

IN THE SUPREME COURT OF
THE STATE OF FLORIDA

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SID J. WHITE

FEB 11 1997

ADVISORY OPINION TO THE
ATTORNEY GENERAL

CLERK, SUPREME COURT
Chief Deputy Clerk

Re: PROHIBITING PUBLIC
FUNDING OF POLITICAL
CANDIDATES' CAMPAIGNS

CASE NO. 89, 667

INITIAL BRIEF OF

FLORIDIANS TO PRESERVE CAMPAIGN SPENDING LIMITS

MARK HERRON, ESQUIRE
FL BAR NO. 199737
AKERMAN, SENTERFITT & EIDSON, P.A.
216 S. MONROE STREET, SUITE 200
TALLAHASSEE, FL 32301
(904) 222-3471

CHRISTOPHER R. HAUGHEE, ESQUIRE
FL BAR NO. 242985
AKERMAN, SENTERFITT & EIDSON, P.A.
216 S. MONROE STREET, SUITE 200
TALLAHASSEE, FL 32301
(904) 222-3471

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STATEMENT OF THE CASE AND FACTS

By letter dated January 9, 1997, the Attorney General has requested this Court to review a proposed amendment to the Constitution of the State of Florida entitled "Prohibiting Public Funding of Political Candidates' Campaigns" to determine whether the proposed amendment complies with the requirements of Article XI, Section 3 of the Florida Constitution, and Section 101.161, Florida Statutes,

The full text of the proposed constitutional amendment provides as follows:

BE IT ENACTED BY THE PEOPLE OF FLORIDA

THAT:

1) 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.

The ballot title for the proposed amendment is "Prohibiting Public Funding of Political Candidates' Campaigns." The summary for the proposed amendment provides:

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.

By order dated January 22, 1997, this Court directed interested parties to file briefs relating to whether the proposed constitutional amendment complies with the requirements of Article XI, Section 3 of the Florida Constitution and Section 101.161, Florida Statutes, on or before February 11, 1997.

Floridians to Preserve Campaign Spending Limits ("Floridians") is a political committee, registered pursuant to Chapter 106, Florida Statutes, supportive of Florida's current law providing for the public financing of certain political campaigns. As an interested party, Floridians submits this brief.

SUMMARY OF ARGUMENT

The proposed constitutional amendment entitled "Prohibiting Public Funding of Political Candidates' Campaigns" violates the single-subject requirements of Article XI, Section 3 of the State Constitution in two respects. First, it embraces multiple subjects in that it impermissibly "logrolls" several separate and discrete issues into a single initiative in order to secure approval of the proposition. It does not proscribe public financing of all political campaigns, rather it selects and classifies only four classes of offices for which public financing is prohibited. The voter is being asked to give one "yes" or "no" vote on the four questions.

Second, and alternatively, the proposed amendment impermissibly deceives the voters into believing it does one thing when it actually does another. Specifically, the proposed amendment fails to disclose that its primary and unstated purpose is to abrogate provisions of existing law which provide for expenditure limitations on campaigns for Governor and Lieutenant Governor and the Cabinet offices.

In addition to the single-subject deficiencies contained in the text of the proposed amendment, the ballot summary accompanying the amendment fails to advise the voters of the true meaning and ramifications of the amendment as required under Section 101.161, Florida Statutes. The ballot summary fails to mention that it repeals the existing campaign

financing law with its attendant campaign spending limitations. Moreover, the amendment creates a false impression that executive and legislative branch offices are currently subject to some form of public campaign financing, when in fact only executive branches are covered.

ARGUMENT ONE

THE PROPOSED CONSTITUTIONAL AMENDMENT
VIOLATES THE SINGLE-SUBJECT REQUIREMENTS
OF ARTICLE XI, SECTION 3 OF THE FLORIDA
CONSTITUTION BECAUSE IT IMPERMISSIBLY
"LOGROLLS" CLASSES OF PUBLIC OFFICES INTO
THE AMENDMENT.

In this proceeding, this Court is limited to determining whether the proposed amendment complies with Article XI, Section 3 of the Florida Constitution and Section 101.161, Florida Statutes. Advisory Opinion to the Attorney General - Fee on Everglades Sugar Production ("Everglades I"), 681 So.2d 1124, 1125 (Fla. 1996). Article XI, Section 3 of the Florida Constitution requires that "any revision or amendment proposed by initiative, 'except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith.'" Advisory Opinion to the Attorney General Re Tax Limitation, 673 So.2d 864 (Fla. 1996), at 865, n. 2. See, also Article XI, Section 3 of the Florida Constitution, as amended (1994).

In explaining the single-subject rule, this Court has stated:

When voters are asked to consider a modification to the constitution, they should not be forced to "accept part of an initiative proposal which they oppose in order to obtain a change in the

constitution which they support." Fine v. Firestone 448 So.2d 984, 888 (Fla. 1984). The single-subject rule is a constitutional restraint placed on proposed amendments to prevent voters from being trapped in such a predicament. Thus to comply with the single-subject requirement, the proposed amendment must manifest a "logical and natural oneness of purpose." Id. at 990.

In Re Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination, 632 So.2d 1018, 1019-1020 (Fla. 1994). "Logrolling" is "a practice wherein several separate issues are rolled into a single initiative in order to aggregate votes or secure approval of an otherwise unpopular issue." Advisory Opinion to the Attorney General - Fee on Everglades Sugar Production, ("Everglades I"), 636 So.2d 1336, 1339; Everglades II, supra at 1127. The purpose of the single subject rule is to require one discrete question that a voter can wholeheartedly accept or reject. Id.

It cannot be said that the proposed amendment has a single-subject or purpose. It does not for example, prohibit public funding of all election campaigns. Rather, the proposed amendment picks and chooses certain campaigns for which public funding will be prohibited - for Governor, Lieutenant Governor, Cabinet offices, Florida Senate and Florida House of Representatives. The proposed amendment does not prohibit public funding for judicial branch offices, other offices (such as sheriff, clerk of courts, county commissioners, etc.) established by the Florida Constitution,

or the myriad of municipal or special district offices established by law.

As presently structured, the proposed amendment enumerates four classifications of offices for which public funding would be prohibited if the amendment were passed. The voter is essentially being asked to give one "yes" or "no" answer to a proposal that actually asks four questions. For example, a voter may want to prohibit public funding for the Governor and Lieutenant Governor and the Cabinet offices, which are the only offices for which public financing is currently authorized by law, (See Section 106.30 et seq., Florida Statutes), but permit public funding of Florida Senate and Florida House of Representatives offices. Or conversely, a voter may want to continue public funding for the Governor and Lieutenant Governor and the Cabinet offices, (which are statewide races) but prohibit public funding of legislative offices. "Requiring voters to choose which classifications they feel most strongly about, and then requiring them to cast an all or nothing vote on the classifications listed in the amendment, defies the purpose of the single-subject limitation." In Re Advisory Opinion to the Attorney General Restricts Laws Related to Discrimination, supra at 1020.

Floridians do not argue that because the proposed amendment affects multiple branches of government, it

therefore violates the single-subject rule. See, Advisory Opinion to the Attorney General - Limited Political Terms in Certain Elective Offices, 592 So.2d 225, 227 (Fla. 1991). Rather, Floridians argue that the proposed amendment constitutes "logrolling" indistinguishable from that proscribed by this Court in In Re Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination, supra. In that case, this Court concluded that the single-subject requirement of Article XI, Section 3 of Florida Constitution was violated because the proposed amendment required a "yes" or "no" answer on whether ten classifications of persons would be entitled to protection from discrimination if the amendment were passed. 632 So.2d at 1020.

Because the proposed constitutional amendment requires voters to choose which classifications they feel most strongly about, and then requires them to cast an all or nothing vote on the classifications listed in the amendment, it violates the single-subject requirements of Article XI, Section 3 of the State Constitution. Consequently, the proposed constitutional amendment entitled "Prohibiting Public Funding of Political Candidates' Campaigns" should be stricken from the ballot.

ARGUMENT TWO

THE PROPOSED CONSTITUTIONAL AMENDMENT VIOLATES THE SINGLE-SUBJECT REQUIREMENTS OF ARTICLE XI, SECTION 3 OF THE FLORIDA CONSTITUTION BECAUSE IT APPEARS TO ADDRESS ONE THING, BUT IN REALITY HAS OTHER CONSEQUENCES NOT READILY APPARENT.

"The voters should never be put in a position of voting on something that, while appearing to do only one thing, actually will result in other consequences that may not be readily apparent or desirable to the voters. This would be a classic violation of the single-subject requirement.

In Re Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination, supra at 1023 (Kogan, J., concurring.)

The proposed constitutional amendment has two subjects - the obvious and stated one of prohibiting public funding of certain political campaigns, and the unstated one of invalidating existing statutory law permitting public financing of the campaigns for Governor and Lieutenant Governor and the Cabinet offices. A significant and unstated collateral effect would be to eliminate the expenditure limits on campaigns for Governor and Lieutenant Governor and the Cabinet offices which are established by law. See, Section 106.34, Florida Statutes.

By eliminating the possibility of public funding for these campaigns, the expenditure limitation provisions of the current law, which are directly tied to the receipt of public funds in accordance with Buckley v. Valeo, 424 U.S. 936, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976), are, in effect, abrogated. Such a result is not consistent with the requirement that the proposed amendment manifest a "logical and natural oneness of purpose." Fine v. Firestone, supra, at 990.

Because the proposed constitutional amendment puts voters in the position of voting on something that appears to do one thing but in reality does another, in a manner violative of Article XI, Section 3 of the Florida Constitution, the proposed constitutional amendment entitled "Prohibiting Public Funding of Political Candidates' Campaigns" should be stricken from the ballot.

ARGUMENT THREE

THE PROPOSED BALLOT SUMMARY IS NOT LEGALLY SUFFICIENT UNDER SECTION 101.161, FLORIDA STATUTES, IN THAT IT FAILS TO ADVISE THE ELECTORATE OF THE TRUE MEANING AND RAMIFICATIONS OF AN AMENDMENT.

Section 101.161(1), Florida Statutes, provides, in pertinent part, as follows:

Whenever a constitutional amendment or other public measure is submitted to the vote of the people. . .[t]he 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 purpose of Section 101.161, Florida Statutes, is "to assure that the electorate is advised of the true meaning, and ramifications, of an amendment." Askew v. Firestone, 421 So.2d 151, 156 (Fla. 1982). See also, In Re Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination, supra at 1022. "[S]ection 101.161, requires that the ballot title and summary state in clear and unambiguous language the chief purpose of the measure." Askew v. Firestone, supra at 154-155. See also, Advisory Opinion to the Attorney General Re Florida Locally Approved Gaming, 656 So.2d 1259, 1262 (Fla. 1995). The ballot summary

is not required to include all possible effects. Grose v. Firestone, 422 So.2d 303, 305 (Fla. 1982). See also, Advisory Opini to the Attorney General Re Tax Limitation, supra at 868. Nor must the ballot summary "explain in detail what the proponents hope to accomplish." Advisory Opinion to the Attorney General English - The Official Language of Florida, 520 So.2d 11, 13 (Fla. 1988).

However, the ballot title and summary must be "accurate and informative" and "give voters sufficient notice of what they are asked to decide to enable them to intelligently cast their ballots." Advisory Opinion to the Attorney General Re Casino Authorization, Taxation and Regulation, 656 So.2d 466, 468 (Fla. 1995) (quoting Smith v. American Airlines, Inc., 606 So.2d 618, 620-621 (Fla. 1992)).

This Court has a duty "to uphold a proposal unless it can be shown to be 'clearly and conclusively defective.'" Floridians Against Casino Takeover v. Let's Help Florida, 363 So.2d 337, 339 (Fla. 1978) (quoting Weber v. Smathers, 338 So.2d 819, 821 (Fla. 1976)). See also, Advisory Opinion to the Attorney General Re Tax Limitation, supra at 876. The Court, however, will not approve a ballot summary which contains "an ambiguity that will in all probability confuse the voters who are responsible for deciding whether the amendment should be included in the state constitution." In Re Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination; supra at 1021.

Both the summary and the text of the amendment omit any mention that the proposed amendment would repeal the existing public campaign financing law. See, Section 106.30 et seq., Florida Statutes. Both fail to state that the proposed amendment would invalidate the campaign spending limits which are tied to the current public financing law. See, Section 106.34, Florida Statutes. The voter might conclude from the summary that the amendment would restrict only future laws, when, in fact, the amendment would immediately affect current laws.

In several cases this Court has stricken proposed constitutional amendments from the ballot because the ballot summary language was misleading. In Askew v. Firestone, supra, this Court stated that:

Fair notice in terms of a ballot summary must be actual notice consisting of a clear and unambiguous explanation of the measure's chief purpose. The chief purpose of [the proposed amendment] is to remove the two-year ban on lobbying by former legislators and elected officers. The ballot summary, however, does not adequately reflect that purpose and, therefore, does not satisfy the requirements of section 101.161.

Id. at 156.

In Advisory Opinion to the At-torney General Re. Stop Early Release of Prisoners, 642 So.2d 724 (Fla. 1994), this Court found "the ballot summary seriously misleading in its failure to make any mention of the fact that the proposed amendment essentially will abolish parole and conditional release in Florida." Id. at 727.

In Advisory Opinion to the Attorney General Re Casino Authorization, Taxation and Regulation, supra, this Court struck a proposed constitutional amendment from the ballot on the basis of three defects in the title that combined to produce a summary that was fatally defective. Id. at 469. Among the flaws specifically noted was that the ballot summary created a "false impression." Id. In that instance, this Court stated "the summary creates the false impression that casinos are now allowed in Florida. It fails to inform that most types of casino gambling are currently prohibited by statute." Id.

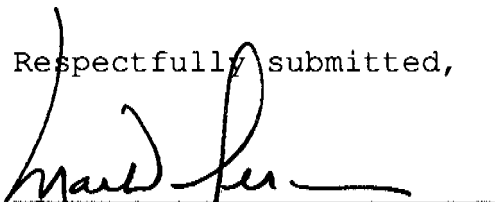
In the instant case, the ballot summary fails to make any mention that its chief purpose is to repeal the existing public financing law. It fails to make any mention of the fact the proposed amendment essentially will abolish the campaign spending limits which form an integral component of the public financing law. The ballot summary, likewise, creates the false impression that executive branch and legislative branch offices are subject to public financing, when, in fact, only executive branch offices are within the scope of the law.

Because of the defects contained in the ballot summary, the proposed constitutional amendment entitled "Prohibiting Public Funding of Political Candidates' Campaigns" should be stricken from the ballot.

CONCLUSION

The initiative petition and the ballot summary should be stricken from the ballot for failure to comply with legal requirements of Article XI, Section 3 of the Florida Constitution, and Section 101,161, Florida Statutes.

Respectfully submitted,



MARK HERRON, ESQUIRE
FL BAR NO. 199737
AKERMAN, SENTERFITT & EIDSON, P.A.
216 S. MONROE STREET, SUITE 200
TALLAHASSEE, FL 32301
(904) 222-3471



CHRISTOPHER R. HAUGHEE, ESQUIRE
FL BAR NO. 242985
AKERMAN, SENTERFITT & EIDSON, P.A.
216 S. MONROE STREET, SUITE 200
TALLAHASSEE, FL 32301
(904) 222-3471

ATTORNEYS FOR:
FLORIDIANS TO PRESERVE CAMPAIGN SPENDING LIMITS

CERTIFICATE OF SERVICE

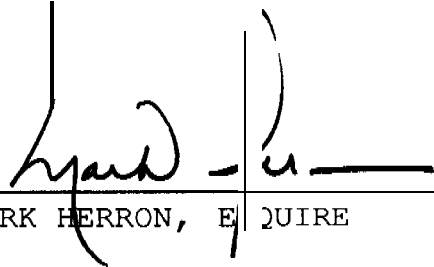
I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail this 11th day of February, 1997 to the following:

The Honorable Robert A. Butterworth
Attorney General
PL-01, The Capitol
Tallahassee, FL 32399

The Honorable Sandra B. Mortham
Secretary of State
PL-02, The Capitol
Tallahassee, FL 32399-0250

Citizens for Campaign and Government
Spending Reform
Post Office Box 513
Orlando, FL 32802-0513

Parker D. Thomson, Esquire
Carol A. Licko, Esquire
R. Amy Blum, Esquire
Thomson Muraro Razook & Hart, P.A.
One Southeast Third AV
Suite 1700
Miami, FL 33131


MARK HERRON, ESQUIRE