

IN THE SUPREME COURT
OF THE STATE OF FLORIDA

FILED

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**CHARTER REVIEW COMMISSION OF
ORANGE COUNTY, FLORIDA,**

Petitioner,

vs.

CASE NO. 83,010

**ERNIE SCOTT, RICHARD T. CROTTY,
etc., EARL K. WOOD, etc., KEVIN BEARY,
etc., and BETTY CARTER, etc.,**

Respondents.

**DISCRETIONARY PROCEEDINGS
TO REVIEW A DECISION OF THE DISTRICT
COURT OF APPEAL OF FLORIDA, FIFTH DISTRICT**

**RESPONDENTS, SCOTT, CROTTY AND WOOD
ANSWER BRIEF ON MERITS**

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TABLE OF CONTENTS

Table of Authorities i

Summary of Argument 1

Argument 4

 I. **THE SINGLE SUBJECT REQUIREMENT APPLIES . . . 4
 TO COUNTY CHARTER AMENDMENTS**

 A. Florida Courts and Other State Court Decisions. . . 4

 B. Applicable Florida Statutes and Sections of the . . . 12
 Florida Constitution.

 C. The Single Subject Rule Applies to Organic or . . . 15
 Constitutional Lawmaking.

 D. Charter Ballot Question Number One Perpetrated . . 18
 a Fraud on the Orange County Voters.

 II. **CHARTER BALLOT QUESTION NUMBER ONE 20
 VIOLATES THE SINGLE SUBJECT RULE.**

 III. **THE BALLOT SUMMARY OF CHARTER BALLOT 22
 QUESTION NUMBER ONE VIOLATES SECTION
 101.161, FLORIDA STATUTES AND APPLICABLE
 CASE LAW BECAUSE IT FAILS TO ADVISE THE
 VOTERS OF THE CHIEF PURPOSE OF THE PROPOSED
 AMENDMENT.**

Conclusion 28

Certificate of Service 29

<u>In re Advisory Opinion of the Attorney General</u>	23
592 So. 2d 225 (Fla. 1991)	
<u>In Re: Advisory Opinion to the Attorney General</u>	20, 22
19 Fla. L. Weekly S109 (Fla. 1994)	
<u>Miami Dolphins, Ltd v. Metropolitan Dade County</u> ,	24, 25
394 So. 2d 981 (Fla. 1981)	
<u>People v. Bopp</u> ,	10
71 N.E. 2d 351 (Ill. 1947)	
<u>People v. Stapleton</u> ,	16, 17
79 Colo. 629, 247 P. 1062 (1926)	
<u>Rivera-Cruz v. Gray</u> ,	8, 21
104 So. 2d 501 (Fla. 1968)	
<u>Santos v. State</u> ,	9
380 So. 2d 1284 (Fla. 1980)	
<u>Smith v. American Airlines, Inc.</u> ,	3, 25
606 So. 2d 618 (Fla. 1992)	
<u>State v. Dade County</u> ,	7
39 So. 2d 807 (Fla. 1949)	
<u>State v. Hall</u> ,	9, 10
335 Mo. 1097, 75 S.W. 2d 578 (1934)	
<u>State v. Lee</u> ,	9
356 So. 2d 276 (Fla. 1978)	
<u>State v. Maitland</u> ,	9, 10, 15
246 S.W. 267 (Mo. 1922)	
<u>Wadhams v. Board of County Commissioners</u> ,	23
567 So. 2d 414 (Fla. 1990)	
<u>Winterfield v. Town of Palm Beach</u> ,	1, 9 18
455 So. 2d 359 (Fla. 1984)	

STATUTES AND CONSTITUTIONS

Florida Constitution, Article III, Section 6 2, 14

Florida Constitution, Article VIII, Section 1 (g) 2, 12

Florida Statute, Section 101.161 2, 22, 27

Florida Statute, Section 101.161 (1) 23

Florida Statute, Section 125.01 (1) (y) 2, 12 13

Florida Statute, Section 125.67 2, 14

Florida Statute, Section 166.041 (2) 2, 14

Florida Statute, Section 905.185 26

MISCELLANEOUS

Blacks Law Dictionary, 4th Ed. 1968 14

5 E. McQuillin, The Law of Municipal Corporations, 6
Section 2198 (1921)

15 J. Latta & E. McQuillin, The Law of Municipal Corporations, 6
Chapter 9

15 J. Latta & E. McQuillin, The Law of Municipal Corporations, 6
Section 9.26

15 J. Latta & E. McQuillin, The Law of Municipal Corporations, 6
Section 9.27

15 J. Latta & E. McQuillin, The Law of Municipal Corporations, 6
Section 9.28

15 J. Latta & E. McQuillin, The Law of Municipal Corporations, 6
Section 40.01 (3rd Ed. 1970)

9 R.C.L., Section 76 p. 1059 10

Orange County Charter, Section 103 2, 12, 13

Orange County Charter, Section 601 12
Orange County Charter, Section 701 12
Orange County Charter, Section 702 12
Orange County Charter, Section 801

SUMMARY OF ARGUMENT

The Fifth District Court of Appeal correctly ruled that the ballot question was unconstitutional. Charter Review Commission vs. Scott, 18 Fla. L. Weekly D2126 (Fla. 5th DCA 1993). The Fifth District Court of Appeal was correct in its conclusion that, in order to insure that elections express the free and independent will of the people through the means of a fair ballot then, under the general law and public policy of Florida, the single subject rule must apply to proposed county charter amendments. *Id.*

The single subject rule is well established law in the State of Florida. The rule is simple, it requires, that if there are two or more separate and distinct propositions to be voted on then each proposition should be stated separately. The reason for the rule is also simple, it is to “prevent to voter from casting his individual and intelligent vote upon the object or objects sought to be obtained” [Antuono vs. City of Tampa, 87 Fla. 82, 99 So. 324 (Fla. 1924)]; it is to “allow the citizens to vote on singular changes in government that are identified in the proposal and to avoid voters from having to accept part of a proposal which they oppose in order to obtain a change which they support” [Fine vs. Firestone, 448 So. 2d 984 (Fla. 1984)]; it is to prevent logrolling, whereby one measure by its popularity “or its apparent necessity, carries other measures not so popular or necessary and which the people, if granted the opportunity of separate ballots, might defeat. [Winterfield vs. Town of Palm Beach, 455 So. 2d 359 (Fla. 1984)].

The Fifth District Court of Appeal was correct in finding that the Florida Constitution and Florida Statutes provide authority for applying the single subject rule to ballot questions on county charter amendments. Scott. *Id.* The Florida Constitution,

Article VIII, Section 1 (g), Section 125.01(1)(y), Florida Statutes, and Section 103, Orange County Charter, give Orange County the power to govern itself as long as it acts consistent with the general law. The general law can be found in Article III, Section 6 of the Constitution, “every law shall embrace but one subject and matter properly connected therewith” Section 125.67, Florida Statutes, “every county ordinance shall embrace but one subject and matter properly connected therewith”; and Section 166.041(2), Florida Statutes, “every municipal ordinance shall embrace but one subject and matter properly connected therewith.”

The Constitutional and statutory provisions create a basis for requiring charter county governments to comply with the single subject rule when proposing ballot questions to amend the charter.

Finally, the Fifth District Court of Appeal was correct in finding that Ballot Question Number One involves at least two, if not four, separate and distinct amendments to the charter. Scott. Id. The ballot question violated the single subject rule by combining the proposed creation of a citizen review board with the proposed status change of three separate, independent and unconnected constitutional offices in a single ballot question. Scott. Id.

The ballot question proposed to the Orange County voters failed to fully inform the voters of the chief purpose of the proposed amendment, as required by Section 101.161, Florida Statutes. The purpose of the ballot summary requirement is to protect the fundamental right of the voters, to insure that they are given fair notice so that they may make an informed decision on the merits of the ballot question. Evans vs. Firestone,

457 So. 2d 1351 (Fla. 1984). Charter Ballot Question Number One fails to inform the voters of Orange County the changes to be made by the adoption of the amendment, and most importantly, the consequences of the adoption of the amendment. For example, prior to voting on whether to create a citizen review board, with unbridled subpoena power, the Orange County voters should be informed that if they are subpoenaed to appear before the board and they fail to do so, the board has the power to impose criminal sanctions against them, including a jail sentence.

Recognizing that the seventy-five word limit on ballot summaries prevents the summary from revealing all the details or ramifications, this Court has never required that the summary explain the complete details at great and undue length. Smith vs. American Airlines, Inc., 606 So. 2d 618 (Fla. 1992). However, this Court has held that the word limit does not give the drafters leave to ignore the importance of the ballot summary and to provide an abbreviated, ambiguous statement, in the hope that the Court's reluctance to remove issues from the ballot will prevent the Court from insisting on clarity and meaningful information. Smith. Id.

For all of the reasons set forth in this answer brief, and for all of the reasons set forth in the Fifth District Court of Appeals, decision, the order of the District Court of Appeal should be affirmed.

ARGUMENT

I. THE SINGLE SUBJECT REQUIREMENT APPLIES TO COUNTY CHARTER AMENDMENTS.

Both the Petitioner and Amicus Curiae argue, in their briefs, that there are no constitutional, statutory or charter provisions imposing the single subject rule on ballot questions proposed to amend a county charter. They further argue that the single subject rule applies only to the passage of laws by the Florida Legislature, the enactment of ordinances and to changes to the Florida Constitution by citizen initiative petition. Petitioner and Amicus Curiae finally argue that it is illogical to extend, by “public policy”, the single subject rule to charter amendment questions.

Neither the trial court in the case at bar, nor the Fifth District Court of Appeal could find a prohibition on the single subject rule, and its application to charter amendments. The question that must then be asked is whether the absence of a specific constitutional or statutory provision means that the single subject rule cannot apply at all to county charter amendments? Or, does it mean that the single subject rule must be applied to all questions proposed to the voters, including county charter amendments?

A. Florida Courts and Other State Court Decisions.

In answering the above posed questions one must start with the basic law, the purpose if you will, for the single subject requirement. This Court has thoroughly discussed the purpose of the single subject requirement as it applies to various measures placed, or to be placed, on the ballot for the electors to vote upon. The single subject requirement was adopted by this Court in Antuono vs. City of Tampa, 87 Fla. 82, 99 So. 324 (Fla. 1924).

In Antuono, an action was brought against the city officials seeking to enjoin the placing of an ordinance for the issuance of certain bonds on the ballot, as the ordinance contained more than one subject. Antuono contended, that under the general principles of law, the grouping of several unrelated objects to be voted on was not within the power of the city officials since such grouping deprived the voters of a right to vote separately on the unrelated objects. The city contended that the bond ordinance being proposed by the city officials was legal, based upon the authority conferred to them by the city charter. In examining the relevant section of the city charter, this Court found that the authority conferred upon the city commission did not authorize them to exercise the power in a manner that conflicts with the general principles of law. *Id.* at 326. This Court stated the rule as follows:

If there are two or more separate and distinct propositions to be voted on each proposition should be stated separately since several propositions cannot be united in one submission to the voters so as to call for one assenting or dissenting vote upon all the propositions, and elections are invalid where held under such restrictions as to prevent the voter from casting his individual and intelligent vote upon the object or objects sought to be obtained. The object of the rule preventing the submission of several and distinct propositions to the people united as one in such a manner as to compel the voter to reject or accept all is to prevent the joining of one local subject to others in such a way that each shall gather votes for all, and thus one measure, by its popularity or apparent necessity, carries other measures not so popular or necessary and which the people, if granted the opportunity of separate ballots, might defeat. However, unless otherwise provided, it is proper to submit a number of propositions or questions at one time, providing the ordinance specifies each separate question or proposition as such, and provision is made by which the voters are given opportunity to vote upon each specific proposition or question independent of the other questions submitted at the same time. This may be done upon a single ballot, but the ballot must state each proposition separately so that the voter may be able to express his will by reference to each question. *Id.* at 326. (Emphasis added).

(Quoting 5 E. McQuillin, *The Law of Municipal Corporation*, Section 2198 (1921)).¹

In applying the rule to the proposed bond ordinance in Antuono, this Court stated that the rule “accords with the principles of fair dealing required of all officials in the exercise of public functions, powers or duties”, *Id.* at 326. This Court found that the proposed ordinance, grouping into one proposition several bond issues, denied the voters the “substantial right and privilege of voting on the items severally”, and stated further that the grouping of matters in one proposition was:

... an injustice to the taxpayers of the city **that is not contemplated by the charter acts and not permitted by the principles of law that govern in such cases, at least, in the absence of contrary controlling provisions of law, that do not exist in this case.** Note the policy of the state in **separately submitting propositions to be voted on** in the same election ... *Id.* at 327. (Emphasis added).

¹ Petitioner contends that the Fifth District Court of Appeal’s application of the rule espoused in Antuono is inappropriate in the instant case, partly because the rule, as quoted from 5 E. McQuillin, Section 2198, is identical to the language found in 15 J. Latta & E. McQuillin, *The Law of Municipal Corporation*, Section 40.01 (3rd Ed. 1970), which is found in the chapter entitled “*Elections as to Incurring of Indebtedness or Issuance of Bonds.*” Petitioner further contends that an examination of the chapter entitled “*The Municipal Charter*”, Section 9.27 *Id.*, precludes the conclusion that the single subject rule recognized in Antuono applies in all cases. Petitioner’s conclusions are wrong. An examination of Chapter 9, *Id.*, requires this Court to conclude that the single subject rule applies to charter revisions/amendments. (Section 9.26 - “Charter amendments must conform to the constitution and be **consistent with the general laws of the state.**” (Emphasis added); Section 9.27 - “An amendment embracing two subjects that are **germane to the general subject** of the amendment **may** be submitted to the electors as a single proposition. However, differentiation has in some instances been made between propositions pertaining to the same subject but requiring changes in more than one section of a charter, and propositions which, although related to the same general subject, are **substantially distinct and separable and which are required to be separately submitted**” (emphasis added); Section 9.28 - “**All charters** are subject to and **controlled by the constitution and general laws of the state** and must at all times be in harmony with them”. (Emphasis added).

This Court applied the single subject rule to a ballot question proposed by the Dade County Board of County Commissioners, in State vs. Dade County, 39 So.2d 807 (Fla. 1949).² In Dade County, the Board of County Commissioners adopted a resolution for the holding of an election to submit to the voters of Dade County the question of issuance of bonds for construction of five bridges throughout the county. The trial court issued an order validating the issuance of the bonds.

An appeal was taken to this Court wherein the appellants argued that the voters should have been given an opportunity to vote on each bond proposition separately. Relying on testimony presented to the trial court, this Court found that the construction of the bridges tied into a general network or system of public roads traversing the county and upheld the trial court's order. However, in conducting the analysis, this Court examined, what it believed to be the established law in the State of Florida:

... that if there are two or more separate and distinct propositions to be voted on, each proposition should be stated separately and distinctly so that a voter may declare his opinion as to each matter separately, since several projects can be united in one submission to the voters so as to call for an affirmative or negative vote upon all the projects. Elections generally are invalid where held under such restrictions as to prevent the voter from casting his individual and intelligent vote upon the object or objects sought to be obtained. (Citing Antuono, Supra.)

2 Petitioner contends that the law espoused in Dade County does not apply to the instant case because Dade County involved the issuance of bonds and not an amendment to the county charter. Although the Dade County case involved a resolution to be submitted to the electorate on bond issues, this Court did not limit the single subject rule to financial issues. To the contrary, this Court ruled, that where there are two or more separate and distinct propositions to be voted on, each proposition should be stated separately so that a voter may declare his opinion as to each matter. Id.

The single subject rule was also applied by this Court in City of Coral Gables vs. Gray, 154 Fla. 881, 10 So.2d 318 (Fla. 1944). In Gray, an action was brought to enjoin the Secretary of State from publishing and certifying the proposed resolution relating to the consolidation of certain public offices in Dade and Orange Counties. The question before this Court was whether the proposal constituted more than one amendment. After having determined that the resolution before the Court contained at least two distinct plans, this Court asked, "How may the electors of the State at large vote upon the proposed amendment in such a manner as to express their views intelligently?"

In answering the question this Court discussed the various views, in opposition to each other, the voters may imagine:

If required to vote upon the proposed amendment as presently framed, the electors will be put to it to accept, or reject, all subject matters contained therein, in toto, without the opportunity for discrimination. This is contrary to the manifest purpose of the Florida Constitution, which is designed to require the submission of each amendment upon its merits alone and thereby secure by means of the ballot the free and independent expression of the will of the people thereon. By this constitutional requirement matters not in common, or those having no reasonable connection with each other, may not be consolidated. If it were otherwise, the elector would be put in the position where, in order to aid in carrying a proposition which he considered good and wise, he would be obliged to vote for another which he would otherwise reject as bad or foolish. Id. at 322.

The single subject rule was applied to a proposed Constitutional amendment in Rivera-Cruz vs. Gray, 104 So.2d 501 (Fla. 1958), wherein it was stated:

Purpose of the single subject requirement is to permit an elector to vote intelligently for the amendments he favors and against the ones he disapproves. Under the "daisy chain" system all amendments must be accepted or all will be rejected, therefore the right of the elector to approve one or few will become worthless unless all others, including the ones he rejects, receive a majority vote of approval.

The cases in which the purpose of the single subject rule is discussed are plentiful: “prevent a single enactment from becoming a ‘cloak’ for dissimilar legislation having no necessary or appropriate connection with the subject matter [State vs. Lee, 356 So.2d 276 (Fla. 1978), single subject requirement applied to legislative enactment]; “prevent subterfuge, surprise, ‘hodge-podge’ and logrolling [Santos vs. State, 380 So.2d 1284 (Fla. 1980), single subject requirement applied to legislative enactment]; “allow the citizens to vote on singular changes in government that are identified in the proposal and to avoid voters having to accept part of a proposal which they oppose in order to obtain a change which they support” [Fine vs. Firestone, 448 So.2d 984 (Fla. 1984), single subject requirement applied to constitution amendment by initiative]; “prevent the electoral equivalent of logrolling, whereby one measure by its popularity or its apparent necessity, carries other measures not so popular or necessary and which the people, if granted the opportunity of separate ballots, might defeat” [Winterfield vs. Town of Palm Beach, 455 So.2d 359 (Fla. 1984), single subject requirement applied to municipal bond referendum].

The single subject rule has been applied to amendments proposed to charters by the Supreme Court of Missouri in State vs. Maitland, 246 S.W. 267 (Mo. 1922) and State vs. Hall, 335 Mo. 1097, 75 S.W. 2d 578 (1934).

In Maitland, an action was brought testing the validity of an amendment to the city charter, creating a water commission, electing water commissioners and granting the commission certain powers. It was suggested to the Supreme Court that the matter of doubleness only arises in cases where the incurring of debts or matters of taxation are concerned. The court rejected that argument reasoning that “it does not follow that the

question of doubleness of a proposition may not arise in other matters. On the Contrary, it has so arisen and the doctrine is as firmly fixed in one class of cases as in the other." *Id.*

In ruling, the Maitland court stated:

Where questions are referred to the electors, whether they are amendments to the Constitution **or questions of any other nature**, they must be submitted separately so that each may stand or fall upon its own merits. But two questions cannot be treated together, to stand or fall upon a single vote. It needs no argument to show the **injustices** of such a submission. By it several interests may be combined; an unpopular measure may be tacked onto one that is popular, and carried on the strength of the latter. A necessary matter may be made to carry with it some private speculation for the benefit of a few. Things odious and wrong in themselves may receive the popular approval because linked with propositions whose immediate consummation is deemed essential. **It is against the very spirit of popular elections.** (Citing 9 R.C.L. Section 76 p.1059) (Emphasis added).

In Hall, the Supreme Court of Missouri applied the single subject rule to a proposition to amend a city charter even though there was no constitutional or charter provision prohibiting the submission of two or more separate propositions as one amendment.

Likewise, the Supreme Court of Illinois has applied the single subject rule to all elections held under the authority of law, at which qualified electors may vote. People vs. Bopp, 71 N.E. 2d 351 (ILL. 1947).

Like its sister states, the Supreme Court of Michigan applied the single subject rule to a proposition amending the city charter in House vs. City of Saginaw, 334 Mich. 241, 54 N.W. 2d 314 (1952). In Saginaw, the city council adopted a resolution proposing to amend a section of the city charter creating a tax limitation on real and personal property, creating an income tax and providing for distribution of revenues accruing from the

income tax. Certain residents and electors from the city filed an action seeking to invalidate the proposed amendment, alleging among other reasons, that the ballot embraced more than one related proposition and did not state each proposition separately to afford an opportunity for an elector to vote for or against each such proposition. The court found that the ballot question clearly embraced three separate propositions. The court affirmed the trial court's declaration that the ballot was invalid stating:

Suffice it to say that proposition number (1), providing for a tax limitation on real and personal property, even though included in and germane to the general subject of the entire amendment, was, insofar as the proposed income tax is concerned, a related proposition, regardless of whether its adoption by the electors had any legal effect or was merely an idle gesture, placing the stamp of approval on existing law, and was, accordingly placed on the ballot for no other purpose than to serve as attractive bait to win approval of the income tax.

As in Saginaw, the establishment of a citizen review board was placed on the ballot in the instant case, for no other reason than to serve as attractive bait to win approval for the abolishment of the constitutional officers, and creating the charter office of tax collector, property appraiser and sheriff. Such political maneuvering is what the single subject rule attempts to avoid.

Again we ask the question - What is the purpose of the single subject rule? It is to protect the Orange County voters, not the Orange County government. It is to provide the Orange County voters with an opportunity to intelligently express their will, not to provide Orange County government with a vehicle to streamline county government. It is to protect the Orange County voters from having to accept a bad proposition in order to

get a good one passed, not to provide Orange County government with an opportunity to engage in political logrolling.

It is abundantly clear from the cases expounding the various purposes and reasons for the application of the single subject rule in proposals presented to the voters, that the rule must also apply to proposed county charter amendments. If the purpose of the single subject rule is to: prevent logrolling, the cloaking effect for unpopular propositions, injustices, and; permit an elector to vote intelligently, then why should the voters of Orange County be denied the safeguards enjoyed by electors throughout the state and country? This Court should not permit such an injustice to occur. ³

B. APPLICABLE FLORIDA STATUTES AND SECTIONS OF THE FLORIDA CONSTITUTION.

Article VIII, Section 1 (g), of the Florida Constitution, provides authority for applying the single subject rule to ballot questions on county charter amendments. Charter Review Commission vs. Scott, 18 Fla. L. Weekly D2126 (Fla. 5th DCA 1993). Article VIII, Section 1 (g) provides that counties operating under a county charter shall have all powers of local self government **not inconsistent with general law**.

³ Petitioner contends that unlike propositions by initiative, which require the application of the single subject rule to amendments in order to provide a safeguard against citizens logrolling, amendments proposed by the Charter Review Commission do not require the single subject safeguard because the Charter Review Commission conducted four public hearings on the proposed amendments to the Orange County Charter. The Orange County Charter can be amended in three different ways: by citizen initiative (Section 601); by the Board of County Commissioners (Section 701); and by a Charter Review Commission (Section 702). It is interesting to note that none of the methods for amending the Orange County Charter require that the proposed amendments comply with the single subject rule. Since there are no constitutional, statutory or charter provisions requiring the application of the single subject rule, then, following Petitioner's

Likewise, Section 125.01 (1) (y), Florida Statutes (1991), provides authority for applying the single subject rule to ballot questions on county charter amendments:

(1) the legislative and governing body of a county shall have the power to carry on county government to the extent **not inconsistent with general or special law**, this power includes, but is not limited to, the power to:

(y) Place questions or propositions on the ballot at any primary election, general election, or otherwise called special election, when agreed to by a majority vote of the total membership of the legislative and governing body, so as to obtain an expression of the elector sentiment with respect to matter of substantial concern within the county. ⁴

Additional authority for applying the single subject rule to ballot questions on county charter amendments can be found in the Orange County Charter, Section 103, which provides that Orange County shall have all powers of local self **government not inconsistent with general law**.

(Footnote 3 continued) argument, the citizens of Orange County, the Board of County Commissioners and the Charter Review Commission can all in one election, propose multi-subject amendments to the charter.

4 This section appears to place the burden on the Orange County Board of County Commissioners to insure that the voters of Orange County are able to clearly express their opinions with respect to matters concerning the county in which they reside and under whose rules they must live. What better way to ensure that the voters can clearly and intelligently express their opinion than to apply the single subject rule to all matters brought before them on the ballot. Petitioner would argue that such a requirement would frustrate a county's ability to adopt an initial charter. The case law cited herein is clear, proposals seeking to establish a charter form of government will pass the single subject requirement. Although the adoption of a county charter entails multiple subjects, they are all part of a single plan or scheme. Only one question needs to be resolved, does the voter want a charter government, or not?

The Florida Constitution, the Florida Statutes and the Orange County Charter give Orange County government the power to govern itself as long as it acts consistent with general law. What is the general law that is to be followed? It is not defined anywhere in the constitution or the statutes. Blacks Law Dictionary, 4th Ed. 1968, defines general law as “one that is contradistinguished from one that is special or local, a law that embraces a class of subjects or places, and **does not omit any subject** or place belonging to such class.” The general law of Florida is found in Article III, Section 6 of the Constitution, which provides that every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.

Finally, the sections of the Florida Statutes that govern the adoption of county and municipal ordinances suggest that the single subject rule be applied to matters brought before the electors, including amendments to county charters. See Section 125.67 (every county ordinance shall embrace but one subject and matter properly connected therewith) and Section 166.041 (2) (every municipal ordinance shall embrace but one subject and matter properly connected therewith).

The provisions cited above create a constitutional, statutory and charter basis for requiring charter county governments to comply with the single subject rule when proposing ballot questions to amend a county charter. Scott. Id.

Petitioner and Amicus Curiae’s contention that there are no provisions, either constitutional or statutory, that require a charter revision to embrace but one subject, is ludicrous. Petitioner and Amicus Curiae’s suggestion that the Fifth District Court of

Appeal's application of the single subject rule to county charter amendments under general law and public policy is illogical, is likewise ludicrous. Petitioner and Amicus Curiae seek a ruling by this Court that all matters placed before the electorate except for charter amendments, must comply with the single subject rule. It is patently unfair for Petitioner and Amicus Curiae to come before this Court espousing the position that citizens of Orange County are not entitled to intelligently declare their opinions on each matter presented for their approval. Petitioner was afforded that right. It looked at the five constitutional offices and chose to revise only three, bringing them under the Orange County Charter. Shouldn't the Orange County electorate have that same right? Shouldn't the electorate be allowed to choose which of the three or five offices, if any, they want to convert to charter offices? The purposes of the single subject requirement dictate that the rule ought to apply to charter amendments, whether that mandate is supplied by the Constitution, statute, general law or public policy.

C. THE SINGLE SUBJECT RULE APPLIES TO ORGANIC OR CONSTITUTIONAL LAWMAKING

Petitioner contends that there is a distinction between legislative lawmaking and organic or constitutional lawmaking, and that the single subject rule does not apply to organic or constitutional amendments to charters.⁵ In support of its contention, Petitioner cites to the Court the case of City and County of Denver vs. Mewborn, 143 Col. 407, 354 P. 2d 155 (1960).

⁵ Petitioner's contention is wrong. See State vs. Maitland, Id. ("there can be no question about the application of the [single subject] rule to cases in general, and especially in cases involving amendments to an **organic law**. If the rule were otherwise,

In Mewborn an action was brought challenging the validity of an amendment to the charter seeking to enjoin the operation of a park improvement district organized under the terms of the charter. The issue before the Mewborn court was whether the constitution of Colorado imposed a requirement limiting an amendment to the charter of a home rule city to the single subject rule?

The Mewborn court recognized that it had never before decided whether there was a general constitutional prohibition against combining two unrelated propositions in one proposed amendment to the charter of a home rule city. The court did however, acknowledge that there had been instances where the court held a charter amendment invalid because it comprised too many non-germane subjects. *Id.* at 159. See People vs. Stapleton, 79 Colo. 629, 247 P. 1062 (1926); City of Denver vs. Hayes, 28 Colo. 110, 63 P. 311; and, Howard vs. City of Boulder, 132 Colo. 141, 290 P. 2d 237 (1955).

In Stapleton, the Supreme Court of Colorado was asked to rule upon the validity of a proposed amendment to the city charter, establishing a Public Service Commission, abolishing preferential voting and providing for apportionment of the cost of sewers. The court found the amendment illegal because it combined several amendments on unrelated subjects into one. The Stapleton court found that none of the changes were germane to each other; each was a separate amendment that must be separately adopted or rejected. The Stapleton court based its ruling on the law set forth in Hayes:

(Footnote 5 continued) two propositions might be submitted in a single amendment to an **organic law**, and the popularity of the one might force the adoption of the two by the vote”) (Emphasis added).

Neither the constitutional limitation nor the statutory provisions expressly declare that only one purpose may be submitted at the same election, nor that, if more than one purpose may thus be submitted, each shall be separately stated. But the object of neither can be attained and effect to the language in which they are expressed cannot be given, unless such purposes be separately stated. ... **To combine several distinct and independent purposes into one proposition, ... is a clear evasion of the law, and, if permitted, would fritter away the safeguards thrown around such transactions.** *Id.* at 1064. (Emphasis added).

The Supreme Court of Colorado, in the case of Howard, invalidated a charter amendment seeking to amend the city charter by changing the method of electing city councilmen from election at large to election from councilmanic districts geographically created. The amendment was invalidated because it did not separate each change proposed into a for-or-against proposal thereby denying the voters the opportunity to exercise their independent judgment on each specific change. *Id.* at 240. In ruling, the Howard court stated:

No convincing argument can be presented to dispute the fact that there were a number of unrelated propositions presented to the voters by this amendment, and they were presented as a single proposition without the voter having the chance to separate and accept or reject each such proposal. This was, in the language of the day, a ‘package deal.’ The voters had no choice but to vote for or against the entire combination. *Id.* at 240. (Emphasis added).

As in Stapleton, Hayes and Howard, the proposed charter amendment in the instant case combines several distinct and independent purposes into one proposition. The proposed charter amendment was presented to the Orange County voters as a “package deal” leaving them no choice than to vote for or against the package. For those reasons, and for others stated herein, the amendment must be declared invalid.

**D. CHARTER BALLOT QUESTION NUMBER ONE
PERPETRATED A FRAUD ON THE ORANGE COUNTY
VOTERS.**

Petitioner lastly contends that there was no showing of a legal fraud in the instant case thereby warranting a reversal of the Fifth District Court of Appeal's decision. In support of its contention Petitioner cites the case of Winterfield vs. Town of Palm Beach, 455 So. 2d 359 (Fla. 1984), wherein it was stated that the courts should not set aside an election for technical reasons unless a fraud had been perpetrated on the voters. *Id.* at 362. Winterfield involved an action seeking invalidation of municipal bonds, after an election was held on the bond issue. The action in Winterfield, unlike the action brought in the instant case, was brought after the election. This Court upheld the validation of the bonds finding that a party is estopped from making a post-election challenge to a pre-election irregularity when an attack could have been made prior to the election. This Court's ruling was based on the premise that one cannot stand by with full knowledge and acquiesce to irregularities contained in a proposed ballot question prior to an election, and then after being disappointed in the results, expect to successfully over turn the election. *Id.* at 362.

The action in the instant case was brought pre-election seeking to enjoin Charter Ballot Question Number One from being placed on the ballot, as it presented to the Orange County voters four separate subjects, having no necessary or appropriate connection, in a single amendment. By proposing this multi-subject proposition, The Charter Review Commission induced the voters of Orange County to accept the abolishing of the constitutional offices of property appraiser, tax collector and sheriff, by

coupling the question of making those offices charter offices, with the creation of a citizen review board to investigate the actions of the sheriff department personnel. In the wake of the Rodney King incident in California, and the growing unrest with alleged police brutality, the effect of combining the proposition creating a review board with the proposition relating to the constitutional officers, guaranteed passage of the amendment. That action constituted a legal fraud on the Orange County voters.⁶ The voters were induced into accepting an objectionable proposition (abolishing constitutional offices) by coupling the proposition with an unrelated favorable proposition (creation of a citizen review board). The voters had no choice. They were not afforded the opportunity to accept the good and reject the bad. Hulbert vs. Board of Education of Louisville, 382 S.W. 2d 389 (Ky. 1964). See also Henkel vs. City of Pevely, 504 S.W. 2d 141 (Mo. 1973), (a fraud is perpetrated on the voters when a proposition containing different subjects which are so unrelated and incongruous and their association so artificial as to constitute logrolling).

The actions of the Charter Review Commission, in presenting an amendment containing multiple unrelated matters perpetrated a fraud on the Orange County voters thereby necessitating a finding by this Court that the proposed amendment is invalid.

⁶ Charter Ballot Question Number One has the same logrolling effect, which constitutes a fraud on the voters, as would an amendment proposing to the electors of Alachua County, a question regarding the imposition of the death penalty against Danny Rolling together with a proposition creating an individual income tax. The likelihood of voter approval for such an amendment would be great, given the mood in Alachua County at this time. Grouping those two propositions together is tantamount to a fraud on the voters. The same semantics were imposed upon the Orange County voters.

II. CHARTER BALLOT QUESTION NUMBER ONE VIOLATES THE SINGLE SUBJECT RULE.

Having answered the question, whether the single subject rule applies to county charter amendments, in the affirmative, the question now posed is whether Charter Ballot Question Number One violated the single subject rule. For the reasons stated below, the answer to this question is an unequivocal yes!

The case law pertaining to the single subject rule is plentiful, beginning with the case of City of Coral Gables vs. Gray, 19 So. 2d 318 (Fla. 1944), a case of first impression in the State of Florida. In applying the law in other states (in order to constitute more than one amendment the proposition submitted must not only relate to more than one subject but must also have at least two separate and distinct purposes not dependent upon or connected with each other), this Court determined that the House Rule before it contained at least two distinct plans.

The purpose of the single subject rule, as fully discussed in Issue I, above, is to allow the citizens to vote on singular changes in government that are identified in the proposal and to avoid voter having to accept part of a proposal which they oppose in order to obtain a change which they support. Fine vs. Firestone, 448 So. 2d 984 (Fla. 1984), see also In Re: Advisory Opinion to the Attorney General-Restricts Laws Related to Discrimination, 19 Fla. L. Weekly S109 (Fla. 1994). Charter Ballot Question Number One proposes amendment changes to more than one government function and, therefore

constitutes a multi-subject amendment which violates the single subject rule. Evans vs. Firestone, 457 So. 2d 1351 (Fla. 1984).

Although the proposal is offered as a single amendment to the charter, it is obviously multifarious. It does not give the electorate the opportunity to express approval or disapproval severally as to each major change suggested. Adams vs. Gunter, 238 So. 2d 824 (Fla. 1970); Rivera-Cruz vs. Gray, 104 So. 2d 501 (Fla. 1958). The charter ballot question addresses two separate sections of the Orange County Charter by creating a citizen review board with subpoena power under Section 8.01 and by changing the status of charter officers under Section 7.03. Charter Review Commission vs. Scott, 18 Fla. L. Weekly D2126 (Fla. 5th DCA 1993). In finding the charter ballot question in the instant case unconstitutional, the Fifth District Court of Appeal stated the reason for it's ruling as follows:

Combining the proposed creation of a citizen review board with the proposed status change of three separate, independent, and unconnected constitutional offices in a single ballot question, involves at least two, if not four, separate and distinct amendments to the charter and unconstitutionally forces the voters of Orange County to choose all or none of the proposed amendments. *Id.*

The ballot question as presented to the Orange County voters required them to accept or reject all the proposed amendments in toto. Even though the voters may have been in favor of creating a citizen review board, they may not have been in favor of transferring the office of the tax collector. The voters may have been in favor of transferring the office of tax collector but not the office of property appraiser or sheriff; or vice versa. As the charter question was proposed to the voters they were not offered

those choices. The Orange County Voter is essentially being asked to give one yes or no answer to a proposal that asks four questions. In Re: Advisory Opinion to the Attorney General-Restricts Laws Related to Discrimination, *Id.* The proponents of the measure could have followed the mandates of the single subject rule and drafted the proposed amendment in at least two, possibly four, amendments to accomplish the changes sought. After all, the Charter Review Commission had no problem with drafting six different ballot questions to be presented to the voters at the general election. What difference would one, or three more questions have made?

Charter ballot Question Number One clearly violates the single subject rule. The Fifth District Court of Appeal's finding the ballot question unconstitutional must be affirmed.

III. THE BALLOT SUMMARY OF CHARTER BALLOT QUESTION NUMBER ONE VIOLATES SECTION 101.161, FLORIDA STATUTES AND APPLICABLE CASE LAW BECAUSE IT FAILS TO ADVISE THE VOTERS OF THE CHIEF PURPOSE OF THE PROPOSED AMENDMENT.

Section 101.161, Florida Statutes, requires that the ballot title and summary for a proposed constitution amendment, or other public measure, state in clear and unambiguous language the chief purpose of the measure. It is the fundamental right of the Orange County voters to be given fair notice so that they may make an informed decision on the merits of the proposed charter amendment. Evans vs. Firestone, 457 So. 2d 1351 (Fla. 1984), see also In Re: Advisory Opinion to the Attorney General-Restricts Laws Related to Discrimination, *Id.* It is because of that fundamental right that the ballot summary requirement is mandatory and if not fully complied with will result in the ballot

caption and summary being stricken from the ballot. Wadhams vs. Board of County Commissioners, 567 So. 2d 414 (Fla. 1990).

In Wadhams, a complaint was filed challenging an amendment to the county charter alleging that the Board failed to comply with Section 101.161 (1), Florida Statutes, by failing to provide a summary of the proposed changes. This Court struck the proposed amendment for failure to comply with the summary requirement. In the opinion, this Court relied on its previous ruling in Askew vs. Firestone, 412 So. 2d 151 (Fla. 1982), wherein this Court declared a Joint Resolution proposing an amendment invalid because the summary was “misleading to the public concerning material changes to an existing constitutional provision,” stating further that the ballot was “deceptive, because although it contains an absolutely true statement, it omits to state a material fact necessary in order to make the statement made not misleading.” This Court, in Askew, found the problem to “lie not with what the summary says, but, rather what it does not say.”

Respondents acknowledge that the summary is not required to explain every detail or ramification of the proposed amendment. Advisory Opinion to the Attorney General - Limited Political Terms in Certain Elective Offices, 592 So. 2d 225 (Fla. 1991). However, the summary must give the voters sufficient notice of what they are asked to decide to enable them to intelligently cast their ballots. Askew. Id.

Petitioner contends that the summary of Charter Ballot Question Number One fully complies with the requirement set forth in Section 101.161, and in support of its

contention cites Hill vs. Millander, 72 So. 2d 796 (Fla. 1954) and Miami Dolphins, Ltd. vs. Metropolitan Dade County, 394 So. 2d 981 (Fla. 1981).

Both cases are distinguishable from the instant case. In Millander, an action was filed challenging a proposition presented to the voters. The contention was that the entire bill to be voted on should have been printed on the ballot. The trial court upheld the ballot language stating that the phraseology of the ballot quoted together with such other information made available to the electors in the weeks preceding the election was sufficient to advise the voters. Refusing to pass upon the sufficiency of the information provided to the voters in the weeks preceding the election, as such evidence was not included in the record and therefore before this Court, this Court had to assume that the electors had full knowledge of the proposition upon which they were voting. This Court held that it was not required that the entire bill be printed on the ballot reciting its holding in numerous instances "the only requirement in a[n] election of this kind are that the voter should not be misled and that he have an opportunity to know and be on notice as to the proposition on which he is to cast his vote." Id. For the reasons set forth below, the instant summary does not meet the test stated by this Court in Millander.

In Miami Dolphins, the Dade Metropolitan County Commission, pursuant to the Local Option Tourist Development Act, created a tourist development council which submitted to the County Commission a tourist development tax plan to be submitted to the voters. An action was brought by county residents seeking to restrain the holding of the referendum election on the county ordinance imposing the tourist development tax. The trial court granted an injunction challenging the language of the ballot summary. The

District Court of Appeal reversed, holding that the language contained on the ballot complied with the provisions of the Local Option Tourist Development Act, which provides suggested language for a ballot question levying the desired tax. This Court agreed with the District Court's ruling, holding that the "ballot contained 'substantially' the same wording as the wording suggested in the statute." Unlike Miami Dolphins, the proposed ballot question in the instant case was not proposed pursuant to an act containing suggested language.

Petitioner next contends that the summary for Charter Ballot Question Number One is clear, it tells the voters the effect of the change, and it does so within the statutory word limit. Claiming further that with the seventy-five word limitation, the test is fairness not completeness and the language in this instance clearly meets the test.

This Court has recognized that the "seventy-five word limit on ballot summaries prevents the summary from revealing all the details or ramifications of the proposed amendment. Smith vs. American Airlines, Inc., 606 So. 2d 618 (Fla. 1992). Therefore, this Court has "never required that the summary explain the complete details of a proposal at great and undue length." *Id.* This Court has, however, recognized, as stated in Smith:

... the word limit does not give drafters of proposed amendments leave to ignore the importance of the ballot summary and to provide an abbreviated, ambiguous statement in the hope that this Court's reluctance to remove issues from the ballot will prevent us from insisting on clarity and meaningful information, *Id.* at 621.

Charter Ballot Question Number One fails to fully inform the voters of the chief purpose of the proposed amendment. It fails to fully inform the voters of the changes to be made, thereby depriving them the opportunity to know the consequences resulting from

the amendment on which they were to vote. Examples of the summary deficiencies are as follows:

1. The summary fails to inform the voters that the amendment provides unbridled subpoena power to individuals not provided for by statute, and without guidelines. It further fails to inform the voters as to who will issue the subpoenas, the Clerk of the Court or the Board of County Commissioners, or someone else (the grand jury does not have unbridled subpoena power, it is required to request the State Attorney to issue process to secure the attendance of witnesses to appear before them. Section 905.185, Florida Statutes).

2. The summary fails to inform the voters that the review board has the authority to impose criminal sanctions for a citizens failure to comply with a lawful order or a subpoena issued by the review commission.

3. The summary fails to inform the voters on the manner in which the review board is to be created; how many members; length of terms; rules, procedures and administrative matter to be followed.

4. The summary fails to inform the voters as to whether the investigations of the review board are confidential or held in a public forum, and the perimeters of the recommendations to be made.

5. The summary fails to inform the voters that the property appraiser, tax collector and sheriff would be subject to policy guidance from the Board of County Commissioners.

6. The summary places an improper emphasis on “constitutional office.” A voter may be led to believe that the property appraiser, tax collector and sheriff maintain special privileges as constitutional officers or that their offices are not currently regulated by statute.

7. The summary fails to inform the voters that if allowed to maintain their status as a constitutional officer, the property appraiser, tax collector and sheriff will remain elected offices and , if transferred to charter offices, the County Chairman and the Board of County Commissioners can thereafter change the offices to appointed ones thereby placing the power of selecting a property appraiser, tax collector and sheriff with the County Chairman and the Board, as opposed to the people.

8. The summary does not define a “Charter Officer” and does not inform the voters of the changes to be made when the “Constitutional Officers” are transferred to “Charter Officers.”

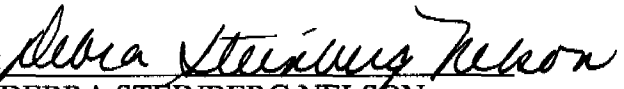
For all these reasons the summary for Charter Ballot Question Number One must be stricken as it violates the requirement of Section 101.161, Florida Statutes.

CONCLUSION

The purpose of the single subject rule, and the fundamental right of the Orange County voters to fully, clearly and intelligently express their opinions on matters pertaining to their charter form of government, requires this Court to answer the certified question in the affirmative and affirm the decision of the Fifth District Court of Appeal.

Respectfully Submitted, this 9th day of March, 1994.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to A. BRYANT APPLGATE, ESQUIRE, Post Office Box 1393, Orlando, Florida, 32802; MEL R. MARTINEZ, ESQUIRE, 719 Vassar Street, Orlando, Florida 32804; ROBERT W. THIELHEM, ESQUIRE, and KEVIN W. SHAUGHNESSY, ESQUIRE, c/o Mel R. Martinez, Esquire, 719 Vassar Street, Orlando, Florida 32804; WILLIAM E. POWERS, JR., ESQUIRE and PHILLIP P. QUASCHNICK, ESQUIRE, Post Office Box 12186, Tallahassee, Florida 32317-2186, this 9th day of March, 1994.

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