IN THE SUPREME COURT OF FLORIDA

Case No. SC19-1070

ADVISORY OPINION TO THE ATTORNEY GENERAL
RE: PROVIDE MEDICAID COVERAGE
TO ELIGIBLE LOW-INCOME ADULTS

Brief of THE FLORIDA SENATE; and BILL GALVANO, in his official capacity as President of the Florida Senate

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Jeremiah Hawkes
General Counsel
Ashley Istler
Deputy General Counsel
THE FLORIDA SENATE
302 The Capitol
404 South Monroe Street
Tallahassee, Florida 32399-1100

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STATEMENT OF THE CASE

This case arises from a request for an advisory opinion by the Attorney General pursuant to Article IV, section 10 of the Florida Constitution. The Initiative at issue is entitled "Provide Medicaid Coverage to Eligible Low-Income Adults." The Attorney General has asked the Court to review the Initiative for compliance with the single subject requirement in Article XI, section 3 of the Florida Constitution and the ballot title and summary requirements in section 101.161(1), Florida Statutes.

The Florida Senate is one house of the Florida Legislature. The Court has held "under section 1 of Article III of the Constitution the legislature may exercise any lawmaking power that is not forbidden by the organic law of the State. 'The Constitution does not grant particular legislative powers, but contains specific limitations of the general lawmaking power of the Legislature.'" *See City of Miami Beach v. Crandon*, 35 So. 2d 285, 287 (Fla. 1948) (quoting *Stone v. State*, 71 Fla. 514, 71 So. 634, 635 (Fla. 1916)).

Most amendments to the state constitution must perforce involve the Legislature. As the Court has explained:

> The constitution is the framework of the government containing the general principles upon which the government must function. *City of Jacksonville v. Continental Can*, 113 Fla. 168, 151 So. 488 (1933). It is not designed to provide detailed instructions for the method of its implementation. This must of necessity be left up to the Legislature.

Johns v. May, 402 So. 2d 1166, 1169 (Fla. 1981).

The Initiative under consideration goes beyond providing a framework and indeed attempts to give detailed instructions and methods of implementation. Therefore, the Senate is filing this brief to assist the Court in its review of this Initiative.

SUMMARY OF THE ARGUMENT

In 2010, Congress passed a Medicaid expansion that would have increased the populations required to be covered. In a challenge to that expansion, the U.S. Supreme Court ruled that the new program served a different purpose than the original Medicaid program and it would be unconstitutional to coerce the states to participate. The expansion required by Congress was thereby rendered optional.

The sponsors would like to go around the Legislature and enshrine the state's participation in the Medicaid program in the Constitution. The Initiative fails to comply both with the ballot title and summary requirements of statutory law and the single subject requirement in the Constitution.

The ballot summary fails to disclose the full sweep of the Initiative. It also omits the material fact that the state will have to fund the Medicaid program and instead contains emotional language referencing federal funding, which leaves the impression that the Initiative will be paid for completely out of Federal revenue.

Furthermore, the ballot summary fails to define material terms and uses different terminology in the summary than in the Initiative.

The Initiative also violates the single subject rule by materially affecting multiple branches and levels of government. Furthermore, it fails to identify the portions of the Constitution it substantially affects thereby leaving significant questions unresolved and open to various interpretations.

The Court should recede from previous opinions and consider whether the Initiative violates the U.S. Constitution. The Initiative violates the Guarantee Clause by committing the state's sovereign power to the Federal Government. The Initiative violates the Supremacy Clause by requiring the state act in violation of the federal laws and regulations regarding Medicaid.

For these reasons, the Court should not allow this Initiative to be placed on the ballot.

ARGUMENT

I. INTRODUCTION

Medicaid is a federally authorized program designed to provide health coverage to certain groups of needy individuals, including low-income families, qualified pregnant women, and qualified disabled individuals. *See* 42 U.S.C. § 1396d(a). If a state decides to opt into the program, a shared federal-state partnership is created in which the federal government provides fifty to eighty-three percent of

the cost with the state funding the remainder. *See* 42 U.S.C. § 1396d(b). A state must then abide by federal fundamental constraints, including mandates for eligibility and coverage of services for certain categories of individuals. The federal program is designed to provide states with flexibility. All 50 states have some form of Medicaid, but each state manages its own program differently within the federal parameters.

For Fiscal Year 2019-2020, the budget for the Florida Medicaid program is approximately $28.4 billion, which is about thirty one percent of the total state budget. Over 3.8 million Floridians are enrolled in Medicaid. State general revenue accounts for approximately $6.9 billion of the $28.4. That is about 20% of state general revenue. The Florida Legislature has designated the Agency for Health Care Administration (AHCA) to administer Medicaid. *See* § 409.901(2) Fla. Stat. Participation in Medicaid requires the state to cover certain groups. *See* § 409.903 Fla. Stat. and 42 U.S.C § 1396a(a)(10)(i). There are also optional populations covered by Florida Medicaid. *See* § 409.904 Fla. Stat. and 42 U.S.C § 1396a(a)(10)(ii). There are also optional services provided under Florida law.

In 2010 Congress enacted the Patient Protection and Affordable Care Act (ACA). The ACA included an expansion of the Medicaid program to cover all low-income adults. While it is clear in creating Medicaid, Congress reserved to itself "[t]he right to alter, amend, or repeal any provision," the U.S. Supreme Court in *NFIB v. Sebelius* ruled that the expansion required by ACA was such a dramatic

change that it would coerce states into participating and as such the mandatory expansion was unconstitutional. *National Federation of Independent Business v. Sebelius (NFIB*), 567 U.S. 519, 575-576, 132 S.Ct. 2566, 183 L.Ed.2d 450 (2012). The U.S. Supreme Court explained this "dramatic" expansion:

> The current Medicaid program requires States to cover only certain discrete categories of needy individuals—pregnant women, children, needy families, the blind, the elderly, and the disabled. 42 U.S.C. § 1396a(a)(10). There is no mandatory coverage for most childless adults, and the States typically do not offer any such coverage. The States also enjoy considerable flexibility with respect to the coverage levels for parents of needy families. § 1396a(a)(10)(A)(ii).
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> The Medicaid provisions of the Affordable Care Act, in contrast, require States to expand their Medicaid programs by 2014 to cover all individuals under the age of 65 with incomes below 133 percent of the federal poverty line. § 1396a(a)(10)(A)(i)(VIII). The Act also establishes a new "[e]ssential health benefits" package, which States must provide to all new Medicaid recipients—a level sufficient to satisfy a recipient's obligations under the individual mandate. §§ 1396a(k)(1), 1396u–7(b)(5), 18022 (b).
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> *Id*.

Therefore, a state could not have its existing Medicaid funds withdrawn "for failure to comply with the requirements set out in the expansion." *See Id*. at 586.

Since the Supreme Court's ruling in *NFIB* the Florida Legislature has chosen not to expand Medicaid. The Provide Medicaid Coverage to Eligible Low-Income Adults initiative (Initiative) as proposed would do three things. First, it would require the State to expand and fund Medicaid coverage for Low-Income Adults. Secondly, the Initiative would require this coverage be provided with no "greater or additional

burdens or restrictions on eligibility, enrollment, or benefits than on any other population eligible for medical assistance." Third, rather than leaving it to the Legislature to implement expansion, it requires the Agency for Health Care Administration (AHCA) to "submit a State Plan Amendment" to expand Medicaid.

II. The Medicaid Coverage Initiative violates the Ballot Summary Rule

In approving a citizen initiative, this Court reviews whether the proposed amendment's ballot summary complies with the requirements of section 101.161, Florida Statutes. The ballot title and summary must "state in clear and unambiguous language the chief purpose of the measure" and "assure that the electorate is advised of the true meaning, and ramifications of an amendment." *Advisory Opinion to Atty. Gen. re Term Limits Pledge*, 718 So. 2d 798, 803 (Fla. 1998) (internal quotations and citations omitted).

While it is not necessary to explain every ramification of a proposed amendment, the ballot summary "in clear and unambiguous language" must state the "chief purpose of the measure." *Askew v. Firestone*, 421 So. 2d 151, 154-155 (Fla. 1982). If a summary fails to accurately describe the scope of the text of a proposed initiative, it is misleading and must be stricken. *See Term Limits Pledge* at 804. The ballot summary and title for the Initiative are misleading in five respects.

A. The Initiative is more sweeping than it appears.

A voter must be able to comprehend the sweep of an initiative from the text of the ballot summary, which cannot be any less nor more extensive than it appears to be. *See Smathers v. Smith*, 338 So. 2d 825, 829 (Fla. 1976). The Initiative's ballot summary states the proposal requires a state to provide Medicaid coverage to low-income adults over the age of 18 and under the age of 65 whose income is at or below one-hundred thirty-eight percent (138%) of the federal poverty level (FPL). However, the ballot summary fails to disclose the effect of constitutionally requiring the state to provide Medicaid coverage to low-income adults. While Florida currently participates in Medicaid, the Medicaid program is an optional program for state governments. The state is unable to provide Medicaid coverage to low-income adults without also covering the other federally mandated populations. Under the Initiative, however, Florida would be required to participate in the overall Medicaid program. The state is currently covering about 3.4 million individuals in the Medicaid program (because of the Legislature's choice to participate in Medicaid), many of whom that it would be forced to continue covering under the Initiative, over and above the low income adults that the Initiative requires to be covered. Therefore, the fact the Initiative fails to disclose that it constitutionalizes, and, therefore, requires the state to fund the entire Medicaid program is misleading.

B. The ballot summary includes emotional language that is not included within the text of the proposal.

This Court does not allow "emotional language" and "political rhetoric" in ballot summaries. This Court summarized its holdings on this topic:

> It appears to be a reference to the federal health care mandate, which is the type of political rhetoric that this Court has condemned in other cases. *See In re Advisory Op. to the Att'y Gen. re Additional Homestead Tax Exemption*, 880 So.2d 646, 653 (Fla.2004) (concluding that use of the phrase "provides property tax relief" in the ballot summary "constitutes political rhetoric that invites an emotional response from the voter by materially misstating the substance of the amendment"); *Advisory Op. to the Att'y Gen. re Tax Limitation*, 644 So.2d 486, 490 (Fla.1994) (stating that the ballot summary must be accurate and informative and "objective and free from political rhetoric"); *In re Advisory Op. to the Att'y Gen.-Save Our Everglades*, 636 So.2d 1336, 1341–42 (Fla.1994) (finding "emotional language" of ballot title and summary to be misleading as it resembled "political rhetoric" more than "an accurate and informative synopsis"); *Evans v. Firestone*, 457 So.2d 1351, 1355 (Fla.1984) (holding ballot summary defective in part because phrase "thus avoiding unnecessary costs" constituted "editorial comment"). The Court has repeatedly stated that the "ballot summary should tell the voter the legal effect of the amendment, and no more." *Evans*, 457 So.2d at 1355. The Court has also condemned "[p]olitical rhetoric in a ballot title and summary that invites an emotional response from the voters as opposed to providing only a synopsis of a proposed amendment." *Advisory Op. to Att'y Gen. re Fla. Marriage Prot. Amendment*, 926 So. 2d 1229, 1238 (Fla. 2006).

Fla. Dep't of State v. Mangat, 43 So. 3d 642, 648 (Fla. 2010).

The ballot summary misleadingly states that it "[d]irects Agency for Health Care Administration to implement the initiative by maximizing federal financial participation for newly eligible individuals." *Initiative* at Part(c)(1). However, nothing to this effect is included within the text of the proposal. Because the ballot

summary contains information that has no basis within the text of the proposal, it must be stricken. *See Advisory Opinion to Attorney General re Tax Limitation*, 644 So. 2d 486 (Fla. 1994) (stating we have made clear that the ballot title and summary must advise the electorate of the true meaning and ramifications of the amendment and, in particular, must be accurate and informative) (internal citation omitted).

While the Initiative does not direct AHCA to maximize matching federal funds, it does require AHCA to take any additional necessary steps to seek required approvals to obtain Federal Medical Assistance Percentage funds. The differing use of terminology misleads voters to believe that the Initiative requires AHCA to maximize federal financial participation for newly eligible individuals when in reality it does not. *See In re Advisory Opinion to Atty. Gen. re Use of Marijuana for Certain Med. Conditions*, 132 So. 3d 786, 804–05 (Fla. 2014).

Even if the Initiative explicitly directed AHCA to maximize federal financial participation for newly eligible individuals, the statement would still be misleading because neither AHCA nor any other state agency has the authority under the federal Medicaid program to do that. The amount the state receives for any individual is completely dependent on federal laws and regulations. AHCA does not have the authority or ability to "maximize" federal funding.

As explained in the Introduction, there are optional benefits and optional populations that can be covered under Medicaid programs. The Legislature would

still make the decisions as to whether to include these programs. During previous economic downturns, the Legislature has suspended certain programs. For instance, in 2003, the Legislature suspended the Medically Needy program. *See* Chap. 2003-397, Laws of Fla., Appropriation 164. Since coverage for low-income adults would be mandated, it is possible that for fiscal policy reasons a future Legislature could cut other programs if this Initiative passes. So rather than maximizing federal revenue, this Initiative might just result in a shift.

Another flaw in the maximizing summary is that AHCA sets reimbursement rates for health care providers that participate in the Medicaid program. *See* § 409.908 Fla. Stat. The higher the rates, the more the Federal revenue the state receives. The Initiative does not affect reimbursement rates so it would not be "maximizing" federal revenue.

The Initiative, by its plain terms, does not require maximizing federal revenue and does not accomplish anything to such effect. While it is likely that more federal revenue may come to the state, it is pure puffery to say the Initiative maximizes it. Since the Initiative does not mention the state will have to make new appropriations of state funds that could result in reprioritization of other programs or the need for additional state revenues, it makes it sound like the state is just receiving Federal money. This is the kind of "emotive language" and "political rhetoric" the Court has condemned in the past and should condemn now.

C. The ballot summary omits material facts.

A ballot summary may be defective if it omits material facts necessary to make the summary not misleading. *Advisory Opinion to Atty. Gen. re Term Limits Pledge*, 718 So. 2d 798, 803 (1998) (citing *Limited Political Terms*, 592 So. 2d at 228). The ballot summary states the Initiative requires the State to provide Medicaid coverage to certain individuals, but does not explain the impact providing such coverage will have on the state's budget. The Court in *Advisory Opinion to the Attorney General re Tax Limitation*, 644 So. 2d 486 (Fla. 1994) found the "Property Rights" ballot summary and title did not properly advise the voters, and was not accurate and informative because the ballot title and summary were devoid of certain consequences. Specifically the Court pointed out:

> "[the] proposal would result in a major change in the function of government because it would require all entities of government to provide compensation from tax revenue to owners or business for damages allegedly caused to their property by the government's exercise of its police powers. Because most true police power actions of government are not now compensable, the fiscal impact of this proposal would be substantial.
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> *Tax Limitation* at 495.

The Medicaid Initiative by mandating the state provide Medicaid coverage to "newly eligible individuals," inherently requires the Legislature to appropriate substantial funding to pay for such coverage. Under current federal law, beginning in 2020, the cost-share for newly eligible adults is ninety percent federal and ten

percent state. *See* 42 U.S.C. 1396d(y)(1)(E). So the state is ultimately responsible for ten percent of the costs for coverage, which has a substantial fiscal impact on budget appropriations and is an important consequence of the Initiative which must be explained in the ballot summary. The omission of the financial requirement is misleading and precludes voters from being able to cast their ballots intelligently. *In re Advisory Opinion to the Attorney General-Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1021 (Fla. 1994) (citing *Advisory Opinion to the Attorney General-Limited Political Terms in Certain Elective Offices*, 592 So. 2d 225 (Fla. 1991)).

D. The Initiative is not written clearly enough for voters to understand its chief purpose.

The Court in *Smith v. American Airlines, Inc.*, 606 So. 2d 618 (Fla. 1992) found the ballot summary of the proposed amendment was not written clearly enough "for even the more educated voters to understand its chief purpose." *Smith* at 621.

The Initiative's ballot summary requires the State to provide Medicaid coverage to the newly eligible individuals "with no greater burdens placed on eligibility, enrollment, or benefits for these newly eligible individuals compared to other Medicaid beneficiaries." While this part of the ballot summary seemingly tracks the text of the Initiative, it fails to explain the ramifications of such statement. Therefore, the problem lies not with what the summary says, but, rather, with what

it does not say. *Advisory Opinion to Atty. Gen. ex rel. Amendment to Bar Government From Treating People Differently based on Race in Public Education*, 778 So. 2d 888 (Fla. 2000) (quoting *Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982).

It is unlikely voters would be able to understand the scope of this statement. Rather than provide an explanatory statement of the prohibition against providing greater or additional burdens on the newly eligible individuals, i.e. able-bodied adults, the ballot summary restates, although inconsistently, what the text of the proposal states. The text of the amendment does not speak for itself, but rather conceals from voters the sweeping effect and ramifications of such a requirement. Without an explanatory statement, which is what is required in a ballot summary, a voter is unable to discern the "true meaning, and ramifications of" the Initiative. *See Advisory Opinion to the Atty. Gen. re Term Limits Pledge*, 718 So. 2d 798, 803 (Fla. 1998) (internal citations omitted).

E. The Initiative fails to define material terms and uses divergent terminology.

If a proposed amendment fails to adequately define material terms, the Court has found the language to be misleading. *Advisory Opinion to the Attorney General, re Amendment to Bar Government from Treating People Differently Based on Race in Public Education*, 778 So. 2d 888, 899-900 (Fla. 2000). The ballot title and summary requires the provision of "Medicaid coverage" to eligible low-income

adults. However, the text of the Initiative requires the state to provide "Medicaid benefits." While the Initiative defines the terms "low-income adults," "Agency for Health Care Administration," "State Plan Amendment," and "Centers for Medicare and Medicaid Services," it fails to define the most critical term "Medicaid benefit."

Under federal law the term "medical assistance" is used when describing the benefits provided through the Medicaid program. *See* 42 CFR §430.0. Under state law the term "benefit" is used and is defined as "any benefit, assistance, aid, obligation, promise, debt, liability, or the like, related to any covered injury, illness, or necessary medical care, goods, or services." Fla Stat. § 409.901. It is unclear from the text of the proposal which benefits are required to be covered.

Even more so than with the traditional Medicaid program, there is no one-size-fits-all benefits package for newly eligible individuals. A lot of states have taken divergent approaches and "benefits" vary state-by-state. Requiring the state to provide Medicaid benefits to newly eligible individuals, begs the question of what services must be covered. There are certain minimum mandatory services a state program must provide, but states are given wide discretion in choosing optional services to offer and the scope and range of such services.

The ballot summary misleadingly refers to low-income adults through use of the term "newly eligible individuals." However, not all of the individuals who meet the definition of "low-income adults" will be newly eligible. For example, Florida

has opted to provide Medicaid coverage to pregnant woman up to 200% of the FPL. The definition for "low-income adults" does not distinguish between someone who may have been eligible before the amendment based on another condition, such as pregnancy. This person would fall under the definition of a low-income adult, but he or she would not be newly eligible under the Florida program. It begs the question of whether the Initiative attempts to leap frog those individuals without a condition that would have qualified them for Medicaid pre-amendment over individuals with conditions that enabled them to receive Medicaid coverage pre-amendment.

III. The Medicaid Coverage Initiative violates the Single Subject Rule

Any citizen initiative "shall embrace but one subject and matter directly connected therewith." Art. XI, § 3, Fla. Const. "The single-subject requirement is at its base a 'rule of restraint' designed to protect Florida's organic law from 'precipitous and cataclysmic change.'" *In re Advisory Op. to Att'y Gen. re Limits or Prevents Barriers to Local Solar Elec. Supply*, 177 So. 3d 235, 242 (Fla. 2015) (quoting *In re Advisory Op. to Att'y Gen.—Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994)).

A. The Initiative affects multiple areas and levels of government.

The Court has held that a purpose of the single-subject restriction is to prevent "a single amendment from substantially altering or performing the functions of multiple branches of government." *Advisory Op. to the Att'y Gen. re Right to*

Treatment & Rehabilitation for Non-Violent Drug Offenses, 818 So. 2d 491, 495 (Fla. 2002). The Initiative performs a Legislative function by requiring the state to fund the program and to treat low-income adults the same as other beneficiaries; substantially affects local governments; and substantially alters the function of legislative power between the legislative and the executive branches of government.

In *Advisory Opinion to the Attorney General re Requirement for Adequate Public Educ. Funding*, 703 So. 2d 446 (Fla. 1997) (Education Funding), this Court had under consideration an initiative that required "appropriation of at least a minimum percentage (40%) for public education from the total appropriations under Article III in each fiscal year, not including lottery proceeds or federal funds" for public education. *Education Funding* at 447. The Court found that initiative violated Article XI, section 3 of the Florida Constitution, which requires that a proposed amendment "embrace but one subject and matter directly connected therewith." In that case the Court held: "It is obvious that this amendment would substantially alter the legislature's present discretion in making value choices as to appropriations among the various vital functions of State government, including not only education but also civil and criminal justice; public health, safety, and welfare; transportation; disaster relief; agricultural and environmental regulation; and the remaining array of State governmental services." *Education Funding* at 449. The Court went on to observe that the initiative affected other executive agencies and local governments

by limiting the appropriations available to them. It also took into account the impact on the Governor: "Under this proposed amendment, this function of the Governor would be limited because the Governor would be unable to veto any specific appropriation within the forty-percent educational appropriation if the veto would reduce the education appropriation to less than the required forty percent." *Id.* The Court citing the holding in *Evans* emphasized "enfolding disparate subjects within the cloak of a broad generality does not satisfy the single subject requirement." *Id*.

While the Medicaid Initiative does not set a specific percentage of the budget to be used, it does dictate participation in Medicaid. Since coverage of other required populations must be accomplished in order to cover the low-income adults identified in the Initiative, it is safe to say that amount would be greater than the present 1/3 of the budget that Medicaid currently is appropriated. The Legislature has the exclusive power to decide how, when, and for what purpose public funds shall be applied in carrying out the government. *See Chiles v. Children A, B, C, D, E, & F*, 589 So. 2d 260, 267 (Fla. 1991). No longer would the Legislature be making a choice to participate, and thus deciding on a funding level, but the amounts would be dictated by the State's required participation. Furthermore, the Governor would no longer be able to veto this appropriation. Thereby, the Initiative annually commandeers $30 billion dollars of state funds and leaves the Legislative and Executive branches without the authority to act otherwise.

Additionally, the Initiative prohibits the state from placing "any greater or additional burdens or restrictions on eligibility, enrollment, or benefits than on any other population eligible for medical assistance." Thereby, the Initiative performs a legislative function by dictating policy decisions beyond the chief purpose of the measure, which is to provide Medicaid to low-income individuals. The Legislature would lose its discretion regarding optional benefits and populations, if this portion of the Initiative is even feasible. *See* discussion in Part IV(B) of this brief.

This sentence in the Initiatives also restricts the state's ability to apply for what is referred to as Section 1115 waivers. Such waivers are authorized pursuant to 42 U.S.C. § 1315, entitled "Demonstration Projects," and allow for modifications to the standard Medicaid requirements to allow the states to experiment. These waivers "result in an impact on eligibility, enrollment, benefits, cost-sharing, or financing with respect to a State program." 42 U.S.C. § 1315(d)(1). The Federal Centers for Medicare & Medicaid Services (CMS) has explained "The purpose of these [Section 1115] demonstrations, which give States additional flexibility to design and improve their programs, is to demonstrate and evaluate policy approaches such as: expanding eligibility to individuals who are not otherwise Medicaid or CHIP eligible; providing services not typically covered by Medicaid; using innovative service delivery systems that improve care, increase efficiency, and reduce costs." *See Nazareth Hosp. v. Sec'y U.S. Dept. of Health & Human Services*, 747 F.3d 172, 181 (3d Cir.

2014). Florida currently has 2 Section 1115 waivers. With this Initiative Florida would be extremely limited in its ability to seek waivers and would lose flexibility in its Medicaid plan. This is a separate and distinct policy choice that the sponsors have made, resulting in the performance of legislative functions.

This Court in *Advisory Opinion to Attorney General re Tax Limitation,* 644 So. 2d 486 (Fla. 1994) invalidated an initiative because not only did it substantially alter the functions of the executive and legislative branches of state government, it also had a very distinct and substantial effect on each local governmental entity. *See Tax Limitation* at 494. Federal law authorizes states to require as much as sixty percent of the state share to come from local government funding. *See* 42 U.S.C. § 1396a(a)(2). Under the Florida program, the state requires local governments to pay a share of Medicaid costs based upon their rate of enrollment. *See* § 409.915 Fla. Stat. For example, for FY 2019-2020 counties were required to pay $302.1 million. Because any increase in the state's share necessitates an increase in county shares, this Initiative has a substantial effect on local governments. The counties would be on the hook to pay any increased share of costs.

B. The Initiative fails to disclose how it affects the Separation of Powers Doctrine by delegating legislative authority to an executive agency.

As the Court made clear in *Fine v. Firestone* "how an initiative proposal affects other articles or sections of the constitution is an appropriate factor to be considered in determining whether there is more than one subject included in an

initiative proposal." *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984); *see also Advisory Opinion to the Atty. Gen. re Rights of Citizens to Choose Health Care Providers*, 705 So. 2d 563 (Fla. 1998) (stating it is imperative that an initiative identify the provisions of the constitution substantially affected by the proposed amendment…to ensure that the initiative's effect on other unnamed provisions is not left unresolved and open to various interpretations). The Medicaid Initiative substantially affects Article II, section 3 of the Florida Constitution, which sets forth the state's strict separation of powers doctrine. The doctrine encompasses two fundamental principles: no branch of government may encroach upon the powers of another and no branch of government may delegate to another branch its constitutionally assigned power. *See Chiles v. Children A, B, C, D, E, and F*, 589 So. 2d 260, 263 (Fla. 1991). The Initiative not only directly transfers legislative authority to a state executive agency, but also transfers authority to a federal executive agency. Such delegation of authority violates the state's strict separation of powers doctrine.

The Initiative requires the AHCA to submit documents, including setting forth the groups of individuals to be covered, to the CMS through a State Plan Amendment, as well as, take any additional necessary steps to seek required approvals from CMS to include low-income adults as a coverage group in Florida's Medicaid Program. *See* Initiative at Part (c)(1).

AHCA is a state executive agency established pursuant to statutory law. *See* § 20.42, Fla. Stat. As an executive agency, AHCA's authority to administer the Medicaid program flows directly from such law. *Id*. AHCA does not have any legislative authority beyond what the Legislature permissibly delegates. *See Askew v. Cross Key Waterways*, 372 So. 2d 913 (Fla. 1978); *see also Southern Baptist Hospital of Florida v. Agency for Health Care Administration*, 270 So. 3d 488 (1st DCA 2019) (finding AHCA went beyond its powers, functions, and duties delegated by the Legislature when it enacted Medicaid Trend Adjustment methodologies and therefore such actions were invalid exercises of legislative authority). AHCA has been given specific authority to request state plan amendments that have been previously submitted to the federal government for approval under the state's Medicaid system. *See e.g.*, § 409.973(5)(b), Fla. Stat. (authorizing AHCA to seek a state plan amendment to commence enrollment in the Medicaid prepaid dental health program).

The Initiative contravenes the separation of powers doctrine and purports to directly bestow AHCA with the legislative authority to submit a state plan amendment to a federal agency. While the separation of powers doctrine contemplates the Constitution could *expressly* provide for one branch to exercise the powers of another, such a fundamental shift in constitutional authority must be directly stated and not implied. *See* Art. II, § 3, Fla. Const. This Court has required

initiative proposals to identify the articles or sections of the constitution directly affected to avoid leaving it up to the Court to interpret which or to what extent constitutional provisions are substantially affected after passage of an initiative. *See Fine v. Firestone*, 448 So. 2d 984, 989 (1984).

If the Court were to find merely providing AHCA with broad authority to act without expressly mentioning the intent to bestow legislative authority on a statutorily created executive agency is enough to breach the longstanding separation of powers doctrine, the Court must consider how far this authority extends to prevent future hemorrhaging of the doctrine. The Initiative does not indicate whether AHCA or the Legislature has authority to make the ultimate policy decisions regarding covered benefits and populations and which priorities to maintain or to cut from the original program. While it is clear that the Legislature retains its authority to implement constitutional amendments, in fact this particular Initiative expressly provides as such, it is unclear where the line of authority will be drawn. The scope of AHCA's legislative authority is entirely unclear. The text seemingly gives AHCA broad authority to "take any steps necessary" to seek required approvals to expand Medicaid. *See Initiative* at Part (c)(1). Does its authority cease once the State Plan Amendment is submitted? Without sufficient guidelines or factors to guide agency action, the text of the amendment contravenes the state's strict nondelegation doctrine. *See Askew v. Cross Key Waterways*, 372 So. 2d 913, 925 (Fla. 1978). The

Initiative's effect on legislative authority is unclear and it should not be left for the Court to later decipher. *See Advisory Opinion to the Attorney Gen. re Tax Limitation*, 644 So. 2d 486, 490 (Fla. 1994).

In *Extending Existing Sales Tax* the Court considered a proposal that required the Legislature to examine existing sales tax exemptions and only exempt from future taxation those services whose exemption is determined to advance or serve a public purpose. *See Advisory Opinion to the Attorney General re Extending Existing Sales Tax to Non-Taxed Services Where Exclusion Fails to Serve Public Purpose*, 953 So. 2d 471 (Fla. 2007). The Court refused to consider in its analysis how an executive agency would implement the amendment without violating the separation of powers doctrine because it only directly affected the Legislature and any effect on the executive branch would be merely hypothetical. *See Id*. at 481, 482. Unlike in *Extending Existing Sales Tax*, the Initiative expressly requires and *actually and substantially* alters the functions of multiple branches of government by requiring an executive agency to perform legislative duties. The Court must consider the effect on legislative authority the Initiative necessarily contemplates.

C. The Initiative fails to disclose how it affects the Separation of Powers Doctrine by delegating state legislative authority to a federal agency.

CMS is the federal executive agency responsible for administering the Medicaid program at the federal level. For any change to the state program to take effect, CMS would have to approve it. The state cannot unilaterally provide

Medicaid coverage as the Initiative suggests. *See Initiative* at Part (a). The entire crux of the Initiative depends on the approval of an executive federal agency. Furthermore, eligibility is specifically dependent upon the federal Medicaid statute and eligibility conditions adopted as federal regulations. *See Initiative* at Part (b) (2).

Even though Article II, section 3 of the Florida Constitution only makes reference to the different branches of state government not using one another's powers, under the nondelegation doctrine, Florida courts have strictly adhered to the rule that the Legislature may not incorporate by reference federal law beyond what is in existence at the time the Legislature makes the reference. *See Freimuth v. State*, 272 So. 2d 473 (Fla. 1972) (finding an attempt to incorporate future versions of federal law would delegate to Congress the power to make Florida law, a duty which resides solely with the Florida Legislature).

It is incomprehensible how this Initiative is workable in light of the state's nondelegation doctrine. The Court in *State v. Rodriguez* considered a similar issue regarding the federal food stamp program within a statutory context. *See State v. Rodriguez*, 365 So. 2d 157 (Fla. 1978) (concluding that it would be an unlawful delegation of legislative authority to incorporate federal law and regulations in effect beyond the time when the statute was enacted, the Court interpreted the phrase "in any manner not authorized by law" as referring only to such laws as were in existence and in effect at the time the legislation was enacted). The Court considered

whether such interpretation was workable and what would happen as future federal changes were made. The Court found that the problem would be avoided because the Legislature could update the chapter law each year, as they update Florida's corporate income tax statute to align with federal changes. *Id*. at 160; *but see* Justice Sundberg's dissent in which Adkins and Hatchett, JJ., concurred (stating to assert that an annual updating of Chapter 409 by the Legislature resolves the problems inherent in freezing particular federal statutes and regulations into our act fails to take into account that distribution of food stamps is a day-by-day process which would be jeopardized for Florida recipients).

Unlike statutory law, constitutional provisions are not adaptable or flexible to such annual changes. If the federal government were to simply amend the specific statutory reference regarding income methodology or the general reference to non-financial eligibility conditions, the state would be unable to deviate from the constitutional text but for a constitutional amendment. The problem with putting policy into the constitution is exacerbated when such policy, such as the case here, specifically cross-references federal law and wholly relies upon federally set requirements that are subject to change at the whim of a Congressional act or federal agency action.

It is misleading for this Court not to address these constitutional implications if like the Court in *Rodriguez* this Court were to interpret the Initiative as referring

to static federal references and find the Initiative was only effective as long as the federal government does not make any changes to the federal program.

The fact that these violations of the separation of powers doctrine arise as result of a constitutional amendment rather than statutory law does not cure the problem. Legislative power, whether it is executed indirectly by the people through the will of the Legislature or directly by the people through constitutional initiatives, is still legislative power. If the Court continues to interpret the Citizen Initiative power as authorizing the people to legislate directly through constitutional initiatives, then the Court must apply the same principles to protect against further violations of the separation of powers doctrine. Such protection by this Court is more warranted during the analysis of an Initiative than any other method because the "citizen initiative process does not afford the same opportunity for public hearing and debate that accompanies the other constitutional proposal and drafting processes." *See Advisory Opinion to Attorney General re 1.35% Property Tax Cap, Unless Voter Approved*, 2 So. 3d 968, 972 (Fla. 2009) (citing *Advisory Op. to the Att'y Gen. re Fish & Wildlife Conservation Comm'n*, 705 So. 2d 1351, 1353 (Fla. 1998).

IV. The Medicaid Initiative Violates Federal Law and the Federal Constitution and Should be Struck on that Ground

Outside of the fact the provision seeks to provide legislative authority to both federal and state executive agencies, the Initiative hands over the state's sovereign

legislative authority to the Federal Government in violation of the Guarantee Clause and attempts to add requirements that Federal Law does not allow in violation of the Supremacy Clause.

In *Gray v. Winthrop*, 115 Fla. 721, 156 So. 270 (1934), this Court reasoned:

> If a proposed amendment to the state Constitution by its terms specifically and necessarily violates a command or limitation of the Federal Constitution, a ministerial duty of an administrative officer, that is a part of the prescribed legal procedure for submitting such proposed amendment to the electorate of the state for adoption or rejection, may be enjoined at the suit of proper parties in order to avoid the expense of submission, when the amendment, if adopted, would palpably violate the paramount law and would inevitably be futile and nugatory and incapable of being made operative under any conditions or circumstances.

See also Gray v. Moss 156 So. 262, 266 (Fla. 1934) (state constitutions and amendments thereto are subject to applicable prohibitions and limitations of the Federal Constitution, the supreme law of the land, which all officers and all electors are required to take an oath to support. (internal citations omitted)

These cases dealt with legislative amendments proposed under the Constitution of 1885. Shortly after the ratification of the 1968 Constitution this Court noted the citizens "have a right to change, abrogate or modify it in any manner they see fit so long as *they keep within the confines of the Federal Constitution*." *Weber v. Smathers,* 338 So. 2d 819, 821 (Fla. 1976) (quoting *Gray v. Golden*, 89 So. 2d 785, 790 (Fla. 1956) (overruled on other grounds in *Floridians Against Casino Takeover v. Let's Help Florida*, 363 So. 2d 337 (Fla. 1978)) (emphasis added).

However, in *Advisory Opinion to Attorney General –Limited Political Terms in Certain Elective Offices* (Limited Political Terms), 592 So. 2d 225 (Fla. 1991) the Court called into question its ability to consider violations of the Federal Constitution. In *Limited Political Terms*, the initiative sought to add term limits for a number of state and federal offices. Opponents argued that the state could not put new qualifications on Federal Officers and the term limits violated the U.S. Constitution. The majority opinion declined to address the issue holding "we are limited in this proceeding to addressing whether the proposed amendment and ballot title and summary comply with article XI, section 3, Florida Constitution and section 101.161, Florida Statutes (1989)." *Limited Political Terms* at 227 (citing *Grose v. Firestone*, 422 So.2d 303, 306 (Fla.1982) (finding question of whether proposed amendment violated due process not justiciable in challenge to ballot summary)) (footnote omitted).

Justice Overton joined by Justice Kogan in dissent argued that based on *Winthrop*, *Moss*, and *Weber* the constitutionality of initiatives should be considered and the Term Limit Initiative should be struck:

> A review at this time, should this legal issue be resolved adverse to the proponents of the amendment, would save both proponents and opponents of the amendment considerable expense and the considerable expense to the state of a futile election. To allow the people to vote and then, if adopted, hold the provision unconstitutional on its face perpetuates a fraud on the voting public. I find that both our constitution and case law recognize our authority to resolve this strictly legal issue now, without further court proceedings.

Limited Political Terms at 229-230.

Grose was decided before there was an automatic review of citizen initiatives. The majority in *Limited Political Terms* reliance on *Grose* is misplaced. *Grose* cites *Winthrop* and *Moss* and does not hold that the Court can never consider the constitutionality of an initiative prior to the vote, just that the issue had not been appropriately raised in that case. The clear precedent before *Grose* is that the Court can consider whether initiatives comply with the U.S. Constitution. The majority in *Limited Political Terms* held out on the possibility that the constitutionality could be brought up in a future proceeding. Subsequently, when the Court was presented again with the question of the constitutionality of the federal term limits they found "there is no question" they were unenforceable. *See Ray v. Mortham,* 742 So.2d 1276, 1280 (Fla. 1999). Instead of striking the amendment however, they ruled it was severable[1]. *See Id.* Justice Lewis, in his concurrence, echoed Justice Overton's dissent in *Limited Political Terms* and wrote "In my view, the circumstances in this case point to a serious constitutional flaw, if we adhere to the principle announced in *Fine v. Firestone*, 448 So.2d 984 (Fla.1984), that this Court should not be placed in the position of redrafting a proposed constitutional amendment by judicial construction."

[1] In part because it contained a severability clause, which the Medicaid Initiative does not.

To compound the difficulty, in *Roberts v. Brown,* 43 So. 3d 673 (Fla. 2010) this Court held it had exclusive jurisdiction to consider pre-election challenges to proposed citizen initiatives. These two rulings create a box where if an amendment is clearly in violation of the U.S. Constitution, then a claim cannot be brought up as part of the advisory opinion process and cannot be brought anywhere else prior to the election. As Justice Overton observed, this "perpetuates a fraud on the voting public." *See Limited Political Terms* at 230. In addition to Justice Overton's concern, there is also the matter that if an unconstitutional amendment were to pass, then a claim may be raised in Federal Court at that point. Then it would be a Federal Judge redrafting the state constitution and this Court would have no opportunity to weigh in. It does no service to the citizens of the state for the Court to wait on otherwise clear and justiciable claims.

This Court should recede from the erroneous holding in *Limited Political Terms* because it was based on a misreading of *Grose* and failed to account for the long-standing precedent of the Court that allowed for facial challenges regarding the amendment's compliance with the U.S. Constitution.

A. <u>The Initiative Violates the Guarantee Clause of the U.S. Constitution.</u>

Article IV, section 4 of the U.S. Constitution provides "The United States shall guarantee to every State in this Union a Republican Form of Government." Federal Courts have held the Guarantee Clause is not justiciable in Federal Court,

saying it is a matter for Congress, though the Supreme Court has questioned that principle on least one occasion. In *New York v. U.S.*, 505 U.S. 144, 184, 112 S.Ct. 2408 (1992), the Supreme Court held that a federal statute that was permissible under the Commerce Clause did not violate the Guarantee Clause because "[t]he States thereby retain the ability to set their legislative agendas; state government officials remain accountable to the local electorate." That standard is not met with the Medicaid Initiative. The Court has also held "The guaranty necessarily implies a duty on the part of the States themselves to provide such a government." *Minor v. Happersett,* 88 US 162, 175, 22 L. Ed. 627 (1874).

A few State courts have also addressed the Guarantee Clause in the context of challenges to proposed amendments. In *Vansickle v. Shanahan*, 511 P.2d 223 (Kan. 1973), the Kansas Supreme Court concluded "the guaranty clause question to be justiciable," and "that separation of powers is inherent in the republican form of government." In that particular case the court allowed a proposed amendment that would shift some powers from the Legislature to the Governor, but demonstrated that there still had to be accountability to the people. In *Morrissey v. State,* 951 P.2d 911 (Colo. 1998) the Supreme Court of Colorado struck a citizen initiative that attempted to direct legislators to vote for an amendment to the U.S. Constitution that imposed term limits for congressmen as violating the Guarantee Clause finding that state legislators could not be directed to vote in a certain way.

This Court has recognized that "[t]he preservation of the inherent powers of the three branches of government, free of encroachment or infringement by one upon the other, is essential to the effective operation of our constitutional system of government." *In Re Advisory Opinion to the Governor*, 276 So.2d 25 (Fla. 1973). The Court has also observed:

> John Locke's Second Treatise, for example, contends there can be no justice or liberty if legislative and executive powers are unified. Abrahams, supra, at 19 & 19 n. 60 (citing P. Laslett, John Locke's Two Treatises of Government: A Critical Edition with an Introduction & an Apparatus Criticus (1960)). Likewise, Montesquieu's Spirit of the Laws argues that genuine liberty is dependent on the rule of law, which in turn is dependent on a true separation of powers enforced by a system of checks and balances. Id. (citing Montesquieu, Spirit of the Laws (Newmann ed. 1949)).
>
> *B.H. v. State*, 645 So. 2d 987 (Fla. 1994)

Just as delegating legislative authority to the federal government violates the state constitution under Article II, section 3, delegating legislative authority to the federal government violates the U.S. Constitution under the Guarantee Clause. The federal government has full authority to alter or amend the Medicaid program and subsequently require the states to incorporate those changes to retain funding. *See NFIB* at 582. By constitutionally requiring participation in the Medicaid program, the Initiative prevents the state from retaining its ability to set its own legislative agenda, thereby violating the Guarantee Clause. As the U.S. Supreme Court explained in *New York*, this is in keeping with the underlying purpose of the

Guarantee Clause, which is to keep state government officials accountable to their electorate so there will not be a disconnect.

This problem was highlighted by a recent case of the Supreme Court of Idaho which dealt with this issue regarding whether a statute enacted pursuant to citizen initiative power regarding expanding Medicaid unlawfully delegated lawmaking authority to the federal government. *See Regan v. Denney*, 165 Idaho 15 (2019). The court in *Regan* found the statute did not delegate any lawmaking authority to the federal government because the statute only referenced federal law in effect at the time of it was enacted and does not include subsequent additions or modifications. *Id*. The court further considered what would happen if the federal government were to amend the eligibility requirements or modify the ninety percent federal contribution and reasoned there was no issue because the Idaho legislature through its power to legislate and its power to appropriate controlled the ongoing nature of Medicaid.

Unlike Idaho's citizen initiative, which was adopted in the form of a statute, this Initiative is a proposed constitutional amendment. Constitutional text cannot be treated like statutory law. It is not susceptible to ongoing changes and does not permit the Legislature to consider any adaptation of policy in light of federal changes that deviate from the text of the Constitution. It would require another constitutional amendment to make such changes.

"Constitutional principles do not change, except as they may be altered by the people through constitutional conventions or by amendments made in the manner prescribed by the Constitution. The Constitution does not mean one thing yesterday or today and another tomorrow." *Carlton v. Mathews*, 137 So. 815, 848 (Fla. 1931). The Constitution lays out particular methods to be amended. By incorporating a Federal program and Federal statutes into the Constitution, this Initiative would create principles that do change, not by actions of the people or even by state officials, but by the actions of a separate sovereign. In *Slyvester v. Tindall* the Court considered the amendment which created a Game and Freshwater Fish Commission. While they approved the amendment, they noted:

> We have no doubt whatever of the right of the people to adopt this amendment to our Florida constitution. It does not violate or come in conflict with any provision of the Federal constitution, and certainly not that provision of the Federal constitution which guarantees a republican form of government to every state. Insofar as the constitutional amendment, implemented by the statute, confers upon the Commission the power to make rules and regulations appropriate to carrying into effect the purposes of the constitutional amendment, we have held in many cases that such power can be conferred upon commissions, boards and departments without violating Art. II of our constitution distributing the powers of our state government into three grand divisions—the legislative, the executive and the judicial. **It is true that this separation of the powers of government is fundamental to the very existence of our form of state and Federal governments and is one of the most important principles of government guaranteeing the liberty of the people.** While we have held that there may be a certain blending of powers in administrative boards and commissions, in a broad sense we have preserved these separations of the powers of government, and the independence of each department, which is so vital to the freedom of our people from tyranny and oppression. This

> separation of powers, coupled with the fundamental individual rights which are guaranteed by our bill rights, prevents the exercise of autocratic power and is essential to the perpetuity of our form of government.
>
> *Sylvester v. Tindall*, 18 So. 2d 892, 899 (Fla. 1944) (emphasis added, internal citation omitted)

The *Sylvester* Court recognized that an amendment that undercut proper separation of powers necessarily went against the fundamental principles of republican government. As this Court noted in *Freimuth*, interpreting a state law to incorporate future federal changes violated the fundamental spirit of the separation of powers doctrine. The state Medicaid Plan does not work unless it can adapt to Federal program changes.

Even if the Initiative were presumed to have a static meaning, that would not necessarily resolve this problem of sovereign delegation to the Federal Government because the change cannot be undone. It should be noted that even if the people of Florida were to decide to amend their constitution to make changes or opt out of the Medicaid program in light of federal changes, they may not be able to. The court in *Regan* seems to presume that if a state expands Medicaid to low-income adults and the federal government makes changes the state disagrees with, the Legislature could simply opt back out. While the Supreme Court in *NFIB* made it clear that states had to opt-in, it did not consider whether the law provides for the opportunity to opt-out. The statutory language does not contemplate expansion being optional. *See* 42

U.S.C. § 1396a(a)(10)(A)(i)(VIII). Therefore, if this Initiative is allowed to take effect, there may be no ability for the state to return to the current status quo in light of any federal changes that the state may disagree with.

Therefore, because nothing prohibits Congress from amending the cost-split ratio, the state may be obligated to pay more. A body which is not accountable to Floridians will decide the fate of approximately one-third of the state's budget. The members of the Florida Legislature, all of whom represent the people of Florida, will have no opportunity to determine whether the use of such funds is in the best interest of the people.

While the people have broad discretion to amend the constitution, that power should not be interpreted to include the ability to delegate the sovereign power of the state to a separate sovereign. The state will be at the mercy of the federal government and be endlessly bound by federal decision makers. Just as the Court has made clear the Legislature may not give its authority to the federal government, so too should the Court protect against the people through an Initiative giving such power to the federal government.

B. The Initiative Violates the Supremacy Clause of the U.S. Constitution.

The Supremacy Clause, reads: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law

of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." *See* Art. VI, cl. 2, U.S. Const. Under the Supremacy Clause, "where state and federal law directly conflict, state law must give way." *PLIVA, Inc., v. Mensing*, 564 U.S. 604, 618, 131 S.Ct. 2567, 2577, 180 L.Ed.2d 580 (2011) (cleaned up). "While Medicaid is a system of cooperative federalism, the same analysis applies; once the state voluntarily accepts the conditions imposed by Congress, the Supremacy Clause obliges it to comply with federal requirements." *Lankford v. Sherman*, 451 F.3d 496 (8th Cir. 2006).

In the past state constitutional provisions have had to give way to Federal Medicaid rules when they conflicted. The Eighth Circuit held that an "Arkansas state constitutional amendment and the Nebraska state regulation prohibiting the use of public funds for abortions except to save the life of the mother violate the federal Medicaid statute, as amended by the 1994 Hyde Amendment, and are therefore invalid under the supremacy clause." *Little Rock Family Planning Servs., P.A. v. Dalton*, 60 F.3d 497 (8th Cir. 1995) (cert. granted in part, judgment rev'd in part 116 S.Ct. 1063, 516 U.S. 474, 134 L.Ed.2d 115 (1996)). This Court has also found a Florida Medicaid statute unconstitutional under the Supremacy Clause. *See State v. Harden*, 938 So. 2d 480 (Fla. 2006).

So were the Initiative to pass, it would have to comply with the Supremacy Clause and could not add elements to state law that contradict Federal Medicaid requirements. The Initiative states "The State shall not impose on Low-Income Adults any greater or additional burdens or restrictions on eligibility, enrollment, or benefits than on any other population eligible for medical assistance."

In *NFIB* the Court noted "[t]he conditions on use of the different funds are also distinct. Congress mandated that newly eligible persons receive a level of coverage that is less comprehensive than the traditional Medicaid benefit package." *NFIB* at 584 (citing 42 U.S.C. § 1396a(k)(1)). The program is designed to provide eligibility pathways to specific groups of individuals based upon categorical criteria. An individual's eligibility pathway dictates the state plan services that he or she is entitled. Additionally, there are also different income levels and financial criteria that are used to determine financial eligibility. *See e.g.*, 42 U.S.C. § 1396a(l)(2)(A)(i). For example, the criteria used for most eligibility is based upon modified gross income (MAGI) counting rules. The Initiative requires the state to use this criteria to determine financial eligibility for low-income adults. However, the state is prohibited from applying the same eligibility criteria to certain individuals with disabilities, such as children. Therefore, the state could not treat the MAGI-exempt eligibility groups the same as low-income adults and be in compliance with Federal requirements.

It is important to remember that § 1396a requires each state to create its own Medicaid plan which is then submitted to the Federal Government for approval. The state is not just enrolling in a set Federal Plan. Therefore, it would not be possible for AHCA or the Legislature to comply with the Initiative's plain terms and the Federal statutes and rules for plan submission. Because the Initiative cannot be interpreted to incorporate future federal changes but for a violation of the Guarantee Clause, the Initiative would have to be interpreted as only to applying to federal law in effect at that time. The state Medicaid plan does not work in a vacuum. It is wholly dependent on being adaptable to federal programmatic changes. Therefore, there is no reasonable interpretation of the Initiative that would not be in violation of either the Guarantee Clause or the Supremacy Clause.

CONCLUSION

This poorly drafted initiative contains an unprecedented attempt to wrest control of potentially more than one-third of the Florida Budget away from the state and give it to the Federal Government. It does so while misleading voters as to its intent and effect. The Florida Constitution and statutes clearly do not allow for this sort of massive power shift to be accomplished by citizen initiative violating the Single Subject limitation in the Constitution. It also brings violations of Federal Law into play. The Court should not allow this Initiative to proceed further.

Respectfully submitted,

/s/ _____
Jeremiah Hawkes (FBN 472270)
General Counsel
Ashley Istler (FBN 105253)
Deputy General Counsel
THE FLORIDA SENATE
302 The Capitol
404 South Monroe Street
Tallahassee, Florida 32399-1100
Telephone: 850-487-5237
hawkes.jeremiah@flsenate.gov
istler.ashley@flsenate.gov

Counsels for the Florida Senate and President Bill Galvano

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed electronically with the Clerk of the Court via the Florida eFiling Portal which will serve all parties of record this 7th day of October 2019.

s/ Jeremiah Hawkes

CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENT

I certify that this brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

/s/
Jeremiah Hawkes (FBN 472270)
General Counsel