

**FILED**

SID J. WHITE

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CLERK, SUPREME COURT

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IN THE SUPREME COURT  
OF THE STATE OF FLORIDA

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

Petitioner,

CASE NO.: 83,010

vs.

**ERNIE SCOTT, RICHARD T. CROTTY,  
as ORANGE COUNTY PROPERTY  
APPRAISER, EARL K. WOOD, as  
ORANGE COUNTY TAX COLLECTOR,  
and KEVIN BEARY, as ORANGE COUNTY  
SHERIFF, BOARD OF COUNTY COMMISSIONS  
OF ORANGE COUNTY, FLORIDA, BETTY CARTER  
AS ORANGE COUNTY SUPERVISOR OF ELECTIONS,**

Appellees,  
\_\_\_\_\_

**ANSWER BRIEF ON THE MERITS BY  
RESPONDENT KEVIN BEARY, SHERIFF OF ORANGE COUNTY, FLORIDA**

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## STATEMENT OF THE CASE AND FACTS

In accordance with Florida Rules of Appellant Procedures 9.210(c), the Respondent, Kevin Beary, Sheriff of Orange County, Florida, generally accepts the statement of case and facts submitted by Petitioner, Charter Review Commission of Orange County, and Amicus Curiae, Metropolitan Dade County, except for the following areas of disagreement.

1. The ballot proposition submitted to the voters of Orange County for their approval by the Charter Review Commission was not a revision, but rather an amendment to the charter establishing a Citizen's Review Board and abolishing the constitutional offices of Sheriff, Tax Collector, and Property Appraiser. (R. 117-147, Exhibit C).

2. The trial court below held that the ballot question at issue was defective because not only did it embrace more than one subject, in violation of Article VIII, Section I(g) of the Florida Constitution, and §§125.01(1)(y), 125.66, and 125.67 of the Florida Statutes (1993), but it also failed to satisfy the notice requirements of Section 101.161(1), Florida Statutes (1993). (R. 336). The Fifth District Court of Appeal specifically declined to rule on the ballot summary issue in light of its holding affirming the trial court on the single subject issue. Charter Review Commission v. Scott, 18 Fla. L. Weekly 2126, 2128, n.3 (Fla. 5th DCA Oct. 1, 1993).

## SUMMARY OF ARGUMENT

The Fifth District Court of Appeal correctly determined that the proposed amendment to the Orange County Charter, which abolished the constitutional offices of Sheriff, Tax Collector, and Property Appraiser, while also establishing a Citizens Review Board to investigate allegations of excessive force and abusive power by members of the Sheriff's Office, constituted an unfair ballot proposal violating the single subject rule. This Court has long held that ballot proposals which combine several unrelated subjects are fundamentally unfair because the voter is forced into an "all or nothing" decision which defies the purpose behind the single subject limitation. The Petitioner and the Amicus have not cited any Florida precedent which exempts charter amendments set forth on a ballot proposal from the single subject rule. Rather, as early as 1924, this Court recognized that the rule applied to local government propositions submitted to the electorate for their approval. This same rule of law should apply with equal force to proposed charter amendments. To hold otherwise and answer the certified question in the negative would in effect condone a form of "logrolling" in which a popular charter amendment may be combined with an unlimited number of less popular amendments in a single "take it or leave it" ballot proposal.

Such a ruling would be contrary to fundamental fairness and established norms of democratic behavior.

Application of the single subject rule in this case leads to the inescapable conclusion that the proposed amendment at issue violates the rule. As found by the District Court of Appeal, the proposed amendment contains at least two diverse subjects and arguably as



many as four. There is simply no relationship between the establishment of a Citizens Review Board to oversee certain aspects of the Office of Sheriff and abolishment of the Office of Tax Collector and Property Appraiser. In order to authorize the formation of the obviously popular Citizens Review Board, the electorate of Orange County should not have had to also choose whether to abolish three separate, distinct, and independent constitutional offices.

Finally, should the Court decide to consider the ballot summary issue, which was not decided by the Fifth District Court of Appeal, the Respondent urges the Court to affirm the decision of the trial court on this issue. The ballot summary fails to explain the dramatic effect and ramifications associated with abolishing these constitutional offices, particular the Office of Sheriff, and reconstituting each office as a charter office. Moreover, the summary fails to explain that the proposed amendment establishes criminal sanctions for failure to obey a subpoena or order of the Citizens Review Board. As such, the summary violates the requirements of Section 101.161(1), Florida Statutes (1993).

In light of the above, this Court should answer the certified question in the affirmative and affirm the decision of the Fifth District Court of Appeal.

## ARGUMENT I

### THE SINGLE SUBJECT RULE APPLIES TO COUNTY CHARTER AMENDMENTS PLACED ON AN ELECTION BALLOT.

The Petitioner and Amicus both assert that the Fifth District Court of Appeal erred in holding that the proposed Charter amendment presented to the voters of Orange County for their approval violated the single subject rule when it combined the establishment of a Citizen's Review Board with the abolishment of the constitutional offices of County Sheriff, Property Appraiser, and Tax Collector, and replacement of such offices with Charter offices. In essence, the Petitioner and Amicus contend that there is absolutely no authority which requires a charter review commission to comply with the single subject rule when proposing amendments to a charter via election ballot. In other words, a review commission can place as many unrelated subjects amending or revising a charter on a single ballot proposition thereby forcing members of the electorate to vote in favor of portions of the amendment they may in fact oppose in order to approve portions of an amendment they support. This view of the law in Florida is simply wrong, and the District Court of Appeals decision should be affirmed.

Neither the Petitioner nor the Amicus has cited a single constitutional provision, statute, or court decision which authorizes the submission of a single ballot proposal to the electorate containing numerous distinct and unrelated propositions. Rather, this Court has long recognized that such ballot proposals are contrary to the general rule of law which invalidates elections where voters are prevented from expressing their will as to each separate and distinct proposal submitted for their consideration. Neither the trial court nor the Fifth District Court of Appeal found any exemption from this general rule of law which

would apply to the charter amendment at issue in this case. Indeed, numerous constitutional and statutory provisions imply that the rule against multiple subjects does in fact apply to charter amendments proposed on an election ballot.

#### FLORIDA AND OTHER STATE COURT DECISIONS

The Fifth District Court of Appeal correctly focused its attention on this Court's decisions in Antuono v. City of Tampa, 99 So. 324 (Fla. 1924), and State v. Dade County, 39 So.2d. 807 (Fla. 1949). In Antuono, the City of Tampa was enjoined from seeking voter approval for the issuance of bonds to fund numerous public projects, all contained on a single ballot proposal. The City argued that the ballot was neither illegal nor in excess of the powers conferred upon the City by its charter, which provided for the issuance of municipal bonds upon ratification by majority of the electors. Id. at 326. This Court held to the contrary by stating that the City's charter does not contemplate an unreasonable exercise of authority and that "general principles of law", sustained by reason and authority, prohibit combining two or more separate and distinct propositions in a single ballot proposal. Id. at 326. The Court quoted with approval the rule set forth in McQuillin, THE LAW OF MUNICIPAL CORPORATIONS, stating in pertinent part:

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 by its apparent necessity, carries other measures not so popular or necessary and which the people, if granted the opportunity of separate ballots, might defeat.

Id. at 326.

This Court applied the same rationale in State v. Dade County, supra, where it stated,

"It is established law 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 which violate this rule are invalid. 39 So.2d. at 808.

It is critical to note that the court in Antuono and Dade County did not rely on any specific constitutional, statutory, or charter provisions in reaching its decisions. Thus, the Petitioner and the Amicus are in error to the extent that they argue there must be a specific constitutional, statutory, or charter provision requiring application of the single subject rule to a ballot proposal amending a county charter in order to invalidate the amendment at issue in this case.

The Petitioner and the Amicus also attempt to distinguish the Antuono and Dade County decisions arguing (1) that they only apply to bond issues; (2) that the section in McQuillin relied upon by the court only concerned taxation and bond matters; and (3) that other states do not apply this rule of law to charter amendments without specific constitutional or statutory authority. A review of the decisions in Antuono and Dade County, however, does not indicate any intent by the Court to so limit its holdings. The section of the current edition of Latta and McQuillin, dealing with charter amendments and quoted by Petitioner on page 18 of its brief, states that all subjects contained within a charter amendment must be germane to the general subject, and propositions which are substantially distinct and separable are required to be separately submitted for voter ratification. Latta and McQuillin, THE LAW OF MUNICIPAL CORPORATION. §9.27. Moreover,

numerous state court decisions apply the single subject rule to charter amendments submitted to voters for ratification without reference to any specific state constitutional or statutory provision adopting a single subject rule.

In State v. Maitland, 246 S.W. 267 (Mo. 1922), the Missouri Supreme Court invalidated a ballot proposal amending a charter by creating a fire department and a water commission, and naming certain officers to the water commission. Because the ballot contained three separate propositions, the court categorized it as "legal fraud" designed to compel votes which is "universally condemned". Id. at 272. The court went on to specifically reject the argument that the single subject rule applied only to ballot questions dealing with debts or matters of taxation, stating, "On the contrary, it has so arisen and the doctrine is as firmly fixed in one class of cases as in the other. ... There can be no question about the application of the rule to cases in general, and especially in cases involving amendments to an organic law." Id. at 272 Similarly, in State v. Hall, 75 S.W. 2d 579 (Mo. 1934), the Missouri Supreme Court held that the single subject rule applied to proposed charter amendments even though no such requirement was contained in the state constitution or the charter itself. Rather, the court relied upon the following passage from the American and English Encyclopedia of Law:

"Two propositions cannot be united in the submission so as to have one expression of the vote answer both propositions, as voters may be there by induced to vote for both propositions who would not have done so if the questions had been submitted singly."

Id. at 579, quoting 21 Am. and Eng. Ency. Law (2nd Ed.); see also, Hulbert v. Board of Education of Louisville, 382 S.W. 2d 389 (Kty App. Ct. 1964)(applies single subject rule to

local ballot proposal on taxes based upon general principles of law); Board of Directors of Northern Wasco County Peoples Utility District v. Kelley, 137 P.2d 295, 303 (Or. 1943)(contrary to spirit of popular elections to require voters to express their choice upon more than one proposition in a single ballot question citing, 18 Am. Jur. Elections §181 and 29 C.J.S., Elections §79).

The Petitioner's reliance upon the Supreme Court of Colorado's decision in City and County of Denver v. Newburn, 354 P.2d 155 (1960), is misplaced. Although the court held that it would not generally apply the single subject rule to a charter amendment absent a specific statutory or constitutional provision requiring it to do so, it explained that the single subject rule had been applied in "exceptional" cases where a proposed charter amendment was comprised of too many "non-germane" subjects, such as an attempt to remove and replace elected officials. Id. at 159. (Emphasis added). Just such an exceptional circumstance exists in this case because the charter amendment at issue sought to abolish three separate constitutional offices and replace those offices with charter offices. Thus, even the Newborn decision, as well as prior decisions by this Court and other state courts, support the Respondent's position in this case because of the exceptional nature of the amendment.

#### APPLICABLE FLORIDA STATUTORY AND CONSTITUTIONAL PROVISIONS

In addition to decisions by this Court, the Fifth District Court of Appeal and the trial court both relied upon numerous statutory and constitutional provisions which, while not specifically providing for, certainly imply that the single subject rule is applicable to a single ballot question proposing separate amendments to a county charter.

Section 125.01, Florida Statutes (1993), lists various powers and duties confirmed upon a county's legislative governing body. Subsection (1)(y) provides in pertinent part:

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 as to obtain an expression of an elector sentiment with respect to matters of substantial concern within the county. ...

Obviously, as noted by this Court in its decision in Antuono, the true sentiments of the voters cannot be determined when numerous separate propositions are contained in a single ballot question. 99 So. at 326. Voters may in fact be swayed to vote in favor of a ballot proposal which contains a subject that is highly favored by the voters, even though it contains other separate, unrelated subjects, which the voters would otherwise reject. When this occurs, the true sentiment of the voters cannot be determined in conformity with the requirements of Section 125.01(1)(y).

This same rationale was utilized most recently by this Court when it held that a proposed constitutional amendment violated the single subject rule. In its decision, the Court reasoned that the rule was designed to prevent voters from being "trapped" into accepting a change in the constitution they oppose in order to obtain a change which they support. In re: Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination, 19 Fla. L. Weekly S109, 110 (Fla. March 3, 1994).

Section 101.161, Florida Statutes (1993), mandates certain requirements that must be met in order to place a public measure, such as a charter amendment, on a ballot for a vote by the electors. The ballot must contain an explanatory statement not exceeding 75 words which details the "chief purpose" of the measure. Obviously the legislature intended that

each ballot measure contain a singular purpose which can be explained in 75 words. Had the legislature intended to allow ballot proposals to contain numerous unrelated subjects, it would not have restricted the manner in which the "chief purpose" of the ballot measure must be summarized to the electorate.<sup>1</sup>

The Fifth District Court of Appeal also relied upon the fact that the single subject rule is specifically applied to county ordinances in Section 125.67, Florida Statutes (1993). Because the Legislature thought that it was sufficiently important to apply this rule to ordinances, it is inconceivable that such a rule would not apply to amendments to a charter which establishes the entire framework of law from which ordinances are enacted by a county's legislative body. The suggestion by the Respondent and Amicus that the Legislature's application of the single subject rule to county ordinances in Section 125.67, without any specific reference to charter amendments, indicates an intent not to apply the rule to such amendments is fundamentally flawed. There is simply no need to enact a statute applying the single subject rule to charter amendments voted on by members of the electorate in light of this Court's well-reasoned opinions adopting the rule of law that multiple subjects placed on a single ballot proposal, requiring an all or nothing vote by the electorate, is invalid. Because these decisions did not purport to apply the single subject rule

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<sup>1</sup>. Indeed, the Respondent's assertions that the proposed amendment at issue in this case violates both the single subject rule and the requirements of Section 101.161 are inter-related in that had the Charter Review Commission separated the numerous propositions contained therein, it would not have had any difficulty in summarizing and explaining each separate proposition as required by Section 101.161.



to legislative enactments, it was necessary to enact such a rule by statute.<sup>2</sup>

Finally, and most importantly, Article III, Section 1(d) of the Florida Constitution provides for the election of certain county constitutional officers, including the Sheriff, Tax Collector, Property Appraiser, Supervisor of Elections, and Clerk of the Circuit Court. This same constitutional provision also provides an exception which permits the abolishment of "any county office" when the duties of that office prescribed by a general law are transferred to another office. By using the terminology "any office", the Constitution implies that the electors will be given an opportunity to express their sentiments concerning the abolishment of a particular constitutional office. That did not occur in this case. Rather, the Charter Review Commission presented to the voters of Orange County a single amendment abolishing three of the five county constitutional offices, and establishing a Citizen's Review Board to examine allegations of excessive force by members of the Sheriff's Department. Grouping these proposals in a single amendment is clearly contrary to the spirit, if not the letter, of Article VIII, Section 1(b) which requires an expression of the voters' sentiment either by charter or by special act of the Legislature, approved by a vote of the electors of the county, before a county constitutional office may be abolished.

While there are no constitutional provisions, statutes, or court decisions which approve the combining of several charter amendments on a single election proposal, the above statutory and constitutional provisions indicate a clear intent to require that the sentiment of the voters be clearly and unambiguously expressed before a constitutional office

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<sup>2</sup>. The same could be said for Article III, Section VI of the Florida Constitution which applies the single subject rule to enactments by the Florida Legislature.

may be abolished and re-created as a charter office.<sup>3</sup>

### RESPONSE TO REMAINING ARGUMENTS BY PETITIONER AND AMICUS

The Petitioner and the Amicus make numerous arguments in their briefs in which they contend it would be unwise and detrimental to effective local government to require that a single subject rule apply to a charter amendment or revision. A closer examination of these arguments will reveal that they are all either not applicable to the facts of this case or completely without merit.

First and foremost, both the Petitioner and the Amicus contend that to apply the single subject rule to a charter amendment submitted for approval by the electorate would effectively prevent a county from revising its charter. This argument incorrectly assumes that the ballot proposition at issue in this case is a revision of the Orange County Charter and not simply an amendment. In Adams v. Gunter, 238 So.2d. 824 (Fla. 1970), this Court discussed the differences between a revision and an amendment, noting that an "amendment" contemplates an attempt to improve or alter a specific article or articles of the Constitution while a "revision" is an attempt to change the entire instrument. Id. at 828, 829. Similarly, other courts have drawn the same distinction between a revision which goes to a fundamental change in the manner in which the government operates compared to an amendment which is an attempt to correct certain details in a charter or constitution. See City of Claremont v. Craigie, 608 A.2d. 866 (N.H. 1992); Kelley v. Laing, 242 N.W. 891, 892

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<sup>3</sup>. In this regard, the Court may decide not to paint with as broad a brush as the Fifth District Court of Appeal, in that it may decide to limit its review of this case to charter amendments which have the affect of abolishing constitutional offices rather answering the certified question with respect to all charter amendments.

(Mich. 1932); City of Midland v. Arbury, 197 N.W. 2d 134 (Mich. Ct. App. 1972).

Accordingly, it would be fundamentally incorrect to describe the proposition at issue in this case as a revision of the Orange County Charter. Rather, the six ballot proposals submitted by the Charter Review Commission taken together may arguably be referred to as a revision.<sup>4</sup> Yet, the Charter Review Commission did not choose to combine all six propositions into a single ballot question, but rather proposed separate amendments to the charter. This alone indicates that the Charter Review Commission considered itself bound to submit its proposals as separate amendments. Acceptance of the arguments proposed by the Petitioner and the Amicus would have allowed the Review Commission to combine all six propositions into a single ballot question without any judicial review for fundamental fairness to the electorate. Even if the proposition at issue is characterized as a revision, the single subject rule would apply to the extent that all items in a revision must be germane to each other. Smathers v. Smith, 338 So.2d. 825, 830 n.1 (Fla. 1976).

Similarly, the Amicus' argument that the single subject rule does not apply to the enactment of a charter is incorrect. Section 125.82, Florida Statutes (1993), allows for the adoption of a county charter by ordinance subject to eventual approval by the electorate. The single subject rule which applies to county ordinances in Section 125.67 would apply to the adoption of a charter by ordinance. However, application of the rule would not require that the charter be broken up into various sections and subsections to be separately voted

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<sup>4</sup>. In addition to the amendment at issue here, the remaining five ballot proposals dealt with nonpartisan elections, establishment of preservation districts, transportation impact fees, changing the title of County Chairman to Mayor, procedures for electing a Vice Chairman, procedures for the Charter Review Commission, and deleting obsolete charter provisions.

on. Where all of the provisions deal with the single subject of forming a charter government, the charter as a whole could be voted on by the public without offending the single subject rule. However, this is not the issue in this case. Here the Charter Review Commission has proposed six separate amendments to the Orange County Charter, one of which combines the abolishment of three separate constitutional offices with the creation of a Citizen's Review Board.

The Petitioner and Amicus contend that the evil of "logrolling" does not arise when a review commission proposes charter amendments. (See page 14 Amicus Brief). The Petitioner and the Amicus apparently believe that public hearings conducted by the Charter Review Commission prevented any "logrolling" in which proposals that separately may lack majority support are wrapped together into a larger package designed to "entice broader appeal". (See Amicus Brief, page 14). The fact that the Charter Review Commission (members of which were all selected by the County Commission) held public hearings before submitting its proposals to the electorate does not in any way ensure that "logrolling" will not take place. Rather, the proposal at issue, which combines the abolishment of the three constitutional offices with the popular proposal to create a Citizen's Review Board to examine allegations of excessive force, is a classic example of "logrolling". Moreover, it makes little sense to apply the single subject rule to prevent "logrolling" in the enactment of county ordinances, which are passed only after open hearings and debate, and not apply the rule to county charter amendments proposed by a review commission.

The Petitioner and the Amicus also claim that application of the single subject rule in this case would be contrary to Article XI, which establishes four methods for amending

the Florida Constitution by legislative enactment, initiative, constitutional revision commission, and constitutional convention. The only method in which the single subject rule is specifically mentioned is initiative. Thus, the Petitioner and the Amicus contend that the legislature, constitutional revision commission, or constitutional convention could submit an amendment to the Florida Constitution for a vote by the electorate which contains numerous unrelated and separate propositions. For example, under this reasoning, a proposition which contained a highly popular proposal, such as a limitation on the Legislature's power to tax, and a less popular proposal, such as a repeal of the right of privacy could be combined as a single ballot proposal. This court rejected such a possibility in Smathers v. Smith, 338 So.2d. 825 (Fla. 1976), wherein it held that in order to prevent "logrolling" the notion of "germaness" applied to any amendments to the Florida Constitution proposed by the Florida Legislature under Section 1 of Article XI, even though such a term is not found anywhere in the article. The court stated:

The state's position would also accommodate the placement of random and unrelated provisions without even the appearance of a nexus. Arguing from this view, it would necessarily follow that an article revision just as a section amendment need not have topical rationality to fall within the Legislature's ambit of power. The internal germanity of proposed article revision stands on no different ground than an article revision which adds irrelevant material to an existing provision. Under this view of Article XI, Section I, there would be nothing to bar the Legislature from proposing a single amendment which in one section or article would establish unicameralism, prohibit forced busing of school children, and bar all forms of taxation on corporate entities formed or domesticated in Florida. Such an aggregation of dissimilar provisions, each individually attractive to a different segment of voters, would exceed legislative power as a section amendment or article revision, being fraught with the very evil this court identified and condemned as to statutory "logrolling".... [citation omitted].

338 So.2d at 830 n. 21. (emphasis added).

Consequently, nothing in the Florida Constitution would prohibit this Court from applying the single subject rule in this case.

Finally, Petitioner submits that absent an affirmative showing on the record of fraud, the passage of the charter amendment at issue should be approved citing this Court's decision in Winterfield v. Town of Palm Beach, 455 So.2d. 359 (Fla. 1984). Winterfield is distinguished from this case because there the court held that it would not consider a post-election challenge to a bond referendum based on the single subject rule without evidence of fraud. Here the challenge was raised well before the election, therefore, the Respondent should not be required to meet the burden established by this court in Winterfield. Moreover, in this court's more recent decision in Wadhams v. Board of County Commissioners of Sarasota County, 567 So.2d. 414 (Fla. 1990), it rejected the argument that the voters approval of a ballot proposal, which did not comply with the summary provisions of Section 101.161(1), Florida Statutes (1993), did not cure the defect. The court reasoned that it was impossible to tell what the vote would have been had the electorate been given an adequate summary of the proposal. Id at 417. Similarly, in this case it is impossible to tell whether the voters would have approved the abolishment of some or all of the constitutional offices proposed by the Charter Review Commission, if those offices were separately stated on the ballot and were not combined with the obviously popular proposal to create a Citizen's Review Board concerning allegations of excessive force by the Orange County Sheriff's Office. In this case, as indicated by the case law discussed above, such a ballot proposal is inherently fraudulent. Therefore, the ultimate approval of the measure

by the electorate cannot be used as a method to cleanse the fraudulent nature of the proposition in the face of a timely pre-election challenge. If that were the case, then trial courts below would be encouraged to always stay elections in which the issue of the single subject rule is raised for fear that if the proposal is passed, the challenge would become moot. Indeed, Amicus, Metro Dade County, states in its brief that it does not contest the position of the District Court of Appeals ruling that ultimate voters' approval does not cure a defective ballot proposal. (Amicus Brief p. 3 n.1).

In summary, the combining of multiple propositions into a single ballot measure proposed by a Charter Review Commission should not be approved by this Court. The fundamental rule of law in a democratic society requires that the citizens be allowed to express their sentiments at the ballot box on each individual and separate proposition. Indeed, the following statement by Justice Thomas, in which he wrote for this Court invalidating a so-called "Daisy Chain"<sup>5</sup> series of constitutional amendments proposed by the Florida Legislature is just as applicable to this case:

Instead of following the mandate of the people, thus given the legislature, whose "trustees and servants" they were, set up the "Daisy Chain" composed of a series of mandates and in effect told the people - take it as we offer it or you can have none of it. To those whose feet have been consistently tangled in the grass roots of Jeffersonian democracy, such an order was not only impertinent but had the aroma of an exotic out of the Soviet Union or other totalitarian state.

Rivera-Cruz v. Gray, 104 So.2d 501, 506 (Fla. 1958).

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<sup>5</sup>. This was a series of amendments to the Florida Constitution in which if any of the amendments were requested by the voters, none of the amendments would take effect.

## ARGUMENT II

### THE COUNTY CHARTER AMENDMENT AT ISSUE IN THIS CASE VIOLATES THE SINGLE SUBJECT RULE

Assuming that the single subject rule applies to charter amendments or revisions, the next issue on appeal for resolution is whether the specific amendment at issue in this case violates the rule. In its decision below, the Fifth District Court of Appeal answered this question in the affirmative. The court held that a charter amendment which proposes to abolish three separate and independent constitutional offices and re-formulate those offices as charter offices, while at the same time, establishing a Citizens Review Board to examine allegations of excessive force involving the Office of Sheriff presented at a minimum two, and possibly as many as four, distinct and separate subjects in a single ballot proposal. Implementation of this amendment would also affect two separate sections of the charter, Section 703 concerning constitutional offices and Section 801 establishing the Citizens Review Board. Petitioner argues that the single subject rule was not violated in this case because the various proposals set forth in the charter amendment all concern making constitutional officers more accountable to the citizens of Orange County. Such an assertion is not in conformity with the decisions of this Court applying the single subject rule.

Recently this Court struck down, as a violation of the single subject rule, a proposed constitutional amendment which would have limited anti-discrimination laws at the state and local level. In Re: Advisory Opinion to the Attorney General Restricts Laws Related to Discrimination, 19 Fla. L. Weekly S109 (Fla. March 3, 1994). The Court repeated the test first announced in Fine v. Firestone, 448 So.2d. 984, 988 (Fla. 1984), which requires a proposed amendment to manifest a "logical and natural oneness of purpose". Id. at S110.



The Court will look to whether the proposed amendment deals with separate functions of government or affects multiple provisions of the Constitution. Id. In applying this test to the facts in In Re: Advisory Opinion, the Court noted that the proposed amendment affected numerous provisions of the Florida Constitution and listed ten separate classifications of people who would be entitled to protection from discrimination if the amendment were passed. The Court held that it was improper to require a voter to cast an all or nothing vote on the list of classifications. Id. at S110. Similarly, in Evans v. Firestone, 457 So.2d. 1351 (Fla. 1984), this Court struck down a proposed constitutional amendment because it changed numerous governmental functions affecting both the legislative and judicial branches. Id. at 1354.

The single subject rule was applied in a local government context in Winterfield v. Town of Palm Beach, 455 So.2d. 359 (Fla. 1984). There the electors of the Town of Palm Beach were presented with a bond referendum seeking to raise funds for three diverse projects, a new police facility, a fire station, and a sewer compressor station. The town argued that the three projects constituted a single purpose - "to provide essential services". The Court rejected this argument stating, "If we were to accept this rationale, the single-purpose would be effectively eviscerated." Id. at 361. Rather, the Court held that at the very least the public safety purpose of the police and fire projects was separate from the public health purpose of the sewer project.<sup>6</sup>

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<sup>6</sup>. It should be noted that the Court applied its earlier decision in Antuono v. City of Tampa, 99 So. 324 (1924), as the basis for applying the single subject rule to a proposed bond referendum. The Court did not rely on any specific statutory or constitutional authority for applying the single subject rule to a local government ballot proposal.

In this case, the charter amendment at issue clearly violates the single subject rule by abolishing three distinct, separate, and independent constitutional offices, reformulating those offices as charter offices, and creating a Citizens Review Board to investigate allegations of abuse of power by the Office of Sheriff. Just as the proposed constitutional amendment in In re: Advisory Opinion, supra, required an all or nothing vote on ten separate classifications of people who would be entitled to protection from discrimination, the ballot proposal in this case required an all or nothing vote as to whether the citizens of Orange County wanted to change the constitutional status of three separate county officers. The ballot proposal held is even more offensive because it included the added subject of a Citizens Review Board which related to only one of the constitutional offices. The citizens were denied the fundamental right to select which of the constitutional offices they desired to abolish and transform into charter offices, and to whether to separately establish a Citizens Review Board. The Charter Review Commission's argument that these diverse subjects all relate to making certain elected offices more accountable to the voters simply misses the mark. This Court has repeatedly stated that "enfolding disparate subjects within the cloak of a broad generality does not satisfy the single-subject requirement." In Re: Advisory Opinion, 19 Fla. L. Weekly at S110, quoting Evans v. Firestone, 457 So.2d at 1353. Here, the petitioner cannot cure an obviously defective amendment by attempting to encompass all of its diverse subjects within the amorphous cloak of citizen accountability. Moreover, the Charter Review Commission itself apparently did not believe that creation of the Citizens Review Board should have been grouped with the abolishment of certain constitutional offices in Orange County by virtue of the fact that in its final report, the

Commission separated these issues as follows:

WHEREAS, these changes include the creation of a Citizen Review Board with subpoena power to investigate citizen complaints regarding use of force or abusive power by employee of the sheriff;

WHEREAS, the Charter Review Commission has further determined that county government would run more efficiently and effectively if the Office of Sheriff, Property Appraiser and Tax Collector were made elected charter offices subject to charter provisions and restrictions...

Orange County Commission Final Report (Appendix B to Brief of Amicus, Metropolitan Dade County)

Even if it could be argued that creation of the Citizen Review Board did in fact relate to abolishment of the constitutional Office of Sheriff of Orange County and the creation of an elected Charter Sheriff, Petitioner has failed to present any credible argument demonstrating how these subjects relate to the abolishment of the Office of Tax Collector or Property Appraiser. These latter two offices have nothing to do with the proposed Citizens Review Board.

The Petitioner's reliance upon this Court's decision in In Re: Advisory Opinion to the Attorney General - Limited Political Terms in Certain Elective Offices, 592 So.2d. 225 (Fla. 1991), is distinguished from this case on at least two points. First, the Court in that case was faced with a single subject, concerning term limits, which affected numerous elected officials. Here, the ballot proposal at issue not only abolishes three separate constitutional offices, but also establishes an administrative agency which relates to only one of those constitutional offices. This court was simply not faced with such a diverse proposal in In Re: Advisory Opinion to the Attorney General, Id.

In summary, this Court should not condone the Petitioner's attempt to force the citizens of Orange County into an "all or nothing" vote to choose whether to abolish three constitutional offices and establish a Citizens Review Board. Obviously, the establishment of such a Board would have broad public support among the county electorate. However, in order to establish such a Board, the citizens are required to abolish three constitutional offices. This is exactly the kind of practice the single subject rule was designed to prohibit. The submission of such a ballot proposal which is patently unfair and contrary to the spirit of true democratic principles should not be condoned by this Court.

### ARGUMENT III

#### THE BALLOT SUMMARY TO THE CHARTER AMENDMENT AT ISSUE FAILS TO COMPLY WITH SECTION 101.161(1), FLORIDA STATUTES

Although the trial court concluded that the charter amendment at issue violated both the single subject rule and the ballot summary provisions of Section 101.161, Florida Statutes (1993), the Fifth District Court of Appeal chose to base its decision entirely on the single subject issue and declined to consider the ballot summary issue. Charter Review Commission v. Scott, 18 Fla. L. Weekly 2126, 2128 n.3 (Fla. 5th DCA Oct. 1, 1993). The Respondent recognizes that this Court may review any decision which the District Court of Appeal certifies as one passing upon a question of great public importance. ART. V §3(b)(4), Fla. Const.; Tillman v. State, 471 So.2d. 32 (Fla. 1985); Zirin v. Charles Pfizer and Co., 128 So.2d. 594 (Fla. 1961). However, there is nothing in the decision below which deals with the ballot summary issue other than footnote 3 in which the Court declines to consider it. Therefore, should this Court disagree with the Fifth District Court of Appeal's disposition of the single subject issue, a remand for consideration of the ballot summary issue would appear appropriate. Should this Court, however, decide to consider the ballot summary issue, the Respondent would urge the Court to affirm the trial court's decision finding that the ballot summary in this case did not meet the requirements in Section 101.161. (R. 336, 341).

In its final order, the trial court concluded that the ballot summary did not constitute a true representation of the charter amendment at issue in that it failed to disclose the obvious implications of abolishing constitutional offices and reformulating those offices as

charter offices. For example, the ballot summary failed to explain the differences between a charter and constitutional officer and the rights that were being changed by the amendment. With regard to the creation of a Citizen Review Board, the trial court noted that the summary failed to explain the subpoena power granted to the Board and, most notably, failed to state that the amendment authorized imposition of a criminal sanction upon any individual who violates a Board subpoena. (R. 341)

The trial court's opinion is consistent with this Court's recent decision finding that the ballot summary to a proposed constitutional amendment limiting anti-discrimination laws was sufficiently misleading so as to preclude voters from being able to cast an intelligent ballot. In Re: Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination, 19 Fla. L. Weekly S109 (Fla. March 3, 1994). In explaining the requirements of Section 101.161(1), Florida Statutes, this Court stated:

The purpose of section 101.161 is "to assure that the electorate is advised of the true meaning and ramifications of an amendment." ... The critical issue concerning the language of the ballot summary is whether the public has "fair notice" of the meaning and effect of the proposed amendment.

Id. at S110, quoting, Askew v. Firestone, 421 So.2d 151, 156 (Fla. 1982).

This Court has consistently found ballot summaries defective which omit critical and material information in violation of the requirements of Section 101.161(1). Wadhams v. Board of County Commissioners of Sarasota County, 567 So.2d. 414 (Fla. 1990); Smith v. American Airlines, 606 So.2d. 618 (Fla. 1982). In Wadhams, the failure to provide a ballot summary to a proposed charter amendment was a fatal defect even though the entire amendment was reproduced on the ballot. By omitting the ballot summary, the public was not informed of how the proposed charter amendment modified the existing charter, thus

omitting material facts necessary to give an accurate indication of the chief purpose of the amendment. 567 So.2d. at 414. In Smith, the court struck a proposed constitutional amendment from the ballot because the ballot summary failed to sufficiently notify voters of the effect of the amendment which concerned taxation of leaseholds. The primary flaw in the ballot summary was its failure to define the term "ad valorem" with regard to its affect on real and personal property. 606 So.2d. at 620.

An examination of the ballot summary in this case, when compared to the text of the actual amendment proposed by the Charter Review Commission and the profound and dramatic affects upon the constitutional officers subject to the amendment, will reveal that the summary is so woefully inadequate in explaining the significance of the amendment that it violates Section 101.161(1), Florida Statutes. The ballot summary reads as follows:

QUESTION #1:

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

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 with regard to the use of force or abuse of power by employees of the Sheriff; and (b) make the Orange County Sheriff and Property Appraiser and Tax Collector elected charter officers subject to Charter provisions and abolish their current status as "constitutional officers"?

- Yes
- No

First and foremost, the summary makes no attempt to explain to the voters the significance or the effect of abolishing the constitutional Office of Sheriff and making the Sheriff a charter officer. Similar to the failure to define the term "ad valorem" in the ballot

summary discussed in Smith v. American Airlines, Inc., *supra*, the ballot summary in this case fails to define or explain the significance of a charter officer versus an independent constitutional officer.<sup>7</sup> Rather, it was incumbent upon the Charter Review Commission to provide a bill summary which alerted the voters to the effect and significance of abolishing an independent constitutional office and bringing it under the jurisdiction of the county charter, particularly with regard to such critical law enforcement issues as personnel, budget control, and policy-making.

With regard to personnel, Section 30.53, Florida Statutes (1993), preserves to sheriffs their independence concerning selection of personnel, including the hiring, firing, and setting of salaries. Section 30.07, Florida Statutes (1993), further provides sheriffs with the authority to appoint deputies who are possessed with the same powers as the sheriff and for whom the sheriff is liable for the deputies' negligence and default of their duties. Thus, deputies are considered alter-ego appointees of the sheriff, rather than employees, and, therefore, they do not possess the right to collectively bargain which applies to public employees of the State of Florida. Tanner v. McCall, 625 F.2d. 1183 (5th Cir. 1980) *re'hg. den.*, 629 F.2d. 1350, *cert. den.*, 101 S.Ct. 1975, 451 US 907, 68 L.Ed. 2d 295; Murphy v. Mack, 358 So.2d. 822 (Fla. 1978). Although not stated in the ballot summary, the charter amendment at issue would effectively change the status of deputies from appointees to employees, and thereby grant deputies the right to collectively bargain.

Section A of the proposed amendment to section 703 of the charter states, "These

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<sup>7</sup>. Of course, had the Charter Review Commission separated the three constitutional officers and the Citizens Review Board into separate amendments, it would not have been so constrained by the 75 word limit set forth in Section 101.161(1).



Charter offices shall be elective and all sections of the Charter shall apply to the Charter offices except that the county's personnel policy shall not apply to the law enforcement officers employed by the Office of Sheriff." (emphasis added). The charter amendment thus provides that the Office of Sheriff shall employ law enforcement officers, which would end deputies' appointee status and grant deputies collective bargaining rights under Chapter 447, Part II, Florida Statutes. See Murphy v. Mack, 358 So.2d. 822 (Fla. 1978)(deputies are not covered by Chapter 447, Part II, because they are appointees rather than employees of the sheriff). This same provision of the charter amendment would also place all non-law enforcement officers employed by the Office of Sheriff under the county's personnel policies and procedures, effectively eviscerating the sheriff's independence with regard to regulating the work and employment of his own employees. These limitations of the Sheriff's authority are not even suggested in the ballot summary.

With regard to the Sheriff's budget authority, Section 30.49, Florida Statutes (1993), provides a detailed and comprehensive budget plan tailored to the Office of Sheriff which would be inapplicable to the Orange County Charter Office of Sheriff under the proposed amendment. Section 30.49 provides the Sheriff must submit a proposed budget with six designated categories to the County Commission for approval. The Commission may "amend, modify, increase or reduce any and or all items of expenditure in the proposed budget and shall approve such budget, as amended, modified, increased, or reduced." §30.49(4), Florida Statutes. Thereafter, the Sheriff has 30 days in which to appeal to the Administration Commission which will provide a hearing and a final ruling as to the Sheriff's appeal. Thus, while the County may make lump-sum reductions or additions to the six

specified budget categories in the Sheriff's budget, it may not intrude into the functions which are specifically within the power of the Sheriff, such as deciding how appropriated funds in each category will be spent. See Weitzinfield v. Dierks, 312 So.2d. 194 (Fla. 1975)(county could not prevent sheriff from using appropriated funds for purchase of helicopter). If Sheriff Beary lost his constitutional status, the County arguably would have the right to dictate budgetary expenditures now solely within the discretion of the Sheriff. Moreover, Section 709 of the Orange County Charter provides for a uniform budget procedure, which would effectively preclude a charter sheriff from appealing review of his proposed budget to the Executive Office of the Governor and the Administration Commission. Again, the significant effects of the amendment on the independence of the constitutional Office of Sheriff are nowhere stated or suggested in the ballot summary.

Numerous other provisions of the County Charter would also operate to limit the independence now enjoyed by the constitutional Office of Sheriff of Orange County. For example, under Section 107 of the Charter, the Sheriff would be subject to policy-making by the Board of County Commissioners. Under Section 207 of the Charter, the Sheriff would also be subject to all ordinances enacted by the County Commission. The County Chairman would arguably have management responsibilities with regard to a charter Office of Sheriff under Sections 301, 302, and 401 of the Charter that were previously non-existent.

In addition, a charter sheriff, as well as any other charter constitutional officer, would be subject to recall under Section 604 of the County Charter, which provides in pertinent part:

The electors of the County shall have the power to recall any elected Charter officer in accordance with the laws of the State of Florida.

Nowhere in the ballot summary is there any mention of the fact that the Sheriff, Tax Collector, and Property Appraiser would be subject to recall upon becoming charter officers.

Enactment of the proposed amendment would also have the effect of requiring the County to participate as a named party in any lawsuit involving the Sheriff, Tax Collector, or Property Appraiser. Section 706 of the Charter provides that the County will participate in any lawsuit on behalf of any county division, officer, or employee, except constitutional officers and their employees, if the legal action involves matters within the scope of the officer's or employee's responsibilities. By changing their status from constitutional officers to charter officers, the County is now required to defend these officers and their employees, and in essence, assume their liability for any acts within the scope of these officers or their employees' responsibilities. Again, this is not stated anywhere or implied in the ballot summary.

The ballot summary is also deficient in that it omits critical information concerning the establishment of the Citizens Review Board. Most notably, the proposed amendment, Section 801 of the Charter, provides for a criminal penalty for anyone who fails to obey a lawful order or subpoena of the Citizens Review Board. The ballot summary fails to state that the proposed amendment includes criminal sanctions.

To reiterate, the ballot's summary in this case is entirely inadequate to provide the voters with sufficient information as to the true meaning and ramifications of the proposed charter amendment. The ballot summary omits critical information which would inform the voters of the effects of changing independent constitutional offices to charter offices, which would enable the voters to make an informed decision at the polls. As such, the failure of

the summary to comply with Section 101.161(1), is a fatal defect which renders the amendment in this case a nullity. For this reason alone, the Court may choose to affirm the Fifth District Court of Appeal on the ballot summary issue, and thereby avoid having to rule on the certified question.

## CONCLUSION

The Respondent, Kevin Beary, Sheriff of Orange County, Florida, respectfully requests this Court to affirm the decision of the Fifth District Court of Appeal and answer the certified question in the positive by stating that a charter amendment must comply with the single subject rule. A ruling to the contrary would condone the submission of ballot proposals to the electorate which require members of the electorate to choose a laundry list of subjects on an all or nothing ballot proposal. This is contrary to fundamental fairness as well as the well-reasoned decisions of this Court, and courts in other states, prohibiting such election abuses. Application of the single subject rule in this case unquestionably would invalidate the proposed amendment in that it sets forth a minimum of a two, and possibly as many as four, distinct and separate subjects. For this reason alone, the decision of the Fifth District Court of Appeal should be affirmed.

Moreover, the trial court's decision, which was not reviewed by the Fifth District Court of Appeal, concerning the ballot summary should also be affirmed if this Court finds it necessary to rule on that issue. As found by the trial court, and demonstrated herein, the summary is misleading and inaccurate in its failure to alert the voters as to the true affect and consequences of approving the amendment at issue.

For these reasons, the Respondent respectfully requests this Court to affirm the decision below.

Respectfully submitted, this <sup>9<sup>th</sup></sup> 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 sent by U.S. Mail to the persons listed below, this <sup>9<sup>th</sup></sup> day of March, 1994.

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