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IN THE SUPREME COURT  
STATE OF FLORIDA

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ADVISORY OPINION TO THE  
ATTORNEY GENERAL

CASE NO. 85,762

IN RE:

STOP TURNING OUT  
PRISONERS: LIMIT EARLY  
RELEASE

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INITIAL BRIEF  
OF  
STOP EARLY RELEASE COMMITTEE

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## STATEMENT OF THE CASE AND FACTS

The Attorney General of Florida, pursuant to Article IV, Section 10, Florida Constitution and Section 16.061, Florida Statutes, has petitioned this Court to review a proposed amendment to Article IV, Section 8, Florida Constitution, entitled "Stop Turning Out Prisoners: Limit Early Release," circulated pursuant to Article XI, Section 3, Florida Constitution. Stop Early Release Committee (STOP)<sup>1</sup>, a political committee organized under Florida Law, is the sponsoring organization which drafted this amendment initiative petition. The petition was filed with the Division of Elections, Florida Department of State, in October, 1994. By letter dated May 1, 1995, the Secretary of State has previously notified the Attorney General that Stop Early Release Committee has met the prerequisites of Section 15.21, Florida Statutes, for commencing the request for review by the Court.

The ballot title for the proposed amendment is "Stop Turning Out Prisoners: Limit Early Release." The summary for the proposed amendment provides:

A state constitutional amendment which, except for pardon or clemency, requires that state prisoners sentenced to a term of years shall serve at least eighty-five percent of their terms of imprisonment. Parole, conditional release, or any

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<sup>1</sup>Stop Early Release Committee (STOP) is closely associated with and supported by the grassroots organization Stop Turning Out Prisoners, Inc., whose members and supporters throughout Florida include crime victims, families of victims, civic groups and associations, and concerned citizens.

mechanism of sentence reduction may reduce the term of years sentence by no more than fifteen percent. State prisoners sentenced to life imprisonment shall be incarcerated for the rest of their natural lives, unless granted pardon or clemency.

The full text recitation of the proposed amendment reads as follows:

Shall the following be added to the Florida Constitution, Article IV, Sec. 8:

All state prisoners lawfully sentenced to a term of years shall serve at least eighty-five percent of their term of imprisonment, unless granted pardon or clemency. Parole, conditional release, or any mechanism of sentence reduction may reduce the term of years sentence by no more than fifteen percent. State prisoners sentenced to life imprisonment shall be incarcerated for the rest of their natural lives, unless granted pardon or clemency.<sup>2</sup>

The sponsor of the initiative petition, Stop Early Release Committee, organized in May, 1994, was a supporter of a previous petition to stop the early release of prisoners drafted and sponsored by the S.O.S. Foundation, Inc. In reviewing this earlier petition in Advisory Opinion to the Attorney General -- Stop Early Release of Prisoners, 642 So. 2d 724, 726 (Fla. 1994), the Court noted three specific infirmities in finding that the proposed amendment violated the ballot summary requirements imposed by Florida Law:

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<sup>2</sup>The Attorney General's submission to the Court by letter dated May 26, 1995 omits the word "years" in the second sentence, a typographical error, noted here merely for clarification.

1. The ballot summary purporting to "ensure" that State Prisoners would serve at least eighty-five percent of their sentences was inaccurate and misleading in light of the express exceptions of pardon and clemency in the proposed amendment and the likely consequences the Court found would result if the amendment was approved.

2. The failure of the ballot summary to mention the collateral consequence which amendment approval would have had in modifying Article IV, Section 8(c) of the Florida Constitution, authorizing the creation of a parole commission with power "to grant paroles or conditional releases to persons under sentences for crime."

3. The proposed amendment did not address the "somewhat puzzling question of how to determine what constitutes eighty-five percent of a life sentence."

Stop Early Release Committee, pursuant to Article XI, Section 3, Florida Constitution, proposes a constitutional amendment which would provide a consistent, substantial "truth in sentencing" policy for state prisoners. In drafting the initiative petition now under review, the Committee has carefully sought to eliminate the legal deficiencies enunciated by the majority in Stop Early Release of Prisoners, supra. The summary and full text of the proposed amendment "Stop Turning Out Prisoners: Limit Early Release" sets forth that state prisoners sentenced to a "term of years" will serve

at least eighty-five percent of their imprisonment with the specified exceptions of pardon and clemency authorized under Article IV, Section 8 (a) and (b) of the Florida Constitution.

The Stop Early Release Committee's initiative petition also includes, in summary and full text, the effect of the amendment in limiting the use of "parole and conditional release," as well as any "mechanism of sentence reduction," to fifteen percent of a term of years sentence. The proposed amendment is intended to be added to Article IV, Section 8, of the Florida Constitution, which includes the authorization of parole and conditional release. The last sentence of both the summary and text of the proposed amendment would require that life sentences mean life imprisonment, with the express exceptions of pardon and clemency.

The additional concerns expressed by the Court in Stop Early Release of Prisoners, 642 So. 2d at 726-727, pertaining to prison overcrowding, renewed Federal lawsuits, sufficient revenue support, and potential use of clemency powers for early release, have now been legislatively debated and considered prior to the overwhelming passage by the 1995 Florida Legislature of Committee Substitute for House Bill 687 entitled the "Stop Turning Out Prisoners Act." This bill passed the Florida Senate by a vote of 40 to 0 and the Florida House of Representatives by a vote of 105 to 10 and would limit the application of incentive gain time to a maximum of fifteen percent of the



sentence imposed. Additionally this legislation, applicable to sentences imposed for offenses committed on or after October 1st, 1995, requires state prisoners sentenced to life imprisonment to be incarcerated for the rest of their natural lives, unless granted pardon or clemency. Persons convicted of any capital felony are ineligible for parole. This legislation became law June 15, 1995. Ch. 95-294, Laws of Fla.

## SUMMARY OF THE ARGUMENT

The Stop Turning Out Prisoners: Limit Early Release initiative satisfies the Article XI, Section 3, Florida Constitution requirement that a constitutional amendment "embrace but one subject and matter directly connected therewith." The plan of the proposed amendment to limit early release of state prisoners, through a substantial truth in sentencing policy, reflects a logical and natural oneness of purpose. The ballot title and summary of the initiative state clearly and unambiguously the chief purpose of the measure, and fairly and accurately inform the voter that passage of the proposed amendment would limit the application of parole and conditional release, authorized under Article IV, Section 8(c), of the Florida Constitution.

The infirmities found by the Court in reviewing an earlier constitutional amendment initiative in Stop Early Release of Prisoners, 642 So. 2d 724 (Fla. 1994) have been eliminated. The predicted likely results the Court opined would occur from passage of the proposed amendment in that case, undermining the accuracy of the ballot summary, have since been legislatively debated and, by and large, put to rest with the recent enactment into law of Committee Substitute for House Bill 687 (1995). Ch. 95-294, Laws of Fla.

The Stop Turning Out Prisoners: Limit Early Release petition having complied with the constitutional and statutory law of Florida, the Court should approve the language of the initiative.

## ARGUMENT

### I. INTRODUCTION

The power is reserved to the people to propose revision or amendment of any portion of the Constitution in Article XI, Section 3, of the Florida Constitution. The Court should not interfere with the people's right to vote on a proposed constitutional amendment unless "the proposal is clearly and conclusively defective." Askew v. Firestone, 421 So. 2d 151, 154 (Fla. 1982), citing from Weber v. Smathers, 338 So. 2d 819 (Fla. 1976). While mandated to render an advisory opinion to the Attorney General, pursuant to Article V, Section 3 (b)(10) of the Florida Constitution, the Court is "constrained by present Florida law to address two issues and no others: (1) whether the proposed amendment contains only a single subject, as required by Article XI, Section 3 of the Florida Constitution; and (2) whether the proposed ballot summary is fair and advises voters of the chief objectives of the proposed amendments so that voters may intelligently cast their ballots." Stop Early Release of Prisoners, 642 So. 2d at 724, citing Advisory Opinion to the Attorney General -- Limited Political Terms in Certain Elective Offices, 592 So. 2d 225, 227-229 (Fla. 1991).

II. THE STOP TURNING OUT PRISONERS: LIMIT EARLY RELEASE INITIATIVE EMBRACES A SINGLE SUBJECT

Article XI, Section 3 of the Florida Constitution requires that a constitutional amendment proposed by initiative "shall embrace but one subject and matter directly connected therewith." In Limited Terms, 592 So. 2d at 227, the Court held that the single subject requirement is met if the proposed amendment has a "logical and natural oneness of purpose," citing Fine v. Firestone, 448 So. 2d 984, 990 (Fla. 1984). In order to make the determination that the single subject requirement is satisfied, the Court has stated that the test is whether the proposal "may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme." Fine, 448 So. 2d at 990, quoting City of Coral Gables v. Gray, 19 So. 2d 318 (Fla. 1944).

The Stop Turning Out Prisoners: Limit Early Release initiative clearly has a "logical and natural oneness of purpose." The proposed amendment simply seeks substantial truth in sentencing of State prisoners by requiring a large portion of the sentence be served, with the limited exceptions of pardon or clemency. The initiative does not eliminate, but rather limits, the use of parole, conditional release, or any mechanism of sentence reduction, all of which have a natural relation and connection and are aspects of this single sentencing plan.

In Stop Early Release of Prisoners, 642 So. 2d at 726, the Court assumed *arguendo* that the earlier initiative to stop the early release of prisoners met the single subject requirement, but concluded that amendment would have substantially affected or abolished parole and conditional release without sufficient notice in the ballot summary. Stop Early Release Committee respectfully submits that the proposed amendment before the Court would have little effect on the application of parole and conditional release in light of the recent enactment into law of Committee Substitute for House Bill 687 overwhelmingly passed by the 1995 Florida Legislature. Ch 95-294, Laws of Fla. Additionally, Article IV, Section 8(c) of the Florida Constitution merely authorizes the creation of a parole commission with power to grant parole and conditional release, but this Section does not prohibit the legislature or the people from limiting the application of that authority.

Historically there have been many legislative restrictions which have been placed on the power and authority of the Florida Parole Commission to grant parole and conditional release. These have come in the form of minimum mandatory sentences, parole ineligibility for certain crimes, the sentencing guidelines system, and other provisions. Thus the people, through constitutional amendment initiative, have the right to vote into law a provision to require substantial truth in sentencing which naturally

has some limiting effect on the application of parole and conditional release as part of the single, common plan.

The proposed amendment requires state prisoners with life sentences to be incarcerated for the rest of their natural lives, unless granted pardon or clemency. This provision is clearly a part of the "logical and natural oneness of purpose" of the initiative. In addition the clarification between "term of years" sentences and "life" sentences, eliminates the confusion the Court noted in considering "how to determine what constitutes eighty-five percent of a life sentence" in Stop Early Release of Prisoners, 642 So. 2d at 726.

Therefore the Stop Turning Out Prisoners: Limit Early Release constitutional amendment initiative petition meets the single subject requirement of Article XI, Section 3 of the Florida Constitution.

III. THE BALLOT TITLE AND SUMMARY OF THE STOP TURNING OUT PRISONERS: LIMIT EARLY RELEASE INITIATIVE COMPLIES WITH SECTION 101.161, FLORIDA STATUTES

Section 101.161, Florida Statutes (1993) prescribes the requirements for the ballot title and summary of a proposed constitutional amendment, providing:

Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word "yes" and also the word "no" and shall be styled in such manner that a "yes" vote will indicate approval of the proposal and a "no" vote will indicate rejection. 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 joint resolution, constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. The substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

The Court has further clarified that this statutory mandate "requires that the ballot title and summary for a proposed constitutional amendment state in clear and unambiguous language the chief purpose of the measure." Askew, 421 So. 2d at 154-155. Thus, the voter must receive fair notice of the issue upon which he must make a



decision and vote. Id. at 155. However, the ballot summary need not "explain every ramification of a proposed amendment, only the chief purpose." Carroll v. Firestone, 497 So. 2d 1204, 1206 (Fla. 1986). See also Limited Terms, 592 So. 2d at 228, and Advisory Opinion to the Attorney General -- Save Our Everglades Trust Fund, 636 So. 2d 1336, 1341 (Fla. 1994).

The ballot title "Stop Turning Out Prisoners: Limit Early Release," by which the initiative is commonly referred to, does not exceed fifteen words and fairly reflects the essence of the issue. Likewise the summary is within the statutory limit, seventy-five words.

Neither the ballot title nor summary purport to represent the proposed amendment as a guarantee against all early release of state prisoners. The initiative to "limit" early release, with express exceptions, is clearly stated. The infirmity the Court found in Stop Early Release of Prisoners, 642 So. 2d at 726, that the petition summary was misleading and inaccurate in purporting to "ensure" all prisoners would serve at least eighty-five percent of their sentences has been eliminated.

The voter has been clearly informed in the ballot summary that "parole and conditional release," as authorized under Article VI, Section 8(c) of the Florida Constitution, as well as any other "mechanism of sentence reduction" will not be eliminated in "term of years" sentences, but rather their application will be limited to

fifteen percent of the sentence, unless granted pardon or clemency. The effect of passage of the proposed amendment on the parole provisions is announced in the summary in "clear and unambiguous language," thereby eliminating the second deficiency found in the petition reviewed in Stop Early Release of Prisoners, 642 So. 2d at 726.

The ballot summary is identical to the proposed amendment itself in stating that: "State prisoners sentenced to life imprisonment shall be incarcerated for the rest of their natural lives, unless granted parole or clemency." The voter is fully and fairly informed that a trial judge's lawful life sentence will mean exactly what it says, unless the sentenced prisoner is granted pardon or clemency. The proposed initiative, therefore, has answered the question the Court had in Stop Early Release of Prisoners, 642 So. 2d at 726, in clearly distinguishing the early release limitations which would apply to a "term of years" sentence, as opposed to a "life" sentence.

The Court in Stop Early Release of Prisoners, 642 So. 2d at 726-728, discussed at some length four possible results which would likely occur upon passage of that earlier initiative: (1) prison overcrowding, resulting in renewed federal lawsuits; (2) the legislature being forced to construct additional prison space at great expense, despite limited revenues and widespread public opposition to new taxes; (3) wholesale use of executive clemency powers in the form of early release by the Governor and Cabinet;

and (4) a combination of these scenarios. While these would appear to be issues for legislative debate, the Court apparently concluded these factual predictions gave additional support to the conclusion that the word "ensure" in the ballot summary of that petition, purporting to guarantee eighty-five percent time served, was misleading and inaccurate. We respectfully disagree with the Court's opinion that these were exclusive or necessary results.

First, the Court in Stop Early Release of Prisoners, supra, failed to mention the stopgap measure which has been most recently used in the face of too few prisons beds - the manipulation of the Sentencing Guidelines. The new 1994 Sentencing Guidelines have already proven to have had an immediate effect of drastically reducing prison admissions. While Stop Early Release Committee and supporting organizations do not advocate front end sentencing manipulation for the purpose of prison population control, such a process remains nevertheless readily available.

Furthermore, the predicted likely results and concerns of the Court, outlined above, have in large part since been debated and put to rest by the 1995 Florida Legislature with the overwhelming passage of Committee Substitute for House Bill 687, recently enacted into law. Ch. 95-294, Laws of Fla. This new law would limit application of incentive gain time to fifteen percent for term of years sentences, require prisoners with life sentences to be incarcerated for the rest of their natural lives, unless

granted pardon or clemency, and make persons convicted of capital offenses ineligible for parole. This law is effective October 1, 1995, and would have substantially the same economic and prison population impact as the proposed amendment initiative under review. A constitutional amendment, however, would give permanence to a substantial truth in sentencing policy limiting early release in Florida.

Therefore, the ballot title and summary of the Stop Turning Out Prisoners: Limit Early Release initiative complies with Section 101.161 Florida Statutes by fairly notifying the voter, through clear and unambiguous language of the chief purpose of the proposed amendment to Article VI, Section 8 of the Florida Constitution.

## CONCLUSION

The Stop Turning Out Prisoners: Limit Early Release initiative satisfies the single subject as well as the ballot title and summary requirements of the Constitutional and Statutory Laws of Florida. The Initiative should, therefore, be approved for placement on the ballot, upon the requisite number of petitions being obtained and certified.

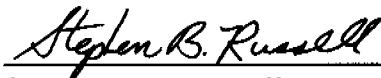
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this brief was mailed on June 19<sup>th</sup>, 1995 to Robert A. Butterworth, Attorney General, State of Florida, The Capitol, Tallahassee, Florida 32399-1050.

  
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Stephen B. Russell