IN THE SUPREME COURT OF FLORIDA

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

AMENDED
INITIAL BRIEF OF PROPONENT - INTERESTED PARTY
FLORIDA CML RIGHTS INITIATIVE

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TABLE OF CONTENTS

CITATION OF AUTHORITIES

PRELIMINARY STATEMENT

This Initial Brief is submitted on behalf of Florida Civil Rights Initiative, which shall hereafter be referred to as "FCRI." FCRI is an organization which has circulated and gathered elector signatures for four proposed citizen initiative amendments to the Florida Constitution.

The requisite signatures authorizing reviewbythis Court have been gathered, and have been certified by the Florida Secretary of State to the Attorney General of the State of Florida. The Attorney General has thereafter, and separately as to each proposed amendment, requested review by this Court.

This Court, by separate interlocutory orders of December 2, 1999, established a briefing and oral argument schedule as to each proposed amendment and, by separate order of same date, directed that the four cases (No. 97,086; No. 97,087; No. 97,088; and No. 97,089) were thereby consolidated "for all appellate purposes."

Pursuant to this Court's order of consolidation, FCRI, by its undersigned attorney, submits the following Initial Brief addressing each of the four proposed amendments. Though FCRI submits a single Initial Brief, each of the proposed amendments will be appropriately hereinafter treated and addressed.

Apart from the constitutional and statutory issues which will be fully addressed below, the ultimate issue herein is whether the citizens of Florida will be afforded, or denied, the opportunity to vote upon the proposed amendments and thereby make the Florida Constitution expressive of the will of its citizens. FCRI, as proponent and interested party, respectfully submits that the

citizens of Florida should be so empowered by this Court's approval and placement of the four proposed amendments on the ballot.

STATEMENT OF TEE CASE AND FACTS

In each of these four cases, now consolidated, the certification by the Secretary of State of Florida, and the request for review of the Attorney General of Florida, have been made a part of the record herein and included as exhibits to this Court's interlocutory orders of December 2, 1999.

In the interest of brevity, FCRI will not in this statement quote extensively from the above-referenced certification or request for review, other than to set forth the title, summary, and text of each proposed amendment. Various provisions of the request of the Attorney General express views or concerns which remarkably resemble argument of an opponent, and will therefore be appropriately addressed in the argument portion of this Initial Brief.

As to each proposed amendment, and pursuant to Article IV, Section 10, Florida Constitution, and Section 16.061, Florida Statutes, the Attorney General has requested this Court's review and opinion as to whether the text of each such amendment complies with Article XI, Section 3, Florida Constitution, and whether the proposed ballot title and summary comply with section 101.161, Florida Statutes.

As to the first issue, and text of each proposed amendment, Article XI, Section 3, Florida Constitution, provides and commands

as follows, with emphasis added to those terms most pertinent to this Court's review:

> § 3. Initiative
>
> . . . .
>
> The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith. It may be invoked by filing with the secretary of state a petition containing a copy of the proposed revision or amendment, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts, respectively and in the state as a whole in the last preceding election in which presidential electors were chosen.

(Emphasis added.)

Article XI, Section 3, Florida Constitution, is one of four authorized means whereby the Constitution of Florida may be revised or amended. See, Art. XI, §§ 1, 2, and 4, Fla. Const. It is, however, the only means whereby the citizens of Florida may directly propose amendment or revision without prior authorization or intervention of the legislature (Article XI, Section 1), a constitutional revision commission (Article XI, Section 2), or a constitutional convention (Article XI, Section 4).

As to referendum elections, and ballots, section 101.161, Florida Statutes, provides as follows, in pertinent part:

101.161. Referenda; ballots

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

(2) The substance and ballot title of a constitutional amendment proposed by initiative shall be prepared by the sponsor and approved by the Secretary of State in accordance with rules adopted pursuant to s. 120.54. The Department of State shall give each proposed constitutional amendment a designating number for convenient reference. This number designation shall appear on the ballot. Designating numbers shall be assigned in the order of filing or certification of the amendments. The Department of State shall furnish the designating number, the ballot title, and the substance of each amendment to the supervisor of elections of each county in which such amendment is to be voted on.

As will be treated more fully in subsequent portions of this Initial Brief, Article XI, Section 3, Florida Constitution, and section 101.161, Florida Statutes, pose and frame the issues to be considered in these proceedings for review. Those issues may be

summarized as being (1) whether the proposed amendments meet the requirements of Article XI, Section 3, Florida Constitution, by each embracing "a single subject and matter directly connected therewith" and (2) whether the title and summary of the proposed amendments meet the requirements of section 101.161 as constituting a "caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of" and a summary or explanatory statement regarding the substance of the amendment, not exceeding 75 words, "of the chief purpose of the measure."

As noted above, four separate proposed amendments are before the Court. Each amendment, or proceeding, has been assigned a separate case number by this Court, and a "designating number" by the office of the Secretary of State pursuant to section 101.161, Florida Statutes. Hereinafter, FCRI will describe each such proposed amendment in the sequence or order which appears to best facilitate discussion of the issues presented.

CASE NO. 97,089

The proposed amendment for consideration in Case No. 97,089 has been assigned the "designation number" or "serial number" of 99-04 by the Secretary of State of Florida.

The ballot title for the proposed amendment is "END GOVERNMENTAL DISCRIMINATION AND PREFERENCES AMENDMENT." The summary for the proposed amendment provides:

> Amends Declaration of Rights, Article I of the 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.

The proposed amendment, by its text, provides as follows:

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.

CASE NO. 97,086

The proposed amendment for consideration in Case No. 97,086 has been assigned the "designation number" or "serial number" of 99-01 by the Secretary of State of Florida.

The ballot title for the proposed amendment is "AMENDMENT TO BAR GOVERNMENT FROM TREATING PEOPLE DIFFERENTLY BASED ON RACE IN PUBLIC EDUCATION." The summary for the proposed amendment provides:

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.

The proposed amendment, by its text, provides as follows:

ADD SECTION 26 TO ARTICLE I, 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 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 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.

CASE NO. 97,087

The proposed amendment for consideration in Case No. 97,087 has been assigned the "designation number" or "serial number" of 99-02 by the Secretary of State of Florida.

The ballot title for the proposed amendment is "AMENDMENT TO BAR GOVERNMENT FROM TREATING PEOPLE DIFFERENTLY BASED ON RACE IN PUBLIC EMPLOYMENT." The summary for the proposed amendment provides:

> 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.

The proposed amendment, by its text, provides as follows:

> ADD SECTION 26 TO ARTICLE I, 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 persons' 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 of 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.

CASE NO. 97,088

The proposed amendment for consideration in Case No. 97,088 has been assigned the "designation number" or "serial number" of 99-03 by the Secretary of State of Florida.

The ballot title for the proposed amendment is "AMENDMENT TO BAR GOVERNMENT FROM TREATING PEOPLE DIFFERENTLY BASED ON RACE IN PUBLIC CONTRACTING." The summary for the proposed amendment provides:

> 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.

The proposed amendment, by its text, provides as follows:

ADD SECTION 26 TO ARTICLE I, 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.

The jurisdiction of this Court to provide review of the above-quoted proposed amendments, and to provide its advisory opinion respecting each is clear. Article IV, Section 10, Florida Constitution, provides as follows as to the duties of the Attorney General and such ensuing proceedings of this Court:

> § 10. Attorney General
>
> The attorney general shall, as directed by general law, request the opinion of the justices of the supreme court as to the validity of any initiative petition circulated pursuant to Section 3 of Article XI. The justices shall, subject to their rules of procedure, permit interested persons to be heard on the questions presented and shall render their written opinion expeditiously.

Article V, Section 3, Florida Constitution, expressly provides in subpart (b)(10) as to jurisdiction of this Court that the Supreme Court:

> (10) Shall, when requested by the attorney general pursuant to the provisions of Section 10 of Article IV, render an advisory opinion of the justices, addressing issues as provided by general law.

Thus, jurisdiction of this Court for expeditious review and advisory opinion is clearly present.

SUMMARY OF ARGUMENT

The power to amend or revise any portion or portions of the Florida Constitution is expressly reserved to the people by Article XI, Section 3, Florida Constitution. This expressly reserved power does not exclude, and therefore includes, proposed amendments respecting Article I of the Florida Constitution and fundamental rights thereunder.

The four proposed amendments now under consideration do address fundamental rights. They do not, however, add to the classes of persons presently recognized for protection from discrimination by existing Article I, Section 2, Florida Constitution. They do not reduce the current prohibition in Article I, Section 2, of discrimination against such persons by depriving of rights. Instead, by the proposed prohibition against treatment of such persons differently, the proposed amendments add a supplemental protection to all persons against discrimination by grant of preferential or affirmative benefit or treatment to such persons.

The proposed amendment to be considered in Case No. 97,089 addresses such discrimination based upon "race, sex, color, ethnicity, or national origin" as occurring in "public employment, public education, or public contracting." As to single-subject analysis, the grouping of "race, sex, color, ethnicity, or national origin" draws its single-subject quality from the fact that these are all persons, or characteristics, which are already recognized constitutionally under existing Article I, Section 2, Florida

Constitution, The specification of public "employment," "education," and "contracting" is properly viewed as a matter of limitation of the single subject's operation to less than universal operation, rather than incorporation of three separate subjects.

The three proposed amendments to be considered in Case No. 97,086, Case No. 97,087, and Case No. 97,088 are narrower in scope. As to persons or characteristics within the subject, they address discrimination based upon "race, color, ethnicity, or national origin." In this respect, they are restricted to four directly related and overlapping classifications which are so overlapping and synonymous that omission of any one would provide a ready "formalistic" vehicle for circumvention of the others. They secondarily provide a vehicle whereby any person who opposes "sex" as a basis in the amendment proposed in Case No. 97,089 is not trapped into an all-or-nothing choice, but may simply vote "no" as to that amendment, and "yes" as to the narrower three proposed amendments.

Finally, the narrower three proposed amendments divide public "employment," "education," and "contracting" into three separate measures. While single-subject analysis does not require the dividing of such a limitation into separate parts, such a separation serves to lay to rest serious contentions of "logrolling."

These proposed amendments each meet the proper and applicable requirements of "one subject and matter directly connected therewith." Article XI, Section 3, Florida Constitution. They must

be viewed or held as each having a natural relation and connection as component parts of a single dominant plan, and therefore demonstrating the requisite unity of object and plan. Fine v. Firestone, 448 So. 2d 984, 990 (Fla. 1984). In this respect, and in various features or provisions treated more fully hereafter, the proposed amendments are of a narrower and different nature than the proposed amendment found defective in In re Advisory Opinion to the Attornev General - Restricts Law Related to Discrimination, 632 So. 2d 1018 (Fla. 1994).

The title to and summary of each such proposed amendment also meets the proper and applicable requirements of section 101.161, Florida Statutes. The title and summary are to be read together, not in isolation. Advisory Opinion to the Attornev General re Tax Limitation, 673 So. 2d 864, 868 (Fla. 1996). The summary, limited to seventy-five words, need only summarize the "chief purpose of the measure," not include every detail or ramification of its provisions, or describe every limitation, definition, scope, or provision therein. Advisory Opinion to the Attornev General re Prohibitinu Public Funding of Political Candidates' Campaigns, 693 So. 2d 972, 975 (Fla. 1997).

The standards suggested by the Attorney General in the four letters of request to this Court would impose unauthorized and insurmountable burdens on any exercise by citizens of the expressly reserved power to revise or amend guaranteed by Article XI, Section 3, Florida Constitution. Such burdens would constitute

nothing less than improper, effective revision of the Florida Constitution, and should not be approved or endorsed by this Court.

The voters of Florida are presumed to have a certain amount of common sense and knowledge from experience. Advisory Opinion to the Attorney General re Tax Limitation, 673 So. 2d 864, 868 (Fla. 1996). The merits and wisdom of such proposed amendments are exclusively matters for those voters. Advisorv Opinion to the Attornev General re Right of Citizens to Choose Health Care Providers, 705 So. 2d 563, 565 (Fla. 1998).

The right of citizens to propose and vote upon such measures is an express constitutional right which should not be interfered with by hypertechnical or formalistic standards, but only where the record establishes that the proposal is clearly and conclusively defective. Askew v. Firestone, 421 So. 2d 151, 154 (Fla. 1982).

No such defect is established or present herein. The four proposed amendments under consideration should be approved for placement on the ballot and consideration by the citizens of the State of Florida.

ARGUMENT

THE FOUR PROPOSED AMENDMENTS' EACH MEET THE SINGLE-SUBJECT REQUIREMENT OF ARTICLE XI, SECTION 3, FLORIDA CONSTITUTION, AND THE TITLE AND BALLOT SUMMARY REQUIREMENTS OF SECTION 101.161, FLORIDA STATUTES.

A. The Scope, Standard, and Principles of Review in These Proceedings.

This Court's jurisdiction to issue advisory opinions on proposed amendments presented by citizen initiative petitions is established in the Florida Constitution. Art. IV, § 10; Art. V, § 3(b)(10), Fla. Const.

The review provided regarding such citizen initiative proposed amendments is limited to two issues: (1) whether the proposed amendment violates the "one subject and matter directly connected therewith" 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(1), Florida Statutes. See, Advisory Opinion to the Attorney General re Term Limits Pledge, 718 So. 2d 798, 801 (Fla. 1998); Advisory Opinion to the Attorney General re Pronertv Rights Amendments, 699 So. 2d 1304, 1306 (Fla. 1997); Advisorv Opinion to the Attorney General - Limited Political Terms in Certain Elective Offices, 592 So. 2d 225, 227 (Fla. 1991).

This Court has recently observed that denial of ballot placement to a citizens initiative petition infringes on the people's right to vote on an amendment, and is therefore a power which the Court should exercise sparingly and only where the record establishes a clear violation of the constitutional single-subject

requirement or that the ballot language would clearly mislead the public regarding material elements of the proposed amendment and its effect on the present Florida Constitution. Advisory Opinion to the Attorney General re Tax Limitation, 644 So. 2d 486, 489 (Fla. 1994).

At an early stage of developing jurisprudence regarding such citizen initiative petitions, this Court recognized and announced that such proposed amendments could not be removed from the ballot, and voter consideration, absent a showing in the record that the proposal is "clearly and conclusively" defective. Weber v. Smathers, 338 So. 2d 819, 821-822 (Fla. 1976). While much has since issued regarding such citizen initiative petitions, the announced requirement of a clear and conclusive showing of defect, before removal from the ballot, has not changed.

This stringent prerequisite for ballot placement denial was stated most succinctly, and in the proper constitutional context, in Askew v. Firestone, 421 So. 2d 151, 154 (Fla. 1982), to wit:

> In order for a court to interfere with the right of the people to vote on a proposed constitutional amendment the record must show that the proposal is clearly and conclusively defective.

This Court's prior pronouncement of such a stringent standard was, and is, proper recognition that the express constitutional reservation to the people of the power to propose and consider revisions or amendments to their state constitution should not be restricted or removed by judicially imposed or created hypertechnical analysis or insurmountable burdens. See, Fine v.

Firestone, 448 So. 2d 984, 999 (Fla. 1984) (Shaw, concurring in result only).

It is now well established that the Court has neither the responsibility nor the authority, in such proceedings, to address or rule upon the merits or wisdom of proposed citizen initiative amendments. Advisory Opinion to the Attornev General re Right of Citizens to Choose Health Care Providers, 705 So. 2d 563, 565 (Fla. 1998); Advisory Opinion to the Attornev General re Tax Limitation, 644 So. 2d 486, 489 (Fla. 1994).

By like measure, it is established that federal constitutional challenges will not be entertained and are not justiciable in such proceedings. Advisory Opinion to the Attornev General - Limited Political Terms in Certain Elective Offices, 592 So. 2d 225, 227 (Fla. 1991).

More recently this Court has recognized and held that the fact that a proposed amendment may affect multiple areas of government does not establish a violation of the single-subject constitutional restriction. In Advisory Oninion to the Attorney General re Limited Casinos, 644 So. 2d 71 (Fla. 1994), this Court explained at page 74, in pertinent part:

> We recognize that the petition, if passed, could affect multiple areas of government. In fact, we find it difficult to conceive of a constitutional amendment that would not affect other aspects of government to some extent. However, this Court has held that a proposed amendment can meet the single-subject requirement even though it affects multiple branches of government. *Advisory Opinion to the Attorney General - Limited Political Terms in Certain Elective Offices,* 592 So. 2d 225, 227 (Fla. 1991). Further, this

> Court has held that the possibility that an amendment might interact with other parts of the Florida Constitution is not sufficient reason to invalidate the proposed amendment. *English - The Official Language of Florida,* 520 So. 2d at 12, 13. All of the scenarios raised by the opponents relating to possible impacts on other branches of government or on the constitution are premature speculation. In *English - The Official Language of Florida we* stated `[i]t may be that, if passed, the amendment could have broad ramifications. Yet, on its face it deals with only one subject.' *Id.* at 13. Likewise, we find that the Limited Casinos amendment meets the single-subject requirement.

In Fine v. Firestone, 448 So. 2d 984 (Fla. 1984), this Court rejected application of a "locational analysis" for single-subject evaluation, accepted a "function" of government approach, and further explained at page 990 that the test is whether the proposal may be logically viewed as having natural relation and connection as component parts or aspects of a single dominant plan or scheme. This Court further observed that unity of object and plan is the universal test.

As to the "functions" based analysis, this Court further explained in Advisory Opinion to the Attorney General re Fish and Wildlife Conservation Commission, 705 So. 2d 1351 (Fla. 1998), at pages 1353-1354, that

> [a] proposal that affects several branches of government will not automatically fail; rather, it is when a proposal substantially alters or performs the functions of multiple branches that it violates the single subject test.

(Emphasis added.)

See also, Advisorv Opinion to the Attornev General re Term Limits Pledge, 718 So. 2d 798, 802 (Fla. 1998), wherein the proposed amendment considered therein was held to satisfy the single-subject requirement, even though affecting the constitutional authority of the Secretary of State and affecting more than one provision of the Constitution.

It has been suggested by some observers in prior cases (and the Attorney General herein) that any proposed amendment which "affects" multiple provisions of the existing Constitution must be held violative of the single-subject restriction. In In re Advisory Opinion to the Attorney General re Limited Casinos, 644 So. 2d 71, 74 (Fla. 1994), and again in Advisory Opinion to the Attornev General - Fee on Everglades Sugar Production, 681 So. 2d 1124, 1128 (Fla. 1996), this Court explained that

> the possibility that an amendment might interact with other parts of the Florida Constitution is not sufficient reason to invalidate the proposed amendment.

(Emphasis added.)

It has also been suggested by some observers that any proposed amendment which may have some impact on state and local governments, by that very impact, must violate the single-subject restriction. This suggestion, or test, when earlier made by the Attorney General and other opponents, was rejected by this Court in Advisory Opinion to the Attorney General re Limited Casinos, 644 So. 2d 71, 74-75 (Fla. 1994), and Advisorv Opinion to the Attornev General re Florida Locally Approved Gaming, 656 So. 2d 1259, 1263 (Fla. 1995).

BY such means and prior judicial pronouncements, the "insurmountable burdens" which would effectively eviscerate the express constitutional power of the people to amend their state constitution are avoided. A proposed amendment may "interact" with other constitutional provisions without violating the single-subject restriction. It may have "impact" on multiple branches or levels of government, so long as it does not "alter or perform" the functions of such.

As this Court most recently summarized in Advisory Opinion to the Attorney General re Term Limits Pledge, 718 So. 2d 798, 802 (Fla. 1998), single-subject analysis is guided by the following principles:

> To comply with the single-subject requirement, a proposed amendment must manifest a 'logical and natural oneness of purpose.' *Fine v. Firestone, 448 So.* 2d 984, 990 (Fla. 1984). This determination requires this Court to consider whether the proposed amendment affects separate functions of government, as well as how it affects other provisions of the constitution. *See In re Advisory Opinion to the Attorney Gen. - Restricts Laws Related to Discrimination, 632* So. 2d 1018, 1020 (Fla. 1994). `[T]he possibility that an amendment might interact with other parts of the Florida Constitution is not sufficient reason to invalidate the proposed amendment.' *Advisory Opinion to the Attorney Gen. - Fee on the Everglades Sugar Prod.,* 681 so. 2d 1124, 1128 (Fla. 1996) (quoting *Advisory Opinion to the Attorney Gen. re Ltd. Casinos, 644* So. 2d 71, 74 (Fla. 1994). Likewise, '[a] proposal that affects several branches of government will not automatically fail.' *Fish & Wildlife Conservation Comm'n, 705 So.* 2d at 1353-54. Rather, 'it is when a proposal substantially alters or performs the functions of multiple branches that it violates the single-subject test.' *Id.* at 1354.

In application of this analytical approach, however, the overriding adjudicatory principle continues to be that the Court will not interfere with the right of the people to vote on a proposed constitutional amendment absent a record showing that the proposal is clearly and conclusively defective. Askewv. Firestone, 421 So. 2d 151, 154 (Fla. 1982); Weber v. Smathers, 338 So. 2d 819, 821-822 (Fla. 1976).

The Attorney General, in his requests for advisory opinions, has cited In re Advisorv Opinion to the Attornev General - Restricts Laws Related to Discrimination, 632 So. 2d 1018 (Fla. 1994), numerous times. While that advisory opinion will be treated more fully in following portions of this brief, it is pertinent to note at this point that there are very significant differences between the amendment proposed therein, and the amendments now before this Court.

The proposed amendment which was rejected in the above-cited advisory opinion was of a far different nature. This is apparent when the nature of existinq constitutional protection under the Florida Constitution is considered. Existing Article I, Section 2, Florida Constitution, declares that all "natural" persons are equal before the law, and that no person may be "deprived" of any right because of race, religion, national origin, or physical handicap. Thus, the focus of existinq equal protection is upon measures which prohibit deprivation of rights as to the persons or classification set forth in Article I, Section 2, Florida Constitution.

The measure considered in In re Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination, 632 so. 2d 1018 (Fla. 1994), provided that no level or branch of government could enact or adopt any law or ordinance "regarding discrimination against persons" based upon any trait, status, or condition except as listed therein. For purpose of single-subject constitutional analysis, it is critical that the rejected proposal would have operated to limit the already preexisting constitutional prohibition against deprivation or denial of equal rights. This Court therefore properly held that the measure did not merely "interact" with preexisting Article I, Section 2, Florida Constitution, but effectively modified it, by restricting preexisting authority to prohibit denial of rights.

The current proposed amendments do not, in any way, limit preexisting authority to, by law or governmental action, proscribe deprivation of any right. The proposed amendments do not modify or amend existing Article I, Section 2, Florida Constitution, because the preexisting prohibition against denial of equal protection by deprivation of rights is unaffected.

What is proscribed by the proposed amendments is of a different nature; governmental action which treats selected persons differently by affirmatively granting preferences or affirmative benefits not afforded others. Thus, the proposed amendments may "interact" with Article I, Section 2, Florida Constitution, or even other provisions, but they do not amend or modify any such provision and therefore do not suffer the defect recognized as

disqualifying in In re Advisory Opinion to the Attornev General - Restricts Laws Related to Discrimination, 632 So. 2d 1018 (Fla. 1994).

Stated alternatively, but accurately, since existing protections or guarantees under Article I, Section 2, Florida Constitution, do not extend to or guarantee any constitutional right to receive affirmative preference over others, the proposed amendments which prohibit any such discriminatory affirmative preference do not "amend or modify" Article I, Section 2. At most, the proposed amendments would "interact" with existing protections.

The instant proposed amendments, by merely adding or supplementing an additional protection from discrimination by legal preference or affirmative benefit to others, is analogous to the proposed amendment approved in Advisorv Opinion to the Attornev General - Limited Political Terms in Certain Elective Offices, 592 So. 2d 225 (Fla. 1991), where this Court explained at pages 227-228, in pertinent part:

> We do not agree with opponents that the proposed amendment fails to identify constitutional provisions with which it conflicts or which it substantially affects. The initiative proposal is intended to amend article VI, section 4 of the state constitution, which provides that `[n]o person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability.' The amendment, if passed, will add term limits as a further disqualification on holding office. The proposed amendment does not change or affect the age or residency requirements of article III, section 15 (state legislators) or article IV, section 5

> (lieutenant governor and cabinet members) of the Florida Constitution.

(Emphasis added.)

By like measure, the instant amendments merely add an additional protection (against discriminatory preference) to the existing constitutional protection (against discriminatory deprivation). It does not revise or amend the already existing protections.

Before moving on to other issues, it is pertinent to consider one other aspect of In re Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination, 632 So. 2d 1018 (Fla. 1994), that has been recited by the Attorney General in his inquiry to this Court. In the above-cited advisory opinion, the Court did observe, in finding a single-subject violation, at page 1020, that:

> The proposed amendment also 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, defies 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.

The Attorney General, and undoubtedly other opponents who will file briefs herein, grasp this language as signifying that any proposal which could be broken into discrete or separate questions

necessarily constitutes "logrolling" and violates single-subject restrictions.

FCRI respectfully submits that surely this Court did not intend to speak, or hold, so broadly. Indeed, the "example" chosen by this Court and quoted above suggests an intended narrower view by characterizing the proscribed forced "choice" as being between previously protected areas of rights (race and religion) and those newly announced in the proposed amendment (marital status and familial status).

Moreover, despite prior observations by individual justices, this Court has never adopted or announced as a test of single-subject compliance whether the proposed amendment could have been drafted differently, divided, and submitted as separate proposals asking separate questions. In Advisory Opinion to the Attorney General - Limited Political Terms in Certain Elective Offices, 592 So. 2d 225 (Fla. 1991), former Justice Kogan, at pages 231-233, in dissenting from the Court's holding of single-subject compliance, seemed to endorse such a test. That was, however, not the view of this Court, as the proposed amendment was approved as complying with single-subject restrictions.

More recently Justice Lewis, in a concurring opinion to Rav v. Mortham, 24 Fla. L. Weekly S412 (Fla. Sept. 2, 1999), quoted from and appeared to endorse the above-referenced view of former Justice Kogan. The issue before the Court in those proceedings, however, was not whether the Court should then approve or deny ballot access, but the effect of partial invalidity of an amendment

approved by the electors of Florida. In this context, the observations of Justice Lewis in a concurring opinion might be described as dicta (with some degree of trepidation when so referring to any pronouncement of any active justice), but more importantly, those pronouncements were not forged in the crucible of a determination of whether the citizens of Florida should then be deprived of the opportunity to vote, and did not represent the pronouncements of the Court.

Finally, as to the issue of whether divisibility of a proposed amendment into separate questions demonstrates a single-subject violation, this contention was clearly rejected by this Court in Advisory Opinion to the Attornev General re Prohibiting Public Funding of Political Candidates' Campaigns, 693 So. 2d 972 (Fla. 1997). In that proceeding the proposed amendment prohibited public financing of campaigns for the offices of Governor, Lt. Governor, and Cabinet offices (executive branch) and Florida Senate and House of Representatives (legislative branch). Despite the fact that the proposed amendment, as opponents urged, put various classes of public offices into one initiative and required an all-or-nothing vote, this Court held that the single-subject restriction was not thereby violated.

Which brings consideration back to the previously announced overall standard or test for single-subject compliance. Does the record herein establish that the proposed amendments are clearly and conclusively defective because of a failure to have a "logical and natural oneness of purpose," Advisory Opinion to the Attorney

General re Term Limits Pledge, 718 So. 2d 798, 802 (Fla. 1998), keeping in mind that such proposals may also extend to and include "matter directly connected therewith?" Art. XI, § 3, Fla. Const.

In In re Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination, 632 So. 2d 1018 (Fla. 1994), this Court noted that enfolding disparate subjects in a broad generality does not satisfy the single-subject requirement, and went on to hold that the "subject" of "discrimination" was such a "broad generality" with respect to the proposed amendment then under consideration.

No such "broad generality" is presented herein. The subject of each of the proposed amendments herein is the prohibition of government action which discriminates by affordins legal preference or affirmative benefit based upon characterizations already recognized in Article I, Section 2, for protection from deprivation of rights. No new categories of protected class or characteristic are added. No new restriction on the preexisting constitutional authority to prohibit deprivation of rights is created.

The proposed amendment under consideration in Case No. 97,089 proscribes such discrimination by legal preference or affirmative benefit on the basis of race, sex, color, ethnicity, or national origin. Article I, Section 2, Florida Constitution, provides that all natural persons "female and male alike" are equal before the law and that no person shall be deprived of any right because of race, religion, national origin, or physical handicap. While "ethnicity" is not expressly mentioned in existing Article I,

Section 2, the comments to the report of the Constitutional Revision Commission wherein "national origin" was recently added make clear that the purpose of the added term "national origin" was to proscribe deprivation of rights based on "ethnicity," and the terms were considered synonymous. By like measure, it is clear that the terms "race" and "color" are so related as to be synonymous for **oneness of purpose" analysis.

Thus, it seems clear that the requisite "oneness of purpose" exists in the subject of prohibiting discrimination by legal preference or affirmative benefit as to persons already protected from discrimination by deprivation of equal rights by existing Article I, Section 2, Florida Constitution. The oneness of purpose (as opposed to "broad generality") arises from the indisputable fact that all categories of persons referenced in the proposed amendment are persons already recognized in existing Article I, Section 2, Florida Constitution, as subject to special, constitutional status.

While this area of contention will be revisited below, particularly with reference to narrower proposed amendments in Case No. 97,086; No. 98,087; and No. 97,088, it is respectfully submitted that the identification of different groups of people in a proposed amendment does not violate single subject or destroy "oneness of purpose" where those included are persons who are presently recognized for special constitutional status in existing Article I, Section 2, Florida Constitution.

Opponents of prior proposed amendments have urged this Court that additional provisions of such amendments which refine, define, restrict, or implement the chief or "key" purpose of the proposed amendment somehow destroy oneness of purpose or create a single-subject violation. In Advisory Opinion to the Attorney General re Fish and Wildlife Conservation Commission, 705 So. 2d 1351 (Fla. 1998), this Court found single-subject compliance and rejected such a contention as to subsections of the proposed amendment. This Court explained at page 1354:

> All of these sections are logically connected to the key purpose of the amendment, which is contained in section (c).

Additionally, in Advisory Opinion to the Attorney General re Stop Early Release of Prisoners, 661 So. 2d 1204 (Fla. 1995), this Court held that a provision which added detail as to how the amendment would be implemented did not create a single-subject violation. In Advisory Opinion to the Attorney General re Limited Casinos, 644 So. 2d 71 (Fla. 1994), this Court rejected a contention that details of a proposal (including specific counties of the state) caused a single-subject violation. This Court explained at page 73:

> Although the petition contains details pertaining to the number, size, location, and type of facilities, we find that such details only serve to provide the scope and implementation of the initiative proposal. These features properly constitute matters directly and logically connected to the subject of the amendment.

(Emphasis added.)

In Advisory Opinion to the Attornev General - Limited Marine Net Fishing, 620 So. 2d 997 (Fla. 1993), it was contended that various provisions of the proposed amendment which defined terms, provided exemptions, and provided for possible partial invalidity and severability produced a single-subject violation. This Court rejected the contention, holding in pertinent part at page 999:

> The remaining provisions, which provide definitions, exemptions, penalties, a severability clause, and an effective date, are logically related to the subject of the amendment.

See also, In re Advisory Opinion to the Attorney General - Homestead Valuation Limitation, 581 So. 2d 586 (Fla. 1991) (provisions providing details of scope and implementation are logically connected to single subject of amendment).

From the foregoing it is clear that provisions of a proposed amendment which define terms employed therein, or limit the scope of operation of the amendment, or provide times and means of implementation, or provide remedies or penalties, or provide for partial implementation or severability upon any determination of partial invalidity, do not create a single-subject violation so long as they are properly related to the subject of the amendment.

There are equally well established principles applicable to determination of title and ballot summary sufficiency under section 101.161, Florida Statutes. The first of these is that the voter is "presumed to have a certain amount of common sense and knowledge." Advisory Opinion to the Attorney General re Tax Limitation, 673 So. 2d 864, 868 (Fla. 1996).

It has been recognized that the omission of details from such a summary would not be expected, or held, to mislead the voters. See, Advisory Opinion to the Attorney General re Limited Casinos, 644 So. 2d 71 (Fla. 1994), wherein this Court announced at page 75:

> We cannot accept the contention that the omission of certain details could reasonably be expected to mislead the voters. The seventy-five word limit placed on the ballot summary as required by statute does not lend itself to an explanation of all of a proposed amendment's details.

This recognition is entirely consistent with section 101.161, Florida Statutes, which only requires that, within the seventy-five word limit, the summary be an explanatory statement of "the chief purpose of the measure."

With respect to such "detail," this Court explained in Advisory Opinion to the Attorney General re Prohibitins Public Funding of Political Candidates' Campaigns, 693 So. 2d 972, 975 (Fla. 1997):

> We have previously determined that this section 'requires that the ballot title and summary for a proposed constitutional amendment state in clear and unambiguous language the chief purpose of the measure.' *Askew v. Firestone,* 421 So. 2d 151, 154-55 (Fla. 1982). Nevertheless, the title and summary need not explain every detail or ramification of the proposed amendment. *Carroll v. Firestone,* 497 *So.* 2d 1204, 1206 (Fla. 1986). Our responsibility is to determine whether the language of the title and summary, as written, misleads the public.

Section 101.161, Florida Statutes, of course, imposes the requirement of both a title and a ballot summary. In the instant proceeding the Attorney General has raised concern that the ballot

title of certain proposed amendments is insufficient or misleading by not referencing certain matters in the ballot summary.

Such a contention was fully addressed and rejected in Advisory Opinion to the Attorney General re Tax Limitation, 673 So. 2d 864 (Fla. 1996), wherein this Court explained at page 868:

> Furthermore, we reject the Attorney General's concern as to the misconstruction of the ballot title because the title cannot be read in isolation. Section 101.161 requires the ballot summary and title to be read together. *Advisory Opinion to the Attorney General re: Limited Casinos, 644 So.* 2d 71, 75 (Fla. 1994) ('This Court has always interpreted section 101.161(1) to mean that the ballot title and summary must be read together in determining if the ballot information properly informs the voter.'). The ballot summary clearly explains that the taxes and fees targeted by the Tax Limitation petition are those imposed 'by constitutional amendment.' Thus, when the ballot title is read with common sense and in context with the summary, it is clear that the Tax Limitation ballot title accurately informs the voters of the chief purpose of the proposed constitutional amendment and satisfies the requirements of section 101.161.

Moreover, in In re Advisory Opinion to the Attorney General - Save Our Everglades, 636 So.2d 1336 (Fla. 1994), which the Attorney General cites, the title ("Save Our Everglades") was pure political rhetoric referring to a "peril" nowhere mentioned in the proposed amendment, and was coupled with a ballot summary which was also held misleading and defective.

It is also well established, as to validity of a ballot summary, that the use of somewhat different terms in summary and text may be inconsequential. As this Court explained in In se

Advisory Opinion to the Attornev General English - The Official Lansuase of Florida, 520 So. 2d 11 (Fla. 1988), at page 13:

> The attorney general further suggests that this Court may also wish to consider whether the ballot title and the explanation of the substance of the amendment meet the requirements of section 101.161, Florida Statutes (1987). In reviewing the requirements of this statute, our Court has stated:
>
> > `[T]he voter should not be misled and . . . [should] have an opportunity to know and be'on notice as to the proposition on which he is to cast his vote. . . . what the law requires is that the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot.'
>
> *Askew v. Firestone,* 421 So. 2d 151, 155 (Fla. 1982) (emphasis omitted) (quoting *Hill v. Milander,* 72 So. 2d 796, 798 (Fla. 1954)).
>
> The attorney general points out that the ballot summary states that the amendment enables the legislature to *'implement* this *article'* by appropriate legislation, whereas the amendment itself gives the legislature the power 'to *enforce* this *section'* by appropriate legislation. Though their meanings are not precisely the same, the words 'implement' and 'enforce' are considered synonyms. Webster's Third New International Dictionary 751 (1976). The reference to 'article' rather than 'section' appears to have been inadvertent. As a whole, the ballot summary fairly reflects the chief purpose of the proposed amendment. The differing use of terminology could not reasonably mislead the voters. We cannot accept the contention that the seventy-five word ballot summary required by the statute must explain in detail what the proponents hope to accomplish by the passage of the amendment.

FCRI respectfully submits that the foregoing summarizes the scope, standards, and principles of review herein. While the

balance of this brief will address the individual proposed amendments, and details thereof, the foregoing authorities recognize, and establish, that the right of the people to propose and vote upon amendments to the constitution is an expressly reserved constitutional risht.

As such, the right is one to be preserved and effectuated by this Court, not one to be removed or thwarted by hypertechnical or formalistic application of single-subject or ballot summary standards, or by opposition of persons of authority or groups of influence. The "wisdom and merits" of such proposed amendments are for the citizens of Florida at the polling place, not these proceedings.

B. The Proposed Amendment in Case No. 97,089.

The key provisions of the proposed amendment to be considered in Case No. 97,089, for purpose of single-subject analysis and determination of compliance with section 101.161, Florida Statutes, are the title, ballot summary, and paragraph 1 of the proposed amendment.

The ballot title for the proposed amendment is "END GOVERNMENTAL DISCRIMINATION AND PREFERENCES AMENDMENT." The summary for the proposed amendment provides:

> Amends Declaration of Rights, Article I of the 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.

Paragraph 1 of the proposed amendment is as follows:

> 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.

FCRI respectfully submits that the foregoing are the "key" provisions for this Court's analysis because the "subject," and chief purpose of the amendment is set forth in paragraph 1 of the text, as above quoted. All the remaining eight paragraphs of the text are in the nature of definitions, exemptions, limitations, remedies, or implementing means respecting the "subject" as set forth in paragraph 1. As such, the remaining paragraphs concern matter clearly and directly connected with the single subject of the amendment as set forth in paragraph 1, and thereby meet the requirements of Article XI, Section 3, Florida Constitution.

The Attorney General, in his request for advisory opinion, has suggested that some single-subject violation may arise from the including of public employment, education, and contracting in a single amendment, and by the inclusion of subparagraph 6, which provides:

> 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.

As used in subsection 1, however, the portion referencing public employment, education, and contracting is a limitation on the overall single subject set forth in paragraph 1 rather than a creation of three separate subjects. It is true that the drafters could have simply put a period after the phrase "national origin" and thereby proposed to ban such discriminatory or preferential treatment in all governmental action. This Court, however, has never held that to satisfy single-subject requirements the measure must extend to all possible reaches of the subject. Limitations of the reach of a single subject have been approved and upheld for ballot access by this Court time and again.

Moreover, it is clear that the provision included in paragraph 6 does not result in multiple subjects; it merely exempts from operation of the prohibition government action necessary to establish or maintain eligibility for federal program funding.

Properly viewed, the above limitations do not by any measure subject the proposed amendment to single-subject condemnation. To the contrary, they serve respectively to avoid the "broad generality" feature and "collateral consequences" threatened which contributed to removal from the ballot of the proposed amendment considered in In re Advisory Opinion to the Attornev General - Restricts Laws Related to Discrimination, 632 So. 2d 1018 (Fla. 1994).

The Attorney General has also suggested that the inclusion of "race, sex, color, ethnicity, and national origin" in the single proposed amendment creates a single-subject violation. This

contention has been treated in preceding subsection A. The restrictions of single subject are not violated where the categories of persons included are those already constitutionally recognized for protection from discrimination by deprivation of rights in Article I, Section 2, Florida Constitution. In this respect, the present proposed amendment also differs from, and avoids the defects of, the amendment considered in In re Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination, 632 So. 2d 1018 (Fla. 1994).

Finally, the Attorney General has suggested that because the proposed amendment would proscribe discriminatory action by all governmental entities of Florida, including state, city, county, district, and educational entities, a single-subject violation is created. With all due respect, that is how fundamental rights approved by citizens for inclusion in their constitution always operate. Article XI, Section 3, Florida Constitution, in reserving to the people the right to propose revisions or amendment of any portion or portions of the constitution, does not say "except fundamental rights." A holding that because a newly adopted fundamental right or protection extended to all levels of government it created a single-subject violation would be nothing less than an unauthorized judicial amendment of Article XI, Section 3, Florida Constitution, and its express guarantee that the people of Florida may revise or amend "any" portion or portions of same by the initiative process.

This Court may also note the insurmountable burden, and constitutional morass, that the suggestions of the Attorney General would create when taken as a whole, as demonstrated by simple mathematics. In effect, the Attorney General suggests that, to meet the requirements of single subject, there must be five separate proposed amendments to individually address race, color, sex, ethnicity, and national origin; as to each there must also be three separate proposed amendments to individually address public employment, contracting, and education; and as to each of these, there must be at least seven separate proposed amendments to address state executive, state legislative, state judicial, county, city, district, and college-level activities.

Simple mathematics shows that to satisfy all of the "suggestions" of the Attorney General would require at least 105 separate citizen initiative petitions. Each of those separate petitions would require, according to the Secretary of State, 43,536 signatures to qualify for review by this Court. Each would require 435,329 signatures to achieve ballot placement after approval of this Court. Thus, for 105 proposed amendments, a present total of 45,710,000 signatures would have to be gathered and verified simply to grant one affirmative "fundamental" protection regarding persons already identified in Article I, Section 2, Florida Constitution, as entitled to protection from deprivation of rights.

One can hardly envision a more insurmountable burden which could be imposed on the express guarantee of the Florida

Constitution, Article XI, Section 3, that the people may by initiative amend or revise any portion thereof. One might also consider the patchwork the Florida Constitution will inevitably become if such a standard is adopted and citizen groups, as is their constitutional right, persevere to present "tiny" 'proposed amendments, one by one, over the years.

The Attorney General has also suggested that the title and summary may mislead by merely referencing in the title "governmental" discrimination and in the summary that its purpose is to bar "government" from discriminating. The suggestion is that by not expressly enumerating districts, school boards, and other such governmental entities in the summary, the voters may be misled.

The citizens of Florida are not so naive or uninformed as the Attorney General suggests. They are well aware that the various bodies which control and effectuate public education, employment, and contracting are "governmental" bodies, whether a state, county, municipal, or district entity of government. They are equally well aware that public education (whether at the elementary or university level) is directed and administered by bodies which are part of "government." As this Court has noted, the voter is presumed to have a certain amount of common sense and knowledge from learning and experience. Advisory Opinion to the Attorney General re Tax Limitation, 673 So. 2d 864, 868 (Fla. 1996).

The Attorney General has further suggested that the title and ballot summary are defective in that a "myriad" of laws, rules, and

regulations might be affected by the proposed amendment, and the summary fails to either identify same or describe the impact on them. In this suggestion, the Attorney General again seeks to impose an insurmountable burden which simply could never be met within the seventy-five word limit of section 101.161, Florida Statutes. In effect, the Attorney General seeks to revise Article XI, Section 3, Florida Constitution, to exclude from its operation amendment or revision of fundamental rights by citizen initiative petitions.

The Legislature of Florida certainly has not been so presumptuous by enacting section 101.161, Florida Statutes, for all that is required therein is a seventy-five word explanation of "the chief purpose of the measure." This Court has recognized that a summary is not expected or required to reference or explain every detail or ramification of the amendment. Advisory Opinion to the Attornev General re Prohibiting Public Funding of Political Candidates' Campaigns, 693 So. 2d 972, 975 (Fla. 1997); Advisory Opinion to the Attornev General re Limited Casinos, 644 So.2d 71, 75 (Fla. 1994).

Moreover, in In re Advisory Opinion to the Attornev General - Restricts Laws Related to Discrimination, 632 So. 2d 1018 (Fla. 1994), the defect found fatal therein arose in part from an express repeal therein of "all laws inconsistent with this amendment" and in part from potential violation of federal program requirements and loss of federal funding. The instant proposed amendment includes no such express repeal and expressly exempts from its

operation action necessary to meet federal program requirements and maintain federal funding. Thus, the instant proposed amendment is significantly different, and avoids the defects which justified ballot denial in the prior advisory opinion of this Court.

It is therefore respectfully submitted that the proposed amendment under consideration in Case No. 97,089 fully meets all proper criteria of Article XI, Section 3, Florida Constitution, and of section 101.161, Florida Statutes. No clear and conclusive defect is established, or presented.

Opponents will undoubtedly endeavor to characterize the matters before this Court as being as complex and multi-faceted as possible, with a virtual Pandora's Box of potential effects. Opposition to change takes many forms, and is often intense.

The simple fact, however, is that the proposed amendment presents a single subject through its requisite oneness of purpose. The citizens of Florida, being adequately informed by the title and ballot summary and being presumed to have a full measure of common sense and knowledge, are entitled to determine for themselves whether the amendment should be adopted and made a part of the Florida Constitution. This Court should approve the amendment for placement on the ballot.

C. The Proposed Amendments in Case No. 97,086; Case No. 97,087; and Case No. 97,088.

FCRI will herein address the remaining three amendments before the Court. Each of these proposed amendments addresses, within its single subject, discrimination based on "race, color, ethnicity, or

national origin." In this respect, each is narrower in its reach than the amendment discussed in preceding subsection B, which additionally addressed discrimination based upon "sex."

Moreover, the areas of government action treated collectively in the amendment discussed in preceding subsection B have been separated into three discrete proposed amendments. The amendment considered in Case No. 97,086 thereby addresses only discrimination in public education. That considered in Case No. 97,087 addresses only discrimination in public employment. That considered in Case No. 97,088 addresses only discrimination in public contracting.

It is respectfully submitted that the authorities discussed above establish that the proposed broader amendment in Case No. 97,089 fully meets all single-subject and ballot title and summary requirements. Those same authorities clearly establish that the three narrower proposed amendments to be considered in this subpoint meet all such requirements.

Moreover, each of the proposed amendments considered herein contains a limitation in subsection 5 whereby loss of federal funding, and therefore "cataclysmic" result, is avoided. Each, in section 4, provides for continuing validity of any court order or consent decree in effect upon adoption, thereby avoiding "cataclysmic" result or infringement on judicial power or "function."

Each amendment, in its section 8, merely recognizes the existing supremacy of federal law in case of conflict and provides for maximum implementation legally possible, and for severability

upon a finding of partial invalidity. Such provisions clearly do not render amendments defective, unless countless decisions and pronouncements of this Court have been reversed sub *silento*.

With respect to the four terms of "race, color, ethnicity, or national origin," it is clear that all are related in such a fashion or to such a degree as to fall within the boundaries of single subject. This Court may surely note than in common usage "race" and "color" are treated as synonymous, as are "ethnicity" and "national origin." Indeed, the four terms are so closely and directly related, and overlapping in common and potential usage, that the omission of anv one of the terms would provide a ready vehicle for circumvention of prohibition of discrimination as to the other three.

These proposed amendments in employing the four terms "race, color, ethnicity, and national origin" clearly do not demonstrate the same defect as that found disqualifying in In re Advisory Opinion to the Attornev General - Restricts Laws Related to Discrimination, 632 So. 2d 1018 (Fla. 1994), wherein the proposed amendment also and additionally extended to "religion," "sex," "age," "handicap," "marital status," and "familial status."

As to each of the three proposed amendments, the Attorney General has, again, suggested that because future actions of counties, cities, districts, and educational entities will also be affected or impacted (by the amendments' prohibition), a single-subject defect is present. This Court has recognized and held, however, that mere effect or impact on multiple branches or levels

of government does not create a single-subject defect. It is only where a proposal "alters or performs the functions" of multiple levels or branches that a single-subject violation will arise. Advisorv Opinion to the Attorney General re Fish and Wildlife Conservation Commission, 705 So. 2d 1351, 1353-1354 (Fla. 1998).

The proposed amendments do not "alter or perform" functions of multiple branches or levels. They do not transfer, rearrange, or perform any functions of any governmental unit or entity. They would merely prohibit a form of governmentally imposed discrimination and, as does any such fundamental constitutional right, thereby impact the actions of the various entities of government in Florida.

The Attorney General has also suggested that the title to each of the proposed amendments is defective by referring only to "race," whereas the summary and text also address "color, ethnicity, and national origin." This contention is without merit in that the summary to each clearly sets forth the additional terms, and the summary and title are to be read together. Advisorv Opinion to the Attorney General re Tax Limitation, 673 So. 2d 864, 868 (Fla. 1996).

The Attorney General has also suggested that each of the three proposed amendments may be misleading in that the ballot summary of each uses the term "people," while the text employs the term "persons." It is respectfully submitted that such a suggestion is without merit where the terms are virtually synonymous. See, In re

Advisory Opinion to the Attornev General Enqlish - The Official Lanquage of Florida, 520 So. 2d 11, 13 (Fla. 1988).

The suggestion of the Attorney General that the term "persons" as used in this context will create confusion as to whether corporations are included is equallywithoutmerit. While "persons" is not defined therein, the scope of such use is to be determined by the context and intent in usage. Thus, in the instant context, since corporations do not have "race, color, or ethnicity," the clear import is that the strictures are directed to discrimination regarding natural persons (i.e., "people"). The scope of the amendment is, however, broad enough to apply where governmental action attempts to authorize or endorse the use of corporate form as a subterfuge to circumvent the prohibition of discrimination as to race, color, ethnicity, or national origin.

FCRI respectfully submits that each of the proposed amendments clearly meets all requirements of title, ballot summary, and single subject. In Fine v. Firestone, 448 So. 2d 984, 990 (Fla. 1984), quoting with approval from an earlier decision, this Court explained that the single subject test is whether the proposal

> 'may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme. Unity of object and plan is the universal test.'

The three proposed amendments considered in this subpart clearly meet this test. They should, therefore, be approved by this Court for placement on the ballot and approval or disapproval by the citizens of Florida. Such a determination by this Court will

effectuate that which is reserved, and guaranteed, to the people by Article XI, Section 3, Florida Constitution.

CONCLUSION

For the reasons set forth above, and based upon the above authorities, this Court should determine and advise that each of the proposed constitutional amendments meets all applicable requirements respecting title, summary, and single subject and is therefore entitled to placement on the ballot for consideration by the citizens of Florida upon presentation and certification of the remaining necessary signatures.

Respectfully submitted,

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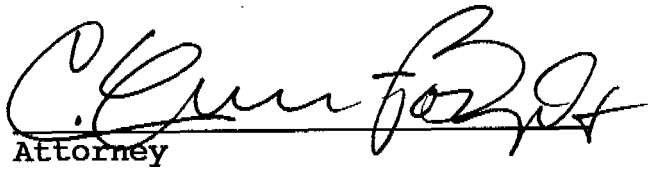
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. mail this 27nd day of December, 1999, to the following:

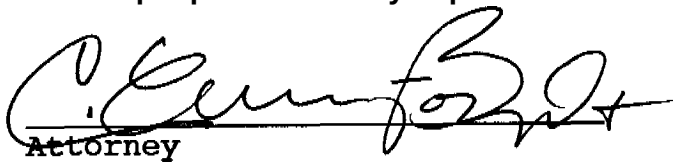
The Honorable Robert A. Butterworth
Attorney Genera1
State of Florida
The Capitol
Tallahassee, FL 32399-1050



Attorney

CERTIFICATE OF SIZE AND STYLE OF TYPE

I HEREBY CERTIFY that the font used in the body of this brief is 12-point Courier, a font that is not proportionately spaced.



Attorney