IN THE
SUPREME COURT
OF FLORIDA

CASE NO. 89,667

In re: ADVISORY OPINION
TO THE ATTORNEY GENERAL -
PROHIBITING PUBLIC FUNDING
OF POLITICAL CANDIDATES' CAMPAIGNS

ANSWER BRIEF OF
CITIZENS FOR CAMPAIGN &
GOVERNMENT SPENDING REFORM
IN SUPPORT OF INITIATIVE

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SUMMARY OF THE ARGUMENT

I.

Opponent Common Cause argues that the amendment substantially alters or performs the functions of more than one branch, but has failed to identify which functions of any branch are affected at all by the amendment, As observed in the supporter's Initial Brief, the proposed amendment does not alter or perform any functions of government branches, but merely addresses the process of election campaigns for State executive and legislative offices.

The opponents' claim that the proposal violates the prohibition on logrolling by prohibiting public funding of campaigns for both legislative and executive officeholders fails under this Court's decisions in Limited Political Terms and Weber v. Smathers. The measure in this case is less encompassing than the measures approved in Weber and Limited Terms in that it addresses but one class of candidate - those who campaign for "elective State office." Because the measure embraces the single dominant plan or scheme of prohibiting public campaign financing for elective State office, it meets the requirements of Article XI, section 3 of the Florida Constitution.

11.

The opponents claim the amendment and summary are fatally defective by omitting discussion of existing public campaign financing laws. These arguments are unfounded. First, the public campaign financing provisions are in fact referred to in both the amendment and its summary. Second, the amendments disapproved by this Court in each of the cases relied on by the opponents suffered from defects not present in the amendment at issue. First, the initiative in question has no undisclosed substantial impact on existing Constitutional provisions. Second,

it cannot be shown, and the opponents have not demonstrated, that the ballot summary misstates the actual text of the amendment. Finally, neither the amendment nor its summary mislead the voters by appearing to do one thing while in reality doing another.

The proposed amendment prohibiting public funding of political candidates' campaigns does precisely what it purports to do. If the average voter is given some measure of the credit envisioned by our Founders, he will view the proposed amendment for what it is and what it purports to be - one which prohibits public funding of political candidates' campaigns for elective State office and which provides for the disposition of funds remaining in existing accounts under current public campaign financing laws. In the absence of any provision of law requiring it, the opponents claim the drafters of the amendment were obliged to include a discussion of what the opponents call the "prior careful consideration by the Legislature of the issue." The voters are capable of independently assessing the merits of a proposed amendment without a blow-by-blow account of their own public servants' prior treatment of the issue. This Court has observed that a ballot summary may be defective if it omits material facts necessary to make the summary not misleading. It is not enough for opponents to identify certain details which they would prefer to have included. The ballot language does not mislead the voters into believing the amendment is accomplishing something it is not. The amendment neutrally and unambiguously informs the voters of the chief purpose of the initiative to prohibit public financing of campaigns for elective State office. Accordingly, the opponents' arguments are unfounded and the initiative should be approved by this Court.

ARGUMENT

I.

THE INITIATIVE PROHIBITING PUBLIC FUNDING OF POLITICAL CANDIDATES' CAMPAIGNS COMPLIES WITH BOTH THE SPIRIT AND THE LETTER OF THE CONSTITUTIONAL INITIATIVE REQUIREMENT THAT A PROPOSED AMENDMENT EMBRACE BUT ONE SUBJECT

In their initial briefs, opponents of the proposal claim the amendment violates the single-subject requirement of Article XI, section 3 of the Florida Constitution by (1) "improperly alter[ing] and perform[ing] multiple government functions" (Common Cause Initial Brief at 15), and (2) "impermissibly 'logroll[ing]' several separate and discreet issues into a single initiative in order to secure approval of the voters," (Floridians Initial Brief at 4).[1]

First, as observed in the supporter's Initial Brief, the proposed amendment does not alter or perform any functions of government branches. the process of election campaigns for State executive and legislative offices. In arguing this point in its Initial Brief, Common Cause has not only failed to describe how the proposed amendment "substantially alters or performs" the functions of more than one branch, but has failed to identify which "functions" of any branch are affected at all by the amendment. Common Cause Initial Brief at 15-16. See, In re Advisory Opinion to the Attorney General - Save Our Everglades, 636 So. 2d 1336, 1340 (Fla. 1994); Advisory Opinion to the Attorney General re Limited Casinos, 644 So. 2d 71, 73 (Fla. 1994).

'A third argument regarding the amendment's effect on prior law is raised in Floridians' Initial Brief as a single-subject issue and in Common Cause's Initial Brief as a title and summary issue. The argument is addressed in this Answer Brief under Issue II.

In asserting merely that the amendment "has collateral effects on the process of elections in both branches," the opponent identifies a feature of the initiative which neither invalidates it under the provisions of Florida's Constitution nor under this Court's single-subject analysis. See, Common Cause Initial Brief at 16 (emphasis added).[2]

Second, the opponents claim the proposal violates the prohibition on logrolling by prohibiting public funding of campaigns for both legislative and executive officeholders. They contend the proposal impermissibly requires the voter to answer four questions involving "four classifications of offices. " Floridians Initial Brief at 8, Common Cause Initial Brief at 17, citing, In re Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination, 632 So. 2d 1018 (Fla. 1994). These claims fail under this Court's decisions in Advisory Opinion to the Attorney General - Limited Political Terms in Certain Elective Offices, 592 So. 2d 275 (Fla. 1991) and Weber v. Smathers, 338 So. 2d 819 (Fla. 1976).

In Term Limitations, this Court upheld a proposed amendment which placed term limits on officeholders in three different branches of government: State Executive, State Legislative and Federal Legislative. As the Court explained, the "sole subject of the proposed amendment is limiting the number of consecutive terms that certain elected public officers may serve." Accordingly, the Court found unpersuasive the arguments of the initiative's opponents that the proposed amendment required voters to vote up or down on an amendment that impermissibly affected officeholders "in three different branches of government." 592 So. 2d at 227.

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[2]In its Initial Brief, Floridians to Preserve Campaign Spending Limits, appears to disavow the above argument proffered by Common Cause, stating that 'Floridians do not argue that because the proposed amendment affects multiple branches of government, it therefore violates the single-subject rule." Floridians Initial Brief at 8-9.

In Weber v. Smathers, this Court upheld the proposed Ethics in Government amendment which required financial disclosure by all elected constitutional officers and candidates, provided for forfeiture of retirement rights for officials violating the public trust and limited both Legislators and statewide elected officers in representing persons before certain government bodies. 338 So. 2d at 822.

The measure in this case is less encompassing than the measures approved in Weber and Limited Terms. Contrary to the opponent's claims, it addresses but one class of candidate - those who campaign for "elective State office." The voters have as much right to consider the measure as they did to consider the measure in Term Limitations imposing term limits on officeholders in three branches of government or the measure in Weber v. Smathers imposing various financial and ethical restrictions on all elected constitutional officers and candidates in Florida.

Unlike the measure in the In re Discrimination case relied on by the opponents, which attempted to enfold ten disparate classifications such as race, marital status, ethnic background and familial status within one all encompassing provision, the measure here "manifest[s] a natural oneness of purpose" and "a single dominant plan or scheme" of prohibiting public funding for all elective State offices. Advisorv Opinion to the Attorney General - Fee on Everglades Sugar Production, 681 So. 2d 1124, 1127 (Fla. 1996), quoting Fine v. Firestone, 448 So. 2d 984, 990 (Fla. 1984); Advisory Opinion to the Attorney General re Florida Locally Approved Gaming, 656 So. 2d 1259, 1263 (Fla. 1995), quoting Citv of Coral Gables v. Grav, 19 So. 2d 318, 320 (Fla. 1944).

On the one hand, the opponents imply that the initiative is impermissibly narrow because it "does not prohibit public funding for all political campaigns." Floridians Initial Brief at 7. On the other hand, they claim the initiative is impermissibly broad because it addresses "four different classifications of offices. " Floridians Initial Brief at 7; Common Cause Initial Brief at 17. Given these arguments, one reasonably wonders what if any measure to restrict public funding, however drafted, would be acceptable to the organizations opposing this initiative. Arguably, the disparate approaches reflected in the opponents' briefs are actually reconciled in the measure in question, which neither embraces every conceivable local, municipal, state and federal election held in Florida nor limits its scope to only some but not all State elective offices. Instead, the measure offers the citizens the opportunity to vote for or against public funding of campaigns for one group of candidates, all who campaign for State elective office. Because the proposed amendment embraces this single dominant purpose, it meets the requirements of Article XI, section 3, of the Florida Constitution.[3]

"Common Cause argues that because "[h]igher monetary hurdles exist" for statewide executive offices than for single legislative seats "a voter may desire to support public funding of statewide executive campaigns" but not legislative campaigns. Common Cause Initial Brief at 17. In its brief, the other opponent theorizes that a voter might want to prohibit public funding for the Governor and Cabinet, but permit public funding for legislative races. Floridians Initial Brief at 8.

Such arguments have no reasonable limit. For example, it could also be said that some voter may wish to prohibit public financing of campaigns for certain smaller legislative races and permit such financing for races in certain more populous areas where "[h]igher monetary hurdles exist." To fully carry the argument, a separate Constitutional initiative would be required on this issue alone for each and every legislative and executive officeholder - some 167 Constitutional amendment initiatives, Even accounting for future breakthroughs in judicial cloning, the increase in Advisory Opinions resulting from such arguments would likely impose an unacceptable strain on this Court's already burdensome caseload, Similar scenarios can be envisioned in virtually every ballot initiative issue previously approved by this Court, For instance, some voters considering the Term Limitations initiative may have wished to limit political terms for Senators, but not for

II.

THE BALLOT TITLE AND SUMMARY OF THE PROPOSED AMENDMENT PROHIBITING PUBLIC FUNDING OF POLITICAL CANDIDATES' CAMPAIGNS FULLY COMPLIES WITH THE PROVISIONS OF SECTION 101.16 1, FLORIDA STATUTES

The opponents argue in their Initial Briefs that the amendment and summary are fatally defective by omitting discussion of the existing public campaign financing laws. These arguments are unfounded. First, the public campaign financing provisions are in fact referred to in both the amendment and its summary. Second, the cases relied on by the opponents are all distinguishable and premised on major inaccuracies and misrepresentations which are not present here.

A. Summary and Amendment Do In Fact Address Public Campaign Financing

The opponents' suggestion that the summary and amendment are designed to conceal the existence of current public campaign finance laws is belied by the express discussion of the disposition of funds remaining in existing public campaign financing accounts upon passage of the amendment. In discussing the ramifications of the amendment on current provisions, both the amendment and its summary specifically address the existing public campaign financing provisions.

Representatives; some may have wished to restrict or expand the entities responsible for paying the fee in the recently approved sugar fee ballot initiative; and some may have wished to authorize more or less casinos in only some or none of the nine specified counties in the Limited Casinos amendment approved by this Court in 1994. As this Court's decisions in these cases confirm, however: the issue is not whether some voters might have drafted the proposal differently, but whether the proposed amendment has a unified purpose, stated clearly and understandably to the voters.

The actual text of the proposed amendment at subsection 2 reads as follows:

> 2) Effective Date and Transition:
>
> This amendment shall be effective on the date it is approved by the electorate. Funds remaining in trust funds or otherwise dedicated to uses abrogated under this amendment on such date shall be used first to satisfy any existing obligations under public campaign financing laws, and then deposited into the general revenue fund.

Proposed Amendment, subsection 2 (emphasis added).

In summarizing this provision, the Ballot Summary provides in part:

> The amendment will be effective upon passage. Upon passage, any funds remaining in public campaign financing accounts will be used to satisfy existing obligations, then treated as general revenue for the State.

Ballot Summary of Proposed Amendment (emphasis added).

Far from concealing the existence of current public campaign financing provisions as the opponents allege, the summary and amendment directly address the ramifications of the amendment in relation to existing public campaign financing laws.

B. Cases Relied on by Opponents are Distinguishable

1. Discussion of Cases Relied on By Opponents

In arguing that the ballot summary and title is invalid because it does not discuss the amendment's effective "repeal of existing detailed legislation," the opponents rely on a number of cases, all of which are distinguishable. Advisory Opinion to the Attorney General Re: Casino Authorization. Taxation and Regulation, 656 So. 2d 466 (Fla. 1995); Advisory Opinion to the Attorney General Re Stop Early Release of Prisoners, 642 So. 2d 724 (Fla. 1994); Smith v. American Airlines, 606 So. 2d 618 (Fla. 1992); Evans v. Firestone, 457 So. 2d 1351 (Fla.

1984); Askew v. Firestone, 421 So. 2d 151 (Fla. 1982). In each of the above cases, the Court found one or more of the following fatal defects, none of which is present in this case: (1) the amendments had a substantially undisclosed impact on existing Constitutional provisions; (2) the ballot titles or summaries misstated the actual text of the amendments; and (3) the titles or summaries affirmatively misled the voters into believing the amendments were accomplishing something which they were not.

In Askew v. Firestone, the ballot summary failed to inform the public of the amendment's "material changes to an existing Constitutional provision." 421 So. 2d at 155-156. What's more, the Court concluded the summary was worded in such a way as to affirmatively mislead the public into believing that it was granting citizens greater protection against conflicts of interest (requiring financial disclosure before anyone can appear before any agency for two years after leaving office), when in fact it was removing an established Constitutional protection (a complete two-year ban on lobbying before one's former agency). 421 So. 2d at 155-156.

In Evans v. Firestone, the Court invalidated a proposed amendment limiting liability for defendants in civil actions because the provision dealt with multiple subjects and the ballot summary misled the voters by falsely stating that the measure added constitutional protection to plaintiffs when in fact the measure's chief purpose was to impose a cap on liability. As the Court noted, the summary's claim that the amendment "established" the citizens' right to full recovery of actual damages, "material[ly] recast" the key provision from "language of limitation in the amendment to language of affirmation in the ballot summary." Evans, 457 So. 2d at 1355. As Justice Overton put it, the misleading summary "appeared to have been intentionally drawn to create an erroneous perception of the effect of the Constitutional proposal," Id at

1356. Justice Ehrlich viewed the summary as nothing more than a "blatant attempt" to violate section 101.161 which could easily be seen as "purposefully misleading." Id at 1360.

In Casino Authorization, the proposal was struck down because the summary told voters one thing while the "text of the proposed amendment present[ed] a significantly different picture. " 656 So. 2d at 469. The summary indicated casinos would be operated only in "hotels" and certain floating vessels, The amendment itself, however, allowed casinos in "transient lodging establishments" and on "stationary and non-stationary" riverboats and commercial vessels. Casino Authorization, 656 So. 2d at 469. Moreover, the summary suffered from the same defects as did the summaries in Askew and Evans proclaiming that the measure "prohibits casinos unless approved by the voters" the summary affirmatively misled the voters with "the false impression that casinos are now allowed in Florida. " Casino Authorization, 656 So. 2d at 469.

The proposed amendment in Stop Earlv Releases was struck because (1) it substantially modified an existing Constitutional provision, (2) its summary failed to disclose this substantial Constitutional impact and (3) its summary's claim to "ensure" that inmates serve at least 85% of their sentences was "seriously misleading" and contrary to the text of the amendment itself which "expressly" left open an easy method of defeating the entire purpose for the amendment. 642 So. 2d at 726-727,

The amendment in Smith v. American Airlines was fatally defective because its summary misstated the text of the amendment and the summary affirmatively misled the voters by suggesting that its purpose was to subject government leaseholds to "ad valorem taxation,"

when its real purpose was to subject leaseholds in government-owned property to such taxation at substantially higher "real property tax rates." 606 So. 2d at 620-62 1 (emphasis added).

2. Amendments in Above Cases Suffered From Defects Not Present Here

The amendments disapproved by the Court in each of the above cases suffered from defects not present in the amendment at issue. First, the amendment in question has no undisclosed substantial impact on existing Constitutional provisions. Second, it cannot be shown, and the opponents have not demonstrated that the ballot summary misstates the actual text of the amendment. Finally, and most importantly, neither the amendment nor its summary mislead the voters by appearing to do one thing while in reality doing another.

The proposed amendment "Prohibiting Public Funding of Political Candidates' Campaigns" does precisely what it purports to do. It can come as no surprise to the voter that an amendment prohibiting public funding of specified political candidates' campaigns will in fact "prohibit" funding for any such campaigns which are currently publicly funded. Far from hiding this fact, the drafters specifically address what will happen to any funds remaining in current public financing accounts and how such funds will be used "to satisfy any existing obligations under public campaign financing laws. "

This Court has observed that "a ballot summary may be defective if it omits material facts necessary to make the summary not misleading." See, Term Limitations, 592 So. 2d at 228 (emphasis added). It is not enough for opponents to identify certain details which they would prefer to have included. Amendments are defective on this ground only where the drafters have left out material facts which would have been essential to make them not misleading.

3. The Opponents Have Failed to Establish How any Alleged Omissions Would Mislead the Average Voter

In the absence of any provision of law requiring it, the opponents of the measure claim its drafters were obliged to advise the voters of the "prior careful consideration by the Legislature of the issue [and] the Act. " Common Cause Initial Brief at 7. While this Court has considered a measure's undisclosed impact on other Constitutional provisions to be a relevant factor in assessing its validity, the Court has not imposed the same requirement with regard to legislative provisions. See e.g., Askew v. Firestone, 421 So. 2d at 156; Early Release, 642 So. 2d at 720. This only stands to reason, Constitutional provisions need not pass statutory muster. To read the opponents' briefs, however, one is left with the impression that the voters are incapable of independently assessing the merits of a proposed amendment absent a blow by blow account of their own public servants' prior treatment of the issue. This notion is inimical to the preeminent Constitutional principle that "all political power is inherent in the people," Article I, section 1, Florida Constitution.

Although this Court has continually reminded litigants to refrain from arguing the relative "wisdom or merit of [a] proposed initiative amendment," the opponents have devoted a significant portion of their briefs extolling the virtues of the current statutory scheme and reiterating the Legislature's intent and specific findings supporting the 1986 Legislation. See, Casino Authorization, 644 So. 2d at 75; Advisory Opinion to the Attorney General re Tax Limitation, 644 So. 2d 486, 489 (Fla. 1994). Ironically, in challenging the ballot title and summary, which are statutorily limited to 15 and 75 words, Common Cause in its own Initial Brief to the jurists of the State's highest court required over 300 words to describe the key

aspects of the prior legislation of which allegedly "no average voter would be aware from the text of the proposed amendment's title or summary." Common Cause Initial Brief at 7.

As the Court observed in Advisory Opinion to the Attorney General re Limited Casinos, 644 So. 2d 71, 75 (Fla. 1994), "the 75-word limit placed on the ballot summary as required by statute does not lend itself to an explanation of all of a proposed amendment's details." The Court has therefore reasoned that a ballot initiative need not explain every detail or ramification of the proposed amendment. See, Save our Everglades, 636 So. 2d at 1341, and Limited Casinos, 644 So. 2d at 74-75. If the ballot title and summary in this case were written to comply with the opponents' expectations of advising the voters of the Legislature's "prior careful consideration" of the "detailed and complex Act," the summary would clearly offend this Court's primary directive that such summaries simply and accurately inform the voters of the chief purpose of the measure. Moreover, had the ballot title and summary included such a discussion, undoubtedly its opponents would now be challenging the provision as confusing, politically charged and rhetorically flawed.[4]

In a further effort to identify a fatally misleading feature of the amendment, the opponents claim that "an average voter reading the summary is induced to believe that passage of the amendment would generate significant general revenue," Common Cause Initial Brief at 11, Betraying a somewhat less than exalted view of the average voter, Common Cause believes he would be duped into embracing the amendment as primarily a revenue enhancing measure. If the average voter is given some measure of the credit envisioned by our Founders, however,

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[4]In its Initial Brief at page 6, Floridians decries the proposed amendment as "effectively repeal[ing] that which is presently permitted," as if that were not the general idea behind all Constitutional amendments.

he will view the proposed amendment for what it is and what it purports to be - one which prohibits public funding of political candidates' campaigns for elective State office and which provides for the disposition of funds remaining in existing accounts under current public campaign financing laws.

The ballot language does not mislead the voters into believing the amendment is accomplishing something it is not. The amendment's summary neutrally and unambiguously informs the voters of the chief purpose of the initiative to prohibit public financing of campaigns for elective State office. Accordingly, the opponents' arguments are unfounded and the initiative should be approved by this Court.

CONCLUSION

For the reasons expressed above and in their Initial Brief, the sponsors of the initiative prohibiting public funding of political candidates' campaigns request that the Court approve the initiative for consideration by the voters of this State.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U. S. Mail, this 3rd day of March, 1997, to the following:

Honorable Robert A. Butterworth
Attorney General
State of Florida
The Capitol
Tallahassee, Florida 32399-1050.

Honorable Sandra B. Mortham
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Appendix

CONSTITUTIONAL AMENDMENT PETITION FORM

104.185 It is unlawful for any person to knowingly sign a petition or petitions for a particular issue or candidate more than one time. Any person violating provisions of this section shall, upon conviction, be guilty of a misdemeanor of the first degree, punishable as provided in §775.082 or §775.083.

TITLE: PROHIBITING PUBLIC FUNDING OF POLITICAL CANDIDATES' CAMPAIGNS

SUMMARY: Prohibits the payment of State funds to political candidates' campaigns for Governor, Lieutenant Governor, Cabinet offices, Florida Senate or Florida House of Representatives. The amendment will be effective upon passage. Upon passage, any funds remaining in public campaign financing accounts will be used to satisfy existing obligations, then treated as general revenue for the State.

I am a registered voter of Florida and hereby petition the Secretary of State to place the following amendment to the Florida Constitution on the ballot in the general election.

(Please print information as it appears on voter records)

Name _____

Address _____

city _____ **Zip** _____

County _____

Precinct _____ **Congressional District** _____

✖ _____ **Date** _____

Sign as registered ***Date Signed***

FULL TEXT OF THE PROPOSED AMENDMENT: BE IT ENACTED BY THE PEOPLE OF FLORIDA THAT:

) **Amendment of Article VI, Florida Constitution:**

Article VI, Florida Constitution, is hereby amended by adding at the end thereof the following new section:

"SECTION 7. No Public Funding of Election Campaigns:

"(a) Public funds shall not be used for the financing of campaigns for elective State office.

"(b) For purposes of this section:

"(1) The phrase 'public funds' means funds from the State, including appropriated funds, trust funds, the Budget Stabilization Fund, or similar fiscal mechanisms of the State.

"(2) The term 'financing' means the payment of funds to campaigns, and does not include the use of funds for the administration or conduct of elections generally, or the reimbursement of funds or property erroneously paid to or taken by the State.

"(3) The term 'campaigns' means the activity of an individual as a candidate for election or of a candidate's campaign committee or organization.

"(4) The phrase 'elective State office' means the Governor, Lieutenant Governor, Cabinet offices, Florida Senate and Florida House of Representatives."

2) Effective Date and Transition:

This amendment shall be effective on the date it is approved by the electorate. Funds remaining in trust funds or otherwise dedicated to uses abrogated under this amendment on such date shall be used first to satisfy any existing obligations under public campaign financing laws, and then deposited into the general revenue fund.

3) Severability:

If any portion of this measure is held invalid for any reason, the remaining portion of this measure, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application.

RETURN TO: CITIZENS FOR CAMPAIGN & GOVERNMENT SPENDING REFORM
P.O. Box 513
Orlando, FL 32802-0513

600,000 Signatures Needed for Ballot Placement

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APPENDIX A