O.A. 1-7-94 047

FILED
SID J. WHITE
DEC 6 1993
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE NO. 82,674

Upon a Request from the Attorney General for an Advisory Opinion as to the Validity of an Initiative Petition

original

In Re:

Advisory Opinion to the Attorney General - Laws Related to Discrimination are Restricted to Certain Classifications

---

Initial Brief of:
— Broward County Hispanic Bar Association, Inc.;
Florida Consumer Action Network (South Florida Chapter);
Florida AIDS Legal Defense and Education Fund; and
Festive Tours & Travel

In Opposition to the Proposed Amendments

Robert W. Lee, Esq.
Florida Bar No. 500984
Smith & Hiatt, P.A.
2400 E. Commercial Boulevard
Suite 600
Fort Lauderdale, Florida 33308

TABLE OF CONTENTS

Table of Citations ii

Statement of the Case and Facts 1

Summary of Argument 3

Argument 5

I. The Proposed Initiative Violates the Single-Subject Requirement Set Forth in the Florida Constitution 5

A. The Proposed Initiative Fails to Meet the Single-Subject Requirement Because It Does Not Have a "Natural Relation and Connection as Component Parts of a Single Dominant Plan." 9

1. The Proposed Initiative Impacts and Affects Multiple Provisions of the Florida Constitution, Thereby Violating the Single-Subject Rule. 12

2. The Proposed Initiative Impacts Greatly on Different Branches and Functions of State and Local Government, Thereby Violating the Single-Subject Rule. 16

B. The Proposed Initiative Encompasses Many Different Subjects within the Cloak of a Broad Generality, Thereby Violating the Single-Subject Rule. 18

II. The Ballot Summary of the Proposed Initiative Fails to Meet the Requirements Set Forth in §101.161 of the Florida Statutes. 20

A. The Ballot Summary of the Proposed AFPC Initiative is Clearly and Conclusively Defective Because It Fails to Be Set Forth in Clear and Unambiguous Language. 21

1. The Ballot Summary is Clearly and Conclusively Defective Because it Omits Many Material Facts. 26

2. The Ballot Summary is Clearly and Conclusively Defective Because it is Misleading. 31

B. The Ballot Summary is Clearly and Conclusively Defective Because it Materially Contradicts the Information Provided in the AFPC Initiative Package. 33

Conclusion 36

Appendix

TABLE OF CITATIONS

CASES:

Palmore v. Sidoti, 466 U.S. 429 (1984). 33

Hunter v. Erickson, 393 U.S. 385 (1969). 33

NLRB v. Great Dane Trailers, Inc., 388 U.S. 26 (1967). 24, 25, 32

Reitman v. Mulkey, 387 U.S. 369 (1967). 33

United States v. Illinois Central R. Co., 263 U.S. 515 (1924). 24

Florida Bar re: Amendments to Rules Regulating The Florida Bar, 18 FLW S393 (Fla. July 1, 1993). 7

Doe v. Thompson, 620 So.2d 1004 (Fla. 1993). 24

Advisory Opinion to the Attorney General - Limited Marine Net Fishing, 620 So.2d 997 (Fla. 1993). 5, 9, 20

Florida League of Cities v. Smith, 607 So.2d 397 (Fla. 1992). 12, 21, 24, 26 - 28, 30

Smith v. American Airlines, Inc., 606 So.2d 618 (Fla. 1992). 21, 24, 26, 28 - 31

Advisory Opinion to the Attorney General - Limited Political Terms in Certain Elective Offices, 592 So.2d 225 (Fla. 1991). 5, 8, 12, 16, 26, 31, 33

Advisory Opinion to the Attorney General - Homestead Valuation Limitation, 581 So.2d 586 (Fla. 1991). 9, 22

Wadhams v. Board of County Commissioners of Sarasota County, 567 So.2d 414 (Fla. 1990). 29 - 30

Advisory Opinion to the Attorney General - English, The Official Language of Florida, 520 So.2d 11 (Fla. 1988). 10, 24

Smith v. Department of Insurance, 507 So.2d 1080 (Fla. 1987). 36

Carroll v. Firestone, 497 So.2d 1204 (Fla. 1986). 13, 34

Evans v. Firestone, 457 So.2d 1351 (Fla. 1984). 5, 7-8, 10, 16-21, 25, 31-32

Fine v. Firestone, 448 So.2d 984 (Fla. 1984). 5, 7-8, 11-15, 17, 25, 32, 36

Grose v. Firestone, 422 So.2d 303 (Fla. 1982). 22, 31

Askew v. Firestone, 421 So.2d 151 (Fla. 1982). 20, 29 - 31, 36

Williams v. Smith, 360 So.2d 417 (Fla. 1978). 24

Smathers v. Smith, 338 So.2d 825 (Fla. 1976). 11, 14, 31, 33

Weber v. Smathers, 338 So.2d 819 (Fla. 1976). 14

Adams v. Gunter, 238 So.2d 824 (Fla. 1970). 6, 10 - 12, 14, 25, 31, 33

Cooper v. Tampa Electric Co., 154 Fla. 410, 17 So.2d 785 (1944). 24

Charter Review Commission of Orange County v. Scott, 18 F.L.W. D2126 (Fla. 5th DCA Oct. 1, 1993). 16, 19

BB Landmark, Inc. v. Haber, 619 So.2d 448 (Fla. 3d DCA 1993). 24

Palm Beach County v. Hudspeth, 540 So.2d 147 (Fla. 4th DCA 1989). 26, 29

Metropolitan Dade County v. Lehtinen, 528 So.2d 394 (Fla. 3d DCA 1988). 21, 32

Watt v. Firestone, 491 So.2d 592 (Fla. 1st DCA 1986). 33

Fine v. Firestone, 443 So.2d 253 (Fla. 1st DCA 1983), overruled on other grounds, 448 So.2d 984 (Fla. 1984). 33

Juno By The Sea North Condominium Ass'n (The Towers), Inc. v. Manfredonia, 397 So.2d 297 (Fla. 4th DCA 1980). 24

Clay Utility Company v. City of Jacksonville, 227 So.2d 516 (Fla. 1st DCA 1969). 24

Cox v. Dry, 1 F.L.W. Supp. 352 (12th Jud. Ct. Mar. 5, 1993). 24, 35

Massaro v. Mainlands Civic Ass'n, 3 F.3d 1472 (11th Cir. 1993). 20

Morton Salt Co. v. FTC, 162 F.2d 949 (7th Cir. 1947). 24

Feng Yeat Chow v. Shaughnessy, 151 F. Supp. 23 (S.D.N.Y. 1957). 24, 32

In re Korvich, 4 B.R. 403 (Bankr. W.D. Mich. 1980). 24

United States v. Sunday Creek Co., 194 F.2d 252 (N.D. Ohio 1911). 24, 32

Welsh v. Municipality of Anchorage, 676 P.2d 602 (Alaska 1984). 7

Citizens for Responsible Behavior v. Superior Court, 2 Cal. Rptr. 2d 648 (Dist. App. 1991). 33

McFadden v. Jordan, 32 Cal.2d 330, 196 P.2d 787 (1948). 6

Evans v. Romer, 854 P.2d 1270 (Colo. 1993). 33

Evans v. Romer, 1993 Westlaw 19678 (Colo. Dist. Ct.), aff'd, 854 P.2d 1270 (Colo. 1993). 33

State v. Arkansas Louisina Gas Co., 227 La. 179, 78 So.2d 825 (1955). 25, 32

Jersey City v. Bettcher, 22 N.J. Misc. 16, 34 A.2d 784 (Bd. Tax 1943). 24, 32

State v. Pate, 47 N.M. 182, 138 P.2d 1006 (1943). 24, 32

In re Public Utilities Commision of Oregon, 268 P.2d 605 (Ore. 1954). 24, 32

CONSTITUTIONAL PROVISIONS:

Art. I, §2, Fla. Const. 14

Art. I, §5, Fla. Const. 15

Art. I, §12, Fla. Const. 22

Art. III, §11, Fla. Const. 15

Art. V, §2. Fla. Const. 15

Art. VII, §3, Fla. Const. 27 - 28

Art. VII, §6, Fla. Const. 27

Art. VIII, §8, Fla. Const. 15

Art. X, §15, Fla. Const. 15

Art. XI, §3, Fla. Const. 5

STATUTES:

47 U.S.C. §543(f) 33

Fla. Stat. §16.061(1) (1991). 1, 33

Fla. Stat. §101.161(1) (1991). 20 - 21, 29, 32

OTHER AUTHORITIES:

American Heritage Dictionary of the English Language 376 (New College ed. 1976). 24

27 C.J.S. Discriminate 25

27 C.J.S. Discrimination 25

Opinion re Idaho Civil Rights Act, Op. Idaho Att'y Gen. (Mar. 18, 1993). 25, 33

Roget's College Thesaurus 138 (rev. ed. 1978). 24

12A Words and Phrases 151 (Supp. 1992). 24

STATEMENT OF THE CASE AND FACTS

This matter is before the Court pursuant to a request of the Florida Attorney General in accordance with Article IV, Section 10 of the Florida Constitution and §16.061(1) of the Florida Statutes seeking an advisory opinion concerning the validity of an initiative petition to amend the Florida Constitution. The full text of the proposed amendment submitted by the American Family Political Committee of Florida (hereinafter "AFPC") is set forth to the petition form attached to this Brief at Appendix C.

On November 4, 1993, the Attorney General submitted a letter to the Court seeking an advisory opinion concerning the proposed amendment. This Court subsequently entered an Interlocutory Order authorizing interested parties to file briefs on or before December 6, 1993, and setting oral argument for January 7, 1994. Pursuant to this Order, this Brief is submitted on behalf of the interested parties described below in opposition to the proposed initiative.

The Broward County Hispanic Bar Association, Inc. is a voluntary bar association comprised of members of The Florida Bar. The Association is interested in this matter for the purpose of educating this Court as to the effects of the proposed initiative on groups in which the Association has an active interest in Broward County: consumers, the indigent and other disadvantaged groups.

The South Florida Chapter of the Florida Consumer Action Network is an arm of the statewide organization which focuses

attention of environmental protection, health care and insurance reform, fairer utility policies, growth management, consumer protection, and good government issues in the State of Florida. The South Florida Chapter is interested in this matter because of the negative impact the proposed initiative will have on insurance, healthcare and consumer protection legislation on the State and local level.

The Florida AIDS Legal Defense and Education Fund is an organization formed for the purpose of providing pro bono or low cost legal services to those HIV infected individuals of this State who cannot afford legal services. The Fund is interested in this matter because of the uncertain nature of the impact of the proposed initiative on State and local legislation designed to protect the HIV infected from discrimination.

Festive Tours & Travel is a travel agency located in Lake Worth, Florida which derives almost all of its income from the tourism industry in Florida. It is interested in this matter because of the probable negative impact on Florida's tourism industry if this initiative is successful.

SUMMARY OF ARGUMENT

Florida law sets forth at least two general requirements for a proposed constitutional amendment by initiative: (1) the initiative must be limited to "one subject and matter directly connected therewith"; and (2) the initiative ballot summary must be "an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure." The AFPC measure violates every guidepost that this Court has established for determining compliance with the single-subject and the ballot summary requirements. As for the single-subject mandate, the AFPC proposal impermissibly significantly affects numerous provisions of the State Constitution and the Florida Statutes which are in no way logically related "as component parts of a single dominant plan." Moreover, the AFPC measure substantially affects multiple sections and articles of the Constitution which are not in any way identified to the electorate. It also impermissibly impacts a wide range of government functions. Finally, the initiative fails the single-subject inquiry because it attempts to cloak a multitude of topics under the broad generality of "laws regarding discrimination."

As for the ballot summary, the AFPC fails to couch the measure in language that is clear and unambiguous. The language fails to provide Florida voters with notice of the requisite meaning, effect

and ramifications of the provision. The measure fails to define what comprises a "law regarding discrimination," and therefore leaves the scope of the provision to much speculation. The AFPC also omits much material information from the summary: it fails to give any specific mention of the dozens of statutory provisions to be repealed, as well as the hundreds of other constitutional and statutory provisions being amended or affected. Finally, the measure is misleading because it requires the voters of this State to have extensive knowledge of all State and local laws regarding discrimination.

ARGUMENT

ARGUMENT I. THE PROPOSED INITIATIVE VIOLATES THE SINGLE-SUBJECT REQUIREMENT SET FORTH IN THE FLORIDA CONSTITUTION.

The Florida Constitution specifically requires that a proposed constitutional amendment by initiative be limited to "one subject and matter directly connected therewith." Art. XI, §3, Fla. Const. Respondents submit that the proposed AFPC initiative clearly fails to meet this requirement.

Florida courts have recognized several purposes behind the single-subject restriction, none of which are met by the AFPC proposal. In its most recent statement on the matter, this Court stated that the purpose of the single-subject requirement is "to prevent the proposal of an amendment which contains two unrelated provisions, one which electors might wish to support and one which they might disfavor." Advisory Opinion to the Attorney General - Limited Marine Net Fishing, 620 So.2d 997, 999 (Fla. 1993).[1] As will be demonstrated throughout this Brief, the proposed AFPC initiative results in a multitude of unrelated effects which evoke a wide range of viewpoints among the electorate. In an early case

---

[1] See also Advisory Opinion to the Attorney General - Limited Political Terms in Certain Elective Offices, 592 So.2d 225, 232 (Fla. 1991) (Kogan, J., concurring in part and dissenting in part) ("No person should be required to vote for something repugnant simply because it is attached to something desirable. Nor should any special interest group be given the power to 'sweeten the pot' by obscuring a divisive issue behind separate matters about which there is widespread agreement"); Evans v. Firestone, 457 So.2d 1351, 1354 (Fla. 1984); Id. at 1360 (Shaw, J., concurring); Fine v. Firestone, 448 So.2d 984, 988, 993 (Fla. 1984); Id. at 998 (Shaw, J., concurring).

on the validity of an initiative amendment, this Court condemned an initiative petition to bring about a unicameral legislature in Florida by citing with approval language of the California Supreme Court:

> [t]he proposal is offered as a single amendment but it obviously is multi-farious. It does not give the people an opportunity to express approval or disapproval severally as to each major change suggested; rather does it, apparently, have the purpose of aggregating for the measure the favorable votes from electors of many suasions who, wanting strongly enough any one or more proposition offered, might grasp at that which they want, tacitly accepting the remainder.

Adams v. Gunter, 238 So.2d 824, 831 (Fla. 1970), quoting McFadden v. Jordan, 32 Cal. 2d 330, 338, 196 P.2d 787, 796-97 (1948). The AFPC proposal similarly generates many major unrelated changes, and hence, is defectively multi-farious. The "laws regarding discrimination" to be repealed or amended by the AFPC initiative pertain to "characteristics, traits, statuses or conditions" that range widely from law enforcement officers[2] to firefighters[3]; from osteopathic physicians[4] to podiatrists[5]; from tenants in condominiums[6] to tenants in mobile home parks[7]; from members of the

---

[2] Fla. Stat. §§112.532(5); 185.06(2); 185.341.

[3] §§112.82(9); 175.071(2); 175.333.

[4] §§155.18; 395.0191(1) & (10)(Supp. 1992).

[5] §395.0191(1) & (10)(Supp. 1992).

[6] §718.62. Tenants in cooperatives are also afforded protection under §719.62.

[7] §723.031(5). Owners in mobile home parks are also afforded protection under §§723.058(9) and 723.0615(1).

military[8] to members of unions[9]; from condominium developers[10] to cooperative developers[11]; from residents in nursing homes[12] to residents in continuing care facilities[13]; from students in public schools[14] to employees in public education.[15] Laws pertaining to health status[16], economic status[17], insurance status[18], veteran status[19] and sickle-cell status[20] would be repealed or amended, as likely would laws protecting the incapacitated[21], the HIV-

---

[8] §§250.45; 250.481.

[9] §§447.17(1); 447.501.

[10] §718.301(3)(b)(Supp. 1992).

[11] §719.301(3)(b)(Supp. 1992).

[12] §400.314(1)(b). Residents of adult congregate living facilities are also afforded protection under §400.428(1)(e).

[13] §§651.083(3); 651.111(4).

[14] §228.2001.

[15] §§228.2001; 240.335(2).

[16] §§381.0402(3); 395.1041(3)(f); 627.6741(1)(Supp. 1992); 641.22(4).

[17] §§286.011(6); 393.12(2)(d)(7); 395.1041(3)(f); 396.141(3); 397.055(3); 641.22(4).

[18] §395.1041(3)(f).

[19] §§110.2135(1)(Supp. 1992); 196.031(Supp. 1992); 296.06(1)(Supp. 1992); 296.35 (Supp. 1992).

[20] §§448.075; 626.9706; 626.9707.

[21] §§626.9705; 744.3215(1)(j). Although federal law has construed some illnesses and incapacities as "handicaps" for purposes of protection under federal law, the same has not occurred in Florida law because of the State's specific types of protections for various illnesses, such as HIV-infection, and incapacities. Courts in other states have recognized that not all illnesses are "handicaps." See, e.g., Welsh v. Municipality of Anchorage, 676 P.2d 602, 603 (Alaska 1984). Additionally, this Court recently recognized that the term "disabled" is a broader term that encompasses the handicapped. Florida Bar re: Amendments to Rules Regulating The Florida Bar, 18 FLW S393, S394 (Fla. July 1, 1993) ("[T]he term 'disability' encompasses what previously has been called 'handicap' . . . . It is not the intention of the Court to create a distinction between the words 'disability' and 'handicap,' since the latter is subsumed within the former.") (emphasis added). However, the term "handicap" alone, as used in the AFPC initiative, leaves those with many illnesses and disabilities without the ability to obtain certain protections or privileges under State or local law. The uncertainty of the meaning of the term "handicap" in the AFPC initiative further contributes to a finding that the measure is fatally defective. See Evans, 457 So.2d at 1356 (Overton, J., concurring); Fine, 448 So.2d at 995 n.2 (McDonald, J., concurring).

infected[22], the indigent[23] and the developmentally disabled.[24]

A second purpose of the single-subject requirement, as espoused by this Court, is to guard against "multiple precipitous changes" to the State Constitution. Limited Political Terms, 592 So.2d at 227; Fine, 448 So.2d at 988.[25] As will also be illustrated below, the proposed AFPC initiative clearly runs afoul of this purpose by affecting multiple changes to the Florida Constitution.

A final purpose of the single-subject restraint is to ensure that the voters' attention is directed to the one change being made. Fine, 448 So.2d at 989. This purpose was further stated by one member of this Court in his view that the single-subject requirement furthers the purpose of "[e]nsuring that the initiatives are sufficiently clear so that the . . . layman or judge, can understand what it purports to do and perceive its limits." Evans, 457 So.2d at 1360 (Shaw, J., concurring); Fine, 448 So.2d at 998 (Shaw, J., concurring). Respondents submit, as hereinafter more specifically demonstrated, that the proposed initiative at issue is so broad that a voter's attention cannot be drawn to any "one" change being made, nor can a voter reasonably perceive the limits of the proposal.

---

[22] §§381.004 (Supp. 1992); 760.50.

[23] §§286.011(6); 393.12(2)(d)(7); 395.1041(3)(f); 396.141(3); 397.055(3); 641.22(4).

[24] §§393.13(3)(i); 626.9705.

[25] See also Evans, 457 So.2d at 1356 (Overton, J., concurring) (the voters have the right "to be knowledgeable about how the proposed amendment would affect the constitution").

The purposes set forth above form the underpinnings of the several analyses that the Florida courts have used to determine if the constitutional single-subject requirement has been met. To effectuate these purposes, initiative proposals should be subjected to strict scrutiny to insure compliance with the requirements of the initiative process. See Evans, 457 So.2d at 1358 (McDonald, J., concurring); Fine, 448 So.2d at 995 (McDonald, J., concurring) & at 999 (Shaw, J., concurring). An analysis of these approaches, as examined by Respondents, unquestionably leads to the conclusion that the proposed AFPC amendment is fatally defective under Florida law.

ARGUMENT I(A).THE PROPOSED INITIATIVE FAILS TO MEET THE SINGLE-SUBJECT REQUIREMENT BECAUSE IT DOES NOT HAVE A "NATURAL RELATION AND CONNECTION AS COMPONENT PARTS OR ASPECTS OF A SINGLE DOMINANT PLAN."

In it most recent statement on how to determine if a single-subject exists, this Court stated that the proposed amendment must have a "natural relation and connection as component parts or aspects of a single dominant plan or scheme." Marine Net Fishing, 620 So.2d at 999. See also Limited Political Terms, 592 So.2d at 227; Advisory Opinion to the Attorney General - Homestead Valuation Limitation, 581 So.2d 586, 587 (Fla. 1991). In the recent case involving the limited marine net fishing initiative, this Court found that all of the provisions of the initiative were "logically related" to the subject of marine net fishing itself, but the Court did note that no one was actually challenging the

issue. 620 So.2d at 997 n.1 & 999. See also Advisory Opinion to the Attorney General - English, The Official Language of Florida, 520 So.2d 11, 15 (Fla. 1988) ("the proposed amendment must have a 'logical and natural oneness of purpose'").

Unlike the marine net fishing initiative, the AFPC initiative significantly affects numerous provisions of the State Constitution and the Florida Statutes which are in no way logically related "as component parts of a single dominant plan." The actual number and substance of affected provisions are so numerous that they cannot possibly all be listed in this Brief.[26] However, a partial listing of the affected provisions is set forth in Appendices A and B.[27]

The instant initiative's defectiveness is more clearly seen by comparing the proposed amendment to the facts of Evans v. Firestone, 457 So.2d 1351 (Fla. 1984), a similar case decided earlier by this Court. In Evans, this Court evaluated an initiative proposal which would have limited the liability of defendants in certain civil actions. In determining that this initiative violated the single-subject requirement based on several factors, this Court noted that "litigation costs" were not directly connected to "liability for civil damages" for purposes of curing a single-subject defect. Id. at 1354. Just as litigation costs and liability for damages are not naturally related component parts of the single dominant plan of civil actions, neither should such

---

[26] Cf. Adams, 238 So.2d at 832. In this decision, this Court acknowledged that the effects on the Constitution were "too numerous to detail."

[27] As discussed more specifically in the text accompanying notes 35 - 37, infra, at least 25 provisions of the Florida Constitution will be impacted by the AFPC initiative.

diverse matters as rights based on sexual orientation[28], protections based on economic status and occupation[29] and privileges based on residency[30] be considered naturally related component parts of a purported single dominant plan of "laws regarding discrimination."[31] Yet, this is what the AFPC urges.

One of the most practical methods of analyzing compliance with the single-subject rule, and thus determining if the "natural oneness" exists, is to consider this Court's view that the requirement mandates a "functional as opposed to locational restraint on the range of authorized amendments." Fine, 448 So.2d at 989. In earlier cases, this Court had implemented an objective "locational" test -- a court would simply review how many different constitutional provisions would be impacted by the initiative proposal. Smathers v. Smith, 338 So.2d 825, 828 n.8 (Fla. 1976); Adams, 238 So.2d at 830. Although the strict locational test has apparently been abandoned, its use assists in determining which "functions" are being impacted by the initiative. The more functions impacted, the less likelihood that the requisite single subject can be found. A review of the functional impact of the proposed AFPC initiative, as developed below, evidences a fatally overbroad initiative proposal.

---

[28] Fla. Stat. §§627.429(1) (Supp. 1992); 627.429(4)(d) (Supp. 1992); 641.3007(4)(d).

[29] §§286.011(6); 393.12(2)(d)(7); 395.1041(3)(f); 396.141(3); 397.055(3); 626.572(1)(f); 641.22(4).

[30] §§83.64(1); 112.021; 125.581(1); 166.0443(1)(d); 400.314(1)(b); 400.428(1)(e); 626.572(1)(f); 626.792(2)(c); 626.835(2)(c); 651.111(4); 718.62; 719.62; 723.031(5); 723.058(9).

[31] As demonstrated throughout this Brief, these "diverse matters" are just a few of the matters affected by the AFPC initiative.

ARGUMENT I(A)(1). THE PROPOSED INITIATIVE IMPACTS AND AFFECTS MULTIPLE PROVISIONS OF THE FLORIDA CONSTITUTION, THEREBY VIOLATING THE SINGLE-SUBJECT RULE.

Even after abandonment of a strict locational test, this Court has continued to look at the extent to which different provisions of the State Constitution would be changed: "how an initiative proposal affects other articles or sections of the Constitution is an appropriate factor to be considered in determining whether there is more than one subject included in the initiative proposal." Fine, 448 So.2d at 990. See Limited Political Terms, 592 So.2d at 228 (Court finds no existing constitutional provision implicated other than the provision being amended). By conducting such an analysis, this Court has recognized the importance of the citizenry's understanding of the "specific changes in the existing Constitution proposed by initiative," as well as avoiding significant problems with the operation of the State government. Fine, 448 So.2d at 989; Adams, 238 So.2d at 832.

In an earlier opinion, this Court went as far as to say that the initiative proposal should actually "identify the articles or sections . . . substantially affected," which the AFPC proposal clearly fails to do, but Respondents recognize that under later holdings this objective view alone cannot be used to strike a proposal from the ballot. Fine, 448 So.2d at 989.[32] However, by

[32] See Florida League of Cities v. Smith, 607 So.2d 397, 404 (Fla. 1992) (Overton, J., dissenting) ("the question arises as to whether Florida's equal protection clause is also being modified and amended by implication without appropriate notification to the voters") (emphasis added).

comparing the proposed AFPC initiative to at least two pertinent cases, one can better see how this Court's application of the "functional" rule results in the inescapable conclusion that the proposed amendment violates the single-subject proscription.

In Carroll v. Firestone, 497 So.2d 1204 (Fla. 1986), this Court addressed whether the proposed lottery initiative met the single-subject requirement. The proposal contained provisions which identified a revenue source and also prescribed the State Legislature with discretionary authority as to who would be the recipient of the revenue. Id. at 1206. In Carroll, this Court did not view any more than one function in the State Constitution being impacted, and therefore, no single-subject defect was found.

In Fine v. Firestone, 448 So.2d 984 (Fla. 1984), a case reaching the opposite conclusion, this Court reviewed an initiative proposal which affected the ability of the government to generate and use revenues. The proponents of the measure argued that each individual section of the initiative proposal "promotes the single object of limiting government revenue in a slightly different way," Id. at 990, just as the AFPC would urge that each provision of its proposal would "promote the single object" of restricting laws regarding discrimination, but "in a slightly different way." In rejecting this argument, this Court, citing the appropriateness of looking at how an initiative affects other articles or sections of the Constitution, found that the Fine proposal "addresses at least three subjects which affect separate, distinct functions of the existing governmental structure in Florida, and substantially

affects multiple sections and articles of our present constitution which are not in any way identified to the electorate." Id. Accordingly, this Court determined that the provision violated the single-subject constraint. Id. at 993.[33] Therefore, by looking at both Carroll and Fine, one can see that the more provisions of the State Constitution impacted, the more likely no single subject can be found. See Smith, 338 So.2d at 827; Adams, 238 So.2d at 832 (the effects were "too numerous to detail").

The proposed AFPC initiative is clearly unlike the Carroll initiative which involved a single constitutional function. Respondents submit that the proposed initiative will, like the Fine initiative, affect multiple provisions of the State Constitution. As more specifically set forth in Appendix A to this Brief, at least twenty-five (25) provisions of the Florida Constitution will be impacted by the AFPC proposal if adopted, three of which would effectively be repealed to some extent[34], and another which would be de facto amended. For instance, as for provisions being impacted, the AFPC initiative would result in a more narrow construction of Article I, §2 which provides that "[a]ll natural persons [have] a right to enjoy and defend life and liberty, [and] to pursue happiness."[35] It would further result in a more narrow

---

[33] Cf. Weber v. Smathers, 338 So.2d 819, 822 (Fla. 1976) ("the proposed amendment, if adopted, will not conflict with other articles and sections of the Constitution").

[34] See text accompanying notes 40 - 43, infra, for a discussion of the provisions being effectively repealed.

[35] Provisions similar to Article I, §2 appear in the preamble to the United States Constitution and in the Declaration of Independence, and these have been held to be without operation or effect standing alone. Article I, §2, however, is not a mere truism, but rather a distinct part of the Florida Constitution itself.

construction of Article I, §5 which grants the citizens of this State "the right . . . to instruct their representatives, and to petition for redress of grievances." The AFPC proposal would limit the ability of the State Legislature to promulgate laws under a wide range of constitutional provisions.[36] Moreover, it would inhibit the ability of the Legislature to place conditions upon appropriations of State funds under Article VIII, §8 and Article X, §15. It would also limit the ability of counties to enact laws under Article VIII, §1. Finally, it would restrict this Court's ability to adopt rules of practice and procedure for state courts under Article V, §2.[37]

As a further indication of the wide sweep of the proposal, the AFPC initiative would also impermissibly result in a de facto amendment to Article III, §11 of the Florida Constitution. This section lists the topics which are "off limits" to the Florida Legislature as subjects for special laws or general laws of local application. The AFPC initiative would, in effect, amend this section by adding another "off limits" topic.

As in Fine, the AFPC proposal "substantially affects multiple sections and articles of our present constitution which are not in any way identified to the electorate." 448 So.2d at 990. If the Fine proposal failed single-subject scrutiny, then surely the proposed AFPC initiative, with its significant impact on multiple

---

[36] Art. II, §8(c); Art. II, §9; Art. III, §6; Art. III, §7; Art. III, §10; Art. III, §18; Art. IV, §2; Art. IV, §4; Art. IV, §8; Art. IV, §9; Art. IV, §12; Art. V, §11; Art. VII, §3(b); Art. VI, §3(c); Art. VII, §6(e); Art. VII, §15; and Art. X, §11, Fla. Const.

[37] The rules of procedure governing the operation of the courts of this State are "laws." Because of a possible broad definition of "laws regarding discrimination," some of the current rules of procedure could well be impacted. See, infra, note 39.

constitutional provisions, likewise fails single-subject scrutiny. Cf. Charter Review Commission of Orange County v. Scott, 18 FLW D2126, D2128 (Fla. 5th DCA 1993) (ballot question which addressed two separate sections of the Orange County Charter violated the single-subject rule).

ARGUMENT I(A)(2). THE PROPOSED INITIATIVE IMPACTS GREATLY ON DIFFERENT BRANCHES AND FUNCTIONS OF STATE AND LOCAL GOVERNMENT, THEREBY VIOLATING THE SINGLE-SUBJECT RULE.

In earlier cases, an initiative proposal would be found violative of the single-subject requirement if it changed more than a single government function. Evans, 457 So.2d at 1354. Respondents acknowledge, however, that in this Court's most recent statement on the issue, the Court asserted that the fact that a proposal affects the three different branches of government is not, sitting alone, sufficient to invalidate a proposed amendment. Limited Political Terms, 592 So.2d at 227. This Court has indicated that it is just one of several factors to consider in evaluating compliance with the single-subject mandate.

Moreover, this factor is not limited to a mere distinction between the three traditional branches of government. For instance, this Court has stricken proposals when it found that the amendment "would have affected several legislative functions." Evans, 457 So.2d at 1354. When analyzing the potential effects of the AFPC initiative on various functions of the State and local government, however, one can see that the proposal undeniably

violates the single-subject rule.

For instance, by comparing the AFPC initiative to the Fine case, one unquestionably concludes that the proposed initiative violates the single-subject requirement by impermissibly impacting a wide range of government functions. The Fine case involved an initiative which would have affected the ability of the government to generate and use revenue. 448 So.2d at 989. While the proponents urged the Court to review it as affecting the single subject of revenues, this Court invalidated the proposal by finding that

> the proposal includes at least three subjects, each of which affects a separate existing function of government. First, it limits how governments can tax, thereby affecting the general operation of state and local government. Second, it restricts all government user-fee operations, such as garbage collection, water, electric, gas, and transportation services which are paid for by the users of the services. Third, it affects the funding of capital improvements through revenue bonds, which are financed from revenue generated by the capital improvements.

Id. at 986, 990-92.

It is almost impossible to list all the affects of the AFPC initiative on the different branches and functions of government. This uncertainty as to the effects of the measure should alone be grounds for striking the initiative from the ballot. Evans, 457 So.2d at 1356 (Overton, J., concurring); Fine, 448 So.2d at 995 n.2 (McDonald, J., concurring). As examples, the AFPC proposal affects multiple State legislative functions, such as lawmaking, taxation and appropriations. In the judicial realm, it affects this Court's

ability to promulgate procedural rules, and it impacts the types of actions which may be brought before a court. The initiative inhibits the legislative ability of counties and municipalities. It also affects the executive branch by providing limitations on the possible functions of the State Cabinet and the various constitutional commissions and departments. These wide-ranging ramifications result in the conclusion that the AFPC measure violates the single-subject rule.

ARGUMENT I(B). THE PROPOSED INITIATIVE ENCOMPASSES MANY DIFFERENT SUBJECTS WITHIN THE CLOAK OF A BROAD GENERALITY, THEREBY VIOLATING THE SINGLE-SUBJECT RULE.

If a court finds that different subjects are encompassed within the "cloak of a broad generality," then the single-subject rule has been violated. Evans v. Firestone, 457 So.2d at 1353. In Evans, this Court addressed the single-subject requirement in the context of an initiative proposal which would have modified the concept of joint and several liability; would have limited certain types of damages; and further would have made the summary judgment rule a part of the State Constitution. Id. This Court found that the initiative was "so broad as to fail to delineate the subject or subjects of this amendment in any meaningful way." Id. at 1353-54. In determining whether the "cloak of broad generality" existed, the Court looked at several factors, including the "functional" factors discussed above. Because the initiative affected both legislative and judicial functions, this Court found the amendment to be too

broad, and hence violative of the single-subject rule. Id. at 1354.

The scope of the AFPC initiative is even broader than the initiative in Evans. The wide range of affected constitutional and statutory provisions is demonstrated by the list of affected provisions discussed previously and set forth in Appendices A and B. The broader the subject matter, the less likely a single subject can be found. The AFPC is clearly attempting to cloak a multitude of topics under the broad generality of "laws regarding discrimination." If the Evans initiative ran afoul of the single-subject requirement, then the proposed AFPC initiative must likewise undeniably be defective.

Additionally, those groups afforded protection by the initiative are quite diverse, yet are cloaked by the AFPC within a broad generality. Of the groups protected, it is highly probable that voters would reject certain of these classes if given the opportunity. See Scott, 18 F.L.W. at D2127 (purpose of single-subject requirement is to prevent "the situation where a voter, who wants to support a proposition . . . , is obligated to vote for another proposition which the voter . . . would otherwise reject.") For instance, the initiative would afford protections, privileges and rights based on both age and familial status. The recent controversy concerning the promulgation of federal laws protecting familial status indicates that a significant number of Florida voters, particularly retirees, would reject such similar laws on the state and local level, but at the same time favor laws barring

age discrimination. See Massaro v. Mainlands Civic Ass'n, 3 F.2d 1472 (11th Cir. 1993). Yet, the AFPC impermissibly cloaks all these protections within the broad generality of "laws regarding discrimination," requiring voters to accept something they disfavor in order to support something they favor. Quite apparently, the AFPC initiative violates Florida's single-subject requirement.

ARGUMENT II. THE BALLOT SUMMARY OF THE PROPOSED INITIATIVE FAILS TO MEET THE REQUIREMENTS SET FORTH IN §101.161(1) OF THE FLORIDA STATUTES.

In addition to the constitutional single-subject requirement, the Florida Statutes further require that the substance of the proposed constitutional amendment be set forth in "an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure." §101.161(1). See Marine Net Fishing, 620 So.2d at 999. The ballot summary requirement was "designed to assure that the elector had fair notice of the proposed amendment's chief purpose." Id. at 999. It has the purpose of advising the voter of the "legal effect of the amendment, and no more." Evans, 457 So.2d at 1355. This includes both the "true meaning and ramifications" of the initiative proposal, so that the amendment does not "fly under false colors." Askew v. Firestone, 421 So.2d 151, 156 (Fla. 1982). Respondents submit that the summary of the proposed AFPC initiative fails to live up to any of these purposes and clearly flies under false colors.

Respondents acknowledge that this Court has stated that no challenge to a ballot summary can be successful unless the summary is shown to be "clearly and conclusively defective." Florida League of Cities, 607 So.2d at 399. The means by which this Court has determined if a summary is clearly and conclusively defective is to determine if material information is omitted from the summary, or to determine if the summary itself is misleading. For instance, in one case, this Court invalidated a ballot summary because it purported to grant "citizens greater protection against conflicts of interest in government without revealing that it also removed an established constitutional right." Evans, 457 So.2d at 1355. As such, this Court found the summary to be misleading, and thus clearly and conclusively defective. Id. Similarly, Respondents will demonstrate below that the summary of the proposed AFPC initiative omits much material information and is quite misleading. Therefore, the instant ballot summary is clearly and conclusively defective.

ARGUMENT II(A). THE BALLOT SUMMARY OF THE PROPOSED AFPC INITIATIVE IS CLEARLY AND CONCLUSIVELY DEFECTIVE BECAUSE IT FAILS TO BE SET FORTH IN CLEAR AND UNAMBIGUOUS LANGUAGE.

As a component of the ballot summary requirement, the Florida Statutes require that the chief purpose of a proposed amendment be set forth in the ballot summary in "clear and unambiguous" language. §101.161(1). See also Smith v. American Airlines, Inc., 606 So.2d 618, 620 (Fla. 1992); Metropolitan Dade

County v. Lehtinen, 528 So.2d 394, 394 (Fla. 3d DCA 1988). As with the "clearly and conclusively defective" inquiry, the means by which courts determine if language is clear and unambiguous is to determine whether the summary is misleading or whether it fairly gives voters notice of the "meaning and effect" of the proposed amendment. Grose v. Firestone, 422 So.2d 303, 305 (Fla. 1982). For instance, in the case involving an amendment to Florida's exclusionary rule, this Court found a summary to be clear and unambiguous when it set forth that Article I, §12 of the Florida Constitution would be read in conformity with the Fourth Amendment to the federal Constitution as interpreted by the United States Supreme Court, and that any evidence found inadmissible by that Court would be inadmissible in this State. Id. In finding the summary to be clear and unambiguous, this Court found that the summary contained "no hidden meanings and no deceptive phrases. The summary says just what the amendment purports to do. It gives the public fair notice of the meaning and effect of the proposed amendment." Id. at 305. See also Homestead Valuation Limitation, 581 So.2d at 588 (the summary must "fairly" reflect the chief purpose of the proposed amendment).

Contrary to the ballot summary in Grose, the summary of the proposed AFPC initiative clearly fails to state "just what the amendment purports to do." The summary evinces a prime example of hidden meanings and clearly denies the people of Florida "fair notice of the meaning and effect" of the proposal. From reviewing the summary proffered by the AFPC, the average voter in this State

has no idea of the plethora of constitutional and statutory provisions impacted by this amendment. Is it "fair" that the average voter has no notice of the wide range of consumer protection legislation to be repealed, amended or affected by this initiative?[38] Is it "fair" that, to advance its own agenda to eliminate any possible protections for homosexual citizens of this State, the AFPC impermissibly uses its ballot summary to hide the fact that laws protecting the economically disadvantaged and the medically challenged will also be wiped out? Respondents submit that the AFPC summary is patently unfair. This conclusion is further supported by a recent Statement of the Catholic Bishops of Florida, a copy of which is attached hereto at Appendix E, that opposes the proposed AFPC initiative by stating that "[w]hen governmental action is considered on this subject, there must be a clear definition of terms, so that citizens and legislators know just what is being considered."

Moreover, the AFPC ballot summary contains a chain of such common phrases that it deceptively lulls the public into not realizing its wide ranging impact. The AFPC proposal fails to define what exactly comprises a "law regarding discrimination." In the public's mind, such laws would generally typically apply to the problem of bigotry and prejudice. However, the wide range of judicial interpretations for this phrase throughout the courts of this country, of which the voters have no real knowledge, provides

---

[38] Consumer protection statutes to be repealed, amended or affected include numerous laws regulating the insurance industry, the real estate development industry, the public utilities industry, and government employment. See specific statutes listed in Appendix B.

no true guidepost as to the exact scope of the initiative.[39] While

---

[39] No Florida case has yet specifically defined the terms "discriminate" or "discrimination" when used in their general contexts. Under Florida law, the terms "discrimination" and "discriminate" have been broadly used in a wide variety of specific contexts. Their uses encompass almost any instance in which two parties or groups are treated differently. See Cooper v. Tampa Electric Co., 154 Fla. 410, 414, 17 So.2d 785, 787 (1944)(charging different utility rates to customers outside of city limits may be discrimination, albeit lawful); Clay Utility Company v. City of Jacksonville, 227 So.2d 516, 518 (Fla. 1st DCA 1969)(same); Fla. Stat. §83.64(4) (treating people differently as to rent charged and services rendered in residential property); Fla. Stat. §723.003(13) (same as to mobile home parks). See Fla. Stat. §153.83 (reference to discrimination as to fees, rates and charges for water and sewer services in the same class apparently means a difference in treatment). See also Fla. Stat. §§27.182, 27.5302 & 28.34 (discrimination meaning an "inequity" in treatment). The particular law does not have to actually contain the word "discrimination" to be construed as a "law regarding discrimination" by a Florida court. See Cox v. Dry, 1 FLW Supp. 352 (12th Jud. Ct., Mar. 5, 1993).

Additionally, a review of Florida cases provides a clear indication that discrimination does not necessarily connote only improper conduct. See Juno By the Sea North Condominium Association (The Towers), Inc. v. Manfredonia, 397 So.2d 297, 304 (Fla. 4th DCA 1980)(even though Association excluded some unit owners from certain common element parking spaces, court found no "unlawful discrimination"); Fla. Stat. §§175.071(2) & 185.06(2) (referring to "unfair discrimination").

In addition to the statutes listed above, many Florida Statutes contain an adjective, such as "unfair," before the term discrimination. For instance, in Florida Statutes §§125.581(1)(d) & 166.0443(1)(d), discrimination against any class of individuals in certain county or municipal ordinances is apparently permitted, as long as such discrimination is not "unfair." Cases arising outside of Florida further demonstrate that the term "discrimination" is not limited to improper conduct. See United States v. Illinois Central R. Co., 263 U.S. 515, 521 (1924) ("mere discrimination" is not unlawful); In re Korvich, 4 B.R. 403, 407 (Bankr. W.D. Mich. 1980) (bankruptcy plan can be discriminatory yet be legal); Morton Salt Co. v. FTC, 162 F.2d 949, 954 (7th Cir. 1947)(court finds that "one discriminates whenever he makes a difference, in the general sense, and a difference is marked by drawing a distinction"; however, statute can make certain types of discrimination unlawful). See also 12A Words and Phrases 151 (Supp. 1992) (distinguishing between "mere discrimination" and "illegal" or "unlawful" discrimination).

In interpreting provisions of the State Constitution, the intent of the framers and voters is paramount, and the courts seek to interpret the provision in a manner which will effectuate the intent. Williams v. Smith, 360 So.2d 417, 419 (Fla. 1978). However, the Florida Supreme Court has recently reiterated that before any judicial construction can occur, the language of the provision must be ambiguous. Florida League of Cities, 607 So.2d at 400. In the absence of ambiguity, the "exact letter must be enforced and extrinsic guides to construction are not allowed to defeat the plain language." Id. In this instance, the plain language of a proposal is looked to to determine both its intent and purpose. Id. at 401 (Barkett, C.J., concurring). In determining the plain and ordinary meaning, the Florida Supreme Court generally resorts to the dictionary definition. Doe v. Thompson, 620 So.2d 1004, 1005-06 (Fla. 1993) (using dictionary meaning of "personally"); Florida League of Cities, 607 So.2d at 399; American Airlines, 606 So.2d at 620; English - The Official Language, 520 So.2d at 13. Reference to dictionary definitions for purposes of interpretation is not confined to the Florida Supreme Court; the intermediate appellate courts also make such references. See, e.g., BB Landmark, Inc. v. Haber, 619 So.2d 448, 449 (Fla. 3d DCA 1993) (using dictionary meaning of "materially").

Although the term "discrimination" has been used broadly in Florida jurisprudence, no Florida case has yet specifically defined the general meaning of the term. However, the deduction, as discussed above, that discrimination is equated with any difference in treatment comports with the plain and ordinary meaning of "discrimination." Roget's College Thesaurus 138 (rev. ed. 1978)("differentiation, difference, distinction"); American Heritage Dictionary of the English Language 376 (New College ed. 1976)("to make a clear distinction; distinguish; differentiate; to act on the basis of prejudice"). Although the greater weight of authority indicates that a Florida court will give a broad construction to the term, the more limited definition of "discrimination" as "an act based on prejudice" may give some credence to the argument that a Florida court may more narrowly define the term to include only laws concerning a difference in treatment based on bigotry or prejudice. However, as shown in this footnote above, any more narrow definition of "discrimination" likely flows from a narrower use or definition in the law itself. No such limitation appears in the AFA proposal. Additionally, for purposes of analyzing the possible effect of the law, and to identify which groups and individuals may be impacted, a broader definition should be favored at this stage of analysis.

Furthermore, case law in other jurisdictions also supports the position that Florida courts will broadly define the term "discrimination" to include any law which has the effect of treating people or things differently, whether positively or negatively. 12A Words and Phrases 362; Feng Yeat Chow v. Shaughnessy, 151 F. Supp. 23, 26 & n.8 (S.D.N.Y. 1957) (treating legal and illegal aliens differently was discrimination, albeit lawful); In re Public Utilities Commission of Oregon, 268 P.2d 605, 616 (Ore. 1954) (discrimination means distinction in treatment); State v. Pate, 47 N.M. 182, ___, 138 P.2d 1006, 1009 (1943) (distinguishing between the employed and unemployed is discrimination); Jersey City v. Bettcher, 22 N.J. Misc. 16, ___, 34 A.2d 784, 789 (Bd. Tax 1943) (discrimination means "to divide, to distinguish, to observe the difference between, to treat differently"); United States v. Sunday Creek Co., 194 F.2d 252, 254 (N.D. Ohio 1911) ("common sense" definition means being treated differently); NLRB v. Great Dane Trailers, Inc., 388 U.S.

the weight of authority suggests that a "law regarding discrimination" is any law which has the effect of treating people differently, such a broad construction would result in the list of affected constitutional and statutory provisions shown in Appendices A and B as being merely the tip of the iceberg of laws being affected by the AFPC proposal. The Statement of the Catholic Bishops of Florida further reveals the uncertainty of the scope of the initiative by concluding that "the language of this amendment is so broad as to preclude future laws protecting other categories of people that may be found to be discriminated against."

Under Florida caselaw, the more uncertain the effects of an amendment, then the less likely the change is clear and unambiguous. See Evans, 457 So.2d at 1356 (Overton, J., concurring); Fine, 448 So.2d at 995 n.2 (McDonald, J., concurring). See also Adams, 238 So.2d at 832 (effects on Constitution were "too numerous to detail"). The scope and effects of the proposed AFPC amendment are enormously uncertain, and the AFPC's proffered summary clearly fails to provide Florida voters fair notice of the meaning and effect of the proposal.

26, 32 (1967) (offering different benefits to striking and non-striking employees was discrimination). For instance, in analyzing the meaning of the word "discrimination," the Louisiana Supreme Court held that "the word itself without any context, merely means '[t]he act of treating differently; treating one differently from another'. . . . It logically follows that every difference is a discrimination." State v. Arkansas Louisiana Gas Co., 227 La. 179, 187, 78 So.2d 825, 827 (1955) (emphasis supplied). See also 27 C.J.S. Discriminate; 27 C.J.S. Discrimination.

Therefore, a strong argument appears to exist that a "law regarding discrimination" will likely be construed in Florida as any law which "treats people or things differently." See also Opinion re Idaho Civil Rights Act, Op. Idaho Att'y Gen. 6 (Mar. 18, 1993), a copy of which is attached to this Brief as Appendix D. Although the provision involved in the Idaho opinion did not directly involve the term "discrimination," the Attorney General recognized the wide range of groups afforded "distinct legal treatment and protection." The view of the Idaho Attorney General was to view the possible effect of the law broadly. Examples given by the Attorney General ranged "from farmers to doctors to homeowners."

ARGUMENT II(A)(1). THE BALLOT SUMMARY IS CLEARLY AND CONCLUSIVELY DEFECTIVE BECAUSE IT OMITS MANY MATERIAL FACTS.

One of the primary means used by the courts to determine if the ballot summary requirement has been met, and hence the summary in language which is clear and unambiguous, is to determine whether material facts are omitted from the summary. Florida League of Cities, 607 So.2d at 399; American Airlines, 606 So.2d at 620-21; Limited Political Terms, 592 So.2d at 228; Palm Beach County v. Hudspeth, 540 So.2d 147, 151 (Fla. 4th DCA 1989). A review of several cases demonstrates the instances in which a Florida court will deem an omission to be material. A comparison of these cases further exposes the defectiveness of the AFPC measure.

In a recent case on an initiative proposal involving a constitutional cap on the percentage annual increase of the ad valorem valuation of homestead property, Florida League of Cities v. Smith, 607 So.2d 397 (Fla. 1992), the Florida Supreme Court addressed the validity of the summary's language. The opponents argued that the initiative had the effect of triggering a repeal of part of Florida's homestead exemption, and such a repeal was omitted from the ballot summary. This Court agreed that if in fact the repeal were to be triggered, the summary would be defective for failing to mention the possible loss of a portion of the homestead exemption. Id. at 399.[40]

Similarly, the ballot summary of the proposed AFPC initiative

[40] The Court found, however, that the repeal would not be triggered; hence, no mention of the repeal was necessary.

omits any specific mention of the dozens of statutory provisions to be repealed, as well as the hundreds of other constitutional and statutory provisions being amended or affected.[41] The AFPC's meager effort to broadly refer to these laws as "all laws previously enacted which are inconsistent with this provision" falls far short of the specificity required by this Court in Florida League of Cities. For instance, Article VII, §6(e) of the State Constitution currently permits the Florida Legislature to promulgate laws that discriminate in favor of permanent resident renters by providing them ad valorem tax relief, to the exclusion of other types of renters. As such, these laws are likely "laws regarding discrimination" under the AFPC initiative.[42] Therefore, because the sole purpose of Article VII, §6(e) is to authorize the Legislature to promulgate these laws, this provision would be rendered meaningless if the AFPC measure passes.

Similarly, Article VII, §3(c) would also effectively be repealed because counties and municipalities could no longer promulgate laws which grant ad valorem tax exemptions to new businesses and the expansion of existing businesses. By permitting laws that discriminate against businesses which are not expanding, this constitutional provision would no longer have any effectiveness if the AFPC initiative became law.

Additionally, depending upon the judicial construction of the

---

[41] See provisions set forth in Appendices A and B.

[42] For an analysis of what constitutes a "law regarding discrimination," see supra note 39.

word "handicap" as set forth in the AFPC initiative, portions of Article VII, §3(b) might also be repealed. This provision permits the Legislature to enact special laws providing for certain tax exemptions for the totally or permanently disabled. Because some types of disabilities may not be construed as handicaps,[43] any law promulgated to favor the totally or permanently disabled under this provision may well be an impermissible "law regarding discrimination" under the AFPC measure.

As with the ballot summary in Florida League of Cities, the AFPC summary fails to reveal that a repeal of these constitutional provisions would be triggered if the initiative passes. The citizens of this State are clearly not accorded the requisite fair notice by the AFPC's overbroad generalization.

In a related case, Smith v. American Airlines, Inc., 606 So.2d 618 (Fla. 1992), the Florida Supreme Court addressed a complicated initiative proposal which purported to subject leaseholds in government-owned property to ad valorem taxation at the real property tax rate for leases. Id. at 620. The ballot summary, however, failed to specify that the taxation method would be based on the real property method, using only the phrase "ad valorem taxation" in the summary. Id. This Court found that the summary was defective "because, [b]y failing to refer to taxation as real property, the ballot summary does not advise the voter that taxes on . . . leaseholds of government-owned property could increase as

---

[43] See, supra, note 21.

much as fifteen times the current rate." Id. The fatal omission of the word "real" in the American Airlines case leads to the plain conclusion that the glaring omissions of the AFPC summary are likewise fatal.

In another related case, Wadhams v. Board of County Commissioners of Sarasota County, 567 So.2d 414 (Fla. 1990), a proposal subject to the §101.161(1) summary requirements was stricken down because, while it set forth that the County Charter Review Board would face restrictions on its meetings, it failed to state that the law currently provided no restrictions on the Board's meetings. Id. at 416.[44] Because of this omission, this Court found the proposed amendment to be "deceptive, because although it contains an absolutely true statement, it omits to state a material fact necessary in order to make the statement not misleading." Id. The AFPC ballot summary similarly contains true statements, but omits to precisely state which other "characteristics, traits, statuses or conditions" are currently accorded "rights, privileges or protections" under Florida law.[45] Again, the lack of specificity in the AFPC proposal fails to bestow the requisite fair notice to the electorate.

In a final case dealing with a ballot summary omission, Askew

---

[44] The proposal at issue was an amendment to a county charter, which is subject to the same statutory summary requirements as an initiative proposal.

[45] Respondents acknowledges that courts will presume that voters have "the ability to reason and to draw logical conclusions." American Airlines, 606 So.2d at 621. Additionally, voters are responsible to "do their homework and educate themselves about the details of a proposal and about the pros and cons of adopting the proposal." Id. See Hudspeth, 540 So.2d at 151-52. However, this voter education cannot be used to excuse an otherwise inaccurate and misleading ballot summary, such as that provided by the AFA. 606 So.2d at 621; Wadhams, 567 So.2d at 417; Askew, 421 So.2d at 156.

v. Firestone, 421 So.2d 151 (Fla. 1982), this Court considered a proposed constitutional amendment which would have prohibited former legislators and statewide officeholders from lobbying for two years following their leaving office unless they filed a financial disclosure. Florida law at that time, however, contained a total two-year prohibition on lobbying without any exception, and the ballot summary failed to disclose this specific information. Id. at 155. The summary was thus found to be fatally defective. Id. at 156.

This Court has recognized that in some instances an initiative proposal will be so broad or diverse that no summary can be drawn of it which will meet the ballot summary requirements. In the initiative challenge involving taxation of leaseholds in government-owned property, the Court, in finding the proposal defective, acknowledged that its decision would effectively bar "the people of Florida from ever having the chance to vote on the merits of the proposal." American Airlines, Inc., 606 So.2d at 621. Accordingly, the desire to have an electorate decision on a matter must sometimes give way to the need to protect the integrity of the State Constitution. The AFPC's proposal is similarly so broad in its present form that it cannot stand, and the AFPC proponents cannot rely on the "hope that this Court's reluctance to remove issues from the ballot will prevent [the Court] from insisting on clarity and meaningful information." Id.

In the Askew case, as with Florida League of Cities, American Airlines and Wadhams, this Court has sought the inclusion of quite

specific information as to the matters being changed. This clearly furthers the purpose of advising the electorate of the "true meaning and ramifications" of the proposal. See Grose, 422 So.2d at 305 (amendment proposed by the Legislature); Adams, 238 So.2d at 833 (Thornal, J., concurring). The AFPC's omission of the ramifications of the initiative renders the ballot summary fatally defective.

ARGUMENT II(A)(2). THE BALLOT SUMMARY IS CLEARLY AND CONCLUSIVELY DEFECTIVE BECAUSE IT IS MISLEADING.

Another means by which Florida courts determine if a ballot summary is satisfactory is to analyze whether the summary itself is misleading. Limited Political Terms, 592 So.2d at 228; Lehtinen, 528 So.2d at 394 n.2; Evans, 457 So.2d at 1354-55; Askew, 421 So.2d at 155; Smith, 338 So.2d at 829. For instance, in Smith v. American Airlines, discussed above, this Court emphasized that the ballot summary was defectively misleading because it required that a voter have "an extensive knowledge of ad valorem taxes," and as such, was not "written clearly enough for even the more educated voters to understand its chief purpose." 606 So.2d at 621. Similarly, the AFPC ballot summary requires the electorate to have "an extensive knowledge" of all State and local "laws regarding discrimination." Respondents stress that it took a significant amount of research and effort to identify the potential laws impacted, as shown in Appendices A and B, and Respondents acknowledge the great level of uncertainty concerning which other

unidentified laws will likewise be impacted. Can the electorate of this State be expected to conduct the same extensive research?[46] This is precisely why the ballot summary requirement exists. This uncertainty alone should be grounds for finding the AFPC measure defective. See Evans, 457 So.2d at 1356 (Overton, J., concurring); Fine, 448 So.2d at 995 n.2 (McDonald, J., concurring).

The defectiveness of the proposed AFPC amendment is further demonstrated by a case decided in the Third District Court of Appeal. In this case, the appellate court struck a proposed amendment to the home rule charter of Metropolitan Dade County because it was misleading in violation of §101.161(1). Lehtinen, 528 So.2d 394.[47] Here, the ballot summary referred to the revisions of the "procedures for initiative, referendum and recall" of the home rule charter. The court found, however, that the amendment made extensive substantive, and not just procedural, changes to the "grounds and availability of the recall process." Id. at 394 n.2. Hence, the summary was fatally defective.

Just as there are substantive "laws regarding discrimination," there are also procedural "laws regarding discrimination."[48] As with the Lehtinen summary, the summary of the proposed AFPC

---

[46] See, supra, note 39.

[47] The same summary provisions apply to initiative proposals.

[48] For instance, the failure to accord homeowners associations the same representative rights as condominium associations and mobile homeowners associations under Rules 1.221 & 1.222, Fla. R. Civ. P., can lead to the conclusion that the rules are "laws regarding discrimination" under the AFA proposal. See Shaughnessy, 151 F. Supp. at 26 & n.8; Public Utilities Commission, 268 P.2d at 616; Pate, 47 N.M. at ___, 138 P.2d at 1009; Jersey City, 22 N.J. Misc. at ___, 34 A.2d at 789; Sunday Creek Co., 194 F.2d at 254; Great Dane Trailers, 388 U.S. at 32; Arkansas Louisiana Gas Co., 227 La. at 187, 78 So.2d at 827. All these cases stand for the proposition that a "law regarding discrimination" is one which has the effect of treating a person or group differently.

amendment is misleading in that it fails to adequately inform the voter that both substantive and procedural laws will be impacted if the AFPC amendment passes.

In addition to matters involving State and local law, the AFPC initiative is misleading because it fails to disclose how the initiative might affect legislative rights granted under federal law. For instance, in 47 USC §543(f), the federal government permits state governments, if they desire, to prohibit "discrimination among customers of basic cable [television] services." The AFPC initiative would effectively bar the Florida Legislature from enacting these protections for citizens of the State. And yet, the AFPC ballot summary fails to address this. Clearly, the measure is misleading.[49]

ARGUMENT II(B). THE BALLOT SUMMARY IS CLEARLY AND CONCLUSIVELY DEFECTIVE BECAUSE IT MATERIALLY CONTRADICTS THE INFORMATION PROVIDED IN THE AFPC INITIATIVE PACKAGE.

In the lottery initiative case previously before this Court, the opponents argued that the proponents had committed fraud by

---

[49] Another means by which the AFPC measure is misleading is its dubious constitutionality. Respondents acknowledge that a majority of this Court view constitutional issues as being non-justiciable at this stage of review. Respondents would respectfully urge this Court that its prior holdings are distinguishable because no initiative challenge under Fla. Stat. §16.061 has yet involved any fundamental right or suspect class, which are clearly implicated by this provision. See Watt v. Firestone, 491 So.2d 592, 594 (Fla. 1st DCA 1986). Neither has an initiative review under §16.061 yet faced a provision, such as that proposed by the AFPC, which is "incapable of being made operative under any circumstances." See Fine v. Firestone, 443 So.2d 253, 257 (Fla. 1st DCA 1983), overruled on other grounds, 448 So.2d 984 (Fla. 1984); Limited Political Terms, 592 So.2d at 229 (Overton, J., concurring in part and dissenting in part); Smith, 338 So.2d at 832 (Boyd, J., concurring). When faced with such a clearly unconstitutional measure, this Court should not hesitate to rule on the constitutional issue at this stage of review to avoid the considerable expense of a futile election. See 592 So.2d at 229 (Overton, J., concurring in part and dissenting in part); Adams, 238 So.2d at 828-29. Reviewing bodies analyzing proposals similar to that of the AFPC measure have uniformly determined them to be violative of the United States Constitution. See, e.g., Palmore v. Sidoti, 466 U.S. 429 (1984); Hunter v. Erickson, 393 U.S. 385 (1969); Reitman v. Mulkey, 387 U.S. 369 (1967); Evans v. Romer, 854 P.2d 1270 (Colo. 1993); Evans v. Romer, 1993 Westlaw 19678 (Colo. Dist. Ct. 1993); Citizens for Responsible Behavior v. Superior Court, 2 Cal. Rptr. 2d 648 (Dist. App. 1991); Opinion re Idaho Civil Rights Act, Op. Idaho Att'y Gen. (Mar. 18, 1993). Of course, if the AFPC measure fails to meet the threshold single-subject and ballot summary inquiries, constitutional review would be unnecessary.

providing false information to the electorate about the effects of the amendment. Carroll, 497 So.2d at 1206-07. In declining to address these claims, this Court expressed its desire not to "embroil this Court in the accuracy or inaccuracy of political advertisements clearly identified as such." Id. Accordingly, Respondents acknowledge that this Court disfavors considering the accuracy of information used to promote an initiative proposal. However, at least two facts clearly distinguish the AFPC proposal from the lottery initiative.

First, the information provided by the AFPC, attached at Appendix C, is provided at the time an individual is given a copy of the initiative petition. The voter has no reason to believe that this information is merely "information used to promote an initiative proposal." Rather, the information reasonably appears to be an integral part of the petition itself.

Second, unlike the information in the Carroll case, the AFPC information is not clearly identified as a political advertisement. Moreover, by providing this information along with the petition, voters are encouraged to view the information not as a political advertisement, but rather as a component of the petition.

When reviewing the AFPC initiative package, one can clearly see that the AFPC's focus is to eliminate any possible rights, protections or privileges based on sexual orientation. While the AFPC attempts to obfuscate its clearly anti-homosexual intentions by couching its ballot summary in benign-sounding civil rights terminology, the convoluted wording of the initiative actually

omits sexual orientation as a classification for protection and muddies the entire issue of civil rights and discrimination in Florida. Because of the AFPC initiative package, the ballot summary deceptively leads one to believe that laws regarding sexual orientation are the only laws being eliminated, when in fact the initiative would have a far greater impact on laws other than those based on sexual orientation. This mischaracterization flies in the face of the purposes underlying the initiative process by failing to direct the voters' attention to the true changes being made, by impermissibly addressing many different subjects, and by precipitating numerous unidentified effects on the State Constitution.

Further demonstrating the misleading nature of the AFPC provision is the fact that Florida Statutes barring homosexual adoption and homosexual marriage would likely be repealed by the AFPC initiative. Because the language of the initiative is not limited to just laws preventing discrimination, laws permitting discrimination would also be impacted. Because homosexuals are not a permitted class under the AFPC measure, the adoption and marriage prohibitions would be repealed. See Cox v. Dry, 1 FLW Supp. 352 (12th Jud. Ct. Mar. 5, 1993) (statute barring homosexual adoption is a "law regarding discrimination"). Contrary to the purported purposes of the AFPC initiative, homosexual adoption and homosexual marriage could actually be permitted if the AFPC initiative passes!

CONCLUSION

This Court has held that the proposal of amendments to the Florida Constitution is a "highly important function of government that should be performed with the greatest of certainty, efficiency, care and deliberation." Askew, 421 So.2d at 155. The paramount importance of the Florida Constitution requires that it "ought to be hard" to amend. Fine, 448 So.2d at 999 (Shaw, J., concurring). This is especially true for the drafting of initiative proposals, such as the AFPC measure, which are not subject to legislative or public debate. Smith v. Department of Insurance, 507 So.2d 1080, 1085 (Fla. 1987); Fine, 448 So.2d at 988. The AFPC is attempting, in one fell swoop, to affect a multitude of changes which should be statutory, rather than constitutional, in nature.

The standards to meet for presenting a constitutional initiative to the electorate are high. The AFPC clearly fails to meet these standards. Its proposal should be stricken.

Respectfully submitted,

Robert W. Lee, Esq.
Florida Bar No. 500984
Smith & Hiatt, P.A.
2400 E. Commercial Boulevard
Suite 600
Fort Lauderdale, Florida 33308