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IN THE SUPREME COURT
OF THE STATE OF FLORIDA

CHARTER REVIEW COMMISSION OF
ORANGE COUNTY, FLORIDA,

CASE NO. 83,010

Petitioner,

-vs-

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

PETITIONER, CHARTER REVIEW COMMISSION,
BRIEF ON MERITS

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STATEMENT OF CASE

On October 12, 1992, Ernie Scott filed an action for declaratory and injunctive relief against the Board of County Commissioners, Orange County, Florida ("the Board" or "the County Commission"), Betty Carter, as Orange County Supervisor of Election, and the Charter Review Commission, Orange County, Florida ("the CRC" or "the Charter Review Commission"), challenging a ballot question proposing a revision to the County Charter ("the Charter") R. 117-47; 154-185; 236-266. Walter J. Gallagher as Sheriff of Orange County, Ford S. Hausman, as Orange County Property Appraiser, and Earl K. Wood as Orange County Tax Collector, were subsequently added as party-plaintiffs.¹ R. 220-224, 229-234. The Board and the CRC moved to dismiss the action, but their motions were denied. R. 187-189, 190-192, 225-228, 290-291.

An emergency hearing was held on October 22, 1992, before the Honorable Lawrence Kirkwood. R. 1-116. On October 26, eight days before the general election, Judge Kirkwood entered a final order declaring Charter Ballot Question # 1 constitutionally invalid and mandating that the question be stricken from the ballot. R. 335-342.

The CRC immediately filed its Notice of Appeal, in which the Board joined. R. 343-344. The order of the trial court was

¹After the general election, the Fifth District Court of Appeal permitted newly elected Sheriff Kevin Beary to be substituted for former Sheriff Gallagher; the current Property Appraiser is Richard Crotty.

stayed by the Fifth District Court of Appeal on October 28, 1992, and the election was conducted with Question #1 on the ballot.

The Fifth District Court of Appeal subsequently issued its opinion affirming the trial court's order on the basis that Ballot Question Number 1 violated the single subject rule. See Appendix A. The CRC and the Board moved for rehearing, and on December 10, 1993, the Fifth District granted the motion for rehearing and certified the following question to be one of great public importance:

Whether ballot questions containing county charter revisions proposed by a charter review commission are subject to a single subject rule?

Appendix B. On January 3, 1994, the CRC filed its notice to invoke the discretionary jurisdiction of this Honorable Court, and was joined by the Board. This brief is filed pursuant to the Court's initial briefing scheduling order.

STATEMENT OF FACTS

On November 4, 1986, the voters of Orange County adopted a Charter. R. 155. As required by statute, the Charter contained provisions for amendments and revisions.

Orange County's Charter can be revised or amended only by voter approval of ballot questions proposed pursuant to three methods described in Sections 601, 701, and 702 of the Charter.² Orange County Charter §§ 601, 701, and 702 (see Appendix C). Section 702 of the Orange County Charter provides for the appointment of a charter review commission charged with the responsibility of conducting a comprehensive study of county government for the purpose of proposing suggested "amendments and revisions to the Charter." Id. at § 702 -- see Appendix C. The CRC is an independent review board that through majority vote can place issues on the ballot without review by or interference from the County Commission. Orange County Charter § 702. In addition to the charter review commission process, citizens, through initiative and the County Commission can also present changes to the electorate for approval. Id. at §§ 601 and 701.

On January 29, 1991, the Board appointed fifteen persons to serve on the Charter Review Commission. R. 154-185. In accordance with the Orange County Charter, these persons were Orange County electors, but were not elected officials. Id.

²Orange County's Charter is attached as Appendix C.

The CRC conducted numerous public hearings and held deliberations and public meetings regarding the Charter and its revision. Id.; See Exhibit C of the Amended Complaint. On July 30, 1992, the CRC presented its final report containing six proposed Charter amendments and revisions. Id. The only question involved in these proceedings is Charter Ballot Question Number 1 which provided that the Charter would be revised as follows:

QUESTION #1

CREATE CITIZEN REVIEW BOARD; CHANGE SHERIFF, PROPERTY APPRAISER, AND TAX COLLECTOR TO ELECTED CHARTER OFFICERS

Shall the Orange County Charter be revised to: (a) create a Citizen Review Board with subpoena power that would review and make recommendations regarding citizen complaints and departmental investigations of the use of force or abuse of power by employees of the Sheriff; and (b) make the Orange County Sheriff, Property Appraiser and Tax Collector elected charter officials subject to Charter provisions and abolish their current status as "constitutional officers"?

_____ YES
_____ NO

The CRC also delivered, prior to the election, a report to each registered voter explaining the six proposed Charter amendments and revisions.

All six ballot questions were placed on the November 3, 1992 ballot pursuant to Section 702 of the Charter. R. 154-185 -- See Exhibit A and C to the Amended Complaint. Charter Ballot Question Number 1 was overwhelmingly approved by the voters. See p. 3 of the Fifth District's Opinion -- Appendix A.³

³Four of the six proposals were passed by the voters. 88.7% of the registered electorate voted in the November 3, 1992 general election. Question #1 was approved by 63.48% of the voters; the

SUMMARY OF ARGUMENT

This Court has never considered the issues presented by the certified question. The cases relied on by the Fifth District involve bond validations or legislative enactments clearly distinguishable from charter revisions proposed by a charter review commission. To preserve Orange County's voters' right to revise their Charter in a manner consistent with the Florida Constitution and in accordance with the Orange County Charter, this Court should accept jurisdiction and reverse the Fifth District's opinion.

There is no constitutional, statutory, or Charter provision imposing a single subject rule on ballot questions proposed by a charter review commission. The single subject rule applies only to the passage of laws by the Florida Legislature, the enactment of ordinances by cities and counties and to changes to the Florida Constitution proposed by citizen initiative petition. It does not apply to ballot questions proposed by a charter review commission. The Fifth District, acknowledging these limitations on the single subject rule, nevertheless held that it is good "public policy" to extend the rule to charter ballot questions proposed by a charter review commission. The Fifth District's holding ignores express constitutional and statutory provisions, eviscerates the mechanism for change via the Charter Review Commission process established by the Orange County Charter, and frustrates the voters' ability to revise their Charter.

other propositions were approved by the following percentages: Question #2 - 55.34%; Question #3 - 62.30%; and Question #5 - 61.57%.

Charter changes proposed by charter review commissions do not warrant the imposition of the single subject rule. In this area of organic (charter or constitutional) law, multiple issue change is proper and necessary if proper safeguards exist. For example, of the four methods of amending Florida's Constitution, the single subject rule is imposed only on change proposed by initiative petition. Florida's Constitution deliberately omits a single subject requirement, that had been previously included in the predecessor to Article XI, regarding change proposed by the Legislature, the Constitution Revision Commission, and the Constitutional Convention.

Similarly, Orange County's Charter empowers the Charter Review Commission to propose amendments and revisions to the Charter and it has procedural safeguards similar to the Constitution Review Commission. Without relief from this Court, the Fifth District's opinion will make the revision provision of the Charter (and presumably of the Constitution) a nullity.

Local charters and the State Constitution form the foundation of each government as approved by the voters. The Constitution and all charters create deliberative bodies charged with the responsibility of conducting comprehensive studies on the need for constitutional change. They are empowered to recommend change to all or to a part of their constitutional documents. It is imperative that these bodies be given the freedom to propose changes to this organic law without being restricted by the single subject rule. Any other result would jeopardize -- contrary to the

Legislature's and the voters' creation of charter government -- the voters' ability to adopt an initial charter that by necessity contains multiple subjects and issues associated with the establishment of a new form of government. To parse the initial adoption of a charter, or its subsequent changes, into innumerable questions limited to a single subject would make an already tedious process impossible.

The freedom to propose multi-subject change to county charters and the State Constitution was carefully created and is necessary to efficient and effective change that is the hallmark of our system of government and its ability to adapt to our dynamic society. This freedom from piecemeal change must be preserved by reversing the Fifth District's opinion and upholding the Charter Review Commission's right to propose change without being hindered by a single subject rule.

ARGUMENT

I. THE COURT SHOULD INVOKE JURISDICTION BECAUSE THE CERTIFIED QUESTION PRESENTS IMPORTANT ISSUES NEVER ADDRESSED BY THE COURT THAT WILL AFFECT CHARTER COUNTIES AND SUBSEQUENT BALLOT PROPOSALS CONTAINING PROPOSED REVISIONS.

This is a case of first impression. Florida courts have applied the single subject rule to amendments to the Florida Constitution proposed by initiative, acts of the legislature, municipal ordinances and resolutions, and county ordinances and bond issues. E.g., In re Advisory Opinion of the Attorney General, 592 So. 2d 225 (Fla. 1991); Burch v. State, 558 So. 2d 1 (Fla. 1990); State v. Dade County, 39 So. 2d 807 (Fla. 1949); Antuono v. City of Tampa, 87 Fla. 82, 99 So. 324, 326-327 (1924). Notably absent from Florida jurisprudence is any application of the single subject rule to a revision of a county charter adopted pursuant to the grant of local self government power provided by Article VIII, Section 1(g) of the Florida Constitution.

In its opinion, the Fifth District acknowledged by omission that no constitutional or statutory provisions apply the single subject rule to revisions to county charters. See Charter Review Commission v. Scott, 18 Fla. L. Weekly D2126, 2127-28 (Fla. 5th DCA 1993).⁴ The Fifth District nevertheless held that Ballot Question

⁴In fact, the Fifth District could find only that the single subject rule applied in specified limited circumstances as provided in the Florida Constitution and the Florida Statutes:

In Florida, various constitutional and statutory provisions expressly apply the single subject rule to legislative acts, county ordinances, and municipal ordinances and resolutions. See Art. III, §6, Fla. Const. (applying the single subject rule to legislative

Number 1 proposed by the Charter Review Commission was violative of the single subject rule and unconstitutional. Id.

Notwithstanding the absence of precedent or authority, the Fifth District believed "public policy" warranted extrapolating the single subject rule far beyond its prior application. Id. at 2127-28. The effect of this ruling is far-reaching.

Fourteen Florida Counties, including most of the more densely populated counties, now operate under a home rule or charter form of government. As their citizens attempt to change these charters, they will be severely limited by the single subject rule imposed by the Fifth District. Moreover, the crux of the ruling -- that "public policy" abhors all multiple-issue revision proposals -- lays a dangerous precedent for finding future constitutional revisions invalid notwithstanding the express language in Article XI, Section 2 of the Florida Constitution, which is virtually identical to the language in Orange County's Charter allowing for change through a "review commission" process.

For these reasons and others set forth in this brief, the Court should invoke jurisdiction and resolve the issues presented by this case of first impression.

acts); Art. XI, §3, Fla. Const. (applying the single subject rule to amendments by initiative to the Florida Constitution); §125.67, Fla. Stat. (1991) (applying the single subject rule to county ordinances); §166.041(2), Fla. Stat. (1991) (applying the single subject rule to municipal ordinances and resolutions).

Charter Review Commission v. Scott, 18 Fla.L.Weekly D2126, 2128 n.2. (Fla. 5th DCA 1993).

II. BALLOT QUESTIONS CONTAINING COUNTY CHARTER REVISIONS PROPOSED BY A CHARTER REVIEW COMMISSION ARE NOT SUBJECT TO A SINGLE SUBJECT RULE.

A. There Is No Constitutional, Statutory Or Charter Provision Imposing The Single Subject Rule On Ballot Questions Proposed By A Charter Review Commission.

The single subject rule is only found in the Florida Constitution and Florida Statutes, but these provisions do not concern changes to a county charter.

The Florida Constitution contains two provisions regarding the single subject rule: Article III, Section 6 and Article XI, Section 3. Article III is entitled "*Legislature*", i.e. the Senate and House of Representatives. Art. III, §1, Fla. Const. Section 6 of that Article, entitled "*Laws*", provides as follows:

Every law shall embrace but one subject and matters properly connected therewith, and the subject shall be briefly expressed in the title. No law shall be revised or amended by reference to its title only. Laws to revise or amend shall set out in full the revised or amended act, sections, subsections or paragraph of a subsection. The enacting clause of every law shall read: 'Be it Enacted by the Legislature of the State of Florida'.

Art. III, §6, Fla. Const. (emphasis added). This provision imposes the single subject rule on Florida laws enacted by the Florida Legislature. No Florida Court has applied this provision beyond its express limits. There is no basis for the contention that this provision imposes the single subject rule on a charter revision proposed by a charter review commission.

Article XI of the Florida Constitution is entitled "*Amendments*". Art. XI, Fla. Const. Section 3 of that Article, entitled "*Initiative*", provides as follows:

The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment shall embrace but one subject and matters directly connected therewith...

This provision is expressly limited to the imposition of the single subject rule on initiative petitions. No Florida Court has applied this initiative provision beyond its exact limits. Moreover, revisions proposed by the Constitution Revision Commission, the constitutional counterpart to Orange County's Charter Review Commission, are not limited by the single subject rule when making or presenting proposals to the electorate for vote. See Art. XI, §2, Fla. Const. The Appellees cannot ignore the parallels between the Constitution Revision Commission and the Charter Review Commission and contend that the initiative provision imposes the single subject rule on a ballot question proposed by a charter review commission.

The single subject rule is imposed on county and city ordinances by two provisions of the Florida Statutes. Section 125.67, Fla. Stat. (1991) (county ordinances); Section 166.041(2), Fla. Stat. (1991) (municipal ordinances). No Florida Court has applied these provisions beyond their express limits. In addition, the existence of these provisions reinforces the argument that Article III, Section 6 of the Florida Constitution, applies only to the Florida Legislature. If Article III, Section 6, is interpreted to the contrary, the statutory provisions regarding municipal and county ordinances would be superfluous.

It appears that the Fifth District Court of Appeal relied on Section 125.67, Florida Statutes, as the general law imposing the single subject rule on revisions or amendments to county charters. See Scott, 18 Fla. L. Weekly at 2128. Yet, Section 125.67, which is located in the chapter on county government, provides in relevant part that "every ordinance shall embrace but one subject and matter properly connected therewith." Section 125.67, Fla. Stat. (1991) (emphasis added). Given that Section 125.67 is expressly limited to ordinances, it was improper for the Fifth District to read more into the statute and to rewrite it to include county charters.

B. There Is No "General Law" Or "Public Policy" Imposing The Single Subject Rule On Ballot Questions Proposed By A Charter Review Commission.

The Fifth District held that "under general law and public policy of Florida, the single subject rule must also apply to proposed county charter amendments." This holding is based on an inaccurate and erroneous analysis.

The Fifth District begins its analysis with Article VIII, Section 1(g) of the Florida Constitution. Section 1 is entitled "Counties" and subsection (g) is entitled "Charter Government". This provision states as follows:

Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

Thus, the Orange County Commission must comply with the single subject rule as provided in Section 125.67 in enacting ordinances. But that requirement has no bearing on the challenged ballot question. It was an independent citizen group -- the Charter Review Commission -- who proposed the contested ballot question. By their very nature, actions and proposals of a county charter review commission are not ordinances or legislative acts.

The contention that Article III, Section 6 applies to the contested ballot question as a "general law" imposed on charter government counties by Article VIII, Section 1(g) similarly makes no sense. Article VIII, Section 1(g) of the Florida Constitution defines the power of charter counties. Article III, Section 6, on the other hand, defines the power of the Florida Legislature to enact laws.

Not only is there a complete absence of constitutional or statutory law imposing a single subject rule on county charter revisions proposed by charter review commissions, but a similar dearth of authority exists under Florida's common law. None of the cases relied upon by the Fifth District applied the single subject rule to revisions to county charters. See Scott, 18 Fla. L. Weekly at 2127-28 (relying on State v. Dade County, 39 So. 2d 807 (Fla. 1949); City of Coral Gables v. Gray, 154 Fla. 881, 19 So. 2d 318 (1944); Antuono v. City of Tampa, 87 Fla. 82, 99 So. 324 (1924)).

In State v. Dade County, this Court applied the single subject rule to a bond issuance proposed by the Board of County Commissioners, not to a county charter revision proposed by a

charter review commission. In Antuono v. City of Tampa, this Court applied the single subject rule to another bond issue proposed by a municipality, not to a county charter revision proposed by a charter review commission. Similarly, in City of Coral Gables v. Gray, this Court applied Article XVII, Section 1 of the Florida Constitution which at that time provided that "the proposed amendments shall be so submitted as to enable the electors to vote on each amendment separately,"⁵ and required constitutional amendments to comply with the single subject rule. The issue of a revision to a county charter proposed by a charter review commission was not involved.

⁵No such requirement exists in the current Constitution. Rather, Article XI entitled "Amendments", Section 1 entitled "Proposal by Legislature" expressly provides:

Amendment of a section or revision of one or more articles, or the whole of this constitution may be proposed by joint resolutions agreed to by three-fifths of the membership of each house of the legislature. The full text of this joint resolution and the vote of each member voting shall be entered on the journal of each house.

Article XI provides four methods of amending or revising the constitution: 1) by the legislature; 2) by the revision commission; 3) by an initiative petition; and 4) by a constitutional convention. The single subject rule is imposed only on the initiative petition. Art. XI, § 3, Fla. Const. Thus, the power to make multi-subject change is reserved to the Legislature, the Constitution Revision Commission and the Constitutional Convention. Because the single subject rule is not applicable to revisions proposed by the Constitution Revision Commission, it should not be applicable to revisions or amendments proposed by the CRC in accordance with Section 702 of the Charter, which sets forth a method of revision and amendment modeled after Article XI. More important, neither the current Constitution nor any previous version contains any requirement for the application of the single subject rule to changes to county charters proposed by a charter review commission.

Thus, Antuono and its progeny do not stand for a "general rule" or "public policy" imposing the single subject rule on revisions proposed by a charter review commission. Instead, these cases are limited to actions of elected officials while enacting ordinances and resolutions. Gray, similarly, is limited to citizen initiatives.

Acknowledging that the issue before this Court in Gray was not the same as the issue involved in this appeal, but without considering the significance of Florida's current constitutional framework, the Fifth District held "that the same public policy concerns apply in both situations because the law of Florida requires elections to express the free and independent will of the people through the means of a fair ballot." Scott, 18 Fla. L. Weekly at 2127-28. Having to rely on public policy in the absence of constitutional, statutory or common law support highlights the quantum leap undertaken by the Fifth District in determining that the single subject rule applies to revisions to county charters proposed by charter review commissions. Taken to its logical conclusion, the decision of the Fifth District means that the single subject rule applies to all matters submitted to the electorate for vote. Such a result defies logic.⁶

⁶For example, applying the Fifth District's single subject analysis, a charter could never be initially adopted in any single vote. Adoption of a county charter necessarily entails multiple subjects concerning, among other things, organization of the county, the structure of the county commission, the form of government and the relationship between the county government and constitutional or county officers. These and a myriad of other subjects are addressed whenever the charter form of government is adopted by the citizens of a county. The adoption, in and of itself, would entail

**III. THE SINGLE SUBJECT RULE ESPOUSED IN ANTUONO
CANNOT BE EXTENDED TO CHARTER REVISIONS.**

This Court's prior precedents do not support extending the single subject rule to charter revisions propounded by a charter review commission. The single subject rule was first recognized in Antuono v. City of Tampa, in which this Court considered whether an ordinance submitted by the city officials of Tampa seeking the issuance of bonds to finance city improvement projects violated the single subject rule. 99 So. at 324-26. In applying the single subject rule to the ordinance, the Antuono court relied heavily on 5 E. McQuillin, The Law of Municipal Corporations, §2198 (1921) ("McQuillin"). Id. at 326. Because McQuillin argued that separate and distinct propositions must be separated so that a voter can express his or her opinion on each issue, the Antuono Court considered the ordinance to be invalid because the bond issuance involved "several separate, distinct, and unrelated objects." Id. at 327.

Given that Antuono did not involve a revision to a county charter proposed by a charter review commission and given the absence of constitutional or statutory provisions, the real issue in this case becomes whether the rule espoused in Antuono applies in all cases as the Appellees maintain. Their argument, however, ignores the source of the rule in Antuono and the need for the

consideration of multiple subjects. Clearly, the application of a single subject rule to the adoption of a county charter is contrary to Florida law. See Art. VIII, §1(c), Fla. Const., and Section 125.64, Fla. Stat. §125.64 (1991).

electorate to have the power to change their constitutional documents.

The Fifth District quoted extensively from this Court's opinion in Antuono. Scott, 18 Fla. L. Weekly at 2127. The quoted language relies on a "rule" which was taken from McQuillin at §2198. However, the Fifth District failed to address the context in which the quoted language appears in McQuillin.

The identical language quoted from McQuillin by this Court in Antuono can be found in the current edition. 15 J. Latta & E. McQuillin, The Law of Municipal Corporation, Section 40.09 (3rd Ed. 1970) ("Latta & McQuillin"); Winterfield v. Town of Palm Beach, 455 So. 2d 359, 360 (Fla. 1984). Section 40.09 of Latta & McQuillin is found in the chapter entitled "*Elections as to Incurring of Indebtedness or Issuance of Bonds*," which is consistent with the fact that Antuono was a bond issuance case and did not involve a county charter amendment or revision. See Latta & E. McQuillin, at Chapter 40.⁷ Significantly, amendments and revisions to charters are addressed in a separate chapter, entitled

⁷The chapter entitled "*Elections as to Incurring of Indebtedness or Issuance of Bonds*" begins with the following sentence:

A vote of the people may be necessary, because of certain statutory or charter provisions, (1) to authorize a municipality to incur any indebtedness whatever, or (2) to authorize it to incur indebtedness for certain specified purposes, or (3) to authorize it to incur indebtedness in excess of the debt limit, or (4) to authorize it to issue bonds.

J. Latta & E. McQuillin, The Law of Municipal Corporation, §^F40.01 (3rd Ed. 1970). Obviously, this chapter of Latta & McQuillin does not address charter amendments and revisions.

"The Municipal Charter". Compare id. at Chap. 9, with id. at Chap. 40. Noticeably absent from the relevant portions of Section 9.27 of "The Municipal Charter" chapter is the language quoted from McQuillin by the Fifth District. In fact, the relevant portions of Section 9.27 of "The Municipal Charter" chapter and the caselaw cited suggest that multi-subject change to a charter is appropriate:

Although amendments may comprise numerous, separate, and distinct articles and sections, and in fact be a general revision, it has been held that they may be voted upon as a whole; each article or section need not be submitted for a separate vote. 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.

Id. at §9.27, p. 948-949. Thus, the relevant section of Latta & McQuillin precludes the conclusion that the single subject rule recognized in Antuono applies in all cases, and supports the CRC's position that the revision proposed by Ballot Question Number 1 is appropriate.

A review of the case law cited in the pertinent sections of Latta & McQuillin indicates that, for the most part, courts applying the single subject rule to amendments or revisions of local government charters do so only on the basis of an express constitutional or statutory requirement. See, e.g., House v. City

of Saginaw, 334 Mich. 241, 54 N.W. 2d 314 (1952) (state statute confined charter amendment to one subject); but cf. State v. Hall, 335 Mo. 1097, 75 S.W. 2d 578 (1934) (appears to apply single subject rule in absence of constitutional or statutory requirement, but finds no violation of the single subject rule even though propositions could have been submitted separately). Significantly, however, the authorities set forth in support of the proposition that "amendments may comprise numerous, separate, and distinct articles and sections, and in fact be a general revision," rely heavily on the distinction between legislative lawmaking and organic or constitutional lawmaking in refusing to apply a single subject rule to changes to local government charters.⁸ This distinction is critical to understanding the need for multi-subject change in the context of charters and constitutions.

The Colorado Supreme Court emphasized the significance of the distinction between organic or constitutional law and legislative enactments in a case very similar to the present appeal. City and County of Denver v. Mewborn, 143 Col. 407, 354 P. 2d 155 (1960) (en

⁸See City and County of Denver v. Mewborn, 143 Col. 407, 354 P. 2d 155 (1960) (in the absence of constitutional limitations, amendment to home rule charter not limited to single subject or proposition); Reutener v. Cleveland, 107 Ohio St. 117, 141 N.E. 27 (1923) (State Constitution gave municipalities all powers of local self-government including method of conducting elections and such municipality need not submit charter amendments separately); Noonan v. Seaside, 97 Ore. 64, 191 P. 651 (1920) (distinguishing between the execution of powers conferred upon the municipality [legislative acts] and the enactment of a charter conferring the ability to execute such power [constitutional or organic law]); State v. Portland, 65 Ore. 273, 133 P. 62 (1913) (acknowledging that limiting changes to a city charter would defeat its purpose, the court permitted a revision to the charter which included several subjects all of which were germane to each other).

banc). In Mewborn, the court addressed a challenge to a charter amendment of a home rule city on the grounds that the amendment violated the single subject rule. Id. at 156. The amendment to the city charter changed procedures, eliminated obsolete provisions of the previous charter and created two departments in place of a department which had grown too large to function properly. Id. at 158. In refusing to find a violation of the single subject rule, the Mewborn court considered two issues in particular: (1) whether the state constitution imposed a single subject limitation on home rule charter amendments and (2) whether the home rule charter imposed such a limitation. See id. at 158-161.

With regard to the limitations imposed by the state constitution, the Mewborn court noted that it had never considered whether a constitutional prohibition existed against combining two unrelated propositions in one proposed amendment to the charter of a home rule city. Id. at 158-59. However, the court also noted that multi-subject amendments or revisions were proper:

It is clear, though, that where the several propositions are related and deal with subjects within the power of the municipality there is no constitutional objection to such an amendment, even though it is multi-purposed. And it is equally clear that there is no limitation on the number of subjects that may be included in a constitutional amendment.

Id. at 159. Analogizing the city charter to a state constitution, the Mewborn court reasoned that "any limitation on the power to amend the charter must be found in a specific provision of either the constitution or the charter." Id. (emphasis added). The

Mewborn court distinguished between legislative law and organic or constitutional law and held that "limitations on the former do not apply to the later." Id. Finding no limitations on the power to amend in either the charter⁹ or the state constitution, the Mewborn court refused to apply the single subject rule to an amendment of a home rule charter.

A similar conclusion should be reached in this appeal because nothing in the Florida Constitution or Orange County Charter imposes a single subject requirement on revisions or amendments to the Orange County Charter proposed by a charter review commission. In fact, the proper functioning of local government militates against always requiring the voters to revise or amend their charters in a piecemeal fashion.

For example, this Court has recognized the "confusion" and "chaos" that would result if a multiple-subject change to the state constitution was attempted through several proposals to the electorate and some of the proposals did not pass. See Adams v. Gunter, 238 So. 2d 824 (Fla. 1970); Rivera-Cruz v. Gray, 104 So. 2d

⁹The Mewborn court found that the home rule charter did not impose a single subject requirement on amendments to the home-rule charter even though Section 216 of the home-rule charter provided, in relevant part, : "All ordinances or resolutions, except ordinances making appropriations, shall be confined to one subject, which shall be clearly expressed in the title." Id. at 160. Here again, the Mewborn court stressed that the single subject limitation imposed by the home rule charter only applied to "ordinary legislative enactments." Id. at 160-161. Since the amendment to the home rule charter was not a "legislative enactment," the single subject rule imposed by the home rule charter did not apply. See id. A similar argument should apply with equal force and effect to the single subject rule for ordinances under Fla. Stat. §125.67 (1991).

501, 503 (Fla. 1958). Following these cases and Mewborn, this Court should acknowledge the distinction between legislation and organic or constitutional law that is already inherent in our state constitutional scheme,¹⁰ and preclude the imposition of a single subject rule to county charter revisions in the State of Florida.

IV. THE SINGLE SUBJECT RULE DOES NOT APPLY TO REVISIONS PROPOSED BY THE CRC BECAUSE THE REVISION PROCESS IS MODELED AFTER THE STATE CONSTITUTIONAL PROVISIONS ALLOWING REVISIONS AND REVISIONS ARE NECESSARY TO THE EFFECTIVE DEVELOPMENT OF CHARTERS AND CONSTITUTIONS.

The process for revising the Orange County Charter under Section 702 is similar in all critical respects to the constitutional revision process imposed by Article XI, Section 2 of the Florida Constitution. Compare Fla. Const. Art. XI §§2 and 5, with Orange County Charter § 702. Under Article XI, Section 2 of the Florida Constitution, a thirty-seven (37) member commission is required to convene, adopt rules of procedure, examine the Constitution, hold public hearings, and prepare a report on any revision proposed by the Constitution Revision Commission. Further, under Article XI, Section 5 of the Florida Constitution, the Constitution Revision Commission's report is published to the voting electorate prior to any election. Significantly, nothing in Article XI of the Florida Constitution imposes a single subject

¹⁰Compare Fla. Const. Art. III, §6 (single subject rule applied to the legislature's passage of laws), with Fla. Const. Art. XI, §1 (legislature can propose amendments or revisions and no single subject requirement exists) and Fla. Const. Art. XI, §2 (Constitution Revision Committee can propose amendments and revisions and no single subject requirement exists).

rule on revisions to the State's Constitution proposed by the Constitution Revision Commission.

Similarly, Orange County's Charter Review Commission consists of 11 - 15 members appointed by the Board which are retained to conduct a "comprehensive study of any and/or all phases of County government," to hold no less than four public hearings, and to prepare a report of proposed amendments or revisions. Orange County Charter § 702. Like the Constitution Revision Commission the CRC is expressly allowed to propose revisions. Id.

The procedural safeguards built into the "review commission" processes of both the Orange County Charter and the Florida Constitution permit necessary multi-subject changes to the organic of law of the state and local government while reducing the possibility of fraud, corruption or collusion in the election itself. In Adams v. Gunter, 238 So. 2d 824 (Fla. 1970), this Court addressed the various methods of making changes to the Florida Constitution under the current provisions of Article XI. In declaring an initiative petition proposing an amendment to the Florida Constitution invalid because the proposed amendment would change and modify numerous other portions of the Constitution, this Court stressed the absence of procedural safeguards:

The 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; . . . such an appeal might well be proper in voting in a revised constitution proposed under the safeguards provided for such a procedure, but it goes beyond the legitimate scope of a single amendatory article. . . .

Id. at 831 (quoting McFadden v. Jordan, 32 Cal. 2d 330, 196 P. 2d 787, 789 (1948)). Implicit in this Court's decision in Adams is the acknowledgment that multi-subject changes to the State Constitution may in fact be necessary at times, but should only be adopted according to the procedural safeguards imposed by Article XI, such as those created by the Constitution Revision Commission.¹¹

The Charter Review Commission process under Section 702 of the Orange County Charter provides the same procedural safeguards intended to reduce the dangers involved in logrolling and to avoid fraud, corruption or collusion being practiced upon the voters of Orange County. At the same time, the Charter Review Commission process enables Orange County to avoid piecemeal changes to its "constitution" or "organic law," which is essential to the proper and orderly function of Orange County's government.

The Orange County Charter and the Florida Constitution recognize the need for avoiding piecemeal changes to the organic law and provide a means for making major changes or revisions that cannot always be limited to a single subject. They also recognize the

¹¹See also Fine v. Firestone, 448 So. 2d 984, 988-89 (Fla. 1984), (comparing the single subject rule under Article XI, §3 (constitutional amendments by initiative) to the single subject rule under Article III, §6 (legislative acts)) the Firestone court ruled that: "We should take a broader view of the legislative provision [Article III, §6] because any proposed law must proceed through legislative debate and public hearing." Id. at 989. Because the process involved in proposing legislative acts involved public hearing and debate, the Firestone court reasoned that the process itself allowed for change in the content of a proposed law before adoption and imposed restrictions on proposed legislation which were not "applicable to the scheme for constitutional revision or amendment by initiative." Id. (emphasis added).

need to promote free and fair elections and avoid fraud, corruption or collusion upon the voters asked to consider revisions. See Winterfield, 455 So. 2d at 361. Despite these procedural safeguards, the decision of the Fifth District imposes a single subject rule on revisions to Orange County's Charter that will precipitate the dangers of piecemeal changes to Orange County's charter or organic law. Such a result is completely contrary to the goals and purposes of Article VIII, Section 1 of the Florida Constitution and its grant of home rule power to charter counties.

V. BALLOT QUESTION NUMBER 1 DOES NOT VIOLATE THE SINGLE SUBJECT RULE.

A. Charter Ballot Question Number 1 Does Not Violate The Single Subject Rule Because Its Single Purpose Is Making Specified Offices More Accountable To The Electorate.

Ballot Question Number 1's dominating single purpose was to ensure that certain elected officers were more accountable to the voters. Assuming *arguendo* that the single subject rule applies to revisions to Orange County's Charter proposed by the Charter Review Commission, Ballot Question Number 1 does not violate the single subject rule as it has been interpreted by Florida courts.

While Florida courts have never addressed the application of the single subject rule to revisions to county charters proposed by charter review commissions, this Court has addressed the single subject rule on numerous occasions in various contexts. In re Advisory Opinion of the Attorney General, 592 So. 2d 225 (Fla. 1991) (constitutional amendment proposed by initiative petition); Burch v. State, 558 So. 2d 1 (Fla. 1990) (legislative act); Smith

v. Department of Insurance, 507 So. 2d 1080 (Fla. 1987) (Florida's Tort Reform and Insurance Act); Fine v. Firestone, 448 So. 2d 984 (Fla. 1984) (constitutional amendment proposed by initiative); Chenoweth v. Kemp, 396 So. 2d 1122 (Fla. 1981) (legislative act); State v. Lee, 356 So. 2d 276 (Fla. 1978) (Tort Reform Act of 1977); and Gray v. Golden, 89 So. 2d 785 (Fla. 1956) (constitutional amendment proposed by Legislature under previous constitutional provision limiting such proposals to single subject). In Advisory Opinion of the Attorney General, this Court considered whether an amendment to the Florida Constitution proposed by initiative violated the single subject rule under Article XI, Section 3 of the Florida Constitution. The initiative sought to limit the number of consecutive terms that certain elected public officials could serve. See 592 So. 2d at 226-227. This Court held that a "single purpose" could be found even when multiple issues are affected by the proposed change:

A proposed amendment meets this single subject requirement if it has "a logical and natural oneness of purpose[.]" To state the test in other way, a proposed amendment is valid if it "may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme."

Id. at 227 (citing Gray, 19 So. 2d at 320). Although the proposed amendment applied to numerous different government offices and three different branches of the government, this Court found that the proposed amendment met the single subject requirement because the dominant purpose was to limit the influence of special interest

groups by restricting or limiting terms of office. See id. at 226-227.

Charter Ballot Question Number 1 passes the single subject test because it similarly has a "logical and natural oneness of purpose[.]" Id. at 227. The question deals with changing the status of certain public offices from constitutional offices to charter offices and to the creation of a review board for complaints against one of those offices. The single overriding purpose of the revision is to make the Sheriff, Property Appraiser and Tax Collector of Orange County more accountable to the electors of Orange County. By making the Orange County Sheriff, Property Appraiser and Tax Collector elected charter offices rather than constitutional offices, those offices become subject to the Orange County Charter and more accountable to the citizens of Orange County. Similarly, the Sheriff's Review Board increases the accountability of the Sheriff's office to the citizens of Orange County.

Both the creation of the Citizens Review Board and the transfers to charter office were part of the "single and dominant plan or scheme" of increasing the citizens' power over their local officials.¹² Moreover, combining the citizens review board with

¹²Indeed, the Florida Constitution expressly provides that citizens in charter counties may abolish county or constitutional offices:

[W]hen provided by county charter or special law approved by vote of the electors of the county, any county officer may be chosen in another manner therein specified, or any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office.

the transfer from "constitutional" to charter offices "may be viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme" in that the creation of a citizen review board under the Orange County Charter would be superfluous if the office to be affected by the review board was not subject to Orange County's Charter. In other words, if the Orange County Sheriff was not a county charter office, the citizens review board would be ineffective and have no control over or affect on the Sheriff. Thus, without logically connecting these issues in a single question, the voters could not be assured that approving the citizens review board would ensure that the Sheriff would be accountable to the electorate of Orange County.

B. Even If The Single Subject Rule Applies Technically To These Facts, It Does Not Invalidate The Revision Approved By The Voters Because There Has Been No Showing Of Fraud Or Coercion Perpetrated On The Voters.

Not only does the distinction between legislation and organic or constitutional law militate against the application of a single subject rule in this case, but this Court has indicated that the single subject rule does not apply to invalidate each and every vote even if a technical violation of the single subject rule has occurred:

The Antuono single purpose rule appears to require invalidation whenever voters have been asked to approve more than one purpose with a single vote. However, this Court has not lost sight of the underlying rationale for the rule, which is to prevent the electoral equivalent of logrolling, whereby "one measure, by

Article VIII, §1(d), Fla. Const.

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." Antuono, 87 Fla. at 90, 99 So. at 326. While electoral logrolling is an evil to be avoided, per se invalidation may very well result in a greater evil.

Winterfield v. Town of Palm Beach, 455 So. 2d 359, 361 (Fla. 1984) (emphasis added). In refusing to hold that the single subject rule applied in all instances, the Winterfield court was more concerned with avoiding a greater evil: the deprivation of the public's right to vote. The Court noted that:

Republics regard the elective franchise as sacred, and the courts should not set aside an election because some official has not complied with the law governing elections, where the voter has done all in his power to cast his ballot honestly and intelligently, unless fraud has been perpetrated or corruption or collusion practiced to a degree to have affected the result.

Id. (emphasis in opinion). Characterizing the voting challenge as being based on a bare assertion that the bond referendum violated the single subject rule, the Winterfield Court held that the violation of the single subject rule did not require invalidation of the election because "no substantial assertion is made that violation of the rule constituted fraud, corruption or collusion or that the violation affected the results of the election." Id. at 362.

In the instant case, there has been no allegation nor any showing of fraud, corruption or collusion. Moreover, the dangers of logrolling and fraud, corruption or collusion are diminished by the charter revision process under Section 702 of the Orange County

Charter. By requiring an eleven to fifteen member commission comprised of electors of the county who hold no public office to (1) study county government, (2) publish a report of proposed amendments and revisions to a charter prior to any election, and (3) conduct no less than four public hearings before making its final report, the charter revision process under Section 702 creates procedural safeguards to avoid fraud, corruption or collusion. The lack of any showing to the contrary warrants reversal of the Fifth District's decision.

VI. THE BALLOT SUMMARY OF CHARTER BALLOT QUESTION NUMBER 1 COMPORTS WITH SECTION 101.161 AND APPLICABLE CASE LAW BECAUSE IT FAIRLY ADVISED THE VOTERS OF THE MAIN PROVISIONS OF THE PROPOSED REVISION.

While this issue was not certified by the Fifth District, this Court has the authority, once jurisdiction is accepted, to consider all issues on appeal. E.g., Tillman v. State, 471 So. 2d 32 (Fla. 1985); Zirin v. Charles Pfizert Co., 128 So. 2d 594 (Fla. 1961). The Fifth District did not reach this issue, declining to rule based on its disposition of the case on the basis of the single subject rule. Scott, 18 Fla. L. Weekly at 2128. If the Court is inclined to rule in favor of the CRC, it is preferable to resolve the ballot summary issue to avoid piecemeal appeals and further delay in resolving the challenges to Ballot Question Number 1. Accordingly, the CRC respectfully submits argument on this issue.

Section 101.161 specifies the requirements for ballot language mandating the substance of a public measure be presented in unambiguous language, followed by the words "YES" or "NO", with

"YES" indicating approval of the proposal and "NO" indicating rejection. In addition, the substance of the measure should be set forth in an explanatory statement in 75 words or less, giving the chief purpose of the measure, and it must have a ballot title captioned in 15 words or less. Section 101.161, Fla. Stat. (1991).

The purpose of the Statute is to give the electorate fair notice of the ballot proposal: "what the law requires is that the ballot be fair and advise the voters sufficiently to enable them to intelligently cast his ballot". Hill v. Milander, 72 So. 2d 796 (Fla. 1954). This standard has been the determining factor in ballot language challenges.

In Milander, the plaintiffs challenged a local referendum arguing the entire proposal should have been printed on the ballot. In upholding the election and determining that the ballot was sufficient to apprise voters of the question to be determined, this Court noted that the only constitutional or legal requirement is that the voter have notice of that which he or she must decide.

Milander was followed when this Court ruled that ballot language establishing a tourist tax was sufficient, even though many details of the proposed tax plan were not explained in the ballot summary. Miami Dolphins Ltd. v. Metropolitan Dade County, 394 So. 2d 981 (Fla. 1981). As the Court noted, every aspect of the proposal need not be explained on the ballot. Id. at 987. The ballot summary is no place for subjective evaluation of special impact, but rather should tell the voters the legal effect of the

amendment and no more. Evans v. Firestone, 457 So. 2d 1351 (Fla. 1984).

In the instant case, the summary of Ballot Question Number 1 states exactly what the proposal would do. It creates a citizens review board to investigate and make recommendations regarding the use of force or abuse of power by employees of the Sheriff, and it abolishes the "constitutional officer" status of the office of Sheriff, Property Appraiser, and Tax Collector. The summary is clear, it tells voters the effect of the change, and it does so within the statutory word limit. The Appellees claim that the summary fails to give every detail of the citizens review board is meaningless. The number of members, the manner in which they are appointed, and other procedural minutia, are not the "chief measure" of the proposal and could not, in any event, be explained in 75 words or less.

With the 75-word limitation, the test is fairness not completeness and the language in this instance clearly meets that test. The Court should therefore hold that the ballot summary complies with Section 101.161.

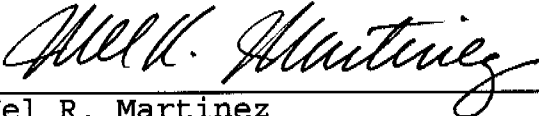
CONCLUSION

The Court should answer the certified question in the negative and hold that the single subject rule does not apply to county charter revisions proposed by a charter review commission further find that the ballot summary complied with the law of Florida and, accordingly, reverse the decision below.

RESPECTFULLY SUBMITTED this 5th day of February, 1994.

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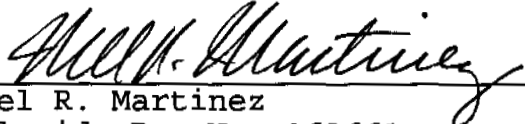
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail this 5th day of February, 1994, to A. BRYANT APPLGATE, ESQ., Post Office Box 1393, Orlando, Florida, 32802; DEBRA STEINBERG NELSON, ESQ., and ALTON G. PITTS, ESQ., 201 East Pine Street, Suite 425, Orlando, Florida, 32801; WILLIAM E. POWERS, JR., ESQ., PHILLIP P. QUASCHNICK, ESQ., and STACI BIEVENUE, ESQ., Post Office Box 12186, Tallahassee, Florida 32317-2186.

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