

O/A 1-8-88

23

IN THE SUPREME COURT
OF FLORIDA

IN RE: ADVISORY OPINION
TO THE ATTORNEY GENERAL

ENGLISH - THE OFFICIAL
LANGUAGE OF FLORIDA

CASE NO. 71,431

BRIEF OF
RESPONDENT
U.S. ENGLISH

FILED
SID
DEC
CLERK OF THE SUPREME COURT
Deputy Clerk

IN SUPPORT OF By

RESPONDENTS

FLORIDA ENGLISH CAMPAIGN

AND

U.S. ENGLISH LEGISLATIVE TASK FORCE, INC.

PROponents OF THE INITIATIVE MEASURE

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TABLE OF CONTENTS

TABLE OF CITATIONS..... ii

INTEREST OF RESPONDENT U.S.ENGLISH..... 1

STATEMENT OF THE CASE..... 3

PRELIMINARY STATEMENT..... 6

SUMMARY OF ARGUMENT..... 11

ARGUMENT

 I. THE OFFICIAL LANGUAGE INITIATIVE
 DOES NOT VIOLATE THE SINGLE SUBJECT
 RULE..... 12

 II. THE PEOPLE HAVE FAIR NOTICE OF THE
 PURPOSE AND EFFECT OF THE AMENDMENT..... 13

 III. THE MISTAKE IN THE BALLOT SUMMARY
 IS NEITHER SUBSTANTIVE NOR MISLEADING..... 15

CONCLUSION..... 18

TABLE OF CITATIONS

CASES

<u>Alfonso v. Board of Review</u> , 444 A.2d 1075 (N.J.) <u>cert. den.</u> , 459 U.S. 806 (1982)	7, 10
<u>Belanger v. State Farm Mutual Auto Ins. Co.</u> , 426 N.Y.S.2d 140, 142 (N.Y. 1980)	7
<u>Carmona v. Sheffield</u> , 475 F.2d 738 (9th Cir. 1973) ..	8
<u>Carroll v. Firestone</u> , 497 So.2d 1204-07 (Fla. 1986) .	9, 10
<u>Castro v. State</u> , 2 Cal.3d 223, 242 (1970)	8
<u>City of Coral Gables v. Gray</u> , 19 So.2d 318 (Fla. 1944)	12
<u>DaLomba v. Director of the Div. of Employment Sec.</u> , 337 N.E.2d 687, 689-90 (Mass. 1975)	7
<u>Diaz v. Board of County Commissioners of Dade County</u> , 502 F.Supp. 190 (S.D.Fla. 1980)	7
<u>Ervin v. Collins</u> , 82 So.2d 852 (Fla. 1956)	7
<u>Evans v. Firestone</u> , 457 So.2d 1351, 1356 (Fla. 1984)	13, 15
<u>Fine v. Firestone</u> , 448 So.2d 984, 989 (Fla. 1984) ...	12, 13
<u>Florida State Racing Comm. v. McLaughlin</u> , 102 So.2d 574, 575 (Fla. 1958)	7
<u>Grose v. Firestone</u> , 422 So.2d 303 (Fla. 1982)	14
<u>Guerrero v. Carleson</u> , 512 P.2d 833, 835 (Cal. 1973), <u>cert. den.</u> , 414 U.S. 1137 (1974)	7, 8
<u>In re Advisory Opinion of the Governor; Request of Nov. 19, 1976 (Constitution Revision Comm.)</u> , 343 So.2d 17, 24 (Fla. 1977)	7
<u>Jara v. Municipal Court for the San Antonio Judicial Dist. of Los Angeles County</u> , 578 P.2d 94 (Cal. 1978)	8
<u>Katzenbach v. Morgan</u> , 384 U.S. 641, 650-51 (1966) ...	9
<u>Loehde v. Gos</u> , 106 N.E. 940 (Ill. 1914)	8
<u>Meyer v. Nebraska</u> , 262 U.S. 390, 412 (1922)	8

<u>Miami Dolphins v. Metropolitan Dade County,</u> 394 So.2d 981, 987 (1981)	14
<u>Puerto Rican Organization for Political Action v.</u> <u>Kusper,</u> 490 F.2d 575 (7th Cir. 1973)	8, 10
<u>Smathers v. Smith,</u> 338 So.2d 825 (Fla. 1976)	14
<u>Stein v. Meyers,</u> 97 N.E. 295 (Ill. 1911)	8
<u>Valdivia v. Chicago & Northwestern Transp. Co.,</u> 409 N.E.2d 457 (Ill.App. 1980)	8, 10

CONSTITUTIONAL PROVISIONS

Article II, § 2, Fla. Const.	3, 13, 16
§ 4,	3
§ 5,	3, 16
§ 6,	3, 16
§ 7,	3, 16
§ 8,	3, 16
Article V, § 10, Fla. Const. (1986)	3
Article XI, § 3, Fla. Const.	4
Article VI, § 3, Cal. Const. (1986)	6

STATUTORY PROVISIONS

§ 15.21, Fla. Stat. (1987)	3
§ 16.061, Fla. Stat. (1987)	3, 4
§ 101.161, Fla. Stat.	14

OTHER

<u>The English Language Amendment, Hearing on</u> <u>S.J.Res. 167 before the Subcommittee on the</u> <u>Constitution of the Senate Committee on the</u> <u>Judiciary, 98th Cong., 2nd Sess. (1984).....</u>	7, 8
<u>Hamilton, Frederick & Schneiders, Floridians'</u> <u>Opinions On English As Official Language,</u> Washington, D.C. 1987.....	15

INTEREST OF RESPONDENT U.S.ENGLISH

U.S.ENGLISH is a national membership organization dedicated to the preservation and protection of English as the common language of the United States. U.S.ENGLISH is also dedicated to encouraging all Americans, through use of English, to join the political, economic and social mainstreams of the Nation.

U.S.ENGLISH is an unincorporated project of U.S., Inc., a Michigan charitable and educational corporation exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954, as amended. Walter Cronkite, Alistair Cooke, Saul Bellow, Bruno Bettelheim, Dr. Denton Cooley, Jacques Barzun, and Arnold Schwarzenegger, among others, are members of U.S.ENGLISH's National Board of Advisors. The Board of Advisors is headed by former U.S. Senator S.I. Hayakawa, a semanticist of international reknown.

U.S.ENGLISH has more than 300,000 members, of whom 23,202 are residents of Florida. U.S.ENGLISH is separate from, by virtue of its parent's charitable status, but closely supports Respondents Florida English Campaign (a Florida political committee) and U.S.ENGLISH Legislative Task Force, Inc. (a District of Columbia corporation exempt from taxation as a social welfare organization under section 501(c)(4) of the Internal Revenue Code of 1954, as amended).

The English language is a vital common bond among all Americans. That common language uniquely brings Americans together. Knowledge of English is the key to full participation in American life; lack of English-language proficiency can doom a

person to miss many essential benefits of our society.

U.S.ENGLISH attempts to bring the blessings of our common language to as many people as possible.

Experiences in other countries indicate that language rivalries can fragment and weaken a country. U.S.ENGLISH, therefore, also tries to protect and preserve our common language bond to avoid such social or political divisions.

U.S.ENGLISH sponsors innovative methods of teaching English to persons with limited English proficiency, conducts conferences and publishes materials on English as the common language of the United States, and advocates laws designating English as the official language of the United States and of the states. U.S.ENGLISH has assisted successful efforts to make English the official language of seven states in the last four years.

STATEMENT OF THE CASE

This is the first matter brought before this Court under the the initiative review process enacted by the voters last year, H.J.R. 71, 1986, adopted November, 1986, now Article V, Section 10, Fla. Const. The Legislature passed implementing legislation this year. §§ 15.21, 16.061, Fla. Stat. (1987).

The initiative measure styled "English - the Official Language of Florida" (hereafter "the official language initiative") adds a new section¹ to Article II of the Constitution of Florida to read:

Section 9. English is the Official Language of Florida.

(a) English is the official language of the state of Florida.

(b) The Legislature shall have the power to enforce this section by appropriate legislation.

The ballot title and summary for the initiative, approved as to format by the Secretary of State, reads:

English is the Official Language of Florida.

Establishes English as the official language of the State of Florida; Enables the legislature to implement this article by appropriate legislation.

Respondent Florida English Campaign, with the support of Respondent U.S.ENGLISH Legislative Task Force, Inc., has been

¹Other provisions of Article II include: the seat of government, § 2; seal and flag, § 4; public officials, § 5; enemy attack, § 6; natural resources and scenic beauty, § 7; and ethics in government § 8.

circulating petitions to qualify this initiative for the ballot since 1985.² More than 200,000 signatures on these petitions have been gathered throughout Florida; more than enough of these signatures have been verified to trigger the new review process.

Pursuant to the new statute implementing the initiative, § 16.061 Fla. Stat. (1987), the Attorney General has requested an advisory opinion from this Court as to the validity of the official language initiative under certain provisions of the Florida Constitution and laws.³ The Attorney General's request to the Court posed three questions:

1) Is the proposed amendment so broad as to violate the single subject requirement of Art. XI, § 3, Fla. Const.?

2) Do the ballot title and summary provide fair notice to the voters of the chief purpose of the proposed revision of the State Constitution?

3) What is the effect of the grammatical error in the ballot summary of the proposed constitutional amendment?

Letter to The Hon. Parker Lee McDonald, Chief Justice, and Justices of the Supreme Court of Florida from Robert A. Butterworth, Attorney General, November 10, 1987, Pp. 3-4.

Respondent U.S.ENGLISH hereby requests the Court to advise the Attorney General that no infirmity under the Florida Constitution or laws exists in the proposed initiative and

²A signature petition, approved by the Secretary of State as to format, is enclosed as Appendix Tab A.

³No federal constitutional or statutory question is at issue.

ballot title and summary.

PRELIMINARY STATEMENT

The Official Language initiative contains two parts: the first, subsection (a), provides that English is the official language of Florida; the second, subsection (b), grants power to the Legislature to enforce subsection (a). Both parts are clear to the Florida electorate as to meaning and effect, address a single issue, and avoid logrolling or drafting problems that have aroused concern within this Court.

Subsection (a) of the initiative simply ratifies in law what is a social and cultural reality: English is already the common language of Florida. It is no legal novelty. At least thirty-four jurisdictions in Florida already recognize in law that English is the official language of those jurisdictions. See, e.g. Appendix Tab B: List of and Representative Samples From Florida Jurisdictions Declaring English Their Official Language.

Thirteen states also have either constitutional or statutory recognition of English as their official languages. See Appendix Tab C: List of States With Constitutional or Statutory Recognition of English As Their Official Languages. California's Proposition 63, English as the Official Language of California, now Article VI, § 3, Cal. Const., was approved last November by 72% of the voters, including majorities of every ethnic or racial group.⁴

The Judiciary Committee of the United States Senate held

⁴Respondent U.S.ENGLISH's statement before hearings of the California Legislature explaining the language and the intent of the California initiative is reprinted as Appendix Tab D.

hearings in 1984 on a strikingly similar proposed federal constitutional amendment. **The English Language Amendment, Hearing on S.J.Res. 167 before the Subcommittee on the Constitution of the Senate Committee on Judiciary, 98th Cong., 2nd Sess. (1984) (hereafter The English Language Amendment).**⁵ Congress has not yet passed the proposed federal amendment.

Even in the absence of statutory or constitutional recognition of English as an official language, English is the common and official language of this State.⁶ Various state courts have recognized English as the official or common language within their jurisdictions.⁷ These decisions reflect our

⁵The Congressional Research Service of the Library of Congress analysis of this proposal is reprinted in Appendix Tab E.

⁶There do not appear to be cases in Florida which contest English as the state's official language. But, see, Diaz v. Board of County Commissioners of Dade County, 502 F.Supp. 190 (S.D.Fla. 1980) (referendum on requirement that county use only English allowed to remain on the ballot); In re Advisory Opinion of the Governor; Request of Nov. 19, 1976 (Constitution Revision Comm.), 343 So.2d 17, 24 (Fla. 1977), quoting Justice Terrell in Ervin v. Collins 82 So.2d 852 (Fla. 1956): "[I]t must be presumed that those who drafted the Constitution . . . knew the English language and that they knew how to use it. . ."; Florida State Racing Comm. v. McLaughlin, 102 So.2d 574, 575 (Fla. 1958) ("the Legislature is conclusively presumed to have a working knowledge of the English language. . .").

⁷See, e.g., DaLomba v. Director of the Div. of Employment Sec., 337 N.E.2d 687, 689-90 (Mass. 1975) ("English is the official language of this country and of this Commonwealth.") and cases cited therein; Alfonso v. Board of Review, 444 A.2d 1075 (N.J.), cert. den., 459 U.S. 806 (1982) (requirements of reasonable notice are satisfied by notice in English) and cases cited therein; Belanger v. State Farm Mutual Auto Ins. Co., 426 N.Y.S.2d 140, 142 (N.Y. 1980) (proceedings required to be in English to avoid translation problems and costs); Guerrero v. Carleson, 512 P.2d 833 (Cal. 1973), cert. den., 414 U.S. 1137 (1974) (welfare termination notices not required to be in

linguistic heritage and traditions.

As Justice Mosk of the California Supreme Court noted:

The United States is an English-speaking country. Despite California's early Spanish culture, the language of our state government has long been that of the waves of American settlers who migrated here when California joined the Union. Although a declaration that all official writings shall be in the English language (former Cal. Const., Art. IV, § 24) was deleted as surplusage in the 1966 revision of our Constitution, section 8 of the Welfare and Institutions Code still provides, as do many of our codes, that "Whenever any Notice, report, statement, or record is required or authorized by this Code, it shall be made in writing in the English language." Justice Holmes declared a half-century ago "it is desirable that all citizens of the United States should speak a common tongue." Meyer v. Nebraska, 262 U.S. 390, 412 (1922) (dissenting opinion). And this court recently recognized that "The state interest in maintaining a single language system is substantial. . ." Castro v. State, 2 Cal.3d 223, 242 (1970).

Guerrero v. Carlson, 512 P.2d 833, 835 (Cal. 1973), cert. den.,

(Note 7 cont.)

languages other than English); Jara v. Municipal Court for the San Antonio Judicial Dist. of Los Angeles County, 578 P.2d 94 (Cal. 1978) (no constitutional right for court-appointed interpreters for represented civil litigants); Valdivia v. Chicago & NorthWestern Transp. Co., 409 N.E.2d 457 (Ill.App. 1980) (official language statute required litigant to provide English translation for Spanish-language affidavit); Loehde v. Glos, 106 N.E. 940 (Ill. 1914) (official documents must be in English so English-speaking person need not seek help in understanding them); Stein v. Meyers, 97 N.E. 295 (Ill. 1911) (abbreviations may not fit judicial English language requirements); Carmona v. Sheffield, 475 F.2d 738 (9th Cir. 1973) (English notices don't violate federal due process requirements).

No other jurisdiction has reported difficulties in interpreting or implementing a similar provision. See, e.g., The English Language Amendment, supra, Pp. 181-208, attached as Appendix Tab G. "Using English as the official language of the State [Nebraska] has not caused problems in government, commerce, schools or industry." Id., 182. In Illinois, for example, a challenge to the federal constitutionality of the official language designation was rejected by the United States Court of Appeals for the Seventh Circuit. Puerto Rican Organization for Political Action v. Kusper, 490 F.2d 575 (7th Cir. 1973).

414 U.S. 1137 (1974).

Subsection (a) changes Florida law in two ways:

1) subsection (a) places into the Florida Constitution the designation of English as the official language of the State; and,

2) subsection (a) prohibits, without further amendment of the Florida Constitution, the designation of any other official language.

Subsection (b) of the initiative empowers the Legislature to enforce subsection (a). That power is not open-ended. Any actions the Legislature takes to enforce the initiative must further, and not frustrate, the purpose of subsection (a). Subsection (b) allows the Legislature only to pass "appropriate legislation" to enforce subsection (a), i.e., the legislation must be "plainly adapted to the end" of enforcing the amendment and "not prohibited by, but . . . consistent with the letter and the spirit of the Constitution." Katzenbach v. Morgan, 384 U.S. 641, 650-51 (1966) (interpreting congressional power to enforce the Fourteenth Amendment by appropriate legislation).

This Court has recognized that drafters of initiatives are entitled to place the implementation of initiatives in the hands of the Legislature. Carroll v. Firestone, 497 So.2d 1204, 1207 (Fla. 1986) (lottery initiative upheld where legislature may implement portion of action authorized by initiative). "[T]hose questions go to the wisdom of adopting the amendment and it is for the proponents and opponents to make the case for adopting or rejecting the amendment in the public forum." Id., (Boyd, J.

concurring).

The legislative involvement provisions upheld in the lottery case are arguably broader than those in the official language initiative. Carroll v. Firestone, supra, 497 So.2d at 1205-6. In the lottery case, the Legislature was allowed to spend the funds generated by the lottery for any activity, despite the purpose of the drafters that the funds go for, and the designation of the fund for, education. Id.

In this case, the Legislature is bound to further the express purpose of the initiative. Thus, for example, no law could overturn this Court's traditional practice that papers be filed and arguments be made in English.⁸ The designation of English as the official language merely recognizes the existing practices of the government of Florida.⁹

⁸Other courts have similar rules. See, e.g., Alfonso v. Board of Review and Valdivia v. Chicago & NorthWestern Transp. Co., supra, Note 7.

⁹There is no express prohibition in the Florida official language initiative, unlike other states' initiatives, against the use of languages other than English in governmental communications. The existence of an official language provision, however, has generally been construed as meaning that, absent a good reason to the contrary, government will function and speak in English. See Puerto Rican Organization for Political Action v. Kusper, supra, 490 F.2d at 578-80.

SUMMARY OF ARGUMENT

The official language initiative is succinct, unambiguous and uncluttered. It is not overly broad. Its obvious goal is to preserve and foster English as the official language of Florida. Its two sections work together in a logical and natural unity of purpose to achieve its primary purpose. It therefore does not violate the single-subject rule.

The ballot title and summary are not misleading and give fair notice to the voters of the chief purpose of the amendment. They state clearly both the chief purpose of the amendment (to declare English the official language) and how the purpose is to be achieved (by designation in law and by legislative enforcement).

The single grammatical error in the ballot summary is neither substantive nor misleading. The error is highly unlikely to affect any voter's actions.

The Court should, therefore, advise the Attorney General that the official language initiative suffers no infirmity under Florida's Constitution or laws.

ARGUMENT

I. THE OFFICIAL LANGUAGE INITIATIVE DOES NOT VIOLATE THE SINGLE SUBJECT RULE.

The official language initiative is succinct, unambiguous, and uncluttered. It is not overly broad. Its obvious goal is to preserve and to foster English as the official language of Florida.

The initiative addresses a single subject: the use of English in the official life of Florida. It declares in law existing custom and practice.

The single-subject rule is applied by examining the function of the proposed initiative. In City of Coral Gables v. Gray, 19 So.2d 318 (Fla. 1944), the Court explained:

Unity of object and plan is the universal test, and it is to be looked for in the ultimate end sought, not in the details or steps leading to the end.

Id., at 320; Fine v. Firestone, 488 So.2d 984, 990 (Fla. 1984) ("logical and natural oneness of purpose").

The official language initiative addresses only one "ultimate end" -- the designation of English as the official language -- and its plan for implementation is straightforward -- the Legislature enforces the measure. Subsections (a) and (b) work together with a "logical and natural oneness of purpose."

The initiative raises no difficult or open-ended interpretive problems for the Court. The concerns found in several of the Court's earlier decisions on the single-subject

rule, such as "log-rolling,"¹⁰ lack of a "filtering" mechanism to refine changes to the Constitution,¹¹ and lack of clarity and unity of purpose¹², are minimized in this initiative because of the delegation to the Legislature in subsection (b). This delegation provides time for deliberation, legislative history, and public discussion that will ease interpretive difficulties¹³ for the Court as the initiative finds full expression in Florida statutes.

Thus, the official language initiative is not so broad or unstructured as to violate the single subject restriction. Its single goal is carried out by its simple enforcement structure. It has a "logical and natural oneness of purpose".

II. THE PEOPLE HAVE FAIR NOTICE OF THE PURPOSE AND EFFECT OF THE AMENDMENT.

¹⁰Logrolling is the wrapping of disparate subjects into one whole on which the voter must vote without separation. Thus voters who support part of an initiative are forced to take the portion they do not support to get the portion of which they approve. Evans v. Firestone, supra, 457 So.2d at 1357 (Overton, J., concurring); Fine v. Firestone, 448 So.2d 984, 989 (Fla. 1984).

¹¹Evans v. Firestone, supra, 457 So.2d at 1357 (Overton, J., concurring)

¹²Evans v. Firestone, supra, 457 So.2d at 1360 (Shaw, J., specially concurring)

¹³One of the Court's concerns in reviews of prior initiative proposals was that the Court alone would have to decide the effect of the amendment. Compare, Evans v. Firestone, 457 So.2d 1351, 1356 (Fla. 1984) (Overton, J. concurring) (tort "reform" initiative struck from ballot). Under subsection (b) of this initiative, the Legislature, not the Court, would determine the impact of the initiative beyond the adoption of English as the official language.

Voters who examine the ballot title and summary¹⁴ will know immediately that they are voting to designate English as the official language of Florida. Those who understand the distinction between constitutional and statutory law will also know that they are forestalling the designation of any other official language by means other than by another constitutional amendment.

Some might question whether voters understand the effect of making English the official language. This question is answered in part by looking at the status quo; since English is the official language of the State in all but letter of the law, a declaration of law by this initiative will not materially change life in Florida. In addition, the ballot title and summary are not required to spell out every effect of the amendment, but only the chief purpose. § 101.161, Fla. Stat.; Grose v. Firestone, 422 So.2d 303 (Fla. 1982); Miami Dolphins v. Metropolitan Dade County, 394 So.2d 981, 987 (1981); Smathers v. Smith, 338 So.2d 825 (Fla. 1976).

The petitions¹⁵ circulated to obtain signatures to place the amendment on the ballot indicate the primary purpose for the amendment: to designate in law that English is the official language of Florida. Since subsection (a) simply declares what

¹⁴Floridians have been further educated about the primary goal of the initiative by widely publicized efforts in other states, such as California's adoption of Proposition 63 last year. See, Appendix Tab D.

¹⁵See, Appendix Tab A.

is existing law, the people of Florida should be well aware of the effect of such a designation. Indeed, a recent poll commissioned by Respondent Florida English Campaign indicates not only high degrees of awareness and support, but also a substantial degree of sophistication among voters about the purpose and effect of the initiative. See Appendix Tab F: Hamilton, Frederick & Schneiders, Floridians' Opinions On English As Official Language, Washington, D.C. 1987.

Floridians believe¹⁶ that designation of an official language will aid public safety, and aid those with limited English proficiency to assimilate and advance economically. Id., Pp. 1, 3-5. "Voters support the speaking of other languages and think this amendment will not curtail that practice." Id., P. 5.

The people of Florida understand what the designation of English as the official language of Florida means. The ballot title and summary are neither misleading nor inaccurate. The Court should find that the voters have fair notice of the purpose and effect of the amendment.

**III. THE MISTAKE IN THE BALLOT SUMMARY IS NEITHER
SUBSTANTIVE NOR MISLEADING.**

The ballot summary must accurately reflect the main purpose of the initiative and must not mislead the voters into thinking that they are voting on something other than the actual initiative language. Evans v. Firestone, supra.

¹⁶These findings mirror the beliefs of Respondent U.S.ENGLISH.

There is a clear grammatical error in the ballot summary in the official language initiative: the amendment itself says that the Legislature may enforce this new "section"; the ballot summary states that the Legislature may enforce this "article." This mistake, however, is neither substantive nor misleading.

The mistake in the ballot summary does not effect a change in the amendment itself, nor does it change the likelihood that a voter will vote for or against the initiative on the basis of the mistake. A voter who chooses to vote for the initiative is more likely to do so because of the designation of the official language portion than because of the legislative enforcement section. A voter considering subsection (b) alone is much more likely to vote on whether to allow any legislative enforcement than whether the enforcement is of a "section" or of an "article."

Even a voter who focuses on the power of the Legislature to enforce **Article** II of the Constitution will not find a substantive change made by the initiative. The Legislature already can enforce the provisions of Article II. See, e.g., Article II, §§ 5 (public officials), 6 (enemy attack), 7 (natural resources and scenic beauty), Fla. Const.¹⁷

¹⁷The only arguably controversial provision of Article II is the portion dealing with ethics in government (§ 8), proposed by the "Sunshine Amendment" initiative of 1976. The Sunshine Amendment already provides for a detailed implementation of the Ethics in Government provision to be effective "until changed by law." Thus the Legislature already has the power to enforce this portion of Article II, and the additional enforcement provision which might concern a voter would not make a substantive difference.

The ballot summary of the official language amendment contains an error, but that error will neither make any substantive change in the voters who support or oppose the measure, nor will it mislead voters into thinking the amendment does more or less than it actually does. The Court should advise the Attorney General that the ballot summary is not misleading, and accurately reflects the chief purpose of the initiative.

CONCLUSION

The official language initiative declares as law what is already economic, governmental and social reality in Florida. The initiative joins a host of other state laws making English the official state language.

The initiative preserves English as the sole official language of Florida. The initiative satisfies the single-subject rule because it effectuates a unitary purpose and plan. It does not entice voters' support through "logrolling" of varied goals; each portion of the amendment appeals to an identity of voter sentiment favoring English as the official language of Florida. The ballot title and summary accurately reflect the chief purpose of the initiative and give voters fair notice of what they are voting on. The single mistake in the ballot summary is neither substantive nor misleading.

Therefore, Respondent U.S.ENGLISH respectfully suggests that this Court should advise the Attorney General that the official language initiative is not unconstitutional or violative of Florida law.

RESPECTFULLY SUBMITTED,



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ENGLISH - THE OFFICIAL
LANGUAGE OF FLORIDA

CASE NO. 71,431

CERTIFICATE OF SERVICE

Pursuant to Order of the Court, I certify that a copy of Respondent U.S.ENGLISH's Brief and Appendix have been served on the following parties of record (as obtained from the Office of the Clerk today), by express overnight delivery service this 9th day of December, 1987:

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MOTION OF RESPONDENT U.S.ENGLISH TO APPEAR
DURING ORAL ARGUMENT BEFORE THE COURT

Pursuant to Order of this Court, Respondent U.S.ENGLISH hereby respectfully requests permission to appear before the Court during oral argument on the above-captioned matter scheduled for January 8, 1987. Respondent U.S.ENGLISH will support the position of Respondents Florida English Campaign and U.S.ENGLISH Legislative Task Force, Inc. that the Official Language Initiative is valid and suffers from no constitutional or statutory infirmity. Respondent U.S.ENGLISH has submitted a brief to this Court regarding this matter.

RESPECTFULLY SUBMITTED,



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