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FLORIDA By

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Case No. 89,667

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Upon Request From The Attorney General  
For Advisory Opinions As To The  
Validity Of Proposed Amendment

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ADVISORY OPINION  
TO THE ATTORNEY GENERAL RE:  
PROHIBITING PUBLIC FUNDING OF  
POLITICAL CANDIDATES' CAMPAIGNS

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INITIAL BRIEF AND APPENDIX OF  
COMMON CAUSE/FLORIDA OPPOSING THE  
VALIDITY OF THE PROPOSED INITIATIVE AMENDMENT

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FLORIDA CONSTITUTION

Article III . . . . . 16  
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FLORIDA STATUTES

Section 101.161(1), Florida Statutes (1995) . . . . . Passim  
Section 106.30 et. seq., Florida Statutes (1995) . . . . . 1, 8

In accordance with Article IV, Section 10 of the Florida Constitution and Section 16.061, Florida Statutes (1991), the Attorney General has petitioned this Court for an advisory opinion as to the compliance of the proposed amendment Prohibiting Public Funding of Political Candidates' Campaigns ("Prohibiting Public Funding") , set forth in the Appendix hereto, with the applicable constitutional and statutory requirements. The proposal would bar public funding of campaigns for Governor, Lieutenant Governor, the Cabinet, the Florida Senate, and the Florida House of Representatives and dispose of any remaining funds heretofore set aside for these purposes.

Common Cause/Florida is a nonpartisan citizens' lobbying organization which has been dedicated to election and government reform since its 1974 formation. Common Cause/Florida was instrumental in the 1986 passage of the "Florida Election Campaign Financing Act," Section 106.30 et. seq., Florida Statutes (1995) (the "Act") . Common Cause/Florida and its parent national organization, Common Cause, Inc., have consistently supported public funding of campaigns as a method of avoidance of election abuse. In pursuit of this **goal**, Common Cause/Florida submits this brief as an interested party.

#### SUMMARY OF ARGUMENT

Prohibiting Public Funding is invalid because the title and summary are misleading in violation of Section 101.161(1), Florida Statutes (1995), and because the text violates the single subject rule of the Florida Constitution.

The Title and Summary Are Misleading

Prohibiting Public Funding misleads the voters by failing to state in its ballot title and summary that its enactment will result in the repeal of existing detailed legislation that provides for matching public contributions of candidates for statewide offices who agree to limit campaign expenditures, personal contributions, and loans and implies that the proposed amendment has a significant positive impact on the State's general revenue. Section 101.161(1), Florida Statutes (1995) mandates that the ballot title and summary for a proposed amendment be clear and not mislead the voting public. This Court has repeatedly struck down initiative petitions which fail to meet these statutory requirements. Here, once again, the title and summary of this initiative petition, if allowed on the ballot, would mislead in critical ways:

The ballot title and summary omit any reference to the present statutory campaign financing law contained within the Act and the repeal thereof that the proposal would cause. This failure to disclose implies that this initiative writes on a clean slate. But the real purpose of the proposed initiative is to erase the writing presently on the slate, This Court has often recognized in passing on the validity of proposed initiative amendments that sins of omission are as misleading as sins of commission.

In contrast to what the ballot summary does not say, the summary's text both misleads and confuses by taking almost half of

its length to discuss disposal of the residue of "public campaign financing accounts" and by implying that approval of the initiative would materially increase the "general revenue fund."

Further, **the language used in the summary is laden with improper emotional and political overtones.**

This court has frequently declared that proposed amendments cannot mislead voters or "fly **under** false colors." Askew v. Firestone, 421 So.2d 151, 156 (Fla. 1982). Prohibiting Public Funding falls far short of the disclosure and clarity requirements of Section 101.161(1). This Court should so find.

#### **The Initiative Covers More Than One Subject**

Article XI, section 3 of the Florida Constitution mandates that a proposed amendment "**shall embrace but one subject** and matter directly connected therewith." The **proposed initiative** amendment repeals existing law by prohibiting any public funding of campaigns for the executive offices of Governor and Lieutenant Governor (who run as a ticket), and the Cabinet and further prohibits **any** future public funding of campaigns for the legislative offices of the Florida Senate and the Florida House of Representatives. In so doing, the proposal merges statewide and local electoral campaigns although significantly different issues may exist as to the appropriateness of public financing of each of these. Thus, the voters must accept multiple amendments, though they may wish to reject one or more of these. This improper process has been termed "logrolling," putting multiple questions to the voters within a "**single**" proposed amendment.

Further, the proposed amendment violates the single subject mandate by substantially altering and performing the functions of more than one branch of government.

#### Petition of the Attorney General

The Attorney General's petition sets for the applicable standards for judging the validity of the title and summary. But its subsequent discussion offers no consideration of the failure of the title and summary to describe its effective repeal of existing law (and its failure to even mention that law). The petition's failure so to do makes erroneous its conclusion that "the ballot title and summary advise the voters of the chief purpose of the amendment."

The petition further appears to conclude that although the proposal affects different branches of the government, this, in and of itself, does not violate the single subject rule by reason of this Court's decision in Advisory Opinion to The Attorney General--Limited Political Terms in Certain Elective Offices, 592 So.2d 225 (Fla. 1991) ("Limited Political Terms"). However, Limited Political Terms does not validate a proposal which substantially alters the present functioning of more than one branch of government, and as discussed below, this proposal does so.

#### ARGUMENT

The legal requirements underlying the drafting, analysis, and interpretation of proposed amendments are well established. The grounds upon which this Court may review such proposals are



equally established and limited to: "(1) whether the proposed amendment violates the single subject requirement in article XI, section 3, of the Florida Constitution . . . and (2) whether the ballot title and summary are misleading and thus violate section 101.161(1), Florida Statutes."

I. **THE TITLE AND SUMMARY OF THE PROPOSED AMENDMENT PROHIBITING PUBLIC FUNDING OF POLITICAL CANDIDATES' CAMPAIGNS ARE MATERIALLY MISLEADING**

Section 101.161(1), Florida Statutes (1995) provides:

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.

This Court often has explained that the statute requires that both title and summary 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 446 (Fla. 1995) ("Casino I") (quoting Smith v. American Airlines, Inc., 606 So.2d 618, 620-21 (Fla.1992)) (emphasis added).

The right to vote is dependent upon the right to vote intelligently on a valid, and not misleading, proposal. This is what section 101.161(1) requires. Both title and summary must be clear and not misleading. Smith, 606 So.2d at 621. A proposal which would be misunderstood by the average person is invalid.

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<sup>1</sup> Advisory Opinion to the Attorney General--Fee on Everslades Sugar Production ("Everglades II"), 681 So.2d 1124, 1125 (Fla. 1996).

1. **The Summary of the Proposed Amendment Materially Misleads in that it Fails to Advise Voters of the Amendment's Chief Purpose - To Repeal the Florida Election Campaign Financing Act Adopted by The Florida Legislature**

The primary purpose of the initiative patently is to trump the legislature's decision to provide for matching public financing of candidates in statewide elections who agree to limit expenditures, personal contributions, and loans. The proposal effectively repeals that which is presently permitted and would void the Act.

The proposed initiative bans public campaign financing of precisely the same offices for which the Act provides such financing -- Governor and Lieutenant Governor (on the same ticket), and members of the Cabinet -- and extends this bar to the offices of Florida Senate and House of Representatives. The proposal would also abolish the Election Campaign Financing Trust Fund ("Trust Fund"), an integral part of the legislature's intended campaign finance reform through the Act. But the proposal does not even mention the Act's (nor the Trust Fund's) existence. Nowhere is this primary purpose of repeal disclosed in the title or summary.

A ballot summary must "state in clear and unambiguous language the chief purposes of the measure." Advisory Opinion to the Attorney General-Fee on Everglades Sugar Production, 636 So.2d. 1336, 1341 (Fla. 1995) ("Everglades I") (quoting Askew v. Firestone, 421 So.2d at 154-55). These must be "fair and advise voters of the chief objectives of the proposed amendment so that voters may intelligently cast their ballots." Advisory Opinion to

the Attornev General Re Stop Early Release of Prisoners 642 So.2d  
724, 725 (Fla. 1994) ("Early Release I"); see also Everglades I,  
636 So.2d at 1341 (requiring ballot title and summary to enable  
voters to "cast an intelligent and informed ballot"). If important  
aspects of a proposal are not discernable by a voter carefully  
reading the full text of the ballot title and summary, it is  
invalid.

No average voter would be aware from the text of the  
proposed amendment's title or summary of the prior careful  
consideration by the legislature of the issue or of the Act. Prior  
to enacting the Act in 1986, the legislature made specific findings  
that the high costs of modern campaigns limit candidates to the  
independently wealthy or those supported by special interests; that  
this has reduced public trust in elected officials; and that public  
campaign financing is in the public interest.<sup>2</sup> Further, the Act

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<sup>2</sup> The legislative intent of the Act, stated in Section  
106.31, reads in full:

The Legislature finds that the costs of running an  
effective campaign for statewide office have reached a  
level which tends to discourage persons from becoming  
candidates and to limit the persons who run for such  
office to those who are independently wealthy, who are  
supported by political committees representing special  
interests which are able to generate substantial campaign  
contributions, or who must appeal to special interest  
groups for campaign contributions. The Legislature  
further finds that campaign contributions generated by  
such political committees are having a disproportionate  
impact vis-a-vis contributions from unaffiliated  
individuals, which leads to the misperception of  
government officials unduly influenced by those special  
interests to the detriment of the public interest. The  
Legislature intends ss. 106.30-106.36 to alleviate these  
factors, dispel the misperception, and encourage  
qualified persons to seek statewide elective office who

authorizes public financing through matching contributions from the Trust Fund only to candidates agreeing to abide by limits on expenditures, on contributions from the candidate or the candidate's political party, and on loans from the candidate's personal funds. See, Section 106.34, Florida Statutes. The terms of the existing Act are detailed and complex. See, Sections 106.30-106.36, Florida Statutes.

No average voter would know from title or summary of the existence of this legislative finding, the Trust Fund, or the Act. Controlling decisions of this Court would, for this reason, invalidate the proposal.

Askew concerned a joint resolution by the legislature entitled "Financial Disclosure Required Before Lobbying by Former Legislators and Statewide Elected Officials." It proposed to allow former elected officials to lobby before state government agencies and bodies from the day they left office if they made full, public financial disclosure. The proposed ballot title and summary failed to reveal that the proposed amendment would remove the existing constitutional bar to all lobbying by former government officials before their former agency or office for two years after leaving office. By failing to inform the voters that existing law prohibited lobbying and that the proposal would change that existing regulatory regime, the voters were misled into believing a proposed weakening of lobbying standards **was** a reform. Therefore, this Court invalidated the proposal.

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would not, or could not, otherwise do so.

Early Release I<sup>3</sup> involved a proposed amendment titled "Stop Early Release of Prisoners," the full summary of which read "[a] state constitutional amendment to ensure that state prisoners serve at least eighty-five percent of their sentence." However, the proposal failed to reveal the constitutional authority of the legislature to create a pardon and parole commission, the legislature's statutory exercise of such authority, and the proposal's effective elimination of the legislative authority and the pardon and parole commission. This, too, this court invalidated.

In Casino I, this Court invalidated a proposal entitled "Casino Authorization, Taxation and Regulation" as misleading. As here, the Casino I ballot summary contained misleading omissions. The ballot summary there stated that "[t]his amendment prohibits casinos unless approved by the voters of any county . . ." This Court reasoned that the ballot summary gave the false impression that casino gaming already was allowed in Florida. The proposal failed to make known the "admission" that Florida already prohibited most casino gaming by statute. Id. at 469. Thus, voters might well conclude that the proposal limited existing casino gaming when, in reality, it would allow it for the first time. Citing Askew, this Court confirmed that language may be "misleading not because of what it **says**, but what it fails to say."

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<sup>3</sup> A revised and corrected early release proposal was validated in Advisory Opinion to the Attorney General re Stop Early Release of Prisoners, 661 So.2d 1204 (Fla. 1995).

Evans v. Firestone, 457 So.2d 1351 (Fla. 1984) involved a proposal entitled "Citizen's Rights in Civil Actions" which limited non-economic damages, limited recovery from joint tortfeasors, and promoted summary judgments. This Court found that "[t]he limitation of noneconomic damages was "clearly the chief purpose , . . . Just as it is clearly misleading to reveal only one half of a . . . 'trade off' in the ballot summary . . . , so is it fatally misleading to imply a constitutional trade-off where none is, in fact, contemplated." Id., at 1355.

The full ballot title and summary of In re Advisory Opinion To The Attorney General--Restricts Laws Related to Discrimination, 632 So.2d 1018 (Fla. 1994) ("In re Discrimination") read:

Laws Relating to Discrimination are Restricted to Certain Classifications: Restricts laws related to discrimination to classifications based upon race, color, religion, sex, national origin, age, handicap, ethnic background, marital status, or familial status. Repeals all laws inconsistent with this amendment.

This Court held the proposal defectively misleading. First, the proposal did not state that it would curtail both present and future authority of government entities. Second, it did not clarify the nature of laws and regulations that would be repealed. Id., at 1021.

Finally, Smith v. American Airlines found invalid a proposed amendment to tax leaseholds of government property. The ballot summary to that proposal neglected to explain the types and rates of tax it would apply to post-1968 leases as opposed to pre-

1968 leases, This Court observed that any voter would be confused, even one educated in ad valorem tax law. Further, " . . . availability of public information cannot be a substitute for an accurate and informative ballot summary." Id., at 621.

The initiative proposal here before the Court never refers to the existing Act or Trust Fund nor to the effective repeal thereof that the proposal would accomplish. It simply makes the misleadingly bare statement that "[u]pon passage, any funds remaining in public campaign financing accounts will be used to satisfy existing obligations, then treated as general revenue for the State." While a proposal need not "explain every ramification of proposed constitutional amendment, only the chief purpose," Everglades I (quoting Carroll v. Firestone, 497 So.2d 1204, 1206 (Fla. 1986)), it must inform voters of significant changes it will cause. This title and summary not only utterly fail to disclose the impact of the initiative on present law, but affirmatively pass the proposal off as increasing general revenue.

2. **The Proposal Misleads the Voters as to Revenue Effects**

The ballot summary of Prohibiting Public Funding reads: "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." These 25 words (of a total 55) create confusion regarding the proposal's effect on revenue. An average voter reading the summary is induced to believe that passage of the amendment would generate significant general revenue. The summary's reference to "existing obligations" is also

unclear. That reference, read in context with the remainder of the sentence, implies that existing State obligations would be satisfied by passage.

The ballot summary's emphasis on the disposition of campaign accounts implies that these accounts have importance in satisfying "existing obligations" and raising "general revenue for the State." Voters could hardly realize that this almost-half-the-summary relates only to the small residue which will be left in various campaign account election funds. Through this misleading use of language, the proponents of this proposal seek to make the tail into the dog. The average voter reading the proposal's ballot summary would believe both that the funds governed are significant and that the proposal quite likely generates revenue for the State.

In Early Release I, in which a proposal was invalidated due to omissions, this Court held its ballot summary defective in commission as well. It promised to "ensure" an end to early release, but early release through gubernatorial clemency remained. Similarly, the proposed initiative here implies a promise of satisfying State obligations and increasing the general revenue. Everglades II upheld a proposed amendment including within it a proposed levy regardless of whether that levy was properly characterized as a tax or **as** a fee. To do that, this Court first found that the proposal at issue presented no confusion as "to who pays, how much they pay . . . and the general purpose of payment." Everglades II, 681 So.2d at 1129. To the contrary, the ballot summary of Prohibiting Public Funding is a classic example of



misleading the voters as to "the general purpose of" both the proposal and payments to the general revenue.

Prohibiting Public Funding not only fails to even reference the Act or Trust Fund it abolishes; the summary's actual references to first "satisfy[ing] existing obligations" (whatever they may be) and, second, "treated **as** general revenue for the State" is nothing short of a deliberate attempt to confuse.

3. **The Proposal is Guilty of Using Emotional, Political Rhetoric**

Finally, the ballot summary's use of the terms "satisfy existing obligations" and "treated as general revenue" has a misleading emotional and political appeal. This language and the great portion of the ballot summary it occupies strikes the emotional chord of saving taxpayer money and generating revenue. This language has the same misleading affect as the political rhetoric this Court denounced in Casino I and Everglades I. In Casino I, this Court found the statement that "[t]his amendment prohibits casinos unless approved by the voters . . ." questionable "political rhetoric." 656 So.2d at 469. Everglades I stated that a proposed amendment should be stricken where the ballot "summary more closely resembles political rhetoric than it does an accurate and informative synopsis of the meaning and effect of the proposed amendment." 636 So.2d at 1342.

4. **Misleading Proposals Such as Prohibiting Public Funds Prevent Intelligent Electoral Decisions**

It is fundamental that the people's empowerment to vote be a true empowerment based upon a voter's ability to vote pursuant to understanding -- and not misunderstanding -- the ballot. See, Advisory Opinion to the Attorney General Re: Tax Limitation, 644 So.2d 486 (Fla. 1994) ("Tax Limitation I"). In re Discrimination explained that "[a]lthough we are wary of interfering with the public's right to vote on an initiative proposal, Smith V. American Airlines, 606 So.2d 618 (Fla. 1992), we are equally cautious of approving the validity of a ballot summary that is not clearly understandable." (emphasis added) Empowerment to vote is nullified when, as here, the voters cannot make an informed decision as to their votes.

As this Court declared in Askew, 421 So.2d at 156 "[a] proposed amendment may not fly under false colors . . . The burden of informing the public should not only fall on the press and the opponents of the measure -- the ballot title and summary must do this." Id., at 156. Prohibiting Public Funding violates these standards and should be found fatally misleading and invalid.

**II. THE PROPOSAL VIOLATES THE SINGLE-SUBJECT RULE**

Article XI, section 3 of the Florida Constitution mandates that a proposed amendment "embrace but one subject and matter directly connected therewith." This Court consistently has stated certain guiding principles upon the single subject rule.

However, the proponents of Prohibiting Public Funding have failed to conform to these principles.

The first of these tenets is that a proposed amendment possess a "oneness of purpose" and, concomitantly, not alter or perform multiple government functions. As expressed in In re Discrimination, 632 So.2d at 1020, "[t]o ascertain whether the necessary 'oneness of purpose' exists, we must consider whether the proposal affects separate functions of government..." Second, the single subject rule "is a rule of restraint . . ." Everglades I, 636 So.2d at 1339. The amendment process must allow the electorate to "propose and vote on singular changes in the functions of our governmental structure." Id. (quoting Fine v. Firestone, 448 So.2d 984, 988 (Fla. 1984)).

**1. The Proposal Improperly Alters and Performs Multiple Government Functions**

This Court interprets the single subject rule as a test of whether a proposed amendment "substantially alters or performs" the functions of more than one branch of government. Everglades I, 636 So.2d at 1340; Tax Limitation I, 644 So.2d at 494 (Fla. 1994) (striking a proposed amendment which ". . . substantially alter[ed] the functions of the executive and legislative branches of state government . . ." by affecting the ability of all levels of state and local government to tax).

Limited Political Terms held that a unitary proposal to set term limits on both executive and legislative offices did not violate the single subject rule. This case merely represents the general rule that ". . . a proposal may affect several branches of

government and still pass muster" if it affects the several branches indirectly and insubstantially. Id., at 494. The initiative presented here, however, substantially alters the present functioning of more than one branch of government. The proposal combines a ban on public funding of campaigns for statewide executive office under Article IV of the Florida Constitution (Governor, Lieutenant Governor, and Cabinet), as to which matching public funding is permitted (in exchange for a limitation on expenditures, personal contributions and loans), with that for legislative office under Article III of the Florida Constitution (Senators and Representatives), as to which public funding is not presently permitted. In doing so, it has collateral effects on the process of elections to both branches in fundamental **ways**: the very ability of citizens to run for election and the method of so running.

## 2. **The Proposal Is Guilty Of Logrolling**

A second function of the single-subject rule is to prevent logrolling, "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." Everslades I, 636 So.2d at 1339; Everglades II, 681 So.2d at 1127. The single subject rule's purpose is to require one discrete question that a voter can wholeheartedly accept or reject. Id.

In Prohibiting Public Funding, the voters are constrained to eliminate or retain public funding of campaigns for both statewide executive and local legislative branches. In re

Discrimination, 632 So.2d at 1020, found that a proposal which would ban laws relating to discrimination except in the case of ten classifications, such as race and religion, unconstitutionally combined ten questions. A voter there would be faced with the improper dilemma of accepting all or none of the ten classifications, though he might "want to support protection from discrimination based upon race and religion" but not marital status. Id.

Higher monetary hurdles exist in a campaign for statewide executive office than for a single legislative seat. A voter may desire to support public funding of statewide executive (or only gubernatorial) campaigns, but not of Senate or House campaigns. Alternatively, a voter might determine that issues of political fundraising committee influence and campaign expenditure limits are significant for some offices, but not others. Yet, the proposed amendment unconstitutionally would force the voter to an all or nothing decision.

The Florida Constitution's single subject rule is important in the initiative amendment process, which lacks opportunities for public hearing and debate prior to a proposal's debut upon the ballot. Further, the Court lacks statutory authority to redraft misleading petitions or rule on their constitutionality in advance. Everslades I, 636 So.2d at 1339 (quoting Fine, 448 So.2d at 988); Casino I, 656 So.2d at 470 (repeating the need to revise the amendment process to avoid these problems).

Finally, the process of obtaining sufficient public support to place a proposed amendment on the ballot is a lengthy and difficult one. As stated by this Court, "proposal of amendments to the Constitution is a highly important function of government, that should be performed with the greatest certainty, efficiency, care and deliberation." Askew, 421 So.2d at 155 (quoting Crawford v. Gilchrist, 59 So. 963, 968 (1912)). It is both essential and beneficial that the people be offered a proposal complying with these foundational principles.

#### CONCLUSION

For the reasons discussed herein and in other briefs filed with the Court in opposition to the Prohibiting Public Funding initiative, this Court should determine that the petition's summary and title are misleading and its text violates the single subject rule.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was furnished by mail to the following on this; 10th day of February, 1997:

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\_\_\_\_\_  
Parker D. Thomson  
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APPENDIX

The petition provides:

BE IT ENACTED BY THE PEOPLE OF FLORIDA THAT:

1) Amendment to 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 law, 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.