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No. SC19-1911

Supreme Court of Florida

ADVISORY OPINION TO ATTORNEY GENERAL
RE VOTER APPROVAL OF CONSTITUTIONAL AMENDMENTS

KEEP OUR CONSTITUTION CLEAN PC'S BRIEF IN SUPPORT OF VOTER APPROVAL OF CONSTITUTIONAL AMENDMENTS INITIATIVE PETITION

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STATEMENT OF CASE AND FACTS

Keep Our Constitution Clean, PC ("Sponsor"), a political committee registered pursuant to section 106.03, Florida Statutes, has invoked article XI, section 3, of the Florida Constitution, to propose a constitutional amendment through the citizen initiative process. The proposal, Initiative Petition 19-08 ("Amendment"), would require electors to approve an amendment or revision to the Florida Constitution twice in separate elections before an amendment or revision is adopted. The Amendment to article XI, sections 5 and 7 of the Florida Constitution meets the single subject requirement of article XI, section 3 and complies with the strictures of section 101.161, Florida Statutes. No opponents have come forward to argue otherwise.

To inform voters of the Amendment and its chief purpose, the ballot title and summary provide:

> Voter Approval of Constitutional Amendments
>
> Requires all proposed amendments or revisions to the state constitution to be approved by the voters in two elections, instead of one, in order to take effect. The proposal applies the current thresholds for passage to each of the two elections.

The Amendment proposes changes to article XI, sections 5 and 7, as follows:

> SECTION 5. Amendment or revision election.—

(a) A proposed amendment to or revision of this constitution, or any part of it, shall be submitted to the electors at the next general election held more than ninety days after the joint resolution or report of revision commission, constitutional convention or taxation and budget reform commission proposing it is filed with the custodian of state records, unless, pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the legislature and limited to a single amendment or revision, it is submitted at an earlier special election held more than ninety days after such filing. If the proposed amendment or revision is approved as provided in subsection (e), it shall be submitted to the electors a second time at the next general election occurring at least ten weeks after the election in which the proposed amendment or revision is initially approved.

(b) A proposed amendment or revision of this constitution, or any part of it, by initiative shall be submitted to the electors at the general election provided the initiative petition is filed with the custodian of state records no later than February 1 of the year in which the general election is held. If the proposed amendment or revision is approved as provided in subsection (e), it shall be submitted to the electors a second time at the next general election.

(c) The legislature shall provide by general law, prior to the holding of an election pursuant to this section, for the provision of a statement to the public regarding the probable financial impact of any amendment proposed by initiative pursuant to section 3.

(d) Once in the tenth week, and once in the sixth week immediately preceding the week in which ~~the~~ an election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, shall be published in one newspaper of general circulation in each county in which a newspaper is published.

(e) Unless otherwise specifically provided for elsewhere in this constitution, if the proposed amendment or

> revision is approved by vote of at least sixty percent of the electors voting on the measure in each of two elections, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the second election in which the proposed amendment or revision is approved, or on such other date as may be specified in the amendment or revision.
>
> SECTION 7. Tax or fee limitation.—Notwithstanding Article X, Section 12(d) of this constitution, no new State tax or fee shall be imposed on or after November 8, 1994 by any amendment to this constitution unless the proposed amendment is approved by not fewer than two-thirds of the voters voting in each of the two elections in which such proposed amendment is considered. For purposes of this section, the phrase "new State tax or fee" shall mean any tax or fee which would produce revenue subject to lump sum or other appropriation by the Legislature, either for the State general revenue fund or any trust fund, which tax or fee is not in effect on November 7, 1994 including without limitation such taxes and fees as are the subject of proposed constitutional amendments appearing on the ballot on November 8, 1994. This section shall apply to proposed constitutional amendments relating to State taxes or fees which appear on the November 8, 1994 ballot, or later ballots, and any such proposed amendment which fails to gain the two-thirds vote required hereby shall be null, void and without effect.

On November 12, 2019, the Attorney General petitioned this Court for an advisory opinion on the validity of the Amendment, as is her duty under article IV, section 10 of the Florida Constitution, and section 16.061, Florida Statutes. The Court issued its Order establishing a briefing schedule, requiring opponents of the Amendment to file their briefs on or before December 3, 2019. No opponent has

filed a brief in opposition to the Amendment. Nevertheless, this Court is still mandated to conduct an examination of the Amendment and render its advisory opinion. *See* Art. V, § 3(b)(10), Fla. Const.; *Advisory Op. to the Att'y Gen. re Stop Early Release of Prisoners*, 642 So. 2d 724, 725 (Fla. 1994) (examining an initiative petition where no interested person filed a brief of any kind and issuing an advisory opinion that the ballot summary violated Florida law); *Advisory Op. to Att'y Gen. re Limiting Cruel & Inhumane Confinement of Pigs During Pregnancy*, 815 So. 2d 597 (Fla. 2002) (examining an initiative petition where no interested person filed a brief in opposition and issuing an advisory opinion that the ballot title and summary complied with Florida law). To assist the Court in its review, Sponsor files this brief in support of the Amendment.

SUMMARY OF ARGUMENT

The Amendment, in simple and direct language, revises existing provisions of article XI, sections 5 and 7 of the Florida Constitution, to require that any subsequent amendments to the Florida Constitution must be passed by the current election thresholds twice in separate elections before being approved—and nothing more. The Amendment does not logroll disparate topics and does not attempt to alter or perform the functions of multiple branches of government. Using neutral language, the ballot title and summary alerts the voter that the Amendment addresses voter approval of amendments to the constitution and informs the voter

of the chief purpose of the Amendment: to require future amendments to the constitution to be approved by the voters in two separate elections, while making it clear that the current thresholds for passage of an amendment will apply to both elections. Accordingly, this Court should issue an advisory opinion approving the Amendment, including the ballot title and summary, for placement on the ballot.

ARGUMENT

I. THE AMENDMENT COMPORTS WITH THE SINGLE SUBJECT REQUIREMENT OF ARTICLE XI, SECTION 3 OF THE FLORIDA CONSTITUTION.

The Amendment exclusively addresses the subject of adoption of subsequent constitutional amendments—specifically requiring all subsequent amendments to the Florida Constitution be adopted twice at the applicable current voter thresholds.[1] The Amendment addresses no other subject.

Article XI, section of 3 of the Florida Constitution grants authority to its citizens to directly propose amendments to their constitution, but limits this authority to amendments that embrace only "one subject and matter directly connected therewith." Referred to as the single subject requirement, the provision acts as a limitation on the power of the people to propose amendments to the Florida Constitution. The purpose of the single subject requirement for initiative

[1] Any amendment imposing a new tax or fee must be approved by two-thirds of the voters voting in the election. *See* Art. XI, § 7, Fla. Const. All other amendments must be approved by sixty percent of the voters voting on the measure. *See* Art. XI, § 5(e), Fla. Const.

petitions is two-fold: to prevent logrolling[2] and to prevent an amendment from "substantially altering or performing the functions of multiple branches of state government." *Advisory Op. to Att'y Gen. re Repeal of High Speed Rail Amendment*, 880 So. 2d 624, 625 (Fla. 2004). Only initiative petitions are subjected to this requirement, which serves as a "rule of restraint." *Fine v. Firestone*, 448 So. 2d 984, 988 (Fla.1984) (observing the lack of a "filtering legislative process" for drafting initiative petitions compared to amendments proposed through legislative, revision commission, and constitutional convention processes via article XI, sections 1, 2 and 4, respectively).

Under the first prong of the single subject requirement, an amendment will pass muster if it deals with the subject with "a logical and natural oneness of purpose." *Fine*, 448 So. 2d at 988. "In determining whether a proposal addresses a single subject the test is whether it 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." *Id.* at 990 (cleaned up).

Here, the Amendment's single dominant scheme is requiring subsequent amendments to the constitution to be adopted twice at separate elections. Under the Amendment, subsection (a) and (b) of article XI, section 5 are amended to

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[2] Logrolling is "a practice that combines separate issues into a single proposal to secure passage of an unpopular issue." *Advisory Op. to Att'y. Gen. re Voluntary Universal Pre-Kindergarten Educ.*, 824 So. 2d 161, 165 (Fla. 2002).

provide that all proposals to amend the constitution, if approved in an initial election, shall be submitted a second time at the next general election. In the instance of proposed amendments or revisions for which the Legislature has authority to set a special election—i.e., proposed amendments or revisions submitted by the legislature, revision commission, tax and budget reform commission, or constitutional convention—the second election must occur at the next general election occurring at least ten weeks after the special election in which the proposed amendment or revision is first adopted.[3] Lastly, the Amendment clarifies the threshold requirement for passage of an amendment—two-thirds of voters voting in an election for an amendment proposing a new tax or fee, and sixty percent of voters voting on a measure for any other amendment—remains unchanged and apply to each of the two elections in which an amendment is considered. The Amendment plainly comports with the first prong of the single subject requirement prohibiting logrolling.

To illustrate, the Court in *Advisory Opinion to Attorney General re Florida's Amendment to Reduce Class Size*, 816 So. 2d 580, 582–83 (Fla. 2002), found that a proposed amendment satisfied this requirement because it encompassed only a

[3] Current law requires primary elections to be held at least 11 weeks prior to the general elections. *See* § 100.061, Fla. Stat. If the amendment passed, the Legislature has the ability to fast track certain amendments for which it has authority to establish a special election by setting the initial election at which the proposed amendment would be considered at the same time as the primary election.

single subject: the reduction of class sizes in public schools. The Court explained that "[t]he fact that the ballot initiative require[d] the Legislature to fund this reduction" was simply a detail of the amendment's implementation, and not a separate subject. *See id.* Likewise, the Amendment in this case encompasses the process for amending the constitution, and nothing more. Any incidental details related to implementation of this new process are perfectly permissible and do not constitute a separate subject.

By contrast, in *Fine v. Firestone*, a seminal case on the single subject requirement, the Court found that a proposed amendment encompassed at least three distinct subjects: restrictions on multiple areas of taxation, the expansion of user-fee services, and the funding of capital improvements with revenue bonds. 448 So. 2d at 990–92. The Court concluded that the combination of these three separate subjects in a single amendment necessitated the amendment's removal from the ballot. *Id.* at 992–93.

Unlike the multifaceted amendment that the Court struck from the ballot in *Fine*, the Amendment in this case touches only a single solitary subject: the process for passing constitutional amendments. The Amendment does not contain any provisions unrelated to this subject. *See Advisory Op. to Att'y Gen. re Ltd. Casinos*, 644 So. 2d 71, 73 (Fla. 1994) (condemning "logrolling" as a practice whereby an amendment is proposed which contains unrelated provisions, some of

which electors might wish to support, in order to get an otherwise disfavored provision passed").

The Amendment also complies with the second prong of the single subject requirement because it does not substantially alter or perform the functions of multiple branches of government. "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." *Advisory Op. to Att'y Gen. re Fish & Wildlife Conservation Comm'n*, 705 So. 2d 1351, 1353–54 (Fla. 1998). Although the Amendment would change the requirements for passing *future* amendments that could impact any of the branches of government, this Amendment does not work any material or substantive change on any branch of government. Thus, the Amendment satisfies the second prong of the single subject requirement. *Compare id.*, at 1354–55 (holding that proposed amendment that transferred regulatory authority that the legislature previously delegated elsewhere to a different entity did not substantially change or perform the functions of multiple branches of government), *with In re Advisory Op. to the Att'y Gen – Save Our Everglades*, 636 So. 2d 1336, 1340-41 (Fla. 1994) (striking proposed amendment as having a duality of purpose by creating a "virtual fourth branch of government," performing legislative functions by imposing a levy on raw sugar and affording trustees discretion to spend the

revenues, infringing on the existing duties of multiple executive agencies, and performing a judicial function by imposing liability and fees on the sugarcane industry).

The Amendment, consistent with its chief purpose, simply changes the manner by which the constitution may be amended in the future. For these reasons, the Sponsor requests this Court issue an advisory opinion, finding the Amendment meets the single subject requirement of article XI, section 3, and approving the Amendment for placement on the ballot.

II. THE BALLOT TITLE AND SUMMARY SATISFY THE REQUIREMENTS OF SECTION 101.161, FLORIDA STATUTES.

The Amendment's ballot title and summary clearly and unambiguously inform the voter of the chief purpose of the Amendment in conformance with section 101.161, Florida Statutes. The text of the Amendment requires future proposed constitutional amendments to be adopted twice in separate elections, and at the same thresholds for which current amendments must pass. The ballot title and summary provide fair, adequate, and accurate notice of the Amendment's chief purpose without engaging in electioneering.

A ballot title for an initiative petition is limited to 15 words, reflecting how a proposed amendment will be commonly referred to.[4] *See* § 101.161(1), Fla. Stat.

[4] The ballot title of the Amendment easily meets this requirement with only 5 words.

A ballot summary for an initiative petition is limited to 75 words, and "in clear and unambiguous language" must inform the voter of the "chief purpose" of the proposed amendment.[5] *Id.* "The purpose of the statute is to provide fair notice of the content of the proposed amendment so that the voter will not be misled as to its purpose, and can cast an intelligent and informed ballot." *Advisory Op. to Att'y Gen. re Term Limits Pledge*, 718 So. 2d 798, 803 (Fla. 1998) (cleaned up). The ballot title and summary must be read in tandem and should "clearly inform voters of the amendment's chief purpose, and provide an accurate description of the amendment." *Amendment to Reduce Class Size*, 816 So. 2d at 585; and *Advisory Op. to the Att'y Gen. re Tax Limitation*, 673 So. 2d 864, 868 (Fla. 1996). To fulfill this obligation, the ballot title and summary need not describe every ramification, but should simply describe the chief purpose of the proposal. *See Repeal of High Speed Rail Amendment*, 880 So. 2d at 627.

In conducting an analysis of the ballot title and summary, a court asks two questions: "First, the Court asks whether the ballot title and summary fairly inform the voter of the chief purpose of the amendment." *Id.* at 628 (cleaned up). "Second, the Court asks whether the language of the title and summary, as written, misleads the public." *Id.* Examining the Amendment in the present case, the proposal satisfactorily addresses both questions: the ballot title and summary

[5] The ballot summary of the amendment meets this requirement using 41 words.

inarguably inform the voter of the chief purpose of the Amendment without misleading the public.

The chief purpose of the Amendment is to require voters to approve subsequent amendments to the constitution in two separate elections. This purpose is clearly conveyed jointly through the ballot title and summary. The ballot title—"Voter Approval of Constitutional Amendments"—plainly informs the voter that the Amendment relates to the voter approval of constitutional amendments. Going further, the ballot summary accurately reflects the changes wrought by the Amendment, informing the public that if adopted "all proposed amendments or revisions to the state constitution to be approved by the voters in two elections, instead of one, in order to take effect." The summary further expressly informs the voters that the amendment would apply the thresholds by which current amendments need to be approved to both elections: "The proposal applies the current thresholds for passage to each of the two elections." In so doing, the summary simply and accurately reflects the textual changes proposed in the amendment, and does so in a manner that would not mislead the voters as to the purpose of the amendment or its effect.

Neither the ballot title nor the ballot summary "fly under false colors" or "hide the ball" as to the amendment's true effect." *See Advisory Op. to the Att'y Gen. re Voter Control of Gambling*, 215 So. 3d 1209, 1216 (Fla. 2017) (cleaned

up). Nor do they contain impermissible political rhetoric, or otherwise mislead the public as to the Amendment's chief purpose. *See Save Our Everglades*, 636 So. 2d at 1341–42. Instead, using neutral and straightforward language, the Amendment's ballot title and summary ensure that "the electorate is advised of the true meaning, and ramifications," of the Amendment, which is simple: future constitutional amendments shall be passed twice, in separate elections. *See Advisory Op. to the Att'y Gen. re Tax Limitation*, 644 So. 2d 486, 490 (Fla. 1994) (cleaned up). The Amendment's ballot title and summary plainly satisfy the requirements of section 101.161, Florida Statutes.

CONCLUSION

The Amendment easily satisfies the requirements of article XI, section 3 of the Florida Constitution, and section 101.161, Florida Statutes. The Sponsor, Keep Our Constitution Clean, PC, therefore requests this Court to render an advisory opinion approving the Amendment's placement on the ballot during the 2020 general election.

Respectfully submitted on December 23, 2019.

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CERTIFICATE OF SERVICE

I certify that, on December 23, 2019, this brief was filed through the Florida Courts eFiling Portal, which will serve a copy on all parties of record in this matter.

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CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENT

I certify that the font used in this brief is Times New Roman 14 point and in compliance with Rule 9.210, Florida Rules of Appellate Procedure.

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