IN AND BEFORE THE SUPREME COURT OF FLORIDA

IN RE:

ADVISORY OPINION TO THE ATTORNEY GENERAL - LIMITED POLITICAL TERMS IN CERTAIN ELECTIVE OFFICES

CASE NO. 78,647

BRIEF IN SUPPORT OF LIMITED POLITICAL TERMS INITIATIVE

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PROPOSITION IV

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BRIEF IN SUPPORT OF
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This matter comes before the Court upon the request of the Florida Attorney General pursuant to FSA §16.061 for the advisory opinion of this Honorable Court regarding the initiative petition limiting the terms of certain elective offices.

Petitioner Term Limits Legal Institute ("TLLI") respectfully submits this Brief in support of the term limits initiative petition, and further in favor of the fundamental right of the citizens of Florida to amend their constitution for purposes of establishing rotation of those public officials elected by the voters of the State of Florida. Petitioner Term Limits Legal Institute is a project of Americans Back in Charge, a public charitable organization dedicated to public education on issues related to limiting the terms of members of the United States Congress.

ARGUMENT AND AUTHORITIES

PROPOSITION I

THE ATTORNEY GENERAL HAS CORRECTLY CONCLUDED THAT THE TERM LIMITS INITIATIVE IS IN COMPLIANCE WITH THE REQUIREMENTS OF FLORIDA LAW AS TO: 1) BALLOT SUMMARY; AND 2) SINGLE SUBJECT AS REQUIRED BY ART. XI, §3, FLA. CONST. AND FSA §101.161; NO OTHER CONSIDERATION IS PROPERLY BEFORE THE COURT AT THIS TIME

The Attorney General has reviewed the initiative petition regarding term limits and has expressed his belief that the initiative complies with the requirements of Florida law as to ballot summary and single subject, to-wit:

"SINGLE SUBJECT LIMITATION

> **. . . I believe the proposed initiative petition complies with the single subject limitation required by Art. XI, §3, Fla. Const.**

BALLOT SUMMARY

> **. . . The language of the summary of the initiative petition advises voters that the amendment to the Constitution limits the terms of the named elected officials, but does not apply to terms of office beginning prior to the approval of the amendment. I believe this summary reflects the substance of the proposed amendment."** September 20, 1991, Petition from Attorney General Robert A. Butterworth to Chief Justice Leander J. Shaw, Jr. and Justices of the Florida Supreme Court.

Having been informed by the Attorney General of his conclusion that the term limits initiative petition comports with the requirements of Florida law, Petitioners herein urge the Court to issue its advisory opinion affirming the determination of the

Attorney General, such that the initiative proposal complies with the legal requirements for submission to the voters of Florida.

PROPOSITION II

THERE ARE NO FURTHER SPECIFIC FACTUAL ISSUES REQUIRING JUDICIAL DETERMINATION AS TO THE TERM LIMITS INITIATIVE AND THE PETITION SHOULD BE CERTIFIED BY THIS COURT

FSA §16.061 provides that the Attorney General may enumerate any "specific factual issues which would require a judicial determination". In the Attorney General's September 20, 1991 petition to the Supreme Court, he noted that the term limits initiative "might be construed" to alter the qualifications of United States Representatives and Senators and the Court "may wish to consider" such an issue. September 20, 1991, Petition of Attorney General at Page Four (4). Petitioner submits that the issue posed by the Attorney General is a legal issue which is not contemplated by FSA §16.061.

In any event, the inclusion of factual issues is not mandated by statute (e.g., the Attorney General may enumerate specific factual issues . . .) and the Attorney General in his September 20, 1991 petition did not specifically state that the term limitation issue would require a judicial determination. Petitioners urge the Court to reject any efforts to be drawn into a detailed consideration of the suggested factual issue primarily because the instant proceeding is not the appropriate forum for a careful review and determination of the constitutionality of term

limits. This proceeding is highly abbreviated for the purpose of expediting review of citizen initiatives to insure that such initiatives are procedurally correct before appearing on the ballot. It would be impossible to properly delineate, brief and advise the Court regarding complex issues of constitutional law in this expedited forum. To the extent required by the Court, these petitioners will certainly make available to the Court the pertinent legal argument and authority which it believes support and will sustain the constitutionality of congressional term limits. See Proposition IV, Page Eight (8) of this Brief.

However, the recitation of authority presented herein is not all-inclusive by virtue of the shortness of time in which to present issues to this Honorable Court.

Opponents of term limits initiatives have sought to defeat the issue in other jurisdictions by requesting various courts to intervene in the political discourse about term limits, as in California, wherein elected incumbents filed suit asking the Court to overturn the initiative enacted by California voters in 1990. However, in a 6-1 opinion, in Legislature of the State of California, et al. v. Eu, S.O. 19660, Calif. Supreme Crt, October 10, 1991, the Court upheld the constitutionality of the term limitation initiative.

In the State of Washington, opponents of term limits sought to strike the measure from the ballot to prevent, altogether, its consideration by the voters. League of Women Voters, et al. v. Munro, Secretary of State, Supreme Court of

Washington No. 58438-9, August, 1991. The Washington State Supreme Court was asked to prohibit the ballot question from being voted on by the electorate this November on the basis that the term limitations initiative unconstitutionally imposes additional qualifications upon members of Congress and other elected officials. The Supreme Court in an 8-1 decision dismissed the action as premature until and unless the initiative is enacted by the people, and further held that the expedited proceeding (similar to this one) did not permit a proper review of the substantive, constitutional issues raised by the opponents to term limits. See Order of Washington Supreme Court issued August 30, 1991, attached as Exhibit "A".

We would urge the Court to follow the example of these other courts and to adopt the position of the Attorney General as to ballot summary and single subject content of the term limit initiative, thus deferring debate of substantive issues until such time as the initiative petition is enacted, should that ever occur.

Having met the requirements of law governing initiatives in Florida, the Court should find that no further factual issue exists at present and no additional judicial determination is required, thus clearing the way for the voters of Florida to determine if they wish to vote for a constitutional amendment that would impose limits on the number of terms their elected officials can serve. Any effort to pre-judge the wishes of the Florida electorate at this time would be premature.

PROPOSITION III

THE RIGHTS OF THE CITIZENRY TO PETITION THEIR GOVERNMENT SHOULD BE PROTECTED, NOT HAMPERED, BY THIS COURT

Article I §1 of the Florida Constitution provides:

"§1. Political Power.

All political power is inherent in the people. The enunciation herein of certain rights shall not be construed to deny or impair others retained by the people." (Emphasis added)

Referring to that very principle, Justice Boyd in his specially concurring opinion in Floridians Against Casino Takeovers v. Let's Help, 363 So. 2d 337 (Fla, 1978) wrote:

> "There is no judicial function more serious and important than that which relates to removal of proposed constitutional amendments from the ballot. Since all power of government flows form the people, courts should exercise extreme restraint in denying electors the right to vote on proposed changes in the government.
>
> . . . All proposed constitutional amendments arising through initiative should come to this Court with a presumption of validity. It is only in those instances in which the proposed amendment clearly fails to meet constitutional standards that thus Court should require removal of the questions from the ballot." Id. at 342.

The right to amend the Constitution through the initiative petition method is a fundamental right. State of Florida ex rel Citizens Proposition for Tax Relief, et al. v. Firestone, 386 So. 2d 561, 565 (Fla. 1980).

In order for a court to interfere with the right of the people to vote on a proposed constitutional amendment, the record must show that the proposal is clearly and conclusively defective. (Emphasis added). Askew v. Firestone, 421 So. 2d 151 (Fla. 1982), citing Weber v. Smathers, 338 So. 2d 819 (Fla. 1976), disapproved on other grounds in Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337 (Fla. 1978).

In the present situation, the Attorney General has recommended approval of the initiative petition on the statutory grounds. Any decision to disallow the petition from the ballot must be based on a clear and conclusive defect in the proposal, which simply doesn't exist here.

While there are those who disagree with the objective of limiting terms of elected officials, this is a question which should be left to the people to decide. As Justice Shaw wrote in Fine v. Firestone, 448 So.2d 984 (Fla, 1984): "The wisdom of the proposed initiative is not a matter for judicial review". Id. at 997.

It would be wholly inappropriate for this Court to deny the electorate the right to conclude their petitioning process and ultimately to vote on this proposed constitutional amendment.

If, at some later date, the proposal becomes law, then any individual aggrieved thereby who has standing to do so may invoke the Court's review of the constitutionality of the enactment.

In that way, the Court will not be acting in a summary proceeding to eliminate the inherent power of the people of Florida to exercise the fundamental right to amend their government through the initiative process.

> "We are dealing with a constitutional democracy in which sovereignty resides in the people. It is their Constitution that we are construing. They have a right to choose, abrogate or modify it in any manner they see fit so long as they keep within the confines of the Federal Constitution". Mr. Justice Terrell in Gray v. Golden, 89 So. 2d 785, 790 (Fla. 1956), cited in Weber v. Smathers, supra. at 821.

PROPOSITION IV

TERM LIMITS DO NOT IMPOSE ADDITIONAL QUALIFICATIONS UPON FEDERAL CANDIDATES IN CONTRAVENTION OF ARTICLE II, SECTION 2 OF THE UNITED STATES CONSTITUTION

Political opponents of term limits for U.S. Senators and Congressmen invariably revert to their ultimate attack on the issue which is their contention that it is "unconstitutional". In fact, that is not correct. Providing for a required rotation in office is in keeping with the fundamental tenets of the United States Constitution and the principles on which the American system of government is founded.

Without a full and thoroughgoing analysis of the constitutional arguments in support of term limitations, which is not possible here, let it suffice to say at the outset that the term limits initiative is not "clearly and conclusively defective", and should, therefore, be allowed to proceed through the ordained process for consideration by the voters of Florida.

The United States Supreme Court has, through the years and through many decisions, upheld the right of the States to regulate elections, including the electoral procedures related to the candidacies of persons seeking federal office.

In Storer v. Brown, 94 S.Ct. 1274, 415 U.S. 724, 39 L.Ed. 2d 714 (1974), the Court upheld a California statute which provided that candidates could not file for office as independents if they had been registered as a member of a political party within one year preceding the primary election. Certain prospective candidates for Congress challenged the state law on constitutional grounds, stating that the statute added qualifications for the office of United States Congressman, contrary to Article I, §2, cl. 2 of the United States Constitution.

The Supreme Court rejected the challenge noting that "the States are given the initial task of determining the qualifications of voters who will elect members of Congress, Art. I, §2, cl.1. The Court went on to discuss Art. I, §4, cl.1 which authorizes the States to prescribe "(t)he Times, Places and Manner of holding elections for senators and representatives", saying:

> " . . . In any event, the States have evolved comprehensive, and in many respects, complex election codes regulating in most substantial ways, with respect to both federal and state elections, the time, place, and manner of holding primary and general elections, the registration and qualifications of voters, and the selection and qualification of candidates." (Emphasis added) Id. at 1279.

The Supreme Court in Storer specifically commented that there are no litmus-paper tests for separating the valid versus the

invidious restrictions of the various state election laws. "The rule is not self-executing and is no substitute for the hard judgments that must be made." In fact, the Court indicated that reviews of election law restrictions would require consideration of the "facts and circumstances behind the law, the interests which the state claims to be protecting, and the interests of those who are disadvantaged by the classification". Id. at 1279, citing Dunn v. Blumstein, 405 U.S. 330 at 348, 92 S.Ct. 995, at 1006, 31 L.Ed. 2d 274 (1972).

The Supreme Court has not been reluctant to uphold restrictions on candidates. In various decisions, the Court has denied congressional candidates' challenges to specific state laws which kept the candidate from the ballot.

In Jenness v. Fortson, 403 U.S. 431, 91 S.Ct. 1970, 29 L.Ed. 2d 554 (1971) the Court upheld a signature gathering requirement for candidates in Georgia, including federal candidates.

Likewise, in Bullock v. Carter, 405 U.S. 134 at 145, 92 S.Ct. 849 at 857, 31 L.Ed 2d 92 (1972), the Supreme Court unanimously upheld filing fees imposed by the State of Texas on all candidates, including candidates for federal office.

A number of federal appellate and district courts have also ruled against congressional candidates in favor of the state's right to regulate elections, including placing restrictions on the eligibility of persons to have their names placed on the official ballots prepared by the state. In Williams v. Tucker, 382 F. Supp.

381 (M.D. Pa, 1974), an incumbent congressman filed an action seeking to have his name placed on the ballot for the general election, arguing that Pennsylvania's filing statutes created additional qualifications for the office of United States Congressman in violation of the Federal Constitution. The Court disagreed, referring to Art. I, §4, cl. 1 of the Constitution, authorizing the states to prescribe "the Times, Places, and Manner of Holding Elections for Senators and Representatives", stating that "the Pennsylvania Election Code merely regulates the manner of holding elections and does not add qualifications for office".

In Signorelli v. Evans, 637 F.2d 853 (2d Cir, 1980) the Court upheld a New York law which prohibited a judicial officer from filing as a candidate for Congress. (" . . . a state regulation, though it functions indirectly as a requirement for congressional candidacy, may not necessarily be an unconstitutional additional qualification if it is designed to deal with a subject within traditional state authority." Id. at 859).

The Ninth Circuit Court of Appeals in 1983 upheld an Arizona constitutional provision which limited incumbents except in their final year of office from filing for another office, state or federal, finding that such a regulation was not an impermissible additional qualification for United States Congress. Joyner v. Moffard, 706 F.2d 1253 (9th Cir. 1983).

Finally, there is a body of legal thinking which suggests that the people of the United States are entitled under the First

Amendment to the Federal Constitution to petition their government and to instruct their officials to rotate the offices to which they may be elected. "The right to petition is perhaps one of the most precious of the liberties guaranteed by the Bill of Rights." McDonald v. Smith, 472 U.S. 479, 486 (1984), citing Mineworkers v. Illinois Bar Association, 389 U.S. 217, 222 (1967).

Clearly, the power of the citizenry to engage in this procedure to eliminate the life tenure of their elected officials is a significant and fundamental right of the citizens, and this Court has a responsibility to protect their efforts to engage in this process.

The complex legal and historical authority favoring the limitation of elected officials' terms will best be heard in another proceeding, if such limitations become a reality in Florida. Absent successful completion of the initiative drive and adoption by the voters of Florida at the polls, the question of the constitutionality of term limits under the United States Constitution is merely speculative, and should not be at issue in these proceedings.

CONCLUSION

WHEREFORE, TERM LIMITS LEGAL INSTITUTE respectfully petitions the Court to approve the initiative as submitted on the basis that the term limitations for various officeholders initiative complies with the single subject and the ballot summary

requirements of Florida law and this initiative should be allowed by this Honorable Court to proceed to its electoral conclusion by the voters of Florida.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on the 15th day of October, 1991, a true and correct copy of the above and foregoing was mailed, postage prepaid, to the following:

The Honorable Robert A. Butterworth
Attorney General
State of Florida - State Capitol
Tallahassee, Florida 32399

Cleta Deatherage Mitchell

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