

SUPREME COURT OF FLORIDA

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ADVISORY OPINION TO THE       \*\*  
ATTORNEY GENERAL               \*\*

RE: AMENDMENT TO BAR           \*\*  
GOVERNMENT FROM TREATING       \*\*  
PEOPLE DIFFERENTLY BASED       \*\*  
ON RACE IN PUBLIC EDUCATION   \*\*

CASE NO. 97,086

ADVISORY OPINION TO THE       \*\*  
ATTORNEY GENERAL               \*\*

RE: AMENDMENT TO BAR           \*\*  
GOVERNMENT FROM TREATING       \*\*  
PEOPLE DIFFERENTLY BASED       \*\*  
ON RACE IN PUBLIC               \*\*  
EMPLOYMENT                      \*\*

CASE NO. 97,087

ADVISORY OPINION TO THE       \*\*  
ATTORNEY GENERAL               \*\*

RE: AMENDMENT TO BAR           \*\*  
GOVERNMENT FROM TREATING       \*\*  
PEOPLE DIFFERENTLY BASED       \*\*  
ON RACE IN PUBLIC               \*\*  
CONTRACTING                     \*\*

CASE NO. 97,088

ADVISORY OPINION TO THE       \*\*  
ATTORNEY GENERAL               \*\*

RE: END GOVERNMENTAL           \*\*  
DISCRIMINATION AND             \*\*  
PREFERENCES AMENDMENT         \*\*

CASE NO. 97,089

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AMENDED INITIAL BRIEF OF  
FLORIDIANS REPRESENTING EQUITY AND EQUALITY

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**STATEMENT OF THE CASE AND FACTS**

Pursuant to the provisions of Article IV, Section 10, Florida Constitution, and Section 101.161, Florida Statutes, the Attorney General has petitioned this Court for a written opinion as to whether the text of each of four initiative petitions comply with Article XI, Section 3, Florida Constitution, and whether the proposed ballot title and summary of each comply with Section 101.161, Fla. Stat. The initiative petitions are entitled:

1. "Amendment to Bar Government from Treating People Differently Based on Race in Public Education" (herein referred to as the "Public Education Amendment"). A copy of this initiative petition, including ballot title and summary, is set forth in Appendix I.

2. "Amendment to Bar Government from Treating People Differently Based on Race in Public Employment" (herein referred to as the "Public Employment Amendment"). A copy of this initiative petition, including ballot title and summary, is set forth in Appendix II.

3. "Amendment to Bar Government from Treating People Differently Based on Race in Public Contracting" (herein referred to as the "Public Contracting Amendment"). A copy of this

initiative petition, including ballot title and summary, is set forth in Appendix III.

4. "End Governmental Discrimination and Preferences Amendment" (herein referred to as the "Discrimination and Preferences Amendment"). A copy of this initiative petition, including ballot title and summary, is set forth in Appendix IV.

This Court's orders dated December 2, 1999, this Court directed interested parties to file briefs on or before December 22, 1999, addressing whether the amendments comply with the requirements of Article XI, Section 3, Florida Constitution, and Section 101.161, Florida Statutes. Also, in an order dated December 2, 1999, this Court consolidated, *sua sponte*, the separate petitions the Attorney General submitted for all appellate purposes.

Floridians Representing Equity and Equality (FREE) is a not-for-profit corporation, established pursuant to Chapter 617, Florida Statutes, to advocate for preserving and protecting current laws that ensure equal opportunity in employment, education, housing, procurement and contracting opportunities for all Floridians. Separate from its corporate existence and purpose, a political committee has been established and registered pursuant to Chapter 106, Florida Statutes, as "Floridians Representing Equity

and Equality" to oppose the four initiative petitions that the Attorney General has submitted to this Court. As an interested party, FREE submits this brief.



## SUMMARY OF ARGUMENT

In this proceeding, this Court is limited to determining two legal issues:

(1) Whether the proposed amendment violates the single-subject requirement of Article XI, Section 3 of the Florida Constitution, and (2) whether the ballot title and summary of the proposed amendment are misleading, in violation of Section 101.161, Florida Statutes (1997), See *Advisory Opinion to the Attorney Gen. re People's Property Rights Amendments*, 699 So. 2d 1304, 1306 (Fla. 1997); *Advisory Opinion to the Attorney Gen. re Tax Limitation*, 644 So. 2d 486, 489-90 (Fla. 1994).

*Advisory Opinion to the Attorney General re Term Limits Pledge*, 718 so. 2d 798, 801 (Fla. 1998). FREE concurs with the Attorney General's Opinion that each of the initiative petitions violates the single-subject requirement of Article XI, Section 3, Florida Constitution, and that each of the ballot titles and summaries of the initiative petitions is misleading, in violation of Section 101.161, Florida Statutes.

Each of the initiative petitions presented for review in this proceeding violates the single-subject requirements of Article XI, Section 3, Florida Constitution, in two respects. First, each embraces multiple subjects impermissibly "logrolling" several separate and discrete issues into a single initiative in order to

secure approval. Voters are asked to cast a single vote on the four classifications listed in the proposed Public Education Amendment, the Public Employment Amendment, and the Public Contracting Amendment in addition to being asked to apply prohibitions to numerous levels of government. In essence, these initiatives ask numerous separate and distinct questions. The Discrimination and Preferences Amendment asks voters to cast a single vote on the five classifications listed in that initiative in addition to combining all the questions presented in the Public Education Amendment, the Public Employment Amendment and the Public Contracting Amendment.

The title and ballot summary of each of the initiatives fail to advise the voters of the true meaning and ramification of the initiative, as required by Section 101.161, Florida Statutes. The title and ballot summaries of the Public Education Amendment, the Public Employment Amendment and the Public Contracting Amendment mislead the voters to believe that they only bar government from treating people differently based on race, when they, in fact, contain additional proscriptions. Moreover, each title and ballot summary fails to note that the initiative perpetuates and establishes as a matter of state constitutional law that people will be treated differently based on circumstances outlined in each

initiative. Each ballot summary fails to advise voters that the initiative amends existing provisions of the State Constitution, limits the power of the legislative and judicial branches of government beyond the limitations stated in the initiatives, extends certain protections to corporations, limits the right to bargain collectively, and invalidates numerous existing laws, rules and regulations at all levels of government.

ARGUMENT I

EACH INITIATIVE VIOLATES THE SINGLE-SUBJECT REQUIREMENT OF ARTICLE XI, SECTION 3 OF THE FLORIDA CONSTITUTION BECAUSE EACH "LOGROLLS" SEVERAL SEPARATE AND DISTINCT ISSUES INTO A SINGLE INITIATIVE PROPOSAL.

Article XI, Section 3, Florida Constitution, requires that any revision or amendment proposed through the citizen 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 x-e Term Limits Pledge, supra* at 801. The single-subject requirement applies only to the citizen initiative method of amending the State Constitution. *Id.* This Court has explained

that the single-subject limitation exists because section 3 does not afford the same opportunity for public hearing and debate that accompanies the proposal and drafting processes of sections 1, 2 and 4. Accordingly, section 3 protects against multiple "precipitous" and "cataclysmic" changes in the constitution by limiting to a single-subject what may be included in any one amendment proposal,

*Advisory Opinion to the Attorney General re Fish and Wildlife Conservation Commission, 705 So. 2d 1351, 1353 (Fla. 1998).*

In addition, the single-subject rule prevents "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." *In re Advisory Opinion to the Attorney General - Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994).

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, 988 (Fla. 1984). The single-subject rule is a constitutional restraint placed on proposed amendments to prevent voters from being trapped in such a predicament. *Id.* at 990.

*In re Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1019-20 (Fla. 1994).

The single-subject rule requires one discrete question that a voter may wholeheartedly accept or reject.

The Public Education Amendment, the Public Employment Amendment, and the Public Contracting Amendment each requires voters to cast a single vote on the four classifications listed in the proposed amendment: race, color, ethnicity, and national origin. See, Public Education Amendment at §1 - Appendix I; Public Employment Amendment at §1 - Appendix II; and Public Contracting Amendment at §1 - Appendix III. The Discrimination and Preferences

Amendment requires voters to cast a single vote on the five classifications listed in the proposed amendment: race, sex, color, ethnicity and national origin. See, Discrimination and Preferences Amendment at §1 - Appendix IV.

The choice that each of the four initiatives presents to the voter is essentially the same choice presented in *In re Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination, supra*:

The proposed amendment violates the single-subject requirement because it enumerates ten classifications of people that would be entitled to protection from discrimination if the amendment were passed. The voter is essentially being asked to give one "yes" or "no" answer to a proposal that actually asks ten questions. For example, a voter may want to support protection from discrimination for people based on race and religion, but oppose protection based on marital status and familial status. 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, deters the purpose of the single-subject limitation. Therefore, the proposed amendment fails the single-subject requirement of Article IV, Section 3 of the Florida Constitution.

*Id.* at 1020. Each initiative petition before the Court, likewise, requires voters to choose the classifications they feel most

strongly about, and then requires "them to cast an all or nothing vote on the classifications listed" in the initiatives.

Prohibited "logrolling" is also evident in the scope of the initiatives. Each defines "state" to include, but not necessarily be limited to, "the state itself, any city, county, district, public college or university, or other political subdivision or governmental instrumentality of or within the state." See, Public Education Amendment at §6 - Appendix I; Public Employment Amendment at §6 - Appendix II; Public Contracting Amendment at §6 - Appendix III; and Discrimination and Preferences Amendment at §7 - Appendix IV. Because it affects all levels of education, the Public Education Amendment forces voters who wish to remove preferential treatment in higher education, but not in primary education grades K-12, to cast an all or nothing vote affecting all levels of education. Because it affects all types of employment at all levels of government, the Public Employment Amendment forces a voter who wishes to remove preferential treatment in certain types of employment or at certain levels of government to express approval or disapproval of the initiative on all types of employment at all levels of government. Similarly, because it affects all levels of public contracting, the Public Contracting Amendment forces voters who wish to remove preferential treatment

at the local level, but not at the state level, to cast a "yes" or "no" vote affecting all levels of contracting. Combining all the issues presented in the Public Education Amendment, the Public Employment Amendment, and the Public Contracting Amendment into the Discrimination and Preferences Amendment multiplies the "logrolling" effect.

#### ARGUMENT II

EACH INITIATIVE VIOLATES THE SINGLE-SUBJECT REQUIREMENT OF ARTICLE XI, SECTION 3 OF THE FLORIDA CONSTITUTION BECAUSE IT ALTERS SEPARATE FUNCTIONS OF MULTIPLE BRANCHES OF GOVERNMENT.

In order to comply with the single-subject requirement, an initiative petition must manifest a "logical and natural oneness of purpose." *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984). In determining "oneness of purpose," this Court must consider "whether the proposed amendment affects separate functions of government, as well as how it affects other provisions of the constitution." *Advisory Opinion to the Attorney General re Term Limits Pledge*, 718 So. 2d 798, 802 (Fla. 1998). The Public Education Amendment, the Public Employment Amendment and the Public Contracting Amendment each prohibit the "state," as defined, from treating persons differently based on race, color, ethnicity, and national origin. The subject of treating persons differently constitutes an



expansive generality that encompasses civil rights and the power of state and local governmental bodies and other entities. The Discrimination and Preferences Amendment prohibits "discrimination" or the "grant of preferential treatment" on the basis of "race, sex, color, ethnicity, or national origin." These, too, are subjects of expansive generality that encompass civil rights and the power of state and local governmental bodies. This Court has held that "enfolding disparate subjects within the cloak of a broad generality does not satisfy the single-subject requirement." *Evans v. Firestone*, 457 So. 2d 1351, 1353 (Fla. 1984), cited *in In re Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination, supra* at 1020.

Each of the initiative petitions limits the power of the Legislature to provide penalties for violation of requirements of each initiative. The Public Education Amendment, the Public Employment Amendment and the Public Contracting Amendment each provide:

The remedies available for violations of this section shall be the same, regardless of the injured party's race, color, ethnicity, or national origin, **as** are otherwise available for violations of **then existing** Florida employment discrimination law.

(emphasis added.) See, Public Education Amendment at §7 - Appendix I; Public Employment Amendment at §7 - Appendix II; and Public Contracting Amendment at §7 - Appendix III. The Discrimination and Preferences Amendment is identical with the addition of the word "sex" after the word "race." See, Discrimination and Preferences Amendment at §8 - Appendix IV.

Each initiative adopts the current remedies set forth in the "Florida Civil Rights Act," Part I, Chapter 760, Florida Statutes. Remedies include the right to sue for unlawful discrimination pursuant to Section 760.07, Florida Statutes, and the right to file a complaint with the Florida Human Relations Commission seeking administrative determination of whether unlawful discrimination has occurred, pursuant to Section 760.11, Florida Statutes. Judicial remedies include:

In any civil action brought under this section, the court may issue an order prohibiting the discriminatory practice and providing affirmative relief from the effects of the practice, including back pay. The court may also award compensatory damages, including, but not limited to, damages for mental anguish, loss of dignity and any other intangible injuries, and punitive damages. The provisions of ss. 768.72 and 768.73 do not apply to this section. The judgment for the total amount of punitive damages awarded under this section to an aggrieved person shall not exceed \$100,000. In any action or proceeding

under this subsection, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs. It is the intent of the Legislature that this provision for attorney's fees be interpreted in a manner consistent with federal case law involving a Title VII action. The right to trial by jury is preserved in any such private right of action in which the aggrieved person is seeking compensatory or punitive damages, and any party may demand a trial by jury. The commission's determination of reasonable cause is not admissible into evidence in any civil proceeding, including any hearing or trial, except to establish for the court the right to maintain the private right of action. A civil action brought under this section shall be commenced no later than 1 year after the date of determination of reasonable cause by the commission. The commencement of such action shall divest the commission of jurisdiction of the complaint, except that the commission may intervene in the civil action as a matter of right. Notwithstanding the above, the state and its agencies and subdivisions shall not be liable for punitive damages. The total amount of recovery against the state and its agencies and subdivisions shall not exceed the limitation as set forth in §. 768.28(5).

Section 760.11(5), Florida Statutes. Administrative remedies include:

(6) Any administrative hearing brought pursuant to paragraph (4)(b) shall be conducted under ss. 120.569 and 120.57. The commission may hear the case provided that the final order is issued by members of the commission who did not conduct the hearing or the commission may request that it be heard by an administrative law judge pursuant to s. 120.569(2)(a). If the commission elects to

hear the case, it **may** be heard by a commissioner. If the commissioner, after the hearing, finds that a violation of the Florida Civil Rights Act of 1992 has occurred, the commissioner shall issue an appropriate proposed order in accordance with chapter 120 prohibiting the practice and providing affirmative relief from the effects of the practice, including back pay. If the administrative law judge, after the hearing, finds that a violation of the Florida Civil Rights Act of 1992 has occurred, the administrative law judge shall issue an appropriate recommended order in accordance with chapter 120 prohibiting the practice and providing affirmative relief from the effects of the practice, including back pay. Within 90 days of the date the recommended or proposed order is rendered the commission shall issue a final order by adopting, rejecting, or modifying the recommended order as provided under ss. 120.569 and 120.57. The 90-day period may be extended with the consent of all the parties. An administrative hearing pursuant to paragraph (4)(b) must be requested no later than 35 days after the date of determination of reasonable cause by the commission, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs. It is the intent of the Legislature that this provision for attorney's fees be interpreted in a manner consistent with federal case law involving a Title VII action.

As provided in each of the four initiative petitions, the Legislature may not modify the measure of damages permissible in a civil action, for example, for violation of any of the prohibitions set forth in the initiative petitions. Limiting the power of the

Legislature to provide remedies for discriminating practices involves a second subject - separate and distinct from limiting governmental entities from "treating persons differently" and from "discriminating against" or "granting preferential treatment" to persons, individuals or groups.

Additionally, each initiative petition encroaches on the home rule powers of county and municipal governments as well as on the rulemaking authority of the judiciary and executive agencies. These initiative petitions will negate the ability of local government entities to fashion narrowly tailored measures designed to remedy the effects of past discrimination. *See, e.g., Peightel v. Metropolitan Dade County*, 26 F. 3d 1545 (10th Cir. 1994). The initiative petitions will also impact on the ability of state and local government entities, as well as any districts, public colleges or universities, or other political subdivisions or governmental instrumentalities of or within the state to settle lawsuits initiated pursuant to federal statutes to remedy unlawful discrimination. Each of the initiative petitions will restrict the ability of this Court and all the courts of the State of Florida to fashion remedies for unlawful discrimination.

This Court has stated that "[a]lthough a proposal may affect several branches of government and still pass muster, no single proposal can substantially alter or perform the functions of multiple branches." *In re Advisory Opinion to the Attorney General - Save Our Everglades*, supra-at 1340 (emphasis in text) (footnote omitted), In this regard

[t]he test . . . is functional and not locational, and where a proposed amendment changes more than one government function it is clearly multi-subject . . . we recognize that all power comes from the people and that the citizens of the state have retained the right to broaden or to restrict that power by initiative amendment. But where such an initiative performs the functions of different branches of government, it clearly fails the functional test for the single-subject limitation the people have incorporated into article XI, section 3, Florida Constitution.

*Evans v. Firestone*, 457 so. 2d 1351, 1354 (Fla. 1984). The initiative petitions significantly alter the powers of the legislative and judicial branches of government as well as the powers of local governmental bodies.

Each of the initiatives modifies Article I, Section 2, Florida Constitution, dealing with basic rights of natural persons, amended November 8, 1998, providing as follows:

§ 2 Basic rights

All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of **real** property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion, national origin, or physical disability.

The last sentence of Article I, Section 2, Florida Constitution, protects persons based upon "race, religion, national origin, or physical disability." Included within the scope of the term "national origin" is a person's place of birth, ancestry and ethnicity. Buzzett, William A. and Kearney, Deborah K., *Commentary to 1974 and 1998 Amendments*, in 25A Fla. Stat. Ann. (2000 West Supp.). With respect to classifications based on "race, color, ethnicity and national origin," the initiative petition establishes a new test for governmental action - that the state take no action to "treat persons differently." The Discrimination and Preferences Amendment would likewise preclude the state, as defined, from treating persons differently based on sex as well. Reading the provisions of the initiative petitions together with the current provisions of Article I, Section 2, Florida Constitution, would

authorize the state to treat persons differently based on religion, physical disability and in some circumstances, depending on the initiative the voters approve, sex in public education, public employment and public contracting.

The Public Employment Amendment and the Discrimination and Preferences Amendment would modify Article I, Section 6, Florida Constitution, dealing with the right of employees to bargain collectively. Because the initiatives prohibit the state from treating persons differently on account of race, they preclude governmental entities from entering into labor agreements that endeavor to address the effects of past discrimination in public employment. See *In re Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination*, *supra* at 1018.

In summary, the initiative petitions substantially alter the functions of multiple branches of governments thereby violating the single-subject test. *Advisory Opinion to the Attorney General re Fish & Wildlife Conservation Commission*, 705 So. 2d 1351, 1354 (Fla. 1998). The initiative petitions target only selected classes and provide exceptions that lead to disparate treatment of classes within classes, They operate only on selected programs, but at multiple levels of government and within all branches of



government. They restrict the power of government at all levels and within all branches to fashion a remedy for past discrimination. The changes the initiative petitions propose are multiple, precipitous, and cataclysmic. They are the type of changes that Article XI, Section 3, Florida Constitution, safeguards against.

### ARGUMENT III

**THE PROPOSED BALLOT SUMMARIES ARE NOT LEGALLY SUFFICIENT UNDER SECTION 101.161, FLORIDA STATUTES, BECAUSE THEY FAIL TO ADVISE THE ELECTORATE OF THE SUBSTANCE OF THE AMENDMENTS.**

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

Whenever a constitutional amendment or other public measure is submitted to a vote of the people, the substance of the amendment or other public measure shall be printed in clear and unambiguous language on the ballot . . . . 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 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 1020. "[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 Opinion to the Attorney General re Prohibiting Public Funding of Political Candidates' Campaigns, 639 So. 2d 972, 975 (Fla. 1997)*. 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)*.

The ballot title and summary however, 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, 620-21 (Fla. 1992)*).

The ballot titles for three of the four initiative petitions state that the amendments will "BAR GOVERNMENT FROM TREATING PEOPLE DIFFERENTLY BASED ON RACE . . . ." See, Public Education Amendment - Appendix I; Public Employment Amendment - Appendix II; and Public Contracting Amendment - Appendix III. Each of these titles as worded is misleading as to the contents and purpose of the initiative. Each initiative extends beyond race to proscribe treating persons differently based on "color, ethnicity and national origin." See Public Education Amendment at §1 - Appendix I; Public Employment Amendment at §1 - Appendix II; and Public Contracting Amendment at §1 - Appendix III. At the outset, these initiative petitions fly under false colors. As stated by this Court in *In re Advisory Opinion to the Attorney General - Save Our Everglades*, 636 So. 2d 1336, 1341 (Fla. 1994): "A voter responding to emotional language of the title could well be misled as to the contents and purpose of the proposed amendment. A proposed amendment cannot fly under false colors; this one does." *Askew v. Firestone*, 421 So. 2d at 156.

The ballot title and summary of each initiative is inaccurate and seriously misleading. Each states that it will bar government from "treating people differently." Yet each petition perpetuates

and establishes as a matter of state constitutional law that people will be treated differently. Rather than ending governmental discrimination and preferential treatment, the initiatives effectively create a two-tiered system of public education, public employment, and public contracting. Each of the initiative petitions provides that it "does not prohibit action that must be taken to establish or maintain eligibility for any federal program, if eligibility would result in a loss of federal funds to the state." See Public Education Amendment at §5 - Appendix I; Public Employment Amendment at §5 - Appendix II; Public Contracting Amendment at §5 - Appendix III; and Discrimination and Preferences Amendment at §6 - Appendix IV. The initiatives will result in disparate treatment based on whether a federal program is involved and whether there would be a loss of federal funds.

Each initiative provides that it "applies only to action taken after the effective date of "the amendment." See Public Education Amendment at §2 - Appendix I; Public Employment Amendment at §2 - Appendix II; Public Contracting Amendment at §2 - Appendix III; and Discrimination and Preferences Amendment at §2 Appendix IV. Preferential treatment with respect to an identified class taken prior to the effective date of the amendment will be allowed to

continue. Court orders and consent decrees providing preferential treatment in force as of the effective date of the amendment will be allowed to stand. See Public Education Amendment at §4 - Appendix I; Public Employment Amendment at §4 - Appendix II; Public Contracting Amendment at §4 - Appendix III; and Discrimination and Preferences Amendment at §5 - Appendix IV. Nowhere are these exceptions or extensions referenced in the ballot summary. As a consequence, the ballot summaries of each of the initiatives are subject to the same deficiency as the ballot summary for the "Stop Early Release of Prisoners" initiative: "The proposed amendment will not deliver to the voters of Florida what it says it will . . . ."  
" *Advisory Opinion to the Attorney General Re: Stop Early Release of Prisoners*, 642 So. 2d 724, 727 (Fla. 1994). The ballot summary of each initiative "at best completely ignores the amendments own exceptions; and at worst it misleads voters into believing that the amendment is ironclad . . . ." *Id.*

The ballot title and summary of each amendment likewise implies that no constitutional provision exists that bars government from treating persons differently on account of race, color, ethnicity or national origin. Each fails to apprise voters of the existence of Article I, Section 2, Florida Constitution,

which provides, in pertinent part: "No person shall be deprived of any right because of race, religion, national origin, or physical disability." Each of the proposed amendments will modify the provisions of Article I, Section 2, Florida Constitution. See *Floridians Against Casino Takeover v. Let's Help Florida*, 363 So. 2d 337 (Fla. 1978) : "When a new amendment does conflict with preexisting constitutional provisions, the new amendment necessarily supersedes the previous provisions." 363 So. 2d at 341. Yet, the summary does not apprise voters of its effect to modify Article I, Section 2 of the State Constitution.

This Court has stated that "[t]he critical issue concerning the language of the ballot summary is whether the public has 'fair notice' of the meaning and effect of the proposed amendment." In *re Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination*, *supra* at 1021. Each of the ballot summaries fails to provide notice to the voters that the amendment limits the power of the Legislature to modify the remedies available for violations not stated in the initiative, Each fails to provide notice that it limits the powers of the judiciary to fashion remedies. Each fails to state that it will limit the power

of local governments to settle lawsuits. As a consequence, a voter will be unaware of the full impact of the proposed amendment.

Each initiative petition limits rights to collectively bargain. Yet, this impact is not noted in the ballot summary. A myriad of existing laws, rules and regulations will be affected through the prohibition against "treating persons differently based on race, color, ethnicity or national origin," although no mention of this impact is found in the ballot summary of the Public Education Amendment, the Public Employment Amendment or the Public Contracting Amendment. Likewise, no mention is made in the Discrimination and Preferences Amendment that its prohibitions against "discrimination" or the grant of "preferential treatment" will invalidate or modify existing laws, rules or regulations.

The ballot title and summary of the Public Education Amendment, the Public Employment Amendment, and the Public Contracting Amendment each state that it will bar government from treating "people differently" based on "race, color, ethnicity or national origin." The text of each proposed amendment prohibits government from treating "persons" differently. The difference is significant. The federal constitutional guaranty of equality before the law applies to every citizen whether natural or corporate. *ABC Liquors, Inc. v. City of Ocala*, 366 So. 2d 146, 149

(Fla. 1st DCA 1979) cert. den. 376 So. 2d 69 (Fla. 1979). The equal protection provision of the Florida Constitution protects "natural persons" only. "All natural persons, female and male alike, are equal before the law . . . ." Art. I, §2, Fla. Const. If intended to be applicable to corporations as suggested in the text of each initiative, then the titles and ballot summaries fail to inform voters that its prohibitions extend to corporations.

Likewise, the Discrimination and Preferences Amendment speaks in the ballot summary of barring government from treating "people" differently on account of race, sex, color, ethnicity or national origin. The text of the amendment, however, prohibits discrimination against or the grant of preferential treatment to any "individual" or "group." See Discrimination and Preferences Amendment at §1 - Appendix IV. Another provision of the text of the amendment speaks in terms of a "person" or "group." See *Id.* at §3. It is unclear whether the provisions of the initiative are applicable to corporations.

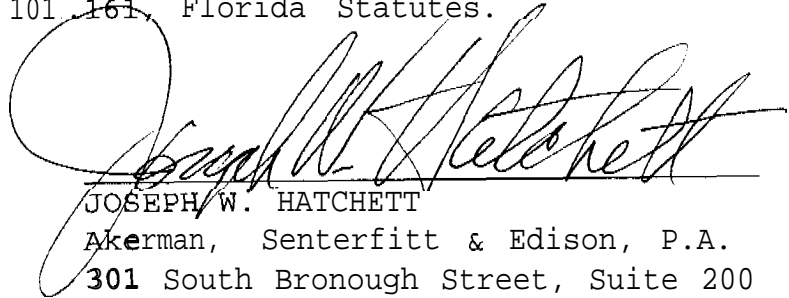
The inconsistent terminology within each of the initiative petitions violates the requirements of Section 101.161, Florida Statutes, It creates an ambiguity similar to that noted in *Advisory Opinion to the Attorney General re Right to Citizens of*



*Choose Health Care Providers*, 705 So. 2d 563 (Fla. 1998), citing a discrepancy between the term "citizens" in the ballot summary and "every natural person" in the text of the amendment: "This discrepancy between 'natural persons' and 'citizens' is material and misleading. This divergence in terminology is ambiguous in that it leaves voters guessing whether the terms are intended to be synonymous or whether the difference in terms was intentional." 705 So. 2d at 566. "The omission of such information is misleading and precludes voters from being able to cast their ballots intelligently." *In re Advisory Opinion to Attorney General - Restricts Laws Related to Discrimination, supra* at 1021.

CONCLUSION

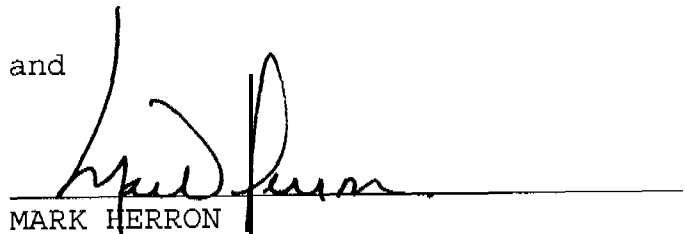
The initiative petitions and ballot summaries for the Public Education Amendment, the Public Employment Amendment, the Public Contracting Amendment, and the Discrimination and Preferences Amendment should be stricken from the ballot for failure to comply with the requirements of Article XI, Section 3, Florida Constitution, and Section 101.161, Florida Statutes.



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APPENDIX I

**CONSTITUTIONAL AMENDMENT PETITION FORM**

Title: **AMENDMENT TO BAR GOVERNMENT FROM TREATING PEOPLE DIFFERENTLY BASED ON RACE IN PUBLIC EDUCATION**

Summary:

Amends Declaration of Rights, **Article I** of the Florida Constitution, to bar state and local government bodies from treating **people** differently based on **race**, color, ethnicity, or national origin in the operation of public education, whether the program is called "preferential treatment: **affirmative action**," or anything else. Does not bar **programs** that treat people equally without regard to race, color, ethnicity, or national origin. Exempts actions needed for federal funds eligibility.

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

Name \_\_\_\_\_

Please print name as it appears on Voter ID Card

Street Address \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_ Zip \_\_\_\_\_

Precinct \_\_\_\_\_ Congressional District \_\_\_\_\_

Voter ID # \_\_\_\_\_ (or) Date of Birth \_\_\_\_\_

is this a change of address for voter registration

Yes  No Date signed \_\_\_\_\_

**ADD SECTION 26 TO ARTICLE 1, FLORIDA CONSTITUTION AS FOLLOWS:**

(1) The state shall not treat persons differently based on race, color, ethnicity, or national origin in the operation of public education.

(2) This section applies only to action taken after the effective date of this section.

(3) This section does not affect any law or governmental action that does not treat persons differently based on the person's race, color, ethnicity, or national origin.

(4) This section does not invalidate any court order or consent decree that is in force as of the effective date of this section.

(5) This section does not prohibit action that must be taken to establish or maintain eligibility for any federal program, if eligibility would result in a loss of federal funds to the state.

(6) For the purposes of this section, "state" includes, but is not necessarily limited to, the state itself, any city, county, district, public college or university, or other political subdivision or governmental instrumentality of or within the state.

(7) The remedies available for violations of this section shall be the same, regardless of the injured party's race, color, ethnicity, or national origin, as are otherwise available for violations of then existing Florida education discrimination law.

(8) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law or the United States Constitution, the section shall be implemented to the maximum extent that federal law and the United States Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section.

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

FILED  
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 SECRETARY OF STATE

Completed Petition form 10: FCRI, P.O. Box 10875, Tallahassee, FL 32302. Contributions mailed to same address. Pol. Adv. by FCRI. Tel 1-800-71 15498

Serial No.: 99-01  
Date Approved: 4/22/99

Title: **AMENDMENT TO BAR GOVERNMENT FROM TREATING PEOPLE DIFFERENTLY BASED ON RACE IN PUBLIC EDUCATION**

**X**

Sign As **Registered**

APPENDIX II

CONSTITUTIONAL AMENDMENT PETITION FORM

Title : AMENDMENT TO BAR GOVERNMENT FROM TREATING PEOPLE DIFFERENTLY BASED ON RACE IN PUBLIC EMPLOYMENT

Summary:

Amends Declaration of Rights, Article I of the Florida Constitution, to bar state and local government bodies from treating people differently based on race, color, ethnicity, or national origin in the operation of public employment, whether the program is called "preferential treatment," "affirmative action," or anything else. Does not bar programs that treat people equally without regard to race, color, ethnicity, or national origin. Exempts actions needed for federal funds eligibility.

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

Name \_\_\_\_\_

Please print name as it appears on Voter ID Card

Street Address \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_ Zip \_\_\_\_\_

Precinct \_\_\_\_\_ Congressional District \_\_\_\_\_

Voter ID # \_\_\_\_\_ (or) Date of Birth \_\_\_\_\_

is this a change of address for voter registration

Yes  No Date signed \_\_\_\_\_

ADD SECTION 26 TO ARTICLE 1, FLORIDA CONSTITUTION AS FOLLOWS:

(1) The state shall not treat persons differently based on race, color, ethnicity, or national origin in the operation of public employment.

(2) This section applies only to action taken after the effective date of this section.

(3) This section does not affect any law or governmental action that does not treat persons differently based on the person's race, color, ethnicity, or national origin.

(4) This section does not invalidate any court order or consent decree that is in force as of the effective date of this section.

(5) This section does not prohibit action that must be taken to establish or maintain eligibility for any federal program, if ineligibility would result in a loss of federal funds to the state.

(6) For the purposes of this section, "state" includes, but is not necessarily limited to, the state itself, any city, county, district, public college or university, or other political subdivision or governmental instrumentality of or within the state.

(7) The remedies available for violations of this section shall be the same, regardless of the injured party's race, color, ethnicity, or national origin, as are otherwise available for violations of then existing Florida employment discrimination law.

(8) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law or the United States Constitution, the section shall be implemented to the maximum extent that federal law and the United States Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section.

Pursuant to §104.185, it is unlawful for any person to knowingly sign a petition for a particular issue or candidate more than one time. Any person violating the provision of this section shall, upon conviction, be guilty of a misdemeanor of the first degree, punishable as provided in 0775.082 or 9775.083

SECRETARY OF STATE  
OFFICE OF THE  
CLERK OF THE  
LEGISLATURE  
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Mail completed Petition form to: FCRI, P.O. Box 10875, Tallahassee, FL 32302. Contributions mailed to same address. Pol. Adv. by FCRI. Tel 1-800-711-5498

Serial No.: 99-02  
Date Approved: 4/22/99

Title: AMENDMENT TO BAR GOVERNMENT FROM TREATING PEOPLE DIFFRENTLY BASED ON RACE IN PUBLIC EMPLOYMENT

X -

Sign As Registered

APPENDIX III

CONSTITUTIONAL AMENDMENT PETITION FORM

Title: AMENDMENT TO BAR GOVERNMENT FROM TREATING PEOPLE DIFFERENTLY BASED ON RACE IN PUBLIC CONTRACTING

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

Name \_\_\_\_\_ Please print name as it appears on Voter ID Card

Street Address \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_ Zip \_\_\_\_\_

Precinct \_\_\_\_\_ Congressional District \_\_\_\_\_

Voter ID # \_\_\_\_\_ (or) Date of Birth \_\_\_\_\_

is this a change of address for voter registration

Yes  No Date signed \_\_\_\_\_

Summary:

Amends Declaration of Rights, Article I of the Florida Constitution, to bar state and local government bodies from treating people differently based on race, color, ethnicity, or national origin in the operation of public contracting, whether the program is called "preferential treatment," "affirmative action," or anything else. Does not bar programs that treat people equally without regard to race, color, ethnicity, or national origin. Exempts actions needed for federal funds eligibility.

ADD SECTION 26 TO ARTICLE 1, FLORIDA CONSTITUTION AS FOLLOWS:

(1) The state shall not treat persons differently based on race, color, ethnicity, or national origin in the operation of public contracting.

(2) This section applies only to action taken after the effective date of this section.

(3) This section does not affect any law or governmental action that does not treat persons differently based on the person's race, color, ethnicity, or national origin.

(4) This section does not invalidate any court order or consent decree that is in force as of the effective date of this section.

(5) This section does not prohibit action that must be taken to establish or maintain eligibility for any federal program if ineligibility would result in a loss of federal funds to the state.

(6) For the purposes of this section, "state" includes, but is not necessarily limited to, the state itself, any city, county, district, public college or university, or other political subdivision or governmental instrumentality of or within the state.

(7) The remedies available for violations of this section shall be the same, regardless of the injured party's race, color, ethnicity, or national origin, as are otherwise available for violations of then existing Florida employment discrimination law.

(8) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law or the United States Constitution, the section shall be implemented to the maximum extent that federal law and the United States Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section.

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

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MARCH 22 1999  
TALLAHASSEE, FLORIDA



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Serial No.: 99-03  
Date Approved: 4/22/99

X

Title: AMENDMENT TO BAR GOVERNMENT FROM TREATING PEOPLE DIFFERENTLY BASED ON RACE IN PUBLIC CONTRACTING

Sign As Registered



APPENDIX IV

CONSTITUTIONAL AMENDMENT PETITION FORM

Title: END GOVERNMENTAL DISCRIMINATION AND PREFERENCES AMENDMENT

Summary:

Amends Declaration of Rights, Article I of Florida Constitution, to bar government from treating people differently based on race, sex, color, ethnicity, or national origin in public education, employment, or contracting, whether the program is called "preferential treatment," "affirmative action," or anything else. Does not bar programs that treat people equally without regard to race, sex, color, ethnicity, or national origin. Exempts bona fide qualifications based on sex and actions needed for federal funds eligibility.

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

Name \_\_\_\_\_

Please print name as it appears on Voter ID Card

Street Address \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_ Zip \_\_\_\_\_

Precinct \_\_\_\_\_ Congressional District \_\_\_\_\_

Voter ID # \_\_\_\_\_ (or) Date of Birth \_\_\_\_\_

is this a change of address for voter registration

Yes  No Date signed \_\_\_\_\_

ADD SECTION 26 TO ARTICLE I, FLORIDA CONSTITUTION AS FOLLOWS:

- (1) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.
(2) This section applies only to action taken after the effective date of this section.
(3) This section does not affect any law or governmental action that does not discriminate against, or grant preferential treatment to, any person or group on the basis of race, sex, color, ethnicity, or national origin.
(4) This section does not affect any otherwise lawful classification that: (a) Is based on sex and is necessary for sexual privacy or medical or psychological treatment; or (b) Is necessary for undercover law enforcement or for film, video, audio, or theatrical casting; or (c) Provides for separate athletic teams for each sex.
(5) This section does not invalidate any court order or consent decree that is in force as of the effective date of this section.
(6) This section does not prohibit action that must be taken to establish or maintain eligibility for any federal program, if ineligibility would result in a loss of federal funds to the state.
(7) For the purposes of this section, "state" includes, but is not necessarily limited to, the state itself, any city, county, district, public college or university, or other political subdivision or governmental instrumentality of or within the state.
(8) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of then existing Florida antidiscrimination law.
(9) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law or the United States Constitution, the section shall be implemented to the maximum extent that federal law and the United States Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section.

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



Print completed Petition form to: FCRI, P.O. Box 10875, Tallahassee, FL 32302. Contributions mailed to same address. Pd. Pol. Adv. by FCRI. Tel 1-800-711-5498

Title: END GOVERNMENTAL DISCRIMINATION AND PREFERENCES AMENDMENT

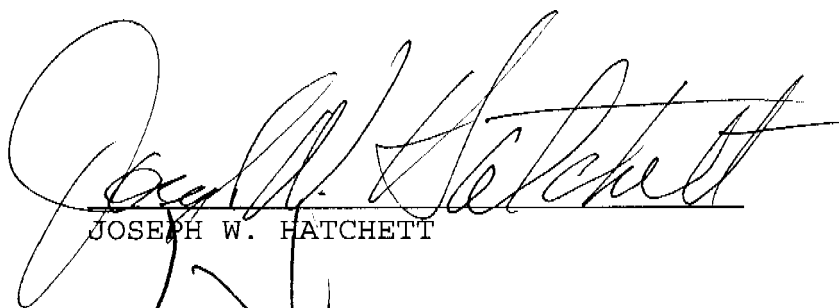
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Serial No.: 99-04
Date Approved: 4/22/99

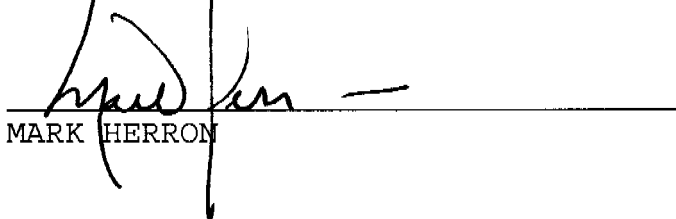
Sign As Registered

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing AMENDED INITIAL BRIEF, typed in Courier 12 pt., has been furnished by U.S. Mail, postage prepaid, to The Honorable Robert Butterworth, Attorney General, The Capitol, Tallahassee, Florida 32399; The Honorable Katherine Harris, Secretary of State, The Capitol, Tallahassee, Florida 32399-0250 and to FCRI, Post Office Box 10875, Tallahassee, Florida 32302 this 30th day of December, 1999.

A large, stylized handwritten signature in black ink, appearing to read "Joseph W. Hatchett", written over a horizontal line.

JOSEPH W. HATCHETT

A smaller, more compact handwritten signature in black ink, appearing to read "Mark Herron", written over a horizontal line.

MARK HERRON