection (b) gives the clear impression that Proposition 9 would change current law by entitling litigants to summary judgment when there is no dispute over material facts, thus "avoiding unnecessary costs" which are now incurred by requiring unnecessary trials. This impression is, of course, totally erroneous since Rule 1.510, Rules of Civil Procedure, now mandates that a court render a judgment "forthwith" when the record indicates there are no material facts in dispute. Again, the problem "lies not with what the amendment says, but, rather, with what it does not say." It fails to inform voters that the summary judgment provision is already in the law.[24]

The failure of the summary to advise the voter that the summary judgment provision makes no substantive change in existing law becomes acutely significant because of the multi-subject nature of the amendment. The effect is a major aggravation of the logrolling problem discussed by the Court in Fine. No sensible person would favor forcing persons to go to trial when there are no facts in dispute. Indeed, the suggestion that the current law does require a meaningless trial is so outrageous that it

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[23]Since much of the public campaign waged by the proponents of Proposition 9 is directed at large jury verdicts [see trial exhibit 10; App. 4], it would not be unreasonable for a voter to assume that the amendment was directed solely at jury trials.

[24] This does not mean that an initiative can never constitutionalize an existing non-constitutional provision. However, when it does so, the summary should so indicate. In this case, the summary properly could have been worded: "constitutionalizing existing requirement that courts..." etc.

would undoubtedly lead many voters to vote for the entire amendment even though they do not favor the other two provisions.

If the court were to permit such a device to lure voters, it would open the door to virtually unlimited "bating" of amendments. It is easy to contemplate the kinds of provisions that could then be included in ballot summaries for the purpose of making multi-subject constitutional amendments more appealing: "permitting parties to interview witnesses prior to trial, thus avoiding surprise"; "providing for the award of attorney's fees against a party filing a frivolous lawsuit, thus reimbursing the defendant for unnecessary expenses"; "entitling citizens to inspect public records, thus making government more accountable". The misleading nature of such provisions is apparent.

The ballot summary on subsection 2 also includes a wholly inappropriate editorial comment. The phrase "thus avoiding unnecessary costs" might be appropriate in a political brochure, but is an intolerable misuse of the ballot. The responsibility for drafting the ballot summary places upon the sponsor of an initiative proposal the duty to draw the summary in fair, balanced language. It is grossly inappropriate for the sponsor to slip in editorial commentary designed to influence the voter in its favor. For the Court to permit such ballot manipulation would be tantamount to permitting an incumbant candidate to include his political slogan on the ballot beside his name.[25] Furthermore, by including four words solely for their persuasive value, the sponsors have necessarily eliminated four more words that could have helped to accurately reflect the actual contents of the amendment.

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[25] The statement cannot even be assumed to be accurate. As noted under Point I, the constitutionalization of the summary judgment rule might well be construed to require interlocutory review of denials of summary judgment, which is not available now. If this were the interpretation, the result of the amendment would be a significant increase, rather than decrease, in the cost of many cases.

ACTUAL AMENDMENT	BALLOT SUMMARY
"(c) "noneconomic damages such as pain and suffering, mental anquish, loss of consortium, and loss of capacity for enjoyment of life shall not be awarded in excess of $100,000 against any party."	"allows full recovery of all actual expenses such as lost wages, accident costs, medical bills, etc., but limits noneconomic damages to a maximum of $100,000.00"

The ballot summary for subsection (c) is directly analogous to the deception identified in the Askew case. The summary states that the amendment "allows full recovery of all actual expenses" in civil suits. Despite this promise, full recovery of actual expenses is not available under current law in many instances, and will not be available if Proposition 9 is adopted.[26] The amendment itself, of course, says nothing whatsoever about allowing full recovery for actual damages in civil suits. There is no reason to believe that any limiting statutes will be repealed by the adoption of Proposition 9, and if any were the ballot summary would be even more deceptive than it now appears. By misstating the damage recovery possibilities "in civil actions," the summary misleads the voting public.

At the trial level, Reason '84 argued that the word "allowed" was only intended to mean that the Constitution would permit full recovery if not otherwise limited by the Legislature. However, it is not what the sponsors now claim was intended that matters. What does matter is the impression that this gratuitous language can reasonably be expected to create in a voter's mind. It would certainly be reasonable for a worker who has previously had a recovery limited by the workers compensation statute to read the ballot summary and conclude that passage would remove such limits and "allow full recovery" after a subsequent job related injury. The language is particularly indefensible

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[26] See Chapter 440, Florida Statutes, (worker's compensation) and Section 768.50, Florida Statutes (waiver of sovereign immunity) for examples of statutes limiting full recovery of actual damages.

because the misleading ambiguity it creates was completely unnecessary. It was included by the sponsor, just as in Askew, for the purpose of transforming a negative amendment provision into a positive sounding ballot summary. Again, the inclusion of the extra sixteen words eliminated room for truly informative language. While the sponsors have chosen to give voters the impression they will receive a benefit they actually will not receive, they have failed to tell them that the undefined word "noneconomic damages" expressly limits "pain and suffering, mental anguish, loss of consortium and loss of capacity for the enjoyment of life" as well as all other similar damages encompassed in the word "etc." as used in the actual amendment.[27]

The summary of subsection (c) includes one other gross distortion. The actual amendment is couched in terms of limiting the liability of a person found liable. The ballot summary, in contrast, is stated from the standpoint of the victim. The implications of this difference are again calculated to deceive. The ballot summary gives a distinct impression that the $100,000 limit applies to each victim. The language of the actual amendment, on the other hand, clearly indicates that the limit applies to any party found liable regardless of how many injured victims are involved in a given incident. As an example, assume that Proposition 9 applied to plaintiff Evans in due course, and that she was successful in her individual suit against General Motors for the defective design of an automobile gas tank. The $100,000 limit would be available to General Motors, with the consequence that $100,000 of noneconomic damages would have to be divided amoung the six alleged survivors: Evans, her four daughters, and a dependent granddaughter. The misleading nature of this ballot summary is even more graphically illustrated by consideration of a class action or an action arising out of an

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[27] It would appear from the language chosen that the limit might also include punitive damages and other forms of non-compensatory recoveries such as trademark, anti-trust and RICO treble damage awards.

airplane crash in which the actual amendment could operate to force hundreds or even thousands of injured persons to share a single $100,000 judgment. This is a far cry from the impression given by the ballot summary.

While any of these misleading provisions should be sufficient in itself to justify removal of the amendment from the ballot, it is the overall impression that is paramount. The clear mandate of Askew v. Firestone is that the ballot summary give fair notice "in clear and unambiguous language" of the chief purpose of the amendment. A voter reading the amendment should be left with a basic comprehension of "the sweep of each proposal from a fair notification in the proposition itself that is neither less nore more extensive than it appears to be."[28] The Proposition 9 ballot summary utterly fails to meet this basic standard.

The Askew decision, which had been published a year and a half before Proposition 9 was submitted, requires that the drafter of a proposed amendment assume the risk, and the consequence, of a deceptive summary. The proponents of Proposition 9 quite clearly chose the politically attractive alternative of disguising a predominantly right-restricting amendment with a misleading ballot summary, choosing to portray the abolition of historic rights as the establishment of new rights. Language in the amendment itself which indicates the full sweep and impact of the amendment was deleted from the ballot summary in order to reduce the "heat" and new language was inserted in order to give a "positive" gloss to "negative" provisions. What was said in Askew pertains here:

> A proposed amendment cannot fly under false colors. This one does.[29]

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[28] Smathers v. Smith, 338 So.2d 825, 829 (Fla. 1976); Askew v. Firestone, supra at 155.

[29] Id. at 156.

At the trial level, Reason '84 argued that anything ambiguous or deceptive in the ballot summary would be cleared up in the public debate preceding the election. In the case of Proposition 9 there are organized groups on both sides of the issue and the opposition may ultimately prove capable of raising as much campaign funds as the sponsors. Surely, however, that will not always be true, and the opinion rendered in this case will define the parameters of future initiatives as well. Furthermore, it is unlikely that any amount of public debate can match the impact of the summary which the voter reads in the voting booth. It is the last thing the voter sees before he casts his ballot and it has greater credibility than the public debate. The voter knows that public commentary must be weighed in light of the bias of the source. However, the average voter will not know that the ballot summary was prepared by one of the competing interests in the debate and will naturally assume that it is accurate and objective. Undoubtedly, it was considerations such as these that lead the Court to reject the same argument now advanced by Reason '84:

> The burden of informing the public should not fall on the press and opponents of the measure — the ballot title and summary must do this.

Askew v. Firestone, supra at 156.

Finally, the Court is urged to give serious deliberation to the public policy considerations bearing on the standard it sets for scrutiny of initiative ballot summaries. In Fine, supra, this Court recognized that a higher standard of scrutiny on the single-subject requirement was necessary for constitutional amendments proposed by initiative than those proposed by the other three methods. The reason for this is that the initiative proposal is not subject to a deliberative process by a representative body in the public eye. The same reasoning applies to the ballot summary. The Supreme Court's comment in Williams v. Smith, supra, regarding sources for determining intent of a constitutional amendment has compelling application in this context as well:

> An absence of debate and recorded discussion marks the development of an initiative proposal. To accord the same weight to evidences of the intent of an amendment's framer as is given to debates and dialogue surrounding a proposal adopted from diverse sources would allow one person's private documents to shape constitutional policy as persuasively as the public's perception of the proposal. This we cannot permit.

Id at 420 n.5.

The Court's well placed concern about the undue influence of private interests in the shaping of constitutional policy should be even more pronounced in the case of the ballot title and summary.

The Proposition 9 summary was prepared by a private group out of the sunshine and with no opportunity for public input. Public policy demands that a high standard be imposed upon such groups. It should be made clear that the privilege of drafting a ballot summary is not an invitation to manipulate the ballot so as to get a step up on the opposition; but that the privilege carries with it the obligation to draft the summary as a fair, accurate, well-balanced description of the amendment. The fact is that the title and summary are absolutely the only legal restraint on revision of the constitution by well-financed special interests. It is imperative that the Court preserve inviolate the integrity of the title and summary.

III

PROPOSITION 9 VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

When a proposed ballot measure is patently unconstitutional, a pre-election due process challenge is appropriate. Dade County v. Dade County League of Municipalities, 104 So.2d 512 (Fla. 1958). The proposal before the court is clearly violative of constitutional law, and petitioner's action is timely.

The due process requirements of the Fourteenth Amendment apply to state constitutional provisions in the same way they apply to state statutes.

> [A] state constitution is of no effect where it is in conflict with the Constitution of the United States, and provisions in state constitutions have often been held void as inconsistent with federal constitutional provisions.

16 Am.Jur.2d, Const. Law § 79 at pp. 403-04, citing to Louisville & Nashville R.R. v. Central Stock Yards Co., 212 U.S. 132 (1909). Initiative petitions and ballot referenda are fully subject to the limits of federal due process.

> It is irrelevant that the voters rather than a legislative body enacted [the challenged proposal], because the voters may no more violate the Constitution by enacting a ballot measure than a legislative body may do so by enacting legislation.

Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290, 295 (1981). The Due Process Clause of the United States Constitution requires:

> ...that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained.

Nebbia v. New York, 291 U.S. 502, 525 (1934). The Nebbia decision has been adopted and approved in Florida. City of Miami Beach v. Forte Towers, Inc., 305 So.2d 764, 768 and n. 4 (Fla. 1974) (Dekle, J., concurring, which opinion was adopted by the majority as to this issue); Stang v. Waller, 415 So.2d 123, 124 (Fla. 4th DCA 1982).

In Arneson v. Olson, 270 N.W. 2nd 125 (N.D. 1978), the Supreme Court of North Dakota considered a legislative enactment placing several limitations on common law rights of plaintiffs in medical malpractice litigation. The court reviewed the purposes of the act as stated in its preamble and concluded that the act could not be expected to promote those purposes. The Court stated:

> We find that the statute is, in respect to these matters, arbitrary and unreasonable and discriminatory, and that the methods adopted have no reasonable relation to the attainment of the results desired.

Id. at 137. Accordingly, the court declared the statute to be in violation of the Due Process Clause of the United States Constitution.[30]

The starting point for analysis of substantive due process is a determination of the objectives of the provision.[31] In analyzing a constitutional amendment adopted by initiative courts will look to the intent of the voters "as evidenced by the materials they had available as a predicate for their collective decision."[32] In the case of Proposition 9, the purpose of the act is readily ascertainable from the materials which have been mass distributed by the sponsor of the amendment in an effort to obtain ballot position and passage of the proposition.[33] Those materials indisputably advise the voters that the act

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[30] The court also found the act to be in violation of the Equal Protection Clause as creating an arbitrary classification.

[31] See Lasky v. State Farm Insurance Co., 296 So.2d 9 (Fla. 1974).

[32] Williams v. Smith, 360 So.2d 417, 420 (Fla. 1978); Myers v. Hawkins, 362 So.2d 926 (Fla. 1978).

[33] The exhibits were offered into evidence at the trial level and are part of the appellate record. Reason '84 objected to their introduction on the grounds of materiality and relevance. The trial court never addressed the Due Process issue and did not rule on the objection. The exhibits, all prepared for Reason '84, consist of a newspaper advertisement and mass mailings favoring Proposition 9 and instructions for petition solicitors. All of them state that the purpose of Proposition 9 is to reduce health care costs. They are certainly material and relevant in light of Williams v. Smith, supra, and Myers v. Hawkins, supra.

serves the singular purpose of reducting health care costs in Florida.[34] Having chosen to sell Proposition 9 to the voters as a measure to cut health care costs, the sponsors must stand or fall with that purpose on a Due Process analysis.

The proposal is arbitrary and capricious in two regards. First, it is apparent on its face that at least two of the provisions will not serve the announced purpose and second, it is grossly overbroad in that it arbitrarily affects a broad area jurisprudence which could not have any impact whatsoever on health care.

It is obvious that the provision regarding summary judgment could have no possible effect on the cost of health care. In the first place, as Reason '84 concedes, the provision does nothing substantive beyond what the law currently does. In the second place, even if the current law did permit medical malpractice cases to be forced to trial in the absence of any factual disputes, Florida's appellate caselaw fails to disclose that this has occurred at all, much less on a significant enough basis to have any impact on the overall cost of health care. Furthermore, as has been previously noted, since the provision would probably have the procedural effect of requiring appellate review of denials of summary judgment, it is likely that it would increase rather than decrease the cost of litigation.

Similarly, the first section of the proposal relating to joint and several liability would not affect overall health care costs. It does not reduce judgments at all, but simply shifts the burden of proof from the defendants to the plaintiff so far as apportionment of the damages among various defendants. This provision would also be likely to increase rather than decrease the cost of litigation since it would encourage

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[34] Counsel for Plaintiffs and Reason '84 stipulated that exhibits 2, 4 and 11 were mass mailed to voters and that exhibit 10 appeared in major newspapers throughout the state. The exhibits were probably not even necessary. The unprecedented size and cost of Reason '84's campaign to convince voters that Proposition 9 is a measure to cut health care costs has reached such magnitude as to support judicial notice.

plaintiffs to sue more defendants and would encourage defendants to raise more frivolous defenses involving third-party negligence.

While the declared purpose of the proposed amendment is the reduction of health care costs, it cuts a broad path across the entire judicial system. The proposed amendment is not limited to cases involving health care or, for that matter, to tort cases. What conceivable impact could the proposed amendment have on health care when applied to a case involving trademark infringement or defamation or damage to personal property or a will contest? Yet one or more sections of the proposed amendment would operate in all those cases. It is precisely such arbitrary and capricious overbreath that substantive Due Process prohibits.

IV

STRIKING OF THE AMENDMENT WILL NOT INTERFERE WITH THE PEOPLE'S RIGHT TO VOTE.

Proponents of the proposed amendment argued below that the courts have neither the right nor the privilege to interfere with the "right of the people to vote," endeavoring to cast the issues before the court in political rather than legal terms. The emotional appeal is strong but misplaced. Indeed, it was the same argument made in Fine and probably every other challenge to a proposed constitutional amendment.

In adopting their constitution, the people surrendered a certain amount of their sovereignty. As a result, the people have no longer reserved to themselves an absolute right to vote on any and all proposals to amend their constitution; rather, the people prescribed requirements and limitations as a prerequisite to submission of proposed amendments to the voters. As Justice Thornal wrote in his concurring opinion in Adams v. Gunter, 238 So.2d 824 (Fla. 1970), with reference to an initiative proposal which was excluded from the ballot:

> I feel that it evidences a courageous application of a rule of restraint which the people themselves have incorporated in our constitution to protect it against precipitous and spasmodic changes in the organic law. It would be easy to do as appellee urges us to do by transferring to the electorate the burden of making our decision on an idealistic pronouncement, "to let the people decide". This, however, is not, in my view, the fulfillment of our judicial responsibility. It is often much more difficult for us as judges to take a stand and "do the people's will" when the responsibility is clearly ours under the law. It is the sort of responsibility which frequently we would as soon not have but which, nevertheless, we must assume as judicial officers.

Id. at 832 (emphasis original). As Justice Thornal so eloquently explained, paramount will of the people regarding procedures and limitations concerning amendment to the constitution, as set forth in Article XI, must prevail. This court is not asked to limit the sovereignty of the people; this court is asked to enforce the will of the people as expressed through their constitution, the fundamental expression of that will.

While this case does not involve denial of the right of the people to vote, it most definitely involves a number of important voter rights. It involves the "right" of the voters not to be burdened with having to vote for or against several separate concepts as a single package. It involves the "right" of the voters to receive fair notice in the voting booth of the true contents and full sweep of a constitutional amendment they are asked to vote upon. And it involves the "right" of the citizens of this state not to be saddled with a major change in their constitution because of a misleading ballot summary. The sponsors of an initiative petition carry a heavy burden of respecting those rights. When, as here, they fail to do so, they cannot fairly ask this Court to overlook their failure in the alleged interests of "letting the people vote." In such cases, the overriding "responsibility" of the Court is to protect the rights of the people to a proper ballot from abuse by private interests.

CONCLUSION

For the foregoing reasons, the Court is respectfully urged to reverse the trial court and order the Secretary of State to remove Proposition 9 from the November election ballot.

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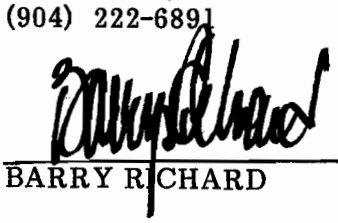

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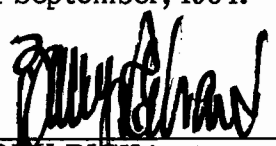
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Mail upon **Robert L. Shevin, Esquire,** First Federal Building, Suite 3050, One Southeast Third Avenue, Miami, Florida 33131; **Mitchell Franks, Esquire,** Office of Attorney General, The Capitol, Tallahassee, Florida 32301, and **Julian Clarkson, Esquire,** Holland and Knight, Post Office Drawer 810, Tallahassee, Florida 32302; **Chesterfield Smith, Esquire,** 1200 Brickell Avenue, Post Office Box 015441, Miami, Florida 33101; and **Donald W. Weidner, Esquire,** Legal Counsel for Reason '84, Post Office Box 2411, Jacksonville, Florida 32203 on this 25th day of September, 1984.



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