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IN THE SUPREME COURT OF FLORIDA

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JUN 8 1994

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

CASE NO. 83,781

ADVISORY OPINION TO THE
ATTORNEY GENERAL

RE: FUNDING FOR CRIMINAL JUSTICE

INITIAL BRIEF OF
CITIZENS FOR A SAFE FLORIDA

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CITATIONS	ii
STATEMENT OF CASE AND FACTS	1
I. THE PETITION BEFORE THIS COURT COMPLIES WITH THE SINGLE SUBJECT REQUIREMENT OF ARTICLE XI, SECTION 3 OF THE FLORIDA CONSTITUTION.	2
II. THE PETITION BEFORE THIS COURT COMPLIES WITH THE BALLOT TITLE AND SUMMARY REQUIREMENT OF SECTION 101.161, FLORIDA STATUTES.	6
CONCLUSION	8

TABLE OF CITATIONS

Page

STATUTES

Section 101.161, Florida Statutes	2, 6, 7
Section 101.161(1), Fla. Stat. (1993)	6

CASES

Askew v. Firestone, 421 So.2d 151, 154-155 (Fla. 1982)	7
Carol v. Firestone, 497 So.2d 1204, 1206 (Fla. 1986)	7
Fine v. Firestone, 448 So.2d 984, 990	3
Floridians Against Casino Takeover v. Let's Help, 363 So.2d 337, 339	2
Goldner v. Adams, 167 So.2d 575 (Fla. 1964)	2
In Re: Advisory Opinion to the Attorney General -- Limited Political Terms in Certain Elective Offices, 592 So.2d 225, 227, (Fla. 1991)	2
In Re: Advisory Opinion to the Attorney General -- Restricts Laws Related to Discrimination, 632 So.2d 1018, 1020 (Fla. 1994)	3
In Re: Advisory Opinion to the Attorney General -- Save our Everglades Trust Fund, No. 83,301, slip. op. at 6 (Fla. May 26, 1994)	3, 4, 6, 7
Weber v. Smathers	2

FLORIDA CONSTITUTION

Article III	1, 3, 4
Article III, section 19	4, 5
Article III, section 20	1
Article VII	3
Article XI, section 3	1, 2

STATEMENT OF CASE AND FACTS

On May 31, 1994, the Florida Attorney General petitioned the Supreme Court of Florida for an advisory opinion as to the validity of an initiative petition circulated pursuant to article XI, section 3 of the Florida Constitution, by a group known as Citizens for a Safe Florida. The petition seeks to amend article III of the Florida Constitution by creating a Criminal Justice Trust Fund whose funds will be dedicated to criminal justice purposes subject to appropriation by Florida's Legislature. The full text of the petition reads as follows:

BALLOT TITLE: FUNDING FOR CRIMINAL JUSTICE

SUMMARY:

Creates the Criminal Justice Trust Fund dedicated to criminal justice purposes and funded by up to one percent tax on the sale of goods and/or services provided no trust funds are used to replace funding at a level less than that allocated to criminal justice in the 1993-1994 budget.

FULL TEXT OF THE PROPOSED AMENDMENT:

This initiative petition would create section 20 of Article III of the Florida Constitution to provide as follows:

Section 20. Criminal Justice Trust Fund.--

There is hereby created the Criminal Justice Trust Fund which shall be funded by a tax of up to one percent on the sale of goods and/or services as provided by law. The Criminal Justice Trust Fund shall be subject to appropriation by the Legislature to fund prisons, juvenile detention facilities, and Florida's other criminal justice purposes; provided, however, that no such funds shall be used to replace or substitute funding at a level less than that allocated to the criminal justice system in the budget for the 1993-1994 fiscal year.

The requests for an advisory opinion filed before this court request inquiries as to whether this petition complies with the single subject requirement of article XI, section 3 of the Florida Constitution, and whether the proposed ballot title and summary complies with section 101.161, Florida Statutes.

I. THE PETITION BEFORE THIS COURT COMPLIES WITH THE SINGLE SUBJECT REQUIREMENT OF ARTICLE XI, SECTION 3 OF THE FLORIDA CONSTITUTION.

Article XI, section 3 of the Florida Constitution substantively mandates 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 matter directly connected therewith.

The application of this section to amendments offered by citizens' initiatives has been the subject of numerous opinions by this court. In determining whether proposed amendments have violated the single subject requirement, this court has dictated that "in the face of such a challenge [its] duty is to uphold the proposal unless it can be shown to be 'clearly and conclusively defective.'" *Floridians Against Casino Takeover v. Let's Help*, 363 So.2d 337, 339, citing to, *Weber v. Smathers*, 338 So.2d 819 (Fla. 1976) and *Goldner v. Adams*, 167 So.2d 575 (Fla. 1964). These decisions have stated that in order to avoid being "clearly and conclusively defective" proposed amendments must have "a logical and natural oneness of purpose." *In Re: Advisory Opinion to the Attorney General -- Limited Political Terms in Certain Elective Offices*, 592

So.2d 225, 227, (Fla. 1991), quoting, *Fine v. Firestone*, 448 So.2d 984, 990; see also: *In Re: Advisory Opinion to the Attorney General -- Save our Everglades Trust Fund*, No. 83,301, slip. op. at 6 (Fla. May 26, 1994); *In Re: Advisory Opinion to the Attorney General -- Restricts Laws Related to Discrimination*, 632 So.2d 1018, 1020 (Fla. 1994). This court has reasoned that "to ascertain whether the necessary 'oneness of purpose' exists, we must consider whether the proposal affects separate functions of government and how the proposal affects other provisions of the constitution." *In Re: Advisory Opinion to the Attorney General -- Restrict Laws Related to Discrimination*, 632 So.2d at 1020, citing to, *Fine*, 448 So.2d at 990. Placing this test within the context of the instance case, the Criminal Justice Trust Fund amendment meets the single subject requirement.

First, the Criminal Justice Trust Fund amendment affects only a single branch of Florida's government. The amendment would establish a Criminal Justice Trust Fund which may be funded and appropriated within the sole discretion of the Legislature. The amendment does not augment or detract from any legislative powers as enumerated throughout the Florida Constitution. In fact, the proposed operation of the amendment occurs within the current powers and duties of the legislative branch as enumerated by article III and article VII of the Florida Constitution.

The Attorney General has acknowledged the "logical oneness" of this proposed amendment. In differentiating the Criminal Justice Trust Fund with the trust fund in the recent *Save our Everglades* advisory opinion, the Attorney General stated:

In contrast to the proposed initiative which this Court struck down in *In re: Advisory Opinion to the Attorney General -- Save our Everglades Trust Fund*, the initiative in this instance affects only the legislative branch of government. While the initiative creates a trust fund, the funding of the trust and allocation of monies therein remains with the Legislature. The Legislature's discretion in allocating the funds is limited only by the provision that it may not replace or substitute for funding at a level less than that allocated to the criminal justice system in the 1993-1994 fiscal year. Unlike the "Save our Everglades Trust Fund" initiative, the "Funding for Criminal Justice" initiative does not impinge upon the powers and duties of existing executive agencies.

Letter from the Attorney General, May 31, 1994, at 2-3.

Article III, section 19 of the Florida Constitution enumerates the processes for state budgeting, planning, and appropriations by the Florida Legislature. In enumerating the format for the annual appropriations bill, section 19 dictates that "separate sections within the general appropriations bill shall be used for each major program area of the state budget; major program areas shall include: ... criminal justice and corrections... ." Fla. Const. art. III, s. 19(b). By allowing the Florida Legislature to appropriate the contents of the Criminal Justice Trust Fund, the new amendment continues with the established procedures for state budgeting, planning, and appropriations and establishes a

recognizable funding source for one of the major program areas of the annual budget.

In addition to adhering with the standards established in section 19 of article III, the Criminal Justice Trust Fund also finds express provisions for its implementation within the parameters of the Florida Constitution. Article III, section 19, subsection f explicitly authorizes and allots for "other trust funds authorized by this constitution" in its consideration of future budgetary matters pending before the Florida Legislature. As such, the Criminal Justice Trust Fund does not adversely affect other branches of Florida's government or other provisions of the constitution. Furthermore, the operation of the proposed amendment within the framework of Florida's constitution effectively makes the Legislature's job easier by enhancing its ability to allocate the state revenues among the major budgetary areas.

Since the proposed constitutional amendment affects only one branch of government and does not adversely affect the constitutional operation of this branch, this amendment does not possess the "clear and conclusive" defects which would violate the single subject requirement. Consequently, the proposed amendment should pass the "logical and natural oneness of purpose" test as established by this court and thereby be permitted to survive on the November ballot as a valid citizens' initiative.

**II. THE PETITION BEFORE THIS COURT COMPLIES WITH THE
BALLOT TITLE AND SUMMARY REQUIREMENT OF SECTION
101.161, FLORIDA STATUTES.**

Section 101.161, Florida Statutes, lists the requirements for the ballot title and summary of a proposed constitutional amendment. Section 101.161 substantively states as follows:

Whenever a constitutional amendment or other public measure is submitted to vote of the people, the substance of such amendment or other public measure shall be printed in a clear and unambiguous language on the ballot.

... The wording of the substance of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the [proposal]. ... The substance of the amendment or other public measure shall be an explanatory statement, not exceeding seventy-five words in length, of the chief purpose of the measure. The ballot title shall consist of a caption, not exceeding fifteen words in length, by which the measure is commonly referred to or spoken of.

Section 101.161(1), Fla. Stat. (1993).

In its recent evaluation of a ballot title and constitutional amendment summary, this court set out the pertinent factors to be considered when evaluating compliance with section 101.161, Florida Statutes. This court stated in *In Re: Advisory Opinion to the Governor -- Save our Everglades Trust Fund, supra*, that:

Section 101.161 requires that the ballot title and summary for a proposed constitutional amendment state in clear and unambiguous language the chief purpose of the measure. This is so that the voter will have notice of the issue contained in the amendment, and will not be misled as to its purpose, and can cast an intelligent and informed ballot. However, "it is not necessary to explain every ramification of a proposed amendment, only the chief purpose."

In Re: Advisory Opinion to the Attorney General -- Save Our Everglades Trust Fund, supra, at 10, citing, Askew v. Firestone, 421 So.2d 151, 154-155 (Fla. 1982); Carol v. Firestone, 497 So.2d 1204, 1206 (Fla. 1986).

The ballot title and summary before the court efficiently sets out the impact of the proposed constitutional amendment, thereby complying with the section 101.161 mandates. The title, "Funding for Criminal Justice," substantively advises the voter as to the text of the amendment and the chief purpose of the measure. Unlike the *Save our Everglades* case, the title does not incorporate any misleading or emotional language which could present the amendment "under false colors." *Askew v. Firestone, 421 So.2d at 156.* In addition, the summary for this constitutional amendment alerts the voter as to the overall impact of the Criminal Justice Trust Fund amendment by advising them, in plain language free of political rhetoric, as to the preservation of current funding levels as well as the Legislature's role in the trust fund's allocation. By explicitly enumerating the creation of the Trust Fund and how the Trust Fund will be allocated, the ballot summary informs the voters as to the overall effect of the amendment so that each voter may intelligently cast his or her vote.

By setting out the chief purpose and impact of the constitutional amendment without incorporating "political puffing," the ballot title and summary sufficiently meet the standards established by section 101.161, Florida Statutes. As such, Citizens for a Safe Florida respectfully request this Honorable

Court's favorable opinion upholding the validity of this citizens' initiative.

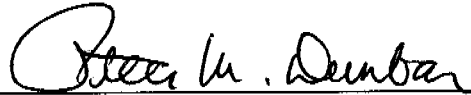
CONCLUSION

As stated by the Attorney General, the proposed amendment embraces a "oneness of purpose" necessary to survive constitutional single subject scrutiny. This fact may be seen through the singular impact that this amendment has on Florida's government. In addition, the trust fund created by the amendment is expressly provided for within the budgetary structures of the Florida Constitution, and as such, the "oneness of purpose" requirement is further met as the proposed amendment does not alter or adversely affect other provisions of the constitution. By meeting both aspects of the "oneness of purpose" test, this constitutional amendment must be upheld as a valid citizens' initiative.

Conversely, the proposed amendments concise, but accurate summary and ballot title meet the requirements promulgated by Florida's Legislature. Through clear descriptions of the impact of the proposed amendment, the title and ballot summary accurately depict the amendment's chief purpose. Finally, the absence of political rhetoric from their language indicates the compliance with past judicial mandates that the title and ballot summary present the chief purpose of the amendment without bias or political "puffing." As a result of their compliance with case law and the directives in the statute, the ballot title and summary must also survive judicial scrutiny so that the amendment may be put to a fair vote of the people. Consequently, Citizens for a

Safe Florida respectfully requests this court's favorable opinion regarding the validity of this constitutional amendment.


RESPECTFULLY SUBMITTED this 8th day of June, 1994.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Mail on this 8th day of June, 1994, to the Department of Legal Affairs, Office of the Attorney General, PL 01, The Capitol, Tallahassee, Florida 32399-1050.



PETER M. DUNBAR