

**IN THE SUPREME COURT OF FLORIDA**

Case Nos.: SC16-1785; SC16-1981

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ADVISORY OPINION TO THE ATTORNEY GENERAL  
RE: VOTING RESTORATION AMENDMENT

ADVISORY OPINION TO THE ATTORNEY GENERAL  
RE: VOTING RESTORATION AMENDMENT (FIS)

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**INITIAL BRIEF OF SPONSOR**  
**Floridians for a Fair Democracy**

IN SUPPORT OF THE INITIATIVE

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## **STATEMENT OF THE CASE**

This matter comes before the Court upon a petition for an advisory opinion submitted by the Attorney General on October 4, 2016, pursuant to Article IV, Section 10, Florida Constitution, and Section 16.061, Florida Statutes. In an order dated November 2, 2016, this Court directed interested parties to submit initial briefs. Floridians for a Fair Democracy, as Sponsor of the proposed amendment entitled “Voting Restoration Amendment” (hereinafter the “Proposed Amendment”), submits this brief in support of the Proposed Amendment.

The ballot title of the Proposed Amendment is “Voting Restoration Amendment.” The ballot summary reads:

This amendment restores the voting rights of Floridians with felony convictions after they complete all terms of their sentence including parole or probation. The amendment would not apply to those convicted of murder or sexual offenses, who would continue to be permanently barred from voting unless the Governor and Cabinet vote to restore their voting rights on a case by case basis.

The Proposed Amendment would amend Section 4 of Article VI as follows:

### **FULL TEXT OF THE PROPOSED CONSTITUTIONAL AMENDMENT:**

#### **Article VI, Section 4. Disqualifications.—**

(a) No 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. Except as provided in subsection (b) of this section, any disqualification from voting arising from a felony conviction shall terminate and voting rights shall be restored upon completion of all terms of sentence including parole or probation.

(b) No person convicted of murder or a felony sexual offense shall be qualified to vote until restoration of civil rights.

(c) No person may appear on the ballot for re-election to any of the following offices:

- (1) Florida representative,
- (2) Florida senator,
- (3) Florida Lieutenant governor,
- (4) any office of the Florida cabinet,
- (5) U.S. Representative from Florida, or
- (6) U.S. Senator from Florida

if, by the end of the current term of office, the person will have served (or, but for resignation, would have served) in that office for eight consecutive years.

### **SPONSOR'S STATEMENT OF INTENT**

The right to vote is a basic right. The Proposed Amendment has the single purpose of returning that right to individuals who have satisfied their obligations to the criminal justice system. Specifically, the drafters intend that individuals with felony convictions, excluding those convicted of murder or a felony sexual offense, will automatically regain their right to vote upon fulfillment of all obligations imposed under their criminal sentence. Those individuals may then register to vote without review by the Governor and Cabinet. The drafters explicitly excluded individuals convicted of murder or a felony sexual offense, who will continue to seek restoration under the current system.

## **STANDARD OF REVIEW**

This Court has acknowledged its responsibility to uphold a proposed amendment when possible, and has stated that it will invalidate a proposal only when it is “clearly and conclusively defective.” *Advisory Op. to the Att’y Gen. re Use of Marijuana for Debilitating Med. Conditions*, 181 So. 3d 471, 476 (Fla. 2015) (quoting *Advisory Op. to the Att’y Gen. re Fla.’s Amendment to Reduce Class Size*, 816 So. 2d 580, 582 (Fla. 2002)).

## **SUMMARY OF THE ARGUMENT**

The duty of this Court is to evaluate the Proposed Amendment, and ensure that it is presented in a form that meets these constitutional and statutory standards. The Court does not judge the desirability of the proposal. That is the role of the voters. Rather, the Court’s inquiry is limited to only two issues.

First, whether the Proposed Amendment complies with the single-subject requirement of Article XI, Section 3, Florida Constitution. *Advisory Op. to the Att’y Gen. re Water & Land Conservation--Dedicates Funds to Acquire & Restore Fla. Conservation & Recreation Lands*, 123 So. 3d 47, 50 (Fla. 2013) (citing *Advisory Op. to the Att’y Gen. re Protect People, Especially Youth, from Addiction, Disease & Other Health Hazards of Using Tobacco*, 926 So. 2d 1186, 1190 (Fla. 2006)). And second, whether the ballot title and summary, when read together, accurately inform the voters of the Proposed Amendment’s chief purpose pursuant to Section

101.161, Florida Statutes. *Advisory Op. to the Att’y Gen. re Florida’s Amendment to Reduce Class Size*, 816 So. 2d at 585 (“the ballot title and summary may not be read in isolation, but must be read together in determining whether the ballot information properly informs the voters”).

The Proposed Amendment satisfies the single subject rule of Article XI, Section 3, Florida Constitution, because it presents voters with a unified and limited question of whether to automatically restore voting rights to persons convicted of a felony, excluding persons convicted of murder or a felony sexual offense, upon completion of all the terms of their criminal sentence including parole or probation. Everything accompanying this limited policy change is matter directly connected to that objective.

Furthermore, the ballot title and summary of the Proposed Amendment clearly and unambiguously explain that such automatic restoration is the chief purpose of the amendment. Reading them together, the voter will be adequately informed and able to cast an intelligent vote about whether to include the proposal in the Florida Constitution.

## ARGUMENT

- I. THE PROPOSED AMENDMENT PRESENTS A SINGLE UNIFIED QUESTION TO VOTERS: WHETHER TO AUTOMATICALLY RESTORE THE VOTING RIGHTS OF FLORIDIANS CONVICTED OF A FELONY, EXCLUDING PERSONS CONVICTED OF MURDER OR A FELONY SEXUAL OFFENSE, UPON COMPLETION OF ALL THE TERMS OF THEIR CRIMINAL SENTENCE

The Proposed Amendment changes the operation of a single existing process—the restoration of voting rights to Floridians with felony convictions. Although that process currently exists, the Proposed Amendment simplifies it.

Article XI, Section 3, Florida Constitution, provides, “[t]he 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 ... shall embrace but one subject and matter directly connected therewith.” This Court has described the single subject requirement as a “rule of restraint designed to insulate Florida’s organic law from precipitous and cataclysmic change.” *Advisory Op. to the Att’y Gen. re 1.35% Property Tax Cap, Unless Voter Approved*, 2 So. 3d 968, 972 (Fla. 2009) (quoting *Advisory Op. to the Att’y Gen. - Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994)). When considering an amendment under Article XI, Section 3, the Court has focused on whether the proposal has a “logical and natural oneness of purpose.” *Advisory Op. to the Att’y Gen. re Extending Existing Sales Tax to Non-Taxed Services Where Exclusion Fails to Serve Pub. Purpose*, 953 So. 2d 471, 478 (Fla. 2007) (quoting *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984)).

The single subject rule is violated when an initiative engages in either one of two practices: “(a) logrolling; or (b) substantially altering or performing the functions of multiple branches of state government.” *See Water & Land Conservation*, 123 So. 3d at 50-51. Because the Proposed Amendment presents a unified question that affects only one subject and matter properly connected therewith, the Court should find that it complies with the single subject requirement of Article XI, Section 3, Florida Constitution.

First, the Proposed Amendment does not logroll. Florida voters are not forced to “accept part of an initiative proposal which they oppose in order to obtain a change in the constitution which they support.” *Advisory Op. to the Att’y Gen. re Standards for Establishing Legislative Dist. Boundaries*, 2 So. 3d 175, 180 (Fla. 2009) (quoting *Advisory Op. to the Att’y Gen. re Amendment to Bar Gov’t From Treating People Differently Based on Race in Pub. Educ.*, 778 So. 2d 888, 891 (Fla. 2000)). Rather, the Proposed Amendment has just a single effect: automatic restoration of voting rights for Floridians with a felony conviction, excluding those convicted of murder or a felony sexual offense, once they have completed all the terms of their sentences. Because the Proposed Amendment does not contain extraneous provisions unrelated to that single effect, it does not engage in logrolling. *See Water & Land Conservation*, 123 So. 3d at 51. A voter is asked one simple question: should persons convicted of a felony, excluding those persons convicted of murder or a felony

sexual offense, who have completed their sentences automatically have their voting rights restored?

Furthermore, the Proposed Amendment does not perform, alter, or substantially affect the functions of multiple branches of Florida's government. An initiative 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." *Treating People Differently Based on Race*, 778 So. 2d at 892 (quoting *Advisory Op. to the Att'y Gen. re Fish and Wildlife Conservation Commission*, 705 So. 2d 1351, 1353-54 (Fla. 1998)).

The Proposed Amendment would make one simple policy change that touches upon only a single branch of Florida's government. Given the vast executive functions of the Governor and Cabinet, this solitary impact is not substantial in the sense contemplated by the single subject rule. If adopted, the measure would automatically, upon completion of all the terms of a criminal sentence, restore voting rights to persons convicted of a felony, excluding persons convicted of murder or a felony sexual offense. Because of this automatic restoration of rights, the Governor and Florida Cabinet would only be responsible for restoring civil rights on a case-by-case basis for those persons convicted of murder or a felony sexual offense. This reduction in the obligations and scope of their current responsibilities affects only the executive branch of our state government and in an insubstantial way. Thus, the

Proposed Amendment satisfies the constitutional prohibition against an initiative substantially altering or performing the functions of multiple branches of state government.

In short, the Proposed Amendment's purpose is quite specific and foreseeable.

II. THE BALLOT TITLE AND SUMMARY, READ TOGETHER, CLEARLY AND ACCURATELY INFORM THE VOTERS ABOUT THE CHIEF PURPOSE OF THE AMENDMENT, WHICH IS TO AUTOMATICALLY RESTORE THE VOTING RIGHTS OF FLORIDIANS CONVICTED OF A FELONY, EXCLUDING PERSONS CONVICTED OF MURDER OR A FELONY SEXUAL OFFENSE, UPON COMPLETION OF ALL THE TERMS OF THEIR CRIMINAL SENTENCE

The ballot title and summary of this proposal contain substantially all of the operative text of the Proposed Amendment. The title and summary give the voter fair notice that the effect of the amendment is to automatically restore voting rights to persons with a felony conviction, excluding those with a murder conviction or a felony sexual offense conviction, who have completed all the terms of their criminal sentences.

In considering an initiative's compliance with Section 101.161, Florida Statutes, this Court asks whether the ballot title and summary give voters "fair notice of the content of the proposed amendment." *Advisory Op. to the Att'y Gen. re Stop Early Release of Prisoners*, 661 So. 2d 1204, 1206 (Fla. 1995); *cf. Askew v. Firestone*, 421 So. 2d 151, 155 (Fla.1982) ("All that the Constitution requires or that the law compels or ought to compel is that the voter have notice of that which he

must decide. ... What the law requires is that the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot.”) (emphasis omitted) (quoting *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954)).

Recognizing the statutory 15-word limit for titles and 75-word limit for summaries, this Court has noted that the title and summary need not explain every aspect or every possible effect of the proposed amendment. *See Advisory Op. to the Att’y Gen. re Right to Treatment & Rehabilitation for Non-Violent Drug Offenses*, 818 So. 2d 491, 497 (Fla. 2002) (“It is not necessary to explain every ramification of a proposed amendment, only the chief purpose.”); *Advisory Op. to the Att’y Gen. re Limited Casinos*, 644 So. 2d 71, 74-75 (Fla. 1994).

Taken together, the ballot title and summary of the Proposed Amendment accurately inform voters about its chief purpose, providing sufficient information for them to cast an intelligent vote. The title and summary place voters on notice that the Proposed Amendment will automatically restore voting rights to persons convicted of a felony, excluding persons convicted of murder or a felony sexual offense, upon completion of all the terms of their criminal sentences. The summary explicitly informs voters that those persons convicted of murder or felony sexual offenses would remain barred from voting unless the Governor and Cabinet restore their civil rights on a case-by-case basis.

This Court has previously noted that the ballot title and summary “need not (and because of the statutory word limit, often cannot) explain ‘at great and undue length’ the complete details of a proposed amendment.” *Advisory Op. to Att’y Gen. re Use of Marijuana for Certain Med. Conditions*, 132 So. 3d 786, 808 (Fla. 2014) (quoting *Legislative Dist. Boundaries*, 2 So. 3d at 186). The Sponsor drafted this ballot title and summary to be as clear as possible regarding its singular purpose. In fact, the title and summary contain substantially all of the text of the Proposed Amendment. Because the Proposed Amendment’s ballot title and summary inform the voters of its chief purpose in language that is clear and unambiguous, this Court should hold that the title and summary comply with the requirements of Section 101.161, Florida Statutes.

### **CONCLUSION**

The Proposed Amendment presents a single, unified subject to the voters: automatic restoration, upon completion of all the terms of a criminal sentence including parole or probation, of voting rights to persons convicted of a felony, excluding persons convicted of murder or a felony sexual offense. Accordingly, this Court should affirm that the Proposed Amendment complies with the single subject requirement of Article XI, Section 3, Florida Constitution.

Likewise, the ballot title and summary comply with the requirements of Section 101.161, Florida Statutes, by explaining in clear, unambiguous language the

chief purpose of the amendment. Both the title and the summary are accurate, and avoid the use of emotional sloganeering. As a result, the Proposed Amendment is neither more nor less than it promises to be.

For these reasons, this Court should uphold the Proposed Amendment and permit its placement on the ballot.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I electronically filed the foregoing document with the Clerk of the Court by using the Florida Courts e-Filing Portal and that a true and correct copy of the foregoing document has been furnished by electronic mail and U.S. Mail to all parties listed below on this day, November 22, 2016.

/s/ Jon L. Mills  
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**CERTIFICATE OF TYPEFACE COMPLIANCE**

I HEREBY CERTIFY that this brief was prepared in Times New Roman 14-point font, in compliance with Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

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