IN THE
SUPREME COURT
OF FLORIDA

CASE NO.: SC05-1950

In re: ADVISORY OPINION
TO THE ATTORNEY GENERAL –
RIGHT TO TREATMENT AND REHABILITATION
FOR NON-VIOLENT DRUG OFFENSES

AMENDED BRIEF OF INTERESTED PARTY, SAVE OUR SOCIETY FROM DRUGS, INC. IN OPPOSITION TO AMENDMENT

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STATEMENT OF THE CASE, FACTS, AND INTERESTS OF SAVE OUR SOCIETY FROM DRUGS

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 on the initiative entitled "Right to Treatment and Rehabilitation."

In presenting its petition to this Court on the "Right to Treatment and Rehabilitation" amendment, the Attorney General identified numerous bases on which the proposed amendment failed to comply with section 101.161, Florida Statutes (2000) and with Article XI, section 3, Florida Constitution, and requested this Court's opinion as to whether the proposed constitutional amendment indeed failed to comply with these provisions.

Save Our Society from Drugs is a 501(c)(4) educational and research organization designed to educate the public on the dangers of illicit drug use and the benefits of drug reduction and prevention. On behalf of its members, including those who would be directly or indirectly affected by the proposed amendment, Save Our Society asserts an interest in opposing the ballot initiative. The Ballot Title for the proposed amendment is "Right to Treatment and Rehabilitation for Non-violent Drug Offenses." The Ballot Summary for the initiative reads:

> 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 text of the proposed amendment is as follows:

Article I of the 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 action.

This Initial Brief is submitted on behalf of Save Our Society from Drugs and in support of the Attorney General's Opinion that the proposed Constitutional amendment does not comply with Article XI, section 3 of the Florida Constitution and with section 101.161, Florida Statutes (2000). Florida Campaign for New Drug Policies is the sponsor of the initiative in question.

SUMMARY OF THE ARGUMENT

ISSUE I

The Amendment violates the single subject limitation of Article XI, section 3 in a number of ways. First, it substantially alters and performs judicial functions by (1) stripping the judiciary of its constitutionally vested powers under Article V and Article I, section 21 to provide redress and administer justice, both of which are quintessential judicial functions, (2) it removes the state judiciary's articulated authority under section 397.334 to administer the statewide Treatment-Based Drug Court Program, (3) it transfers quintessential judicial decision-making authority (including the determination of the type of appropriate treatment program or programs an individual shall receive, the determination of the duration of an individual's treatment program, the methods of monitoring the individual's progress while in treatment, and the authority to determine without judicial control or oversight when an individual's appropriate treatment in lieu of sentencing has been successful) from the state judiciary to unelected, unappointed, and unaccountable "qualified professionals" with no judicial qualifications or experience whatsoever and (4) it creates a de facto court system outside the purview of Article V, section 1. Second, the amendment substantially alters and performs legislative functions by (1) implementing a public policy decision of statewide significance, essentially decriminalizing the possession and purchase of all illegal drugs and supplanting Florida's Treatment-Based Drug Court Program with an extensive and costly

statewide drug treatment, education and training program under the authority of private entities, (2) modifying the penalties for the possession or purchase of all illegal drugs (3) authorizing a term of treatment for misdemeanor offenders which exceeds the maximum imposed by the Legislature (4) placing constraints on the Legislature's authority to adopt programs and (5) requiring the Legislature to appropriate large sums to fund a treatment and rehabilitation scheme of massive scale. The amendment substantially alters and performs executive functions by substantially affecting the State Attorneys (1) by substantially affecting the State Attorney's discretion as to the prosecution of those possessing or purchasing illegal drugs (2) by removing altogether even the threat of punishment by incarceration, thereby eliminating the deterrent effect which the criminal statutes were designed to achieve and substantially affecting executive enforcement of the criminal laws, and (3) by giving offenders authority over the course of the criminal justice system, removing any incentive to resolve their cases prior to trial and giving them an incentive to put the prosecution and courts to the expense of trial without fear of being sentenced or incarcerated.

The amendment fails to identify constitutional provisions it substantially affects including (1) the equal protection clause of Article I, section 2 by granting a constitutional right to treatment to charged or convicted drug offenders while denying the same right to those who have not been so charged and convicted, (2) Article 1, section 21 and Article 5, section 1, by removing from the courts their duty to administer justice in making sentencing decisions and placing the authority to make

decisions affecting the liberty interests of criminal defendants in the hands of private individuals with no judicial experience, (3) the due process clause, Article I, section 9, by failing to extend any hearings whatsoever before persons are deprived of their liberty interests and failing to ensure that such decisions are made by those vested with the authority to administer the law and (4) numerous other sections of the Constitution, including Article III, sections 1 and 19, Article IV, section 1, and Article V, sections 2, 5, 8, 12, 13, and 17.

The amendment also violates the single subject prohibition against logrolling, requiring voters to choose whether they wish to accept part of the proposal which they oppose in order to obtain a change which they support, with regard to numerous issues including (1) the right to treatment for multiple offenders as opposed to single offenders, (2) the right to treatment as opposed to a right to treatment in a program administered by non-judges, (3) the right to treatment for violent criminals as opposed to a right to treatment for those who have never been convicted of a violent crime and (4) the right to state funded traditional substance abuse treatment as opposed to the state funded job training, literacy training, mental health treatment, and "similar support services" required by the amendment. The amendment also violates the logrolling component of the single subject rule by encouraging voters who may support the concept of drug treatment to vote for an amendment which essentially decriminalizes drug use for all drugs, including heroin, LSD, cocaine and all hallucinogenic and narcotic drugs.

ISSUE II

The amendment violates the clear and unambiguous language requirement of section 101.161(1) in a number of ways. First, it omits material facts necessary to make it not misleading, including (1) the fact that the amendment removes authority from the state judiciary, (2) the key stipulation in the amendment that allows a treatment right for those committing multiple offenses and (3) the fact that the amendment in effect abolishes Florida's statewide Treatment-Based Drug Court Program codified in section 397.334. Because the summary creates the impression that adopting the proposal would fill a void by failing to advise the voters of the statewide Drug Court Program it abolishes, the summary is fatally defective. Second, the summary fails to identify the constitutional provisions substantially affected by the amendment, including as noted above, Article I, sections 2, 9, and 21 and Article V, section 1. Third, the summary fails to define legally significant terms, contains "divergent terminology" and makes serious misstatements concerning the substance of the amendment. The summary does not define the terms "appropriate treatment," "unamenable to treatment," "serious crimes," and "in same episode." The summary also contains a complete falsehood concerning a material feature, namely, when a defendant is free of prosecution or sentencing. The summary states that a defendant is free of prosecution or sentencing once he has spent "eighteen months in treatment." The text of the amendment provides an entirely different period, namely "eighteen months after the date the individual elected to receive appropriate treatment." Finally,

the summary fails to advise the voters that upon completion of treatment, an offender cannot even be placed under continued court supervision for the offense which led to the appropriate treatment. Under this court's decisions, any one of the above failures will render a summary misleading and the proposed amendment must therefore by stricken from the ballot.

ARGUMENT AND CITATION OF AUTHORITIES

ISSUE I.

THE PROPOSED AMENDMENT ENTITLED "RIGHT TO TREATMENT AND REHABILITATION" VIOLATES THE SINGLE SUBJECT LIMITATION OF ARTICLE XI, SECTION 3 OF THE FLORIDA CONSTITUTION.

A. The Single Subject Requirement and Supreme Court Precedent.

A Constitutional amendment proposed by initiative petition must "embrace but one subject and matter directly connected therewith." Article XI, section 3, Florida Constitution. To comply with the single subject requirement, an amendment must manifest a "logical and natural oneness of purpose." Fine v. Firestone, 448 So.2d 984, 990 (Fla. 1984). Although there are a number of methods for amending the Constitution, the citizens initiative is the only method constrained by the single subject requirement, because the initiative process does not provide the opportunity for public hearing and debate that accompanies other methods of proposing amendments. See Advisory Opinion to the Attorney General re Fish and Wildlife Conservation Comm'n, 705 So.2d 1351, 1353 (Fla. 1998). Because the Constitution

is the basic document "that controls our governmental functions," this Court requires "strict compliance with the single subject rule in the initiative process for Constitutional change." Advisory Opinion to the Attorney General re Amendments to Bar Government from Treating People Differently Based on Race, 778 So.2d 888, 891 (Fla. 2000).

Recognizing that a proposed amendment by ballot initiative must manifest "a logical and natural oneness of purpose," this Court has identified two primary purposes served by the single subject requirement. Fine v. Firestone, 448 So.2d 984, 990 (Fla. 1984); Advisory Opinion to the Attorney General -- Initiative for Statewide High Speed Monorail, 769 So.2d 367, 369 (Fla. 2000). First, the requirement prevents "logrolling," which combines separate issues into a single proposal to prompt voters to "accept part of an initiative proposal which they oppose in order to obtain a change in the constitution which they support." Fine, 448 So.2d at 988.

A second purpose for the single subject requirement is "to prevent a single constitutional amendment from substantially altering or performing the functions of multiple aspects of government." Initiative for Statewide High Speed Monorail, 769 So.2d at 369. This Court has identified two grounds on which proposed constitutional amendments will fail under this analysis. First, a proposal violates the single subject test when it "substantially alters or performs the functions of multiple branches" of government. Fish and Wildlife Conservation Comm'n, 705 So.2d at 1354. Second, in determining whether a proposal violates the single subject rule, the Court "must

consider . . . how the proposal affects other provisions of the constitution." In re Advisory Opinion to the Attorney General – Restricts Laws Related to Discrimination, 632 So.2d 1018, 1020 (Fla. 1994). As this Court has recently explained, to meet the single subject test, "initiative petitions must identify those constitutional provisions that are substantially affected by the proposed amendments." Amendments to Bar Government From Treating People Differently Based on Race, 778 So.2d at 893. As the Court explained in Fine, "how an initiative proposal affects other articles or sections of the constitution is an appropriate factor to be considered in determining whether there is more than one subject included in an initiative proposal." 448 So.2d at 990.

The "Right to Treatment and Rehabilitation" amendment in question violates the single subject provision under each of the above tests recognized by this Court.

B. The Proposed Amendment Substantially Alters and Performs Multiple Governmental Functions.

When an amendment "changes more than one government function, it is clearly multi-subject." Evans v. Firestone, 457 So.2d 1351, 1354 (Fla. 1984). As the Attorney General observed in his Petition, the proposed amendment at issue substantially alters and performs the functions of more than one government function.

1. The Proposed Amendment Substantially Alters and Performs Judicial Functions.

a. Amendment Strips Judiciary of Constitutionally Vested Powers

First, the initiative alters or performs a judicial function, and it does so in the

most substantial manner conceivable. It wrests from the judiciary its constitutionally vested power under Article V, section 1 and Article I, section 21 to impose appropriate sentences and administer justice, both of which are quintessential judicial functions. See, Andrews v. Florida Parole Commission, 768 So.2d 1257 (Fla. 1st DCA 2000). The amendment does this by removing key authority from the judiciary and giving it over to "qualified professionals." Because the proposed amendment "[s]trips the judiciary of its power" to determine appropriate sentences for convicted offenders, the initiative "performs a quintessential judicial function." See, Amendments to Bar Government from Treating People Differently Based on Race, 778 So.2d at 894 - 95 (limitations on courts' powers to provide redress and administer justice "are significant in that they operate to redefine the remedial role of courts in equal protection cases"); Advisory Opinion to the Attorney General - Save Our Everglades, (Save Our Everglades I), 636 So.2d 1336, 1340 (Fla. 1994) (an initiative which found that the sugar cane industry polluted the everglades and imposed a flat fee on the industry to cover the clean-up "render[ed] a judgment of wrongdoing and de facto liability and thus perform[ed] a quintessential judicial function.")

b. Amendment Alter State Judiciary's Function in Administering Statewide Drug Court Program.

Not only does the amendment "strip the judiciary" of its inherent power over sentencing under the constitutional delegation of Article V, it strips the judiciary of its articulated authority under section 397.334, Florida Statutes (2001), to administer

the statewide Treatment-Based Drug Court Program. Currently, some 20,000 drug offenders in our state system receive treatment in lieu of sentencing as part of the nationally recognized and court-administered Treatment-Based Drug Court Program. The proposed amendment essentially abolishes the current program and establishes a de facto court system, substantially altering the function of the judicial branch of state government under Article V. See Save Our Everglades I, 636 So.2d at 1340 (where drafters in effect "drew up their own plan to restore the Everglades, then stepped outside their role as planners, donned judicial robes, and made factual findings and determinations of liability and damages," the initiative clearly performed a judicial function).

c. Amendment Transfers Quintessential Authority to Private "Qualified Professionals" with No Judicial Qualifications or Experience.

Not only does the initiative strip the judiciary of its constitutionally authorized power to sentence and its statutorily mandated authority to administer Florida's current Treatment-Based Drug Court Program, it transfers quintessential judicial decision-making authority to unelected, unappointed, and unaccountable "qualified professionals" who have no judicial qualifications or experience whatsoever. See, Advisory Opinion to the Attorney General re Tax Limitation, 644 So.2d 486 (Fla. 1994). In Tax Limitation, this Court struck down a proposed amendment limiting taxes which would have resulted in "a major change in the function of government" by "transferr[ing] all administrative remedies for police power actions that damage

private property interests from the executive branch to the judicial branch." 644 So.2d at 495. In an even more dramatic manner, the amendment in question transfers the historic constitutional and statutory powers of the judiciary to private individuals with no judicial training or experience. As the Attorney General correctly determined, such a wholesale transfer of power from the courts substantially alters the functions of the judicial branch. The judicial decision-making functions transferred by the amendment are by no means insignificant and include (1) the "determination of the type . . . of the appropriate treatment program or programs an individual shall receive," (2) the "determination of the . . . duration" of an individual's treatment program, (3) the "methods of monitoring the individual's progress while in treatment," (4) the authority to render an independent evaluation as to whether an individual is unamenable to treatment and rehabilitation as a pre-condition to the court rendering such a finding and (5) the authority to determine without judicial control or oversight when "an individual's appropriate treatment [in lieu of sentencing] has been successful" and will be terminated. This extraordinary transfer of authority is made more significant by the recognition that "[u]pon termination of appropriate treatment," as determined exclusively by the qualified professional, "the individual may not be prosecuted, sentenced, or placed under continued court supervision for the offense which led to the appropriate treatment." Section (e), Proposed Amendment. Incredibly, the voter is totally oblivious to this remarkable and wholesale transfer of judicial authority over a huge category of drug offenders because the ballot summary omits any reference or

suggestion that "qualified professionals" have anything to do with the amendment.[1]

The proposed amendment adopts the definition of "qualified professional" set forth in section 397.311(25), Florida Statutes (2000). Among those identified as "qualified professionals" under that section are physicians, osteopaths, psychiatrists, psychologists, and persons "certified in substance abuse treatment services." There is nothing in the definition which requires or even suggests judicial expertise. In other words, the most important component of the new alternative sentencing drug treatment scheme will be under the exclusive authority and control of private individuals with no judicial experience, no judicial training, no governing code of judicial conduct, no legal education, no commitment to binding legal precedent, no benefit of pre-sentence background reports and no accountability to the public for their actions.

d. Amendment Violates Single Subject Requirement by Substantially Altering or Performing Multiple Functions of the Judicial Branch Alone.

A proposed amendment can violate the single subject rule by affecting multiple

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[1]The ramifications of granting judicial power to non-judges are indeed far reaching. For instance, Article V, section 10 provides a mechanism by which Article V judges may be the subject of formal complaints and may be investigated, charged and removed from office. Article V, section 13 provides that all state judges "shall devote full time to their judicial duties [and] shall not engage in the practice of law or hold office in any political party." There are also age limitations and eligibility requirements, including education and length of bar membership set out in Article V, section 8. There are no such restrictions on the "qualified professionals" who will be rendering the fundamental and substantive liberty determinations in the drug treatment proceedings created under the proposed amendment. There is nothing to prevent, for instance, a local or state political office holder from serving as a part time "qualified professional" and rendering critical adjudications affecting the liberty interests of his constituents.

aspects of the same branch of government. As this Court observed in Evans, "where a proposed amendment changes more than one government function, it is clearly multi-subject." Evans v. Firestone, 457 So.2d 1351, 1354 (Fla. 1984). See, also, Advisory Opinion to the Attorney General re Limited Casinos, 644 So.2d 71, 73 (Fla. 1994) (amendment violated single subject rule by substantially altering or performing functions "of multiple aspects of government"); Fine v. Firestone, 448 So.2d 984, 990 (Fla. 1984) (proposal which affects "separate, distinct function of the existing governmental structure of Florida" violates single subject requirement); Advisory Opinion to the Attorney General re Peoples' Property Rights Amendments, 699 So.2d 1304, 1308 (proposed amendment having substantial effect on "more than one level of government" violates single subject requirement). As this Court noted in Evans, "we found multiplicity of subject matter [in Fine] because the proposed amendment would have affected several *legislative* functions." Id. at 1354 (emphasis in original). In this case, the proposed initiative affects numerous judicial functions by (1) discarding Florida's existing statewide drug court program, (2) stripping the judiciary of its constitutionally grounded power to administer the statewide drug court system, (3) creating a de facto court system outside the purview of Article V, section 1 and (4) relinquishing the judicial power vested in the state courts to unelected, non-appointed and unaccountable "qualified professionals." Accordingly, the amendment violates the single subject requirement by substantially altering or performing multiple functions of the judicial branch. The amendment also substantially alters or performs

legislative and executive functions.

2. The Proposed Amendment Substantially Alters and Performs Legislative Functions.

a. Amendment Implements a Public Policy Decision of Statewide Significance.

Like the Constitutionally infirm initiative in Save Our Everglades I, the "Right to Treatment and Rehabilitation" initiative "implements a public policy decision of statewide significance and thus performs an essentially legislative function." Save Our Everglades I, 636 So.2d at 1340. The proposed amendment clearly implements a public policy decision of statewide significance by essentially decriminalizing the possession and purchase of any and all illegal drugs and by supplanting Florida's existing statewide Treatment-Based Drug Court Program with an extensive and costly statewide drug treatment, education and training program under the primary authority of private entities. See Stop Early Release of Prisoners. In addition, like the provisions in Evans v. Firestone, which limited a defendant's liability, the provisions in the proposed amendment which grant a constitutional right to treatment for charged and convicted offenders, place limitations on the length of such treatment and prohibit subsequent prosecution, sentencing or continued court supervision "are substantive in nature and therefore perform an essentially legislative function." Evans, 457 So.2d at 1354.

b. Amendment Alters Legislative Mandate Concerning Drug Offenders.

By modifying the penalties for the possession or purchase of any and all illegal drugs, the proposed amendment substantially alters this function of the legislative branch. Lightbourne v. State, 438 So.2d 380 (Fla. 1983) (Legislature determines penalties for crimes.) The proposed amendment substantially alters and performs this legislative function in two distinct ways. First, it extends a constitutional right to all charged or convicted drug possessors or purchasers to receive treatment "instead of being sentenced or incarcerated." Second, it authorizes a term of treatment for misdemeanor offenders which exceeds the maximum imposed by the Legislature. Under section 775.08(2), Florida Statutes (2000), a person convicted of a misdemeanor may be sentenced to a term of no more than one year. Under the proposed amendment, those convicted of a misdemeanor possession offense are subject to 18 months in treatment.

c. Amendment Places Substantive Constraints on Legislative Prerogatives.

Like the initiatives in Amendments to Bar Government From Treating People Differently Based on Race, the proposed amendment "would eliminate the Legislature's authority to adopt programs" and set the parameters for treatment of criminal defendants. 778 So.2d at 895. Such "substantive constraints are essentially legislative functions." Id. In the same manner in which the proposed amendment in Stop Early Release of Prisoners "essentially . . . eliminate[d] the [Parole] Commission's primary powers and abolish[ed] parole and conditional release," the

initiative here effectively abolishes the current statewide drug court's program codified by the Legislature in section 2001, thereby substantially affecting a legislative function. 642 So.2d at 726; see, §397.334, Fla. Stat. (2001)

d. Amendment Would Have Substantial Fiscal Impact.

Finally, the proposed amendment performs a legislative function because the "fiscal impact of this proposal would be substantial" and "the legislature will be forced to appropriate large sums" to fund a treatment and rehabilitation scheme of massive scale. Advisory Opinion to the Attorney General re Tax Limitation, 644 So. 2d at 495; Stop Early Release of Prisoners, 642 So.2d at 726. For each of the above reasons, the initiative substantially alters and performs multiple legislative functions.

3. Proposed Amendment Substantially Alters and Performs Executive Functions.

In Save Our Everglades, this Court found that the initiative "contemplate[d] the exercise of vast executive powers," noting that "the Constitutionally conferred powers of the trustees [of the Everglades Trust Fund established by the proposed amendment] would impinge on the powers of existing agencies." 636 So.2d 1340. See also, In re Advisory Opinion - Restricts Laws Related to Discrimination, 632 So.2d at 1020 (amendment "encroache[d] on municipal home rule powers and on the rulemaking authority of executive agencies and the judiciary."); Stop Early Release of Prisoners, 642 So.2d at 726 (amendment substantially affected executive power by eliminating the Parole Commission's powers and by "put[ting] strong pressure on the [executive

branch] to greatly expand . . . . clemency [and] essentially creat[e] . . . an entirely new form of 'gain time' cast in the mold of executive clemency."); Peoples' Rights Property Amendment, 699 So.2d at 1308 (in striking down amendment designed to allow multiple subjects for constitutional initiatives providing government compensation for restricting use of real property, the Court held that the initiative substantially altered or performed the functions of the executive branch because "the executive branch is charged with the responsibility of carrying out the various functions of government which in multiple ways impact the use of real property in Florida.")

a. Amendment Impinges on Power of State Attorneys.

The proposed amendment "impinge[s] on the powers of" state attorneys by limiting their discretion to charge and prosecute offenders. Save Our Everglades I , 636 So.2d at 1340; see, Valdes v. State, 728 So.2d 736 (Fla. 1999) (prosecuting authority has complete executive discretion in the decision to charge and prosecute). By conferring a constitutional right to treatment, section (a) of the proposed amendment substantially affects the state attorneys' discretion as to the prosecution of those who possess or purchase any illegal drugs, including the most dangerous and narcotic drugs.

b. Amendment Substantially Affects Executive Enforcement of Criminal Laws.

The amendment also substantially affects executive enforcement of the criminal

laws by removing altogether even the threat of punishment by incarceration, thereby eliminating the deterrent effect which the criminal statutes were designed to achieve. By eliminating the possibility that anyone arrested and convicted for possessing or purchasing drugs of any kind, including heroin and LSD, will face any meaningful punishment whatsoever, the proposed amendment destroys one of the primary incentives for persons to avoid first time use. Given Florida's alarming increase in juvenile drug use in the last 10 years, any initiative which would discourage abstinence and promote first time drug use is irresponsible. As this court has held, amendments which "affect[ ] . . . executive enforcement and decision-making" and which impede "the executive branch in executing its responsibility" have a substantial impact on the executive branch of government. People's Property Rights Amendments, 699 So.2d at 1304.

c. Amendment Gives Offender Authority Over Course of Criminal Justice System.

As the Attorney General aptly noted, the proposed amendment also may adversely affect the state's ability to effectively prosecute the violation of its criminal laws by giving the offender sole discretion to forestall prosecution. As the Attorney General rightly observed "[a]llowing an accused to unilaterally divert the prosecutorial course of the criminal justice process substantially interferes with the state attorneys' executive function." See Petition at page 8. A careful analysis of the amendment reveals that offenders are granted a constitutional right to manipulate their

prosecutions, wreaking untold havoc on the criminal justice system and placing intolerable burdens on executive and judicial resources. Section (a) entitles offenders to demand treatment immediately upon being charged. Despite the waiver of speedy trial rights, nothing in the amendment prevents an accused from also exercising his constitutional right to a trial. Under section (a), as underscored by its last sentence, an accused appears to have the right to elect appropriate treatment, and also proceed to trial. If he is convicted, he retains his constitutional right to receive treatment "instead of being sentenced or incarcerated." Under the amendment, offenders have no incentive to resolve their cases prior to trial. In fact, because under section (e) an offender's term of treatment must end "18 months after the date the individual elected to receive" treatment, rather than 18 months after the offender began treatment, offenders have every incentive to immediately elect treatment and demand their right to trial, knowing that if they are acquitted they will be immediately released and that if they are convicted any period in treatment will have been substantially reduced. As this Court is aware, prosecutions are generally resolved through the plea bargaining process in which the offender relinquishes his right to trial and acknowledges his responsibility in exchange for an anticipated reduction in his sentence. This initiative gives the defendant an incentive to "roll the dice" and put the prosecution and courts to the expense of trial without fear of "being sentenced or incarcerated" upon conviction. See Sections (a) and (e), Proposed Amendment.

As this Court has held, "if a proposed amendment changes more than one

governmental function, then it violates the single subject requirement." Peoples' Property Rights Amendments, 699 So.2d at 1307, n. 1. The substantial changes in governmental functions wrought by the "Right to Treatment and Rehabilitation" proposal, which curtail and significantly modify the powers and functions of the judicial, legislative and executive branches, "are precisely [the] sort of 'cataclysmic' change[s] 'that the drafters of the single subject rule labored to prevent." Amendments to Bar Government from Treating People Differently Based on Race, 778 So.2d at 896.

C. The Proposed Amendment Fails to Identify Constitutional Provisions it Substantially Affects.

1. Single Subject Rule Requires Amendments to Identify Constitutional Provisions They Substantially Affect.

Because all existing constitutional provisions were included in the constitution "for a distinct and specific purpose," initiative petitions must identify those constitutional provisions they substantially affect. See Tax Limitation I, 644 So.2d at 494; Amendments to Bar Government from Treating People Differently Based on Race, 778 So.2d at 893-894. As this Court has explained

> It is imperative that an initiative identify the provisions of the constitution substantially affected by the proposed amendment in order for the public to fully comprehend the contemplated changes and to ensure that the initiative's effect on other unnamed provisions is not left unresolved and open to various interpretations.

Advisory Opinion to the Attorney General re Right of Citizens to Chose Health Care Providers, 705 So.2d 563, 565-66 (Fla. 1998).

In this instance, the proposed amendment substantially affects numerous constitutional provisions without identifying any of them. Most notably, the proposed amendment substantially affects Article I, section 2, Article I, section 9, Article I, section 21, and Article V, section 1.

2. Amendment Substantially Affects Equal Protection Clause of Article I, Section 2.

Article I, section 2 provides that all natural persons, female and male alike, are equal before the law and have inalienable rights . . ." Historically, these rights have only become alienable when persons violate the law. For instance, convicted felons lose the fundamental constitutional right to vote, to bear arms, to hold office and to participate in the jury system. The proposed amendment creates and denies a right to treatment in precisely the opposite manner. Under the proposed amendment, those charged with or convicted of drug offenses, who traditionally forfeit constitutional rights, are the exclusive recipients of a newly created right to treatment. On the other hand, those who have not been charged with or convicted of drug offenses are denied this right to treatment. This is a blatant violation of the equal protection clauses of both the state and federal constitutions. See, Amendments to Bar Government From Treating People Differently Based on Race, 778 So.2d at 894. (amendments "created new distinctions" previously forbidden by the Constitution). Because the voter is nowhere apprised in the amendment of its substantial affect on Article I, section 2, the amendment violates the single subject requirement.

3. Amendment Substantially Affects Authority of Courts Under Articles I and V.

The amendment also substantially affects Article I, section 21 and Article V, section 1, in several ways. First, it removes from the courts their constitutionally vested duty and authority to administer justice in making sentencing decisions. Article V, section 1 provides that "the judicial power shall be vested" in the state judiciary and "[no] other courts may be established by the state, any political subdivision or any municipality." The amendment substantially affects this section by placing the authority to make ultimate sentencing and supervisory decisions affecting the liberty interests of criminal defendants in the hands of private individuals, including "qualified professionals" and offenders themselves. Second, the proposed amendment effectively abolishes the current statewide drug court program and establishes a new treatment regime which is not under the full control of the state judiciary. Third, under the new program, private individuals are given the authority to make quintessential judicial decisions such as the "type and duration" of treatment in lieu of sentencing, the "methods of monitoring [an] individual's progress," and the determination as to when treatment should be terminated and when the state shall be forbidden from prosecuting, sentencing or placing an individual "under continued court supervision." See Proposed Amendment at sections (c) and (e). Given this remarkable transfer of judicial authority to private individuals over an entire class of criminal defendants, the proposed amendment clearly contravenes

Article V's mandate that "judicial power shall be vested" in the designated courts of this State and that "no other courts may be established" by the state or any of its entities. Remarkably, not only does the proposed amendment violate the single subject rule by utterly failing to identify its effect on provisions of the Constitution vesting power in the state judiciary, its ballot summary fails to make any reference whatsoever to the "qualified professionals" which play so prominent a role in the amendment.

4. Amendment Has Substantive Affect on Due Process Clause of Article I, Section 9.

The amendment also violates the single subject rule by failing to identify its substantial affect on the due process clause of Article I, section 9. The amendment violates the due process clause by giving "qualified professionals" the power to deprive persons of their liberty interest without a fair hearing. Under the amendment, a misdemeanor offender who could have served a maximum one year sentence if convicted, can be subjected to treatment for up to 18 months upon the sole discretion of a "qualified professional" and without the requirement of any hearing whatsoever. See Concrete Pipe and Products of California, Inc. v. Construction Laborers, 508 U. S. 602 (1993) (persons may not be deprived of due process liberty interests without a fair hearing at which a court or an impartial official with vested authority, may determine the appropriate length of treatment). Accordingly, the proposed amendment substantially affects the due process clause of Article I, section 9 by (1) failing to extend any hearings whatsoever before persons are deprived of their liberty interests and (2) failing to ensure that such determinations are made by those vested with the authority to administer the law. Because Article I, section 9 is no where identified in the initiative, the proposed amendment violates the single subject rule.

5. Amendment Has Substantial Effect on Numerous Other Constitutional Provisions.

Other sections of the Constitution which are substantially affected by, but no where identified in, the proposed amendment are Article III, section 1 (vesting legislative power in the Legislature of the State of Florida); Article III, section 19(b)

(requiring separate sections of general appropriations bill for major state budget items, including criminal justice and corrections and judiciary); Article IV, section 1 (vesting executive power in the Governor and executive entities); Article V, section 17 (directing that the State Attorney shall be the prosecuting officer of all trial courts); and Article V, sections 2, 5, 8, 12 and 13 (allowing for judicial administration over rules of practice and jurisdiction, establishing jurisdiction of circuit courts, creating eligibility requirements for all members of the judiciary, providing for discipline and removal of judges, requiring judges to devote full time to their judicial duties and prohibiting the practice of law or the holding of office in any political party).

D. Proposed Amendment Violates the Single subject Prohibition Against "Logrolling."

1. Legal Principles Behind Logrolling Prohibition.

This Court has held that the requirement of Article XI, section 3 that an initiative "shall embrace but one subject and matter directly connected therewith," was also designed to prohibit what is known as "logrolling," a practice "wherein several separate issues are rolled into a single initiative in order to aggregate votes or secure approval of an otherwise unpopular issue." Advisory Opinion to the Attorney General - Fee on Everglades Sugar Production, 681 So.2d 1124, 1127 (Fla. 1996); Fine 448 So.2d at 988. As the Court put it in Fine, the purpose of the single subject rule is "to prohibit the aggregation of dissimilar provisions in one law in order to attract the support of diverse groups to assure its passage." 448 So.2d at 988. It would be

difficult to envision a ballot initiative which would be more offensive to this rule than the initiative in question. The initiative barrages the voters with multiple disparate choices and offends the spirit and letter of the one-subject rule by encouraging voters to "accept part of [the] proposal which they oppose in order to obtain a change which they support." See Fine, 448 So.2d at 993.

2. Right to Treatment for Multiple Offenders.

Section (a) of the proposed initiative provides that "[i]f more than one qualifying offense under this section occurs during a single criminal episode, it shall be considered a single offense." The section therefore allows multiple and indeed unlimited drug offenses to be consolidated into one drug offense. Many voters may support a right to treatment for first or second offenders, but oppose such a right for someone guilty of many offenses. These voters will be forced to determine whether they wish to "accept part of [the] proposal which they oppose (right to treatment for someone guilty of many offenses) to obtain a change which they support (right to treatment for first or second offenders)." Fine, 448 So.2d at 993. As explained in Issue II, the possibility that the framers engaged in logrolling in an effort to "secure approval of an otherwise unpopular issue" is evidenced in the failure to include any reference in the ballot summary to the amendment's requirement that multiple offenses occurring during a "single criminal episode" . . . shall be considered a single offense."

3. Decision-Making Authority in Hands of Non-Judges.

By placing critical decision-making authority in the hands of non-judicial "qualified professionals," the initiative would force many voters to vote for a portion of the amendment they might oppose (removal of authority from state judiciary) in order to pass another portion they may support (right to treatment). Again, the danger of logrolling is enhanced by the fact that this transfer of decision-making authority to "qualified professionals" is totally hidden from the public in the ballot title and summary.

4. Right to Treatment for Violent Criminals

By granting a right to treatment to those who have not been convicted of a violent crime within five years of the offense, the proposal forces the voter to accept a provision the voters might oppose. Voters who wanted the limit to be 10 or 15 years or wanted to deny the right altogether to those who had ever been convicted of a violent crime would be forced to accept the five year allowance to provide a right to treatment for drug possessors with no violent criminal history.

5. State Funded Treatment to Include Broad Range of Social Services.

In addition to providing specific "treatment" for substance abuse and drug dependency, section (c) mandates "as deemed appropriate" a broad array of other costly services including "vocational training, literacy training, family counseling, mental health services, or similar support services." The amendment again places the determination of which of these services will be provided in the sole hands of "qualified professionals." Voters may support state funded drug "treatment" for drug

offenders but oppose such state funding for job training, literacy training, mental health treatment and unspecified "similar support services." The section therefore violates the single subject rule by forcing voters to accept public financing of a wide array of costly ancillary services in order to provide certain drug offenders a right to drug treatment. Once again, the ballot summery neglects to advise the public that these collateral services are even contemplated. The repeated failure of the drafters to include controversial features of the amendment in the ballot summary suggests an effort to secure passage of the amendment's less popular and more provocative features by incorporating them into a seemingly more modest proposal.

6. Decriminalization of Drug Use.

Perhaps the most serious violation of the single subject rule derives from the initiatives hidden but very real agenda and consequence. The amendment essentially decriminalizes drug possession and purchasing offenses in the State of Florida. By providing a means by which all drug use and purchase offenders may avoid conviction ostensibly for their first and second offenses, the amendment assures that in the future no offender will ever reach his or her "third" conviction, and therefore will be perpetually treated as a first offender. It removes all accountability and meaningful punitive consequence for the use of any drugs. The amendment constitutes a de facto legalization of drug use, assuring all offenders that without fear of punishment they may use and purchase drugs of all types, no matter how harmful or deadly. The proposed amendment, in a most disingenuous and stealthy manner, rolls numerous

less offensive issues into a single initiative, encouraging an average voter who may support the pure concept of drug treatment to vote for an amendment which actually seeks "approval of an otherwise unpopular issue," namely – the decriminalization of drug use for all drugs including heroin, LSD, cocaine, and all hallucinogenic and narcotic drugs. Because legalizing drugs is a different subject than providing treatment for drug offenders, the amendment violates the single subject requirement.

7. Amendment Includes Numerous Other Multiple and Disparate Subjects.

There are other significant multiple and disparate subjects in the initiative which render it constitutionally infirm under the single subject requirement, including (1) it gives a right to treatment for not only individuals who are charged and facing trial but for those who have been convicted after trial, (2) it grants a constitutional right to treatment to those charged with or convicted of possessing illegal drugs as well as to those charged with or convicted of purchasing illegal drugs, (3) it deals with individuals charged or convicted of possessing or purchasing not only illegal drugs, but drug paraphernalia, and (4) it forbids prosecution and sentencing not only for those who have "successfully" completed treatment, but also for those for whom 18 months have passed from the date they elected to receive treatment, whether or not the treatment was successful. In each of these instances, meaningfully different features and effects are presented in a single initiative "[r]equiring voters to choose which [feature] they feel most strongly about, and then requiring them to cast an all or nothing vote" on the amendment as a whole. In re Advisory Opinion to the Attorney

General – Restricts Laws Related to Discrimination, 632 So.2d 1018, 1020 (Fla. 1994). Because this is precisely the practice forbidden by the prohibition on "logrolling" encompassed in the single subject requirement, the proposed initiative violates Article XI, section 3 of the Florida Constitution.

ISSUE II.

THE PROPOSED AMENDMENT VIOLATES THE CLEAR AND UNAMBIGUOUS LANGUAGE REQUIREMENT OF SECTION 101.161(1), FLORIDA STATUTES (2000).

A. The Clear and Unambiguous Requirement and Supreme Court Precedent.

Section 101.161, Florida Statutes provides, in pertinent part:

> Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment . . . shall be printed in clear and unambiguous language on the ballot. . . . The substance of the amendment . . . shall be an explanatory statement, not exceeding 75 words in length of the chief purpose of the measure.

§101.161(1), Fla. Stat. (2000). This Court has held that the ballot title and summary must "state in clear and unambiguous language the chief purpose of the measure" and "assure that the electorate is advised of the true meaning, and ramifications, of an amendment." Askew v. Firestone, 421 So.2d 151, 155 (Fla. 1982); Limited Political Terms in Certain Elective Offices, 592 So.2d at 228; Tax Limitation I, 644 So.2d at 490; see, also, Laws Related to Discrimination, 632 So.2d at 1021 (summary must inform public of meaning and effect of amendment). While the title and summary need not "explain every detail or ramification," it must "sufficiently inform the public" of important aspects of the proposed amendment and "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 Opinion to the Attorney General re Fish and Wildlife Conservation Comm'n, 705 So.2d 1351, 1355 (Fla. 1998); Advisory Opinion to the Attorney General – Fee on the Everglades Sugar Prod., 681 So.2d 1124, 1127 (Fla. 1996).

B. The Ballot Summary Omits Material Facts Necessary to Make it Not Misleading.

In its most basic application, section 101.161 will render a ballot summary invalid if the summary "omits material facts necessary to make the summary not misleading." Limited Political Terms, 592 So.2d at 228; Restricts Laws Related to Discrimination, 632 So.2d at 1021. In several key respects, the ballot summary in question omits information necessary to make the summary not misleading and to enable the voters to cast their ballots intelligently.

1. Summary Omits Fact that Amendment Removes Authority from State Judiciary.

The ballot summary makes no mention whatsoever of the fact that under the amendment substantive decisions affecting liberty interests are removed from the state judiciary and transferred to private individuals. In Restricts Laws Related to Discrimination, this Court struck a ballot summary that failed to mention it "would curtail the authority of [certain] government entities." 632 So.2d at 1021. According to the court, "[t]he omission of such material information is misleading and precludes

voters from being able to cast their ballots intelligently." Id. at 1021. Similarly, in Stop Early Release of Prisoners, this Court invalidated a ballot initiative which would "essentially . . . eliminate the [Parole] Commission's primary powers and abolish parole and conditional release, because "nothing in the ballot summary mention[ed] this collateral consequence of the amendment." 642 So.2d at 726. In Amendments to Bar Government From Treating People Differently Based on Race, this Court addressed various amendments which "redefine[d] the remedial role of courts" in certain cases and which thereby restricted the powers of the Judicial Branch conferred in Florida's Constitution. 778 So.2d at 894 - 896. In Amendments to Bar Government From Treating People Differently Based on Race, the court held that ballot summaries were defective because they did not identify the amendments' substantial effect on the Constitution wrought by the amendments' limitations on the court's powers. Id. at 895-98; see also Stop Early Release of Prisoners; Restricts Laws Relating to Discrimination. If this Court deemed the limitations on the authority of the Parole Commission, the judiciary and certain government entities to be material information necessary to make the summaries not misleading in the above cases, the summary in this case must also be invalidated for its failure to identify both the removal of constitutionally-vested power from the state judiciary and the transfer of such authority to non-judicial private persons.

2. Even if the Summary Stated that the Amendment Affected the Judiciary, it would be Deficient for Not Advising the Voter that it Substantially Impacted Key Judicial Powers.

Some ballot summaries have been rejected for their mere failure to adequately describe the extent to which an amendment affected a constitutional officer's powers. In Term Limits Pledge, this Court struck a ballot summary which advised the voters merely that the amendment "affects the powers of the Secretary of State," when the amendment actually "substantially impact[ed]" the Secretary's constitutional powers and duties. 718 So.2d at 803. The Court found that the amendment "substantially impact[ed]" those powers by allowing the Secretary to "answer key questions and make decisions which would ultimately determine which candidates would suffer a 'Broke Term Limits Pledge' notation" next to their names on the ballot. Id. at 803. In this case, the amendment tampers with much more important rights involving the constitutionally vested authority of state judges to make ultimate determinations involving individual liberty interests, namely, when some one will be terminated from treatment and susceptible to prosecution, sentencing and incarceration. The proposed amendment has as substantial an affect on the judiciary's powers under Article V, as the Term Limits Amendment did on the powers of the Secretary under Article IV. In Term Limits Pledge, this Court struck the ballot because its summary only told the voters half the story – that it affected the Secretary's constitutional powers, rather than substantially impacted them. Here, the ballot summary tells voters none of the story. The amendment substantially impacts Article V, section 1 by removing vested powers of the state judiciary and giving them over to private persons. The voters are oblivious to this impact because the title and summary are utterly silent on the subject.

Under this Court's ruling in Term Limits Pledge, the summary at issue would be fatally defective even if it had advised the voters that the amendment "affects the powers of [the state judiciary]." 718 So.2d at 803. It cannot be upheld when it fails to mention that it has any affect whatsoever on those powers. As this Court has held, where a ballot summary is "silent as to the constitutional ramifications on, and the discretionary authority vested in, [the persons implementing a proposed amendment], the ballot summary must fail." Term Limits Pledge, 718 So.2d at 804.

3. Summary Omits Key Stipulation in Amendment that Allows Treatment Right for Those Committing Multiple Offenses.

A second material fact entirely omitted from the summary is the key stipulation in the body of the amendment that "[i]f more than one qualifying offense under this section occurs during a single criminal episode, it shall be considered a single offense." Proposed Amendment, Section (a). The summary fails to mention the qualifying language, and states merely that offenders may elect treatment "for first two offenses; discretionary with court thereafter." Like the disputed language in Term Limits Pledge, the issue as to which offenders will have a constitutional right to treatment "cuts to the very core of the chief purpose" of the amendment. 718 So.2d at 803-804. Voters reviewing the title and summary will be led to believe that the amendment grants a constitutional right to treatment for those committing their first two offenses only, and that it will not apply to those committing three or more offenses. This Court has repeatedly held that summaries which "lead the voters to

believe" one thing while actually permitting another are misleading and fatally defective. See, Casino Authorization, Taxation and Regulation, 656 So.2d at 468; Health Care Providers, 705 So.2d at 566; Save Our Everglades I, 636 So.2d at 1359. In leaving the impression that the chief purpose of the measure is to give first and second time drug offenders a constitutional right to treatment, while omitting any reference to the proviso requiring all offenses in a "single criminal episode" to be treated as a single offense, the ballot initiative "flies under false colors" and misleads the voters "as to the contents and purpose of the proposed amendment." Askew v. Firestone, 421 So.2d at 156 (ballot summary "fail[ed] to give fair notice of an exception to a present prohibition); Save Our Everglades I, 636 So.2d at 1341 (summary which gave reader erroneous impression that amendment applied to one entity while the actual text suggested it applied to another, was fatally defective). While voters may support a constitutional right to treatment for those who commit more than two "qualifying offenses," such a measure "must stand on its own merits and not be disguised as something else." Askew v. Firestone, 421 So.2d at 156.

4. Summary Omits Fact that Amendment in Effect Abolishes Florida's Drug Court Treatment Program.

Third, the summary makes no mention of the fact that the amendment in effect abolishes Florida's statewide Treatment-Based Drug Court Program which began in 1990 and has become a model for the entire nation. The Legislature codified the statewide program in section 397.334, Florida Statutes (2001). It was the intent of the

Legislature to "implement treatment-based drug court programs in each judicial circuit," to "ensure that there is a coordinated, integrated and multi-disciplinary response to the substance abuse problem," and to provide for "the integration of judicial supervision, treatment, accountability, and sanctions" in order to "greatly increase[] the effectiveness of substance abuse treatment." §397.334(1), Fla. Stat. (2001). The Treatment-Based Drug Court Program is administered by the state judiciary in conjunction with the Florida Association of Drug Court Program Professionals and under the direction of the Supreme Court Treatment-Based Drug Court Steering Committee. The Florida Treatment-Based Drug Court Program is currently providing treatment to more than 20,000 offenders. From the title and summary of the initiative in question, voters considering the proposed amendment would have no idea that drug offenders in Florida already receive treatment as part of a legislatively mandated and judicially administered program combining "judicial supervision, treatment, accountability and sanctions." §397.334(1), Fla. Stat. (2001).

Not only does the proposed amendment conflict with the existing statewide program (by among other things removing supervision by the judiciary, accountability through executive prosecutions and sanctions imposed by the Legislature), it totally abolishes it. This Court upheld a ballot summary, finding that "[t]his is not a situation in which the ballot summary conceals a conflict with an existing provision." Advisory Opinion to the Attorney General – Limited Political Terms in Certain Elective Offices, 592 So.2d 225, 228 (Fla. 1991). In Limited Political Terms, opponents claimed the

ballot summary was invalid because it did not advise voters that there were presently no limits on the terms of the affected offices. The court noted that a failure to indicate a current lack of term limits was not misleading because "[i]n effect, this proposed amendment writes on a clean slate." Id. at 228. In this case, the slate is by no means clean. The proposed amendment here is more akin to the amendment struck down in Askew v. Firestone, which purported to impose meaningful financial disclosure requirements as a condition to after-term lobbying but which would actually have eliminated the existing two-year ban on lobbying before one's former agency. This Court struck down the initiative because the ballot summary neglected to advise the public that there was presently a two-year ban. 421 So.2d at 155. As the court observed, the summary "create[d] the impression that adopting the proposal would fill a void" in the law as it currently stood. Id. at 154. Because the summary failed to advise the public that there was currently a two-year ban on lobbying, which would be essentially abolished by the amendment, the ballot summary was stricken. Id. at 155-56. As the court noted, the summary was defective not because of what it said but because of what it failed to say. Id. at 156; see also, Casino Authorization, Taxation and Regulation, 656 So.2d at 468 (summary misleading not because of what it said but what it failed to say); Evans v. Firestone, 457 So.2d at 1356 (ballot title and summary "conveniently leaves out any reference to existing rights that are 'changed' by the proposed" amendment). In Amendments to Bar Government From Treating People Differently Based on Race, Tax Limitation I, and Casino Authorization,

Taxation and Regulation, the court struck ballot initiatives because their summaries suggested they were filling a void, that no existing provisions were in place, or that the amendments were necessary to accomplish something which had already been dealt with by the state. Because the ballot summary in question totally fails to advise the voters of the statewide drug court program it abolishes, the summary is fatally defective.

C. Ballot Summary Fails to Identify Constitutional Provisions Substantially Affected by the Amendment.

The ballot title and summary is also fatally defective for its failure to identify the constitutional provisions substantially affected by the proposed amendment. As the court noted in Amendments to Bar Government From Treating People Differently Based on Race, summaries are defective when they fail to "identify[ ] the initiative petitions' effect on . . . existing constitutional provisions." 778 So.2d at 898.[2]

As discussed in Issue I, the proposed amendment substantially affects a number of constitutional provisions, most notably Article I, sections 2, 9, and 21, and Article V, section 1. Because the ballot summary does not identify this effect, the proposed amendment must be stricken from the ballot. Id. at 898; Stop Early Release of Prisoners, 642 So.2d at 726.

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[2]As the court has repeatedly held, and as discussed in Issue I of this Brief, amendments which fail to identify those constitutional provisions they substantially affect also violate the single subject rule. See Right of Citizens to Choose Health Care Providers citing Amendments to Bar Government From Treating People Differently Based on Race, 778 So.2d at 893 - 94; Tax Limitation I, 644 So.2d at 493-94.

D. Ballot Summary Fails to Define Legally Significant Terms.

The ballot summary also fails to define legally significant terms, contains "divergent terminology" and makes serious misstatements concerning the substance of the amendment. Ballot initiatives which fail to define legally significant terms prevent voters from casting their ballots intelligently and therefore violate the "clear and unambiguous" requirement. Amendments to Bar Government From Treating People Differently Based on Race, 778 So.2d at 898-99; People's Property Rights Amendments, 699 So.2d at 1309.

1. Summary Fails to Define "Appropriate Treatment."

Among the more provocative features of the proposed amendment is its definition of "appropriate treatment." Under the amendment, "appropriate treatment" includes programs not only to reduce or eliminate substance abuse but "to increase employability." The amendment specifically provides that "[s]uch program or programs shall include, as deemed appropriate, access to vocational training, literacy training, family counseling, mental health services, or similar support services." Section (c), Proposed Amendment. The ballot summary, however, fails to advise voters that the "appropriate treatment" to which drug offenders are entitled under the amendment includes this wide range of services. Instead, the summary states only that offenders "may elect appropriate treatment as defined." This Court "vigorously enforces the clear and unambiguous requirement" by striking ballot initiatives which include "ambiguous and undefined terms in ballot summaries." Amendments to Bar

Government From Treating People Differently Based on Race, 778 So.2d 898-99; People's Property Rights Amendment, 699 So.2d at 1309; Smith v. American Airlines, Inc., 606 So.2d 618 (Fla. 1992).

The summary here suffers from the same deficiency existing in the summary in Amendments to Bar Government From Treating People Differently Based on Race. In that case, the summary stated that the amendment "exempts bona fide qualifications based on sex," leaving voters "to guess at its meaning." 778 So.2d at 899. The "bare mention of a bona fide qualification exception" did not inform voters "of the concerns regarding sexual privacy, medical treatment, law enforcement, theatrical casting, or sports." Id. Like the defective summary in Amendments to Bar Government From Treating People Differently Based on Race, voters considering the summary in question "would undoubtedly rely on their own conceptions of what constitutes" appropriate treatment. 778 So.2d at 899. Like the common law nuisance" language at issue in People's Property Rights Amendment, voters "could construe ['appropriate treatment as defined'] very broadly or narrowly," based on their own conceptions of appropriate treatment. 669 So.2d at 1309. Voters who believe "appropriate treatment" does not include a convicted drug offender's constitutional right to state-funded literacy training, for instance, could support the measure under the notion that "appropriate treatment" would by definition exclude such services. Conversely, voters who believe "appropriate treatment" is properly defined as including such literacy training could also support the amendment in the belief that "appropriate

treatment" would by definition include such services. The merit of the amendment is not the issue. The public may wish to provide state-funded "literacy training, family counseling, vocational training, medical health services or similar support services" to a select class of drug users who happen to have been arrested or convicted. Members of the public have a right, however, to be informed of this fact on the ballot itself so that they can cast their ballots intelligently. See Askew v. Firestone, 421 So.2d at 156.

2. Ballot Summary Fails to Advise Voters that Offenders Can Not be Found "Unamenable" to Treatment Until They Have Had "Multiple Programs and Violations."

The summary states that an "[i]ndividual unamenable to treatment may be prosecuted or sentenced." The text of the amendment, however, contains a material qualification to this concept which is no where mentioned in the ballot summary. The text provides that

> 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.

Proposed Amendment at Section (d). The voter has no way of knowing upon review of the ballot summary that no matter how incorrigible, disruptive or "unamenable" to treatment, a drug offender who exercises his constitutional right under the amendment cannot under any circumstances be removed from treatment if he has not already had "multiple programs and violations." The voter could not possibly know that the

determination of unamenability would be qualified in this restrictive manner. The information omitted is clearly material because it is necessary to give the public "'fair notice' of the meaning and effect of the proposed amendment." Restricts Laws Related to Discrimination, 632 So.2d at 1021. It is reasonable to assume the voter would have an interest in knowing under what circumstances an offender may lose his constitutional right to treatment and face prosecution and sentencing, particularly when the determination has been qualified in so peculiar a manner. Accordingly, the omission of such information is misleading and precludes voters from being able to cast their ballots intelligently. See Restricts Laws Related to Discrimination, 632 So.2d at 1021.

3. Summary Fails to Define Phrase "Excludes Individuals Committing Serious Crimes in Same Episode."

The summary also states that the amendment "excludes individuals committing serious crimes in same episode," without adequately defining the phrase. First, the phrase "in same episode" is ambiguous for failure to include the antecedent object. Reviewing the summary only, a voter could conclude that the amendment excludes those who commit more than one serious crime in the same episode. Another voter could conclude the amendment excludes those who commit a serious crime in the same episode as the possession or purchasing offense set out in section (a). Although the text of the amendment adopts the latter approach, that interpretation may make

little sense to the voter who wonders how other serious crimes such as bank robbery or murder could ever be interpreted to have occurred "in the same episode" as a drug possession offense. In any event, "in same episode" is clearly a legal phrase, and the voters are left to guess at its meaning. See Amendments to Bar Government From Treating People Differently Based on Race, 778 So.2d at 896-97; People's Property Rights Amendment, 699 So.2d at 1309. The courts have long grappled with this concept and "even more educated voters" cannot be expected to understand its meaning. See Smith v. American Airlines, 606 So.2d at 621.

The same can be said of the reference to "serious crimes" in the ballot summary. A serious crime to one voter may be deemed a minor offense to another. The confusion is underscored by the drafters' own difficulty in defining "serious" crimes. Section (b) of the proposed amendment states that the amendment shall not apply to any individual "who in connection with the same criminal episode as the drug offense" is also charged with or convicted of any felony; any misdemeanor involving theft, violence or threat of violence, DUIs and various drug offenses. Although these offenses are not described as "serious" in the amendment itself, these are the offenses described in the summary as "serious crimes." In describing the second exclusion, for those convicted of or in prison for certain crimes within five years before committing the drug offense, the actual amendment refers to "the serious or violent crimes" described in section 775.084(1)(c)1.a-r, Florida Statutes (2000). Proposed Amendment, Section (b). As it turns out, however, the so-called serious or violent

crimes described in section 775.084 do not include any drug offenses whatsoever. Voters who believe that violence is inevitably linked to the illicit drug trade would erroneously believe from the summary that the second exclusion for "violent crimes in the past five years" would include major drug crimes such as trafficking, production, distribution, CCE, RICO and other drug conspiracies. The ballot summary neither defines these terms nor clarifies this confusion. Like the defective ballot summary in Smith v. American Airlines, the summary here "not only assumes an extensive understanding of [the topic] but also requires the voter to infer a meaning which is no where evident on the face of the summary itself." 606 So.2d at 621.

E. Ballot Summary Contains Fatal "Divergent Terminology."

Not only does the summary fail to adequately define terms, it contains the type of "divergent terminology" this Court has disapproved in numerous cases. This Court has struck other ballot initiatives with material and misleading discrepancies in terms such as "citizens" versus "every natural person," "people" versus "persons," "hotel" versus "transient lodging establishment," and "owner of real property" versus "people who own the property." Right of Citizens to Choose Health Care Providers, 705 So.2d at 566; In Re Casino Authorization, Taxation and Regulation, 656 So.2d at 468-69; People's Property Rights Amendments, 699 So.2d at 1308-09; Amendments to Bar Government From Treating People Differently Based on Race, 778 So.2d at 897. The Court has held that in such cases the "divergence in terminology is ambiguous in

that it leaves voters guessing whether the terms are intended to be synonymous or whether the difference in terms was intentional." Right of Citizens to Choose Health Care Providers, 705 So.2d at 565.

1. Summary Contains Serious Falsehood as to When a Defendant is Free of Prosecution or Sentencing.

The ballot summary states that "[u]pon successful completion or eighteen months in treatment, no prosecution or sentencing." This summary flatly misrepresents the substance of the amendment in two important respects. First, the amendment does not say that an individual can no longer be prosecuted or sentenced upon successful completion or "eighteen months in treatment." Proposed Amendment at Ballot Summary. Instead, it provides that an individual may not be prosecuted or sentenced upon a finding "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." Proposed Amendment at Section (e). These are simply not the same two time periods. Under the amendment, an arrestee has a right to elect treatment immediately after his arrest. There is no requirement that treatment be immediately begun and, given that qualified professionals must first decide the appropriate program or programs and the level, type and duration of the "appropriate treatment," it is reasonable to assume it may take some time for an

offender to be placed in treatment.[3] Voters have a right to know that under the amendment offenders cannot be prosecuted or sentenced once 18 months has passed after the date the individual elected to receive treatment. The summary misleads the voter into believing that an offender must successfully complete treatment or at least spend "eighteen months in treatment" before he can escape prosecution or sentencing. This is not true. Because the summary deceives the voter on this material point, it is defective and misleading and must be stricken from the ballot.

Second, the summary also fails to advise voters that upon successful completion or the passage of 18 months, the offender not only cannot be prosecuted or sentenced, but cannot even be "placed under continued court supervision for the offense which led to the appropriate treatment." Proposed Amendment, Section (e). Voters wishing to assure that offenders receiving treatment are properly monitored and subject to continuing supervision are not told in the summary that such "continued court supervision" is automatically terminated 18 months from the date the offender elected to receive treatment. In this regard, the proposed initiative "is misleading not because of what it says, but what it fails to say." Casino Authorization, Taxation and Regulation, 656 So.2d at 469; Askew v. Firestone, 421 So.2d at 156.

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[3]What's more, because the amendment does not prevent the defendant from "rolling the dice" and exercising his constitutional right to be tried and convicted, an offender may well be able to invoke that right, in which case many months could pass before the defendant ever enters a treatment program. Under these circumstances, a convicted defendant may end up serving little or no time in treatment because 18 months will have passed from the time he elected treatment, in which case he is automatically "terminated" from treatment and may not be prosecuted or sentenced. See Proposed Amendment, Section (e).

2. Summary's Expression "In Same Episode" Has Different Legal Significance Than the Amendment's Phrase "In connection with the Same Criminal Episode."

The summary states that it excludes those committing serious crimes "in same episode," while the amendment itself states that it excludes those committing such crimes "in connection with the same criminal episode." In Amendments to Bar Government From Treating People Differently Based on Race, this Court noted that while the terms "'people' and 'person'" appear synonymous, their legal differences are significant and are not revealed to the voter." 778 So.2d at 897. Similarly, there is a legally significant difference between the phrase "in same criminal episode" and the phrase "in connection with the same criminal episode." The latter concept may be broader or narrower depending on the circumstances. For instance, when an offender possesses drugs while committing a bank robbery, he can hardly be said to be committing the bank robbery "in connection with the same criminal episode as the drug offense." On the other hand, he might be construed to have possessed drugs "in the same episode" as the bank robbery. Because the summary uses different terminology which is legally significant and leaves the voters guessing whether the use of different terms was immaterial or intentional, the ballot summary is defective and must be stricken.

This Court has held that ballot summaries must be invalidated when they (1) do not adequately define terms, (2) fail to mention constitutional provisions they affect, (3) use divergent terminology, (4) omit information necessary to enable voters to cast

intelligent ballots, and (5) do not adequately describe the chief purpose and effect of the amendment. Amendments to Bar Government From Treating People Differently Based on Race, 778 So.2d at 899. In this case, the ballot summary fails under each of the above prohibitions. The summary is therefore misleading and violates section 101.161, Florida Statutes (2000).

CONCLUSION

For the reasons set forth herein, the proposed amendment fails under both the single subject rule and the clear and unambiguous requirement, and therefore should be rejected as violating Article XI, section 3, Florida Constitution and section 101.161, Florida Statutes (2000).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief has been forwarded this 10th day of October, 2001 by U. S. Mail to: Honorable Jeb Bush, Governor, The Capitol, Tallahassee, FL 32399; Honorable Katherine Harris, The Capitol, Tallahassee, FL 32399; Honorable John McKay, The Capitol, Tallahassee, FL 32399; Honorable Tom Feeney, 420 Capitol, 402 S. Monroe Tallahassee, FL 32399; Honorable Robert A. Butterworth, The Capitol, Tallahassee, FL 32399; and by hand delivery to Stephen H. Grimes, Esq. and Susan L. Kelsey, Esq., Holland & Knight; P. O. Box 800, Tallahassee, FL 32302.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Amended Brief complies with the font requirements of Fla. R. App. P. 9.210(a)(2).

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Kenneth W. Sukhia