IN THE SUPREME COURT OF FLORIDA

Case No.: SC01-1950

ADVISORY OPINION TO THE ATTORNEY GENERAL
RE: RIGHT TO TREATMENT AND REHABILITATION FOR
NONVIOLENT DRUG OFFENSES

BRIEF OF AMICUS CURIAE THE FLORIDA PROSECUTING ATTORNEYS ASSOCIATION IN OPPOSITION TO BALLOT INITIATIVE

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THE FLORIDA PROSECUTING ATTORNEYS ASSOCIATION

On September 20, 2001, this Court entered its Interlocutory Order scheduling oral argument for 9:00 a.m., October 10, 2001 and authorizing interested parties to file briefs by said date regarding the proposed initiative "Right to Treatment and Rehabilitation for Nonviolent Drug Offenses" ("Right to Treatment and Rehabilitation".) The Florida Prosecuting Attorneys Association asserts an interest in opposing the ballot initiative in that its membership is integrally involved in the prosecution on the State's behalf of drug offenses and accordingly files this amicus brief .

In presenting its petition to this Court on the "Rights to Treatment and Rehabilitation", the Attorney General identified numerous bases upon which the proposed constitutional amendment fails to comply with Article XI, Section 3, Florida Constitution and Section 101.161, Florida Statutes, (2000.) The Attorney General has requested this Court's opinion as to whether the proposed amendment indeed fails to comply with the requisites of said constitutional and statutory provisions.

The petition of the proposed amendment provides:

BE IT ENACTED BY THE PEOPLE OF FLORIDA THAT:

Article I, Section 26, Florida Constitution, is hereby created to read as

follows:

Right to Treatment and Rehabilitation

(a) Any individual charged with or convicted of illegally possessing or purchasing a controlled substance or drug paraphernalia may elect to receive appropriate treatment as described in subsection (c), instead of being sentenced or incarcerated, which shall be a matter of right for the first and second offense after enactment of this section and at the discretion of the court for subsequent offenses. If more than one qualifying offense under this section occurs during a single criminal episode, it shall be considered a single offense. For purposes of this section, an individual who elects to receive appropriate treatment prior to conviction shall be deemed to have waived the right to a speedy trial.

(b) This section shall not apply to any individual who in connection with the same criminal episode as the drug offense described in (a) is also charged with or convicted of: any felony; any misdemeanor involving theft, violence or the threat of violence; trafficking, sale, manufacture, or delivery of a controlled substance; purchase or possession with intent to sell, manufacture, or deliver a controlled substance or drug paraphernalia; or operating a vehicle under the influence of alcohol or a controlled substance. This section also shall not apply to any individual who, within five years before committing the drug offense described in (a), has been convicted of, or in prison for, one of the serious or violent crimes described in Section 775.084(1)(c) 1. a-r., Florida Statutes, (2000) or such other violent crimes as may be provided by law.

(c) For purposes of this section, "appropriate treatment" means a state-approved drug treatment and or rehabilitation treatment program, or set of programs designed to reduce or eliminate substance abuse or drug dependency and to increase employability. Such program or programs shall include, as deemed appropriate, access to vocational training, literacy training, family counseling, mental health services, or similar support services. The determination of the type and duration of the appropriate treatment program or programs that an individual shall receive, and methods of monitoring the individual's progress while in

treatment, shall be made by a qualified professional as defined in Section 397.311(25), Florida Statutes (2000).

(d) An individual receiving appropriate treatment under this section may be transferred to a different program due to violations of program rules or unsuitability to the form of treatment initially prescribed. An individual may be removed from appropriate treatment if, after multiple programs and violations, and upon an independent evaluation by a qualified professional as defined in Section 397.311(25). Florida Statutes (2000), the individual is found by the court to be unamenable to treatment and rehabilitation. Any such individual removed from appropriate treatment who has been convicted of the drug offense described in (a) may be sentenced for the offense. Prosecution may be recommenced against any individual removed from appropriate treatment who has not yet been convicted, and a conviction resulting from such prosecution may result in a criminal sentence without regard to this section.

(e) Appropriate treatment shall be terminated upon an individual's successful completion of the prescribed course of appropriate treatment, or upon an independent evaluation and finding by a qualified professional as defined in Section 397.311(25). Florida Statutes (2000), that an individual's appropriate treatment has been successful, or eighteen months after the date the individual elected to receive appropriate treatment, whichever occurs first. Upon termination of appropriate treatment, the individual may not be prosecuted, sentenced, or placed under continued court supervision for the offense which led to the appropriate treatment.

(f) This section shall become effective on July 1 of the year following passage by the voters, and shall apply prospectively only to qualifying drug offenses occurring on or after that date.

(g) The Legislature shall enact such laws as necessary to implement this section.

The ballot title and summary for the proposed amendment provides:

> Individuals charged or convicted of possessing or purchasing controlled substances or drug paraphernalia may elect appropriate treatment as defined, instead of sentencing or incarceration, for first two offenses; discretionary with court thereafter. Excludes individuals committing serious crimes in same episode or convicted or in prison for violent crimes in past five years. Individual unamenable to treatment may be prosecuted or sentenced. Upon successful completion or eighteen months in treatment, no prosecution or sentencing. Legislative implementation.

SUMMARY OF THE ARGUMENT

The issue presented is whether the constitutional amendment proposed through the ballot initiative entitled "Right to Treatment and Rehabilitation" fails to comply with the "single-issue" limitation as required by Article XI, Section 3, Florida Constitution and therefore should be barred as a ballot initiative. Article XI, Section 3, Florida Constitution provides that a proposed_ amendment "shall embrace one subject and matter directly connected therewith."[1] In Chapter Review Commission v. Scott, 627 So. 2d 520 (Fla. 5th D.C.A. 1993.), an initiative was struck down because it called for the consideration "of three separate, independent and unconnected constitutional offices"[2] which risked calling on the voters to consider what was in

[1]Fla. Const. art XI, 3.

[2]627 So. 2d 520, (Fla. 5th D.C. A. 1993).

essence three separate amendments forcing them "to choose all or none of the proposed amendments."[3] In Fine v. Firestone, 448 So. 2d 984, 990 (Fla. 1984), the court found that a proposal which affects "...separate, distinct functions of the existing governmental structure of Florida, and substantially affects multiple sections and articles of our present constitution..." violates the single-subject requirement. By substantially altering or performing the functions of "multiple aspects of government'[4], a proposed amendment violates the single-subject requirement and fails to comply with Article XI, Section 3, Florida Constitution.

The "Right to Treatment and Rehabilitation" amendment fails on the single-subject basis as stipulated by Article XI, Section 3, Florida Constitution, because it presents multiple issues in contradiction to the single-issue requirement and, as drafted, proposes to perform the functions of multiple aspects of government including by taking away and/or severely limiting the prosecutorial discretion of the State Prosecutors of Florida through the amendment's provision to allow for offender-based election for treatment and rehabilitation in lieu of prosecution.

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[3] *Id.*

[4] Advisory Op. of the Att'y Gen. re. Limited Casinos, 644 So. 2d 71, 73 (Fla. 1994.)

ARGUMENT

Ballot initiatives present conflicting democratic principles. One such principle is that a constitution belongs to the people and the people should not have to rely on methods that may frustrate their will to alter the document. However, a second and arguably more important principle is that the state constitution is the core of the social contract among citizens and, if it is functioning properly, cannot be altered to the point that government does not function properly. Thus a primary tenet of the constitutional initiative process is that the constitution should contain fundamental principles of policy and be difficult to amend.

The rationale behind this long-standing principle is clear. Constitutions are looked upon as timeless documents that should be drafted in such a way as to need very little modification and as such provide society with the invaluable "stability in the law and society's consensus on the ground of general fundamental values."[5] Statutory law, on the other hand, is intended to be more easily modified as the needs of the people and society change. Indeed, it is the prevailing view that state constitutions should be brief, limited to fundamentals and avoid legislative matters.

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[5] Advisory Op. to the Att'y Gen. re Limit Marine Net Fishing, 620 So. 2d 997, 1000 (Fla. 1993).

As such, ballot initiatives proposing amendment to the state constitution have traditionally been reviewed under high levels of scrutiny through codified safeguards, such as the single-subject requirement as provided by Article XI, Section 3, Florida Constitution, in an effort to prohibit legislation by means of ballot initiative. These very safeguards have been established to deny the sort of "log-rolling" legislation through ballot initiative as would be effected if the "Right to Treatment and Rehabilitation" initiative were to succeed.

Article XI, Section 3, Florida Constitution provides, in part, that:

> "The power to propose revision or amendment to any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of the government to raise revenue, *shall embrace but one subject and matter directly connected therewith....*" (Emphasis supplied.)

It is the court's role to determine whether an amendment meets the single-subject requirement.[6] To comply with the single subject requirement, an amendment must manifest a "logical and natural oneness of purpose."[7] The single-subject requirement in the provisio language is a "rule of restraint"[8] to allow the citizens, by initiative provision, to propose and vote on **singular** changes in the functional

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[6] *Id.* at 998-99.

[7] Fine v. Firestone, 448 So. 2d 984, 990 (Fla. 1984).

[8] *Id.* at 988.

structure of our government.[9] A proposed amendment meets the single-subject requirement if it has "a logical and natural oneness of purpose[.]"[10] Put another way, a proposed amendment is valid if it "may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme."[11] The single-subject requirement imposes a "functional as opposed to a locational restraint on the range or authorized amendments."[12] It is the intent of the single-subject requirement to "protect against multiple precipitous change in our state constitution."[13]A showing that a proposed amendment does not meet the single-subject requirement is sufficient to invalidate it.[14]

In the proposed amendment "Right to Treatment and Rehabilitation", there are significant multiple and disparate subjects in the initiative which render it constitutionally invalid under the single-subject requirement including:

(1) substantially alters or performs multiple functions of government in that

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[9]*Id.*

[10]*Id.* at 990.

[11]*Id.* (Quoting City of Coral Gables v. Gray, 19 So. 2d 318, 320 (Fla. 1944).)

[12]Fine, 488 So. 2d at 990.

[13]*Id.* at 988.

[14]Advisory Op. to the Att'y Gen. re. Bar Gov't From Treating People Differently Based on Race in Public Education, 778 So. 2d 888, (Fla. 2000).

it takes from the judiciary its constitutionally vested power under Article V, Section 1, to impose appropriate sentences and administer justice, quintessential judicial functions.[15] In that the proposed amendment allows for offender-based election to treatment and/or rehabilitation in lieu of prosecution and as provided for in subsection (a) as opposed to the statutorily-mandated judicial authority to administer the existing Florida Drug Court Program, the initiative would effect a broad-based taking of the prosecutorial discretion of the State Prosecuting Attorneys. Further, the proposed amendment would effect a stripping of judicial power in determining the appropriate sentences for offenders and as such perform additional quintessential judicial function;

2. implements public policy decision of statewide significance and thus essentially performs legislative functions[16] by essentially decriminalizing through log-rolling and loopholes the possession and purchase of any and all illegal drug and supplanting the existing Florida Drug Court Program with an extensive and costly statewide drug treatment and

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[15] Andrews v. Florida Parole Commission, 768 So. 2d 1257 (Fla. 1st D.C.A. 2000).

[16] Advisory Op. of the Att'y Gen. re. Save Our Evergaldes, 636 So. 2d 1336, 1340, (Fla. 1994).

rehabilitation program under the primary authority of private authorities and by modifying the penalties for possession and purchase of illegal drugs, and;

3. circumvents the executive functions as provided pursuant to Article V, Section 8, Florida Constitution, which allow for formal complaints against state judges to be investigated with possible charges and removal from office. The "de facto" judges of the proposed amendment, said "qualified professional" under whose authority the proposed treatment and rehabilitation are to be carried out, are not subject to Article V, Section 8, Florida Constitution.

In effect, limiting legislative authority and redefining the courts' remedial powers significantly restricts the state's ability to govern effectively, including its ability to address the effects of past and present discriminatory practice. That such effects constitute substantial alternations of governmental function is incontrovertible.[17]

When a proposed amendment would effect functionally the curtailment of legislative and judicial branches, it must be rendered "fatally defective and violative

[17]Advisiory Opin. To the Att'y Gen. re. Bar Gov't From Treating People Differently Based on Race in Public Eductaion, 778 So. 2d 888, 895, Fla. 2000.)

of the single-subject requirement."[18] " This is precisely the sort of "cataclysmic change" that the drafters of the single-subject rule labored to prevent."[19]

[18] *Id.* a7 896.

[19] *Id.*

CONCLUSION

The Florida Prosecuting Attorneys Association opposes the proposed amendment "The Right to Treatment and Rehabilitation" as a ballot initiative and supports the Attorney General in its opinion that said amendment is in non-compliance with the single-subject requirement of Article XI, Section 3, Florida Constitution. Our opposition is founded on both constitutional and public policy grounds for when it can easily be foreseen, as in the proposed amendment, that said amendment would effect identifiable changes in the function of different and multiple levels and branches of government, said amendment must be invalidated pursuant to the single-issue requirement of Article XI, Section 3, Florida Constitution in protection of the Constitution itself and the citizenry of Florida. To find otherwise would open the floodgates to legislative log-rolling undermining the very safeguards and unity of our time-tested democratic process and society.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to The Honorable Robert A. Butterworth, State of Florida Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399-1050_____; via _____ this _____ day of October, 2001.

JACOBS & Associates, P.A.

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CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS

Pursuant to FLA. R. APP. P. 9.210(a)(2), the hereby certify that this response is printed using Times New Roman 14-point font.

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