IN THE SUPREME COURT OF FLORIDA

Case No. SC01-1950

Upon Request From the Attorney General
For An Advisory Opinion As To the
Validity Of An Initiative Petition

ADVISORY OPINION TO THE ATTORNEY GENERAL

RE: RIGHT TO TREATMENT AND REHABILITATION FOR NONVIOLENT DRUG OFFENSES

ANSWER BRIEF OF THE SPONSOR, FLORIDA CAMPAIGN FOR NEW DRUG POLICIES

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Standard of Review

Opponents of the drug treatment amendment would do well to recall the limited scope and standard of review in this proceeding, which is whether the proposed drug treatment amendment is "clearly and conclusively defective" when measured against the standards governing only two legal issues: disclosure of the chief purpose of the amendment, and compliance with the single-subject rule. Weber v. Smathers, 338 So. 2d 819, 822 (Fla. 1976) (emphasis added). Each of the four briefs filed in opposition to the drug treatment amendment improperly approaches this proceeding as if it were a campaign debate on the merits of the amendment, and not a narrowly-confined review of those two specific legal issues.

The brief of the Florida Association of Drug Court Professionals, Inc., in particular, allots only the last three and a half of its thirty pages to a discussion of the legal issues, and that discussion is merely conclusory. [Drug Court In. Br. 25-28.] The bulk of the Drug Court brief, like much of the content in the three other opponents' briefs, is devoted to campaigning or lobbying the Court as to why these opponents disagree with the drug treatment amendment. Those subjective opinions are simply irrelevant here. The Court has consistently adhered to the principle that "neither the

wisdom of the provision nor the quality of its draftsmanship is a matter for our review." Weber, 338 So. 2d at 822; see also, e.g., Advisory Op. to Atty. Gen. re Tax Limitation, 644 So. 2d 486, 489 (Fla. 1994); Advisory Op. to Atty. Gen. re Ltd. Casinos, 644 So. 2d 71, 75 (Fla. 1994); Advisory Op. to Atty. Gen. – Ltd. Political Terms in Certain Elective Offices, 592 So. 2d 225, 227 (Fla. 1991). Thus, the Sponsor urges the Court to guard against the opponents' "campaign" arguments, and approve the proposed drug treatment amendment for submission to the voters so that each voter may express an individual opinion about the merits of the proposal.

Text of the Amendment

For ease of reference, the full text of the proposed drug treatment amendment is set forth again here:

> 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.

Operation of the Amendment

The drug treatment amendment does one thing. It gives certain nonviolent drug offenders a right to elect treatment and rehabilitation instead of prosecution, incarceration, or sentencing. In public policy terminology, it recognizes a preference for treatment rather than punishment. The amendment and its title and summary express this chief purpose with crystal clarity, thus passing the only two tests before the Court: whether the amendment has but one chief purpose, and whether that chief purpose is fairly and accurately disclosed to the voter in the ballot title and summary.

The Sponsor and other proponents of this amendment share the ultimate goal of the opponents: to try to solve the drug problem by one means or another. The amendment espouses one means; the opponents espouse another. The opponents do not like the idea of medicalizing and treating drug offenses, and would prefer instead to revert to the old model of punishment. Opposing this amendment on that basis is misplaced and belated, however, because Florida already has medicalized drug offenses and codified a preference for treatment. The amendment does not constitute a major shift in policy as the opponents apparently believe, but rather elevates Florida's treatment policy to constitutional status, which is, of course, an inherent effect of a constitutional amendment.

The opponents assert that this amendment marks the falling of the drug control sky in Florida, "legalizing drugs" and "abolishing drug courts." Significantly, no opponent links these accusations to any constitutional question that is properly before the Court in this proceeding. The Sponsor, by responding briefly here to these arguments, does not intend to validate these assertions or concede their propriety here; to the contrary, the Sponsor seeks only to correct the record where the opponents are incorrect, and to neutralize the effect of the opponents' attempts to persuade the Court on the merits. The assertions of "legalizing drugs" and "abolishing drug courts" are

completely false and reflect nothing but the opponents' subjective opinions against the merits of the amendment, which are irrelevant. The opponents are free to take their viewpoints to the public, and free to vote as they wish, but mere disagreement of position furnishes no legal basis whatsoever to remove a proposed amendment from the ballot. The opponents' unfounded and emotional speculations about what they are afraid the amendment will do, or what they want the Court and the public to (mistakenly) believe the amendment will do, or their mischaracterizations of the Sponsor's motives, have no place in this analysis. The drug treatment amendment neither "legalizes drugs" nor "abolishes drug courts."

Drugs Not Legalized. The amendment makes treatment and rehabilitation, rather than criminal sanctions, the consequence of violating Florida's drug laws in certain cases. The amendment does not thereby legalize drugs. The fact remains that the amendment operates only after an offender has been charged with a crime, and thus presumes that possessing and purchasing drugs and drug paraphernalia will remain crimes. Moreover, the amendment retains existing criminal penalties for drug possession or purchase, to be imposed on defendants who do not meet the measure's eligibility requirements, and on those who fail to complete treatment satisfactorily after it is offered under the amendment's terms. This is a far cry from "legalizing" drugs.

Drug Courts Not Abolished. This persistent theme of the opponents' arguments is so utterly wrong that it demands decisive correction. The opponents assert, as if it were an unassailable, obvious truism, that the drug treatment amendment will "abolish" Florida's drug courts. This assertion is absolutely untrue. In the first place, the phrase "drug courts" is something of a misnomer to the extent that it connotes some fixed and discrete court system. It refers, instead, to an approach to drug cases available in some (but not all) Florida counties pursuant to the Florida Legislature's public policy pronouncements favoring treatment. See § 397.334, Fla. Stat. (2001). Florida's drug courts will continue to exist and to operate after enactment of this amendment, just as drug courts in Arizona and California have continued to operate after those states adopted similar measures (and despite the same dire predictions that the opponents assert here). The drug treatment amendment does not either expressly or impliedly abolish Florida's drug courts, or repeal or preempt any other provisions of existing law that are consistent with the amendment.

The drug treatment amendment assumes, and the Sponsor intends, that the drug court system will continue to operate side by side with, and in a manner consistent with, the drug treatment amendment. For example, the current statute allows drug court treatment for certain offenders who would not be eligible under this amendment. See § 948.08(2), Fla. Stat. (2001) (granting eligibility to "any first offender, or any

person previously convicted" of certain offenses). The drug treatment amendment does not purport, either expressly or impliedly, to eliminate this provision of current Florida law. Therefore, the drug treatment does not impact drug court handling of first-time felons. Rather, the drug treatment amendment expands the category of drug possession and purchase offenders who are eligible for diversion to treatment, to include second-time offenders and, with the court's consent, third-time and subsequent possession and purchase offenders. The amendment also extends treatment to offenders whose prior offenses occurred at least five years earlier. By expanding the universe of eligible offenders, the drug treatment amendment makes it clear that a drug court approach will continue to exist in Florida.

Current Florida law also allows diversion to an educational and treatment program for offenders meeting certain defined criteria, including being charged with second or third degree felonies for possession or purchase of a controlled substance. Id. § 948.08(6). The drug treatment amendment would not eliminate this provision of Florida law. The Sponsor intends, instead, that the amendment would require modification of the current law in some respects to comply with the amendment, such as by affording these offenders a second election of treatment, or a subsequent election with court approval; and by allowing offenders with previous non-violent felony convictions, or past violent convictions if they have been out of prison more

than five years, to participate in treatment. These effects on current Florida law simply illustrate the unassailable proposition that when the constitution is amended, the existing law must yield in compliance with the amendment. That is a permissible – and unavoidable – effect of a constitutional amendment.

The Sponsor envisions the drug treatment amendment as requiring quite simply that every jurisdiction process drug cases that are within the scope of the amendment in the manner contemplated by the terms of the amendment. Inconsistent practices would have to change, but that does not mean drug courts are abolished. The amendment expands current law by allowing both post-conviction and pre-trial treatment in certain cases. The amendment specifies that treatment professionals will determine the details of the method and duration of treatment, which is already the practice where resources are available, because designing a treatment plan is not a judicial function any more than is providing treatment.

Under the amendment, the role of the treatment professional dovetails with, but does not preempt, the role of the judge. The court retains the judicial duties at each stage of qualified cases. The court will determine eligibility at the outset and order the defendant into treatment. The amendment expresses criteria for removal from treatment, but preserves the trial judge's authority to determine unamenability to treatment and resume the criminal process in appropriate cases. Finally, the

amendment requires cessation of treatment upon the achievement of success, mirroring the current system under which, for example, probation officers and Department of Corrections employees determine when an individual has successfully served out a sentence.

The amendment does not prohibit the chief judges from formulating drug court programs, as currently required by statute. § 397.334, Fla. Stat. (2001). The amendment will simply require that cases that qualify under the amendment be treated as provided in the amendment. Other cases will continue to be processed pursuant to statutory law that is not inconsistent with the amendment. All of these provisions are matters directly connected to the chief purpose of the amendment, and they do not by any stretch of the imagination abolish drug courts or legalize drugs.

SUMMARY OF THE ARGUMENT

The principal thrust of the opponents' arguments is that they disagree with the drug treatment amendment on its merits. The opponents claim that the amendment will "legalize drugs" and "abolish drug courts," and assert a number of other attacks on the merits that are not only demonstrably incorrect, but inappropriate in this proceeding. The opponents are entitled to disagree with the amendment if they choose, but the merits and positions on the merits are not before the Court. The sole questions before the Court are whether the ballot title and summary fairly and accurately disclose the chief purpose of the amendment, and whether the amendment complies with the single-subject rule. Thus, the Court should disregard the opponents' merits arguments and confine its consideration carefully to the two legal issues at bar.

The chief purpose of the drug treatment is to give certain nonviolent drug offenders the right to elect treatment and rehabilitation instead of incarceration or sentencing under certain circumstances. The ballot summary discloses this chief purpose in language that is clear and unambiguous. Two opponents argue that the ballot summary does not provide enough detail about the operation of the amendment, but the Sponsor took care to ensure that the summary fairly discloses the most significant and presently ascertainable ramifications of the amendment to the extent that it was possible to do so within the strict word limit. The summary more than

satisfies the standards that this Court has uniformly applied in the past. Instead of expanding those standards to the level of extreme detail that the opponents apparently advocate, or requiring the summary to include speculation about future implementation of the amendment, the Court should adhere to its past guidelines and approve the ballot title and summary.

No opponent claims that the drug treatment amendment contains more than one "dominant plan or scheme." No opponent claims that the amendment lacks "unity of object and plan." Rather, the opponents' objections stem from their claims that the drug treatment amendment is guilty of logrolling by providing certain details of implementation in its text, and that the amendment impacts each branch of government. The logrolling arguments are misplaced and fundamentally misapprehend the meaning of logrolling. The amendment includes only matters directly connected with its chief purpose, and that cannot as a matter of law constitute logrolling.

The fact that the amendment will affect each branch of government in some way is far from a single-subject violation. Indeed, the Court has recognized frequently that most constitutional amendments will have just such an effect, because each branch of government must comply with the changes in Florida law wrought by an amendment. The amendment does not usurp a judicial function by incorporating the

role of treatment professionals, because the provision of treatment services is not a judicial function in the first place. Further, the amendment retains the quintessentially judicial functions at each stage of a case, preserving judicial authority to determine eligibility for treatment, monitor the offender's progress to the extent each respective judge chooses to do so, and determine unamenability to treatment in appropriate cases. Likewise, the amendment does not usurp or substantially perform either an executive or a legislative function. It does not deprive prosecutors of the ability to charge crimes, and it does not usurp the legislative function by affecting existing statutes or by raising the possibility (though far from the certainty) that some appropriations may be made in amounts and to recipients left to Legislative discretion. In short, the drug treatment amendment embraces but a single subject, and should be approved for placement on the ballot and submission to the voters of Florida.

ARGUMENT

I. THE BALLOT TITLE AND SUMMARY ACCURATELY INFORM THE VOTER OF THE CHIEF PURPOSE OF THE AMENDMENT.

The ballot title for the proposed drug treatment amendment is **"Right to Treatment and Rehabilitation for Nonviolent Drug Offenses**." The ballot summary states as follows:

> 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.

The governing legal principles are clear and certain. The ballot summary of a proposed constitutional amendment need only disclose the "chief purpose of the measure." § 101.161(1), Fla. Stat. (2000). The Court has ruled that the purpose of this 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 Atty. Gen. re Term Limits Pledge, 718 So. 2d 798, 803 (Fla. 1998). The Court has applied the requirement to mean that the language disclosing the chief purpose must be clear, unambiguous, and not misleading. Advisory Op. to Atty. Gen. re: Prohibiting Pub. Funding of Political Candidates' Campaigns, 693 So. 2d 972,

976 (Fla. 1997); Askew v. Firestone, 421 So. 2d 151, 154-55 (Fla. 1982).

The Governor and the Florida Alcohol and Drug Abuse Association do not attack the ballot summary of the drug treatment amendment, while the other two opponents assert that it suffers from a variety of defects. In so doing, these opponents appear to fundamentally misapprehend the limited and pragmatic purpose of the ballot summary. An understanding of that purpose is essential to understanding why the present ballot summary is more than adequate. Quite simply, the ballot title and summary, being the only verbiage printed on the ballot and presented to the voter in the voting booth, must be sufficient to put the voter on notice of what proposed amendment is at issue by disclosing its chief purpose. This limited function can hardly be explained better than it was in the following excerpt, discussing the ballot summary of a proposed Dade County ordinance, but nonetheless applying the same principles of law now codified at section 101.161:

> It is true … that certain of the details of the ordinance as well as some of its ramifications were either omitted from the ballot question or could have been better explained therein. That, however, is not the test. There is no requirement that the referendum question set forth the ordinance verbatim nor explain its complete terms at great and undue length. Such would hamper instead of aiding the intelligent exercise of the privilege of voting. Under our system of free elections, the voter must acquaint himself with the details of a proposed ordinance on a referendum together with the pros and cons thereon before he enters the voting booth. If he does not, it is no function of the ballot question to provide him with that needed education. What the law very simply requires is that the ballot give the voter fair notice of the question he must decide so

> that he may intelligently cast his vote. That requirement has been more than adequately met in this case.

Metropolitan Dade Co. v. Shiver, 365 So. 2d 210, 213 (Fla. 3d DCA 1978), aff'd sub nom. Miami Dolphins, Ltd. v. Metropolitan Dade Co., 394 So. 2d 981, 987 (Fla. 1981). These cases build on the longstanding rule of law reflected in this Court's decision in Hill v. Milander, 72 So. 2d 796, 798 (Fla. 1954): "All that the Constitution requires or that the law compels or ought to compel is that the voter have notice of that which he must decide." This Court applies these same principles, for the same reasons, in initiative cases such as this under section 101.161, Florida Statutes. See, e.g., Limited Casinos, 644 So. 2d at 74 (requiring ballot summary to "state the chief purpose of the measure in clear and unambiguous language . . . so that the voter is put on fair notice of the content of the proposed amendment to enable the casting of an intelligent and informed vote"); Carroll v. Firestone, 497 So. 2d 1204, 1207 (Fla. 1986) (Boyd, J., concurring) (immaterial to validity of summary whether voters choose to educate themselves or not, as long as the chief purpose of the measure is disclosed so that they have the opportunity to inform themselves).

Under these authorities, it is clear that the ballot summary need only disclose the chief purpose of the drug treatment amendment, which is to give certain nonviolent drug offenders the right to elect treatment and rehabilitation instead of incarceration or sentencing under certain circumstances. The ballot summary of the

drug treatment amendment does this, in language that is clear, unambiguous, and not misleading. It complies with the governing requirements and should be approved.

The two opponents that attack the ballot summary of the drug treatment amendment misapprehend the limited scope of the ballot summary requirements, or hope that the Court will expand the requirements to encompass all manner of detail about how the amendment would be implemented. Perhaps their scattershot barrage, particularly that of the Save Our Society brief, is born of a hope that one of the missiles will find a target. The attacks miss their marks, however, because the Court has never subjected ballot summaries to the standards that these opponents advocate. To the contrary, the Court has rebuffed similar attacks repeatedly.

The Court has made it clear that the title and ballot summary need not explain every detail, ramification, or effect of the proposed amendment. Public Funding, 693 So. 2d at 976; Limited Casinos, 644 So. 2d at 74; Carroll v. Firestone, 497 So. 2d 1204, 1206 (Fla. 1986); Grose v. Firestone, 422 So. 2d 303, 305 (Fla. 1982). The adequacy of disclosing the chief purpose depends not at all upon also disclosing the detail of the means to the end: "Unity of object and plan ... is to be looked for in the ultimate end sought, not in the details or steps leading to the end." Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337, 339 (Fla. 1978) (emphasis added).

The attacks launched against the ballot summary of the drug treatment amendment illustrate the wisdom of the Court's having consistently rejected a detailed standard for ballot summaries. The drug treatment amendment builds on existing Florida law, including Florida's drug courts, but does not include all details necessary to make the amendment fully self-executing. As a result, the amendment provides a conceptual framework and specifies important matters directly related to the chief purpose of the amendment, which are fairly disclosed in the summary to the extent possible within its word limit.

Neither the text nor the summary, however, can disclose certain kinds of additional details of implementation that the opponents would demand, because such details will be up to the Florida Legislature to create after passage of the amendment. Many of the opponents' arguments about how the amendment will work rest upon pure speculation and presumptions of worst-case scenarios. The Sponsor could not have drafted a summary to "disclose" details that are unintended, speculative, or absurd. Still other allegedly omitted details are misinterpretations of the amendment, or simply disagreements about the wisdom of the proposal. None have any merit.

To a large degree the opponents' attacks on the ballot summary merely parrot those of the Attorney General, and it is not necessary to repeat here the refutation arguments already presented in the Sponsor's Initial Brief. [Sponsor's In. Br. 16-27.]

The ballot summary challenges asserted in the Drug Court brief [Drug Court In. Br. 27-28] are so superficial and lacking in analysis, and redundant of other parties' points, that they do not merit separate discussion. The sheer volume of the ballot summary attacks in the Save Our Society brief [SOS In. Br. 33-48] is its own worst enemy, because it reveals a lack of confidence in any single argument, and because if the summary had to include and explain everything that Save Our Society demands it include and explain, it would cease to be a "summary" altogether.

The first category of ballot summary arguments in the Save Our Society brief is that the summary omits an explanation that the amendment removes authority from the state judiciary [SOS In. Br. 33-34], an utterly unfounded argument that Save Our Society also asserts in the single-subject section of its brief and that the Sponsor refutes completely in the corresponding section of this brief, below. The summary could not be clearer in disclosing that the offender is given the right to decide whether to go into treatment as an alternative to incarceration or sentencing. Indeed, that is the central purpose of the amendment, and the ballot summary says so quite plainly in its very first sentence: "Individuals … may elect … for first two offenses; discretionary with court thereafter." (Emphasis added.)

Save Our Society next argues that if the summary does disclose its effect on the judiciary, it does not go far enough because it does not discuss in enough detail where

or when private persons (the offender and treatment professionals) will be making decisions about "liberty interests." [SOS In. Br. 34-35.] To the contrary, again, the summary expressly discloses that the qualified offender has the right to make those decisions in the first place by electing treatment and rehabilitation. Treatment professionals determining that an offender is unamenable to treatment do not, as Save Our Society apparently intends to suggest, thereby "determine" the offenders' liberty interests. Rather, the amendment expressly provides in subparagraph (d) that the trial court determines unamenability to treatment: "the individual is found by the court to be unamenable to treatment and rehabilitation." This paragraph explains that any such finding is to be based upon the informed expert advice of the treatment professional, but makes it clear that an offender who fails to progress satisfactorily in treatment is returned to the criminal justice system, where the role of the trial judge remains the same as it is today and the trial judge determines the disposition of the case.

Likewise, once an offender is sent into treatment, a treatment professional can determine that the offender has successfully completed the treatment program. This is directly analogous to the current system whereby Corrections employees, such as parole or probation officers, determine that offenders have completed their terms satisfactorily. See § 948.01, Fla. Stat. (2001) (offender placed on probation or community control is supervised by corrections employees rather than judges); Fla.

R. Crim. P. 3.790 (person placed on probation or community control is under corrections supervision unless and until charged with a violation). It is not a judicial function to determine when an offender has participated in treatment successfully, and therefore the ballot summary cannot be faulted for failing to disclose this as an effect on the judiciary.

Save Our Society also repeats the Attorney General's argument that the ballot summary of the drug treatment amendment is defective because it fails to include a definition of "single criminal episode" for purposes of calculating the drug offender's promised two chances. [SOS In. Br. 35-37.] In the first place, the definition of that phrase as it appears in the text is twenty-two (22) words long, and thus would consume nearly a third of the words allotted to the summary. Further, both the Attorney General and Save Our Society build this argument on their unilateral presumption that the word "offenses" as used in the ballot summary can mean nothing except what they want it to mean, and they want it to mean each separate act that could be charged as a qualifying drug offense even if the acts result in a single arrest. To impose that meaning on the word "offenses" would take it out of its context and force it to disagree with the express definition provided in the text, which the voter has readily available.

Perhaps more importantly, this construction of the term "offenses" would

produce an absurd result that the voter cannot be presumed to contemplate. For example, assume that one offender is arrested on one evening and charged with multiple counts of possession or purchase of drugs and drug paraphernalia. Voters can be presumed to understand, from television if nothing else, that regardless of the number of counts asserted against the offender in that one arrest, the offender will be taken on one trip to the police station, booked once, and brought in front of a judge once to elect treatment if that option is available. The voter would then understand that such single election would constitute one of the offender's two chances, and that it has nothing to do with how many counts are charged. To assume, as Save Our Society does, that the voter will interpret "offenses" as used in the ballot summary to mean "counts charged," would be to assume that the voter thinks there will be a separate course of treatment for, for example, the charge of possession of crack cocaine and the charge of possession of a crack pipe arising from a single, simultaneous event and a single arrest. That result is nonsensical, and cannot be presumed. Instead, the interpretation of "offenses" that is consistent with common sense and consistent with the definition provided in the text must be preferred, and that makes it clear that the summary is fair and accurate in disclosing that each offender can elect treatment twice.

Incorporating a repeated theme, the Save Our Society brief argues that the

summary is defective because it fails to disclose that it (allegedly) abolishes drug courts. [SOS In. Br. 37-39.] As already discussed, the drug treatment amendment is not intended to do anything of the kind, and it does not do anything of the kind. To the contrary, it presumes the continued operation of the drug court program in a manner consistent with the terms of the amendment. A constitutional amendment nearly always requires corresponding changes in the statutory law of the State, and this amendment is no exception. However, the Court has held expressly that the summary of such an amendment need not disclose its effect on existing statutes; those statutes simply give way to the superior force of the constitutional provision. Public Funding, 693 So. 2d at 975-76; Carroll v. Firestone, 497 So. 2d 1204 (Fla. 1986). Because the amendment does not abolish the drug court program, the summary cannot be misleading for failing to disclose any such abolition.

The Save Our Society brief also asserts that the summary is defective because it omits detailed definitions of other terms used in the amendment. [SOS In. Br. 40-46.] Specifically, Save Our Society would require the summary itself to set forth in full the definitions of the phrases "appropriate treatment," "unamenable to treatment," "in same episode," and "serious crimes." Such a requirement would, of course, eliminate the possibility of including anything else of substance within the summary's 75-word limit. This summary fairly discloses that definitions of terms are provided in

the text of the amendment, and the voter has every opportunity to read that text to discover what the terms mean as used in the amendment.

The Court has never required the summary to include a glossary. In the Net Ban case, for example, the amendment was written to be self-executing and therefore included a number of quite detailed definitions. Advisory Op. to Atty. Gen.–Limited Marine Net Fishing, 620 So. 2d 997, 999 (Fla. 1993). The summary used at least five terms that had specialized definitions in the text, not in the least expounded on in the summary, and not within the ken of the average non-commercial-fishing voter. The Court, nevertheless, had no difficulty approving the summary, because it fairly "provide[d] electors with sufficient information to make an informed decision on how to cast their ballots." Id. This goes back to the governing standard of review for ballot summaries as discussed above, and this ballot summary is more than adequate.

The Save Our Society brief also alleges that the ballot summary fails to identify constitutional provisions that Save Our Society alleges are substantially affected by the amendment. [SOS In. Br. 23-26, 39-40.] The cursory argument about constitutional provisions allegedly affected merely incorporates the single-subject arguments addressed in that section of this brief, below; but in any event stretches credulity past its limit by asserting an equal protection violation in giving certain drug offenders a constitutional right to treatment without also conferring a right to

treatment on all members of society who may need it. [SOS In. Br. 23-24.] The equal protection clause, of course, only guarantees similarly situated persons the equal protection of the laws. All qualified drug offenders will have an equal opportunity to receive treatment under this amendment. The Save Our Society brief also alleges that the ballot summary uses certain terms that are different from those used in the text of the amendment. [SOS In. Br. 46-49.] The alleged discrepancies in terminology are nonexistent, and have been addressed in the Sponsor's Initial Brief. [Sponsor's In. Br. 16-27.]

II. THE PETITION SATISFIES THE SINGLE-SUBJECT REQUIREMENT OF ARTICLE XI, SECTION 3, FLORIDA CONSTITUTION.

The single-subject rule of Article XI, Section 3, Florida Constitution, limits the drug treatment amendment to "one subject and matter directly connected therewith." The Court has ruled repeatedly that an amendment satisfies the single-subject requirement if it has a logical and natural oneness of purpose or if it may be logically viewed as having natural relation and connection as component parts or aspects of a single dominant plan or scheme. Advisory Op. to Atty. Gen. re Florida Locally Approved Gaming, 656 So. 2d 1259, 1263 (Fla. 1995) (quoting City of Coral Gables v. Gray, 19 So. 2d 318, 320 (Fla. 1944)); Limited Political Terms, 592 So. 2d at 227. "Unity of object and plan is the universal test." Coral Gables, 19 So. 2d at 320.

Neither the Attorney General nor any of the opponents that filed briefs disputes the existence of a "single dominant plan or scheme" in the drug treatment amendment, nor do they claim that it lacks "unity of object and plan." The amendment clearly embodies the single dominant plan or scheme of giving certain nonviolent drug offenders a right to receive treatment and rehabilitation instead of sentencing or incarceration. Accordingly, it fully satisfies the purpose for which the single-subject rule was included in our constitution.

Most of the opponents' single-subject arguments arise from a fundamental misunderstanding or misinterpretation of the amendment as abolishing drug courts or legalizing drugs. Nothing is further from the truth, as already explained, and therefore all arguments rooted in those erroneous concepts are groundless. In addition, the opponents argue that the amendment violates the single-subject rule either by encompassing matters not "directly connected" with its single dominant plan, and thus being guilty of logrolling; or by having an impermissibly great impact on more than one branch of state government. Neither species of argument has merit.

***No Logrolling*.** Although the Attorney General and two opponents do not accuse the drug treatment amendment of logrolling, the brief of Save Our Society [SOS In. Br. 27-31] and the condensed version of that same brief filed by the Florida Alcohol and Drug Abuse Association [FADAA In. Br. 10-12] do so in a manner that

reveals an apparent misapprehension of what logrolling is. Logrolling is not, as these opponents seem to think, the practice of including in an amendment matters directly connected with its single subject. The inclusion of directly connected matters is expressly authorized in article XI, section 3 of our constitution. Instead, logrolling is the combination of disparate subject matters altogether, or matters not directly connected with the chief purpose of the amendment. Thus, for example, if the drug treatment amendment said exactly what it now says, and also required each judicial circuit to acquire 50 acres of land in a rural setting and to operate thereon a go-cart racing or other recreational facility for the exclusive use of drug offenders, that would be logrolling. In contrast, all of the provisions of the drug treatment amendment are quite comfortably within the scope of "directly connected" matters, and the amendment is not guilty of logrolling.

No Performance of Multiple Branches of Government. The principle is firmly established in initiative caselaw that an amendment may, and almost always will, affect multiple branches of government. That effect on government exceeds the confines of the single-subject rule only if it rises to the level of a cataclysmic, precipitous change, or a complete usurpation of multiple governmental functions. Advisory Op. to Atty. Gen. re: Florida Transp. Initiative (High Speed Rail), 769 So. 2d 367, 369-70 (Fla. 2000); Advisory Op. To Atty. Gen. re Fish & Wildlife

Conservation Comm'n, 705 So. 2d 1351, 1353 (Fla. 1998); Limited Casinos, 644 So. 2d at 74; Fine v. Firestone, 448 So. 2d 984, 988 (Fla. 1984).

The law is equally clear that if a proposed amendment impacts each branch of government only in a manner that is directly related to compliance with the single subject of the amendment, it does not violate the single subject rule. See, e.g., Term Limits Pledge, 718 So. 2d at 802; Public Funding, 693 So. 2d at 975; Limited Political Terms, 592 So. 2d at 227; In re Adv. Op. to Atty. Gen., English – The Official Language of Fla., 520 So. 2d 11, 13 (Fla. 1988); Carroll v. Firestone, 497 So. 2d at 1205-06; Smathers v. Smith, 338 So. 2d 825, 831 (Fla. 1976). Finally, an amendment that merely builds on current law does not substantially alter the governmental function at issue. Fish & Wildlife, 705 So. 2d at 1354-55; Advisory Op. to Atty. Gen. – Fee on Everglades Sugar Production, 681 So. 2d 1124, 1128 (Fla. 1996).

When tested fairly and objectively against these standards, the drug treatment amendment satisfies the single-subject rule. The opponents adopt the Attorney General's single-subject arguments, which the Sponsor's Initial Brief has already demonstrated to be without merit. [Sponsor's In. Br. 29-39.] To the extent that the opponents make assumptions about how the amendment would operate after enactment of implementing legislation, the arguments are pure speculation and have no weight here. To the limited extent that the opponents assert other single-subject

arguments, they are equally meritless. Save Our Society's arguments that the drug treatment amendment substantially affects other provisions of the Florida Constitution [SOS In. Br. 23-26], simply incorporate Save Our Society's other "government function" arguments, which are demonstrably meritless.

1. ***Judicial Branch*****.** A persistent theme of the opponents' arguments is that the drug treatment amendment is a fatally defective usurpation of the judicial function because it incorporates the expertise of a qualified treatment professional to determine the precise course and duration of treatment. This argument is unfounded. It is not and never has been an Article V judicial function to furnish or control psychological or psychiatric services, or even to design a treatment plan for an addicted offender. Judges in drug cases and other contexts routinely refer parties to treatment professionals and then have nothing to do with what happens before those treatment professionals. For example, judges frequently direct psychologists to render opinions as to competency and sanity, or impose a sentence of probation with a special added condition of successfully completing a drug or alcohol program, or a sexual offender rehabilitation program. But the judges do not control those programs. In family law and juvenile cases, judges routinely refer parties to counseling, to assessment by social workers with the Department of Juvenile Justice, and to evaluation by non-judge guardians ad litem. Judges appoint masters, receivers, monitors in institutional reform

litigation, and experts to evaluate and advise. These people are not judges, but they partner with the judicial system by providing services and recommendations within their respective fields of expertise. Judges do not try to do their jobs for them. Judges simply await the results and proceed in a manner consistent with the law, with the benefit of the outside expertise.

The drug treatment amendment parallels current law providing that once an offender is placed on probation or community control, the trial court cedes jurisdiction over the offender unless and until the offender is charged with a violation of probation or community control. See § 948.01, Fla. Stat. (2001) (offender placed on probation or community control is supervised by corrections employees rather than judges); Fla. R. Crim. P. 3.790 (person placed on probation or community control is under corrections supervision unless and until charged with a violation). Employees of the Department of Corrections such as parole and probation officers – not judges – determine whether the defendant has complied with the terms of probation or community control. If they determine that the defendant has been successful, the case does not return to the trial court. Likewise, the drug treatment amendment provides that once an offender is sent into treatment, the treatment professional, not the judge, determines whether the offender has successfully completed the treatment program. In the case of probation and community control, the jurisdiction of the trial court

resumes only when the defendant is failing to meet the conditions of probation or treatment, not so long as it is progressing successfully. The drug treatment amendment, therefore, does not usurp or substantially alter any judicial function by designating treatment professionals to determine the success of treatment.

The drug treatment amendment preserves the quintessential judicial functions of determining eligibility under the amendment, entering orders as may be necessary to ensure compliance with prescribed treatment regimens, responding to violations, and, finally, terminating treatment for failure. The amendment allows a great deal of flexibility for judges to be as involved as they wish in the processing of each case. The fact that the judge will have the benefit of professional advice at each stage does not mean that the judicial role is supplanted.

Judges rely on the expertise of non-judges because the current law allows them to do it. This amendment requires the same kind of advisory process within the context of certain drug offenders, and will authorize judges to engage in a similar process of partnering with treatment professionals as contemplated by the amendment. Far from usurping the judicial function, and of course subject to future Legislative action that cannot be predicted with certainty, the Sponsor contemplates that under the amendment the judge will appoint or approve the treatment professional, and that the judge will retain the right to reject a professional or a treatment regimen that do not

comport with the requirements of law. Nothing in the amendment prohibits the trial court from supervising offenders during treatment in any way not inconsistent with the right of treatment. Nothing in the amendment prohibits a trial court from taking steps to ensure compliance with treatment and any other court-imposed conditions of release, probation, or treatment. Thus, for example, the Sponsor contemplates that a judge will retain the power to require court appearances for status inquiries, or to require periodic drug testing, meetings with probation officers, and other typical methods of monitoring the offender's progress. The treatment professional's function is parallel to that of the trial judge, and is not a substitute for, or preclusive of, the judicial function. Thus, it does not usurp the judicial function and does not violate the single-subject rule.

In a related argument, the Save Our Society brief claims that the amendment must fail because it allows treatment professionals to determine when treatment has been successful, at which point the offender cannot also be criminally sanctioned for that offense. [SOS In. Br. 14.] Save Our Society argues that the voter is left unaware of this possibility, but that argument is patently incorrect and disproven merely by reading the ballot summary, which explains that treatment, when available and elected, is a <u>substitute</u> for sentencing or incarceration. That is the whole point of the amendment: to <u>replace</u> criminal sanctions with medical treatment in certain cases,

because the Sponsor believes and statistics show it to be a more effective and economical response to the problem of drug abuse. The opponents disagree, and they are free to do so, but their subjective opinions on the merits of the proposal cannot be projected into the amendment in an attempt to keep it from the voters.

2. ***Executive Branch*.** The opponents' arguments relating to the executive branch function mirror those of the Attorney General, and have been refuted already in the Sponsor's Initial Brief. [Sponsor's In. Br. 35-36.] The Court should reject outright the opponents' lobbying argument that treatment should be disfavored as providing an inadequate deterrent effect. [SOS In. Br. 20.] Such arguments are irrelevant here, and in any event are disproven by empirical data demonstrating the opposite, with treatment producing a success rate as high as 72%. [Sponsor's In. Br. at 7 & A 4 at 9, A5 at 7.]

The argument that an offender could simultaneously elect treatment and proceed to trial [SOS In. Br. 21], misconstrues the amendment. The amendment contemplates that the two are mutually exclusive pending the outcome of treatment. An offender who is determined to be unamenable to treatment may be tried because by electing treatment the offender is "deemed to have waived the right to a speedy trial." [Amendment at (a).]

3. ***Legislative Branch*.** Most of the opponents' legislative branch arguments

are repeats of what the Attorney General said, and were addressed in the Sponsor's Initial Brief. [Sponsor's In. Br. 37-39.] The Governor's brief complains that the drug treatment amendment would contradict a "legislative determination that pretrial drug treatment intervention is not an effective tool for individuals who have participated in such a program before or for individuals with criminal histories." [Gov. Br. 7.] This argument simply asserts a disagreement with the merits of the amendment, not a single-subject violation. All successful voter initiatives effect a change in the law, which is not only permissible but unavoidable.

The opponents also lift a phrase from an earlier initiative case out of context to support their argument that the drug treatment amendment impermissibly usurps the legislative branch function. Borrowing from the first sugar tax case, the opponents claim the present amendment "implements a public policy decision of statewide significance and thus performs an essentially legislative function." [SOS In. Br. 16 (quoting from Advisory Op. to Atty. Gen.–Save Our Everglades, 636 So. 2d 1336, 1340 (Fla. 1994)]. Taken in its proper context, of course, the phrase is part of a larger explanation of why the Court struck down the first proposed sugar tax amendment because it substantially performed the functions of all three branches of government and performed multiple legislative functions. Id. The first proposed sugar tax amendment was expressly designed to be fully self-executing and to require no

implementing legislation. Id. at 1338. It created a trust fund, then dictated how it would be funded and how and by whom and for what purpose all of the funds would be expended. The invalid sugar tax proposal was a far cry from the drug treatment amendment, and furnishes no analogy sufficient to justify the borrowing of the phrase describing the faults of that failed amendment.

Further, the very nature of a constitutional amendment, being a change in the fundamental organic law of the state, is such that every amendment necessarily effects a "public policy decision of statewide significance." That does not mean, and the Court has never said that it means, that an amendment is invalid. It takes much more to establish an impermissible multiplicity of government functions, and this amendment does not suffer from that fault.

The opponents also argue, again, that the drug treatment amendment abolishes drug courts and eliminates the Legislature's ability to regulate the handling of drug offenses. Neither is true. The amendment makes a singular change in the law of Florida, and all aspects of government related to that change will be required to comply with it, but that does not equate to impermissibly usurping a government function.

CONCLUSION

The Court should approve the drug treatment amendment for submission to the voters.

Respectfully submitted this 9th day of November, 2001.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing with its appendix was furnished by United States mail to The Honorable Robert A. Butterworth, Office of Attorney General, The Capitol, Tallahassee, Florida 32399-1050; David P. Healy, counsel for Florida Alcohol and Drug Abuse Association, 537 East Park Ave., Tallahassee, FL 32301; Martin Epstein, counsel for Florida Association of Drug Court Professionals, Inc., 3228 Gun Club Road, West Palm Beach, FL 33406; Simone Marstiller, Assistant General Counsel, Executive Office of

the Governor, Room 209, The Capitol, Tallahassee, FL 32399-0001; and to Kenneth W. Sukhia, counsel for Save Our Society from Drugs, Fowler, White et al., 101 N. Monroe St., Ste. 1090, Tallahassee, FL 32301; this 9th day of November, 2001.

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Attorney

CERTIFICATE OF FONT

I HEREBY CERTIFY that this brief was prepared using Times New Roman 14 point type, a font that is proportionately spaced.

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Attorney

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