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

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

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STATEMENT OF THE CASE AND FACTS

Florida Campaign for New Drug Policies is a Florida political committee. See http://www.drugreform.org/florida. The committee has invoked the initiative petition process of Article XI, section 3, Florida Constitution, to propose an amendment to the Florida Constitution. [A 1.] This drug treatment amendment would give certain nonviolent drug offenders a right to receive treatment and rehabilitation in lieu of sentencing or incarceration. The Court has jurisdiction. Art. V, § 3(b)(10), Fla. Const.[1]

The Secretary of State submitted the drug treatment amendment to the Attorney General pursuant to section 15.21, Florida Statutes (2000),[2] certifying that it had satisfied the signature requirements and qualified for this Court's advisory opinion. [A 2.] The Attorney General, pursuant to section 16.061, Florida Statutes (2000),[3] has

[1] "The supreme court … [s]hall, when requested by the attorney general pursuant to the provisions of Section 10 of Article IV, render an advisory opinion of the justices, addressing issues as provided by general law."

[2] Section 15.21 requires the Secretary of State immediately to submit an initiative petition to the Attorney General if the sponsor has satisfied stated requirements, including obtaining the requisite number and geographic distribution of electors' signatures in support of the petition.

[3] Section 16.061, Florida Statutes (2000), requires the Attorney General to petition this Court within 30 days after receiving an initiative from the Secretary of State, "requesting an advisory opinion regarding the compliance of the text of the proposed amendment or revision with s. 3, Art. XI of the State Constitution and the compliance of the proposed ballot title and substance with s. 101.161." This section implements Florida Constitution article IV, section 10, which requires the Attorney General to "request the opinion of the justices of the supreme court as to the validity of any initiative petition circulated pursuant to Section 3 of Article XI."

requested this Court's opinion as to whether the ballot title and summary of the proposed constitutional amendment comply with section 101.161, Florida Statutes (2000),[4] and whether the amendment complies with the single-subject requirement of article XI, section 3, Florida Constitution.[5]

Title, Summary, And Text Of The Amendment

The ballot title for the proposed amendment is **"Right to Treatment and Rehabilitation for Nonviolent Drug Offenses**."

The summary for the proposed amendment 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.

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[4] Section 101.161(1), Florida Statutes (2000), provides, in pertinent part, that "The substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of."

[5] Article XI, section 3, requires that, with one exception not implicated here, any revision or amendment of the Florida Constitution proposed by the people "shall embrace but one subject and matter directly connected therewith."

The full text of the proposed amendment is as follows:

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.

Legal Context Of The Amendment

Florida was a leader among the states in recognizing substance abuse as a health problem and a disease requiring treatment. Building on earlier programs for providing treatment to substance-abuse offenders, Florida adopted the Hal S. Marchman Alcohol and Other Drug Services Act in 1993 (the "Marchman Act"), which expressly codifies concepts that are central to the drug treatment amendment:

> Substance abuse is a major health problem . . . . Substance abuse impairment is a disease . . . . It is the intent of the Legislature to provide, for substance abuse impaired adults and juvenile offenders, an alternative to criminal imprisonment by encouraging the referral of such offenders to service providers not generally available within the correctional system instead of or in addition to criminal penalties.

§ 397.305(1), (7), Fla. Stat. (2001).

Florida has in many contexts and for many years recognized the benefits and efficacy of drug treatment programs. Thus, Part VII of the Marchman Act, entitled "Offender Referrals," authorizes Florida courts and criminal justice authorities to refer substance abuse impaired offenders, including juvenile offenders, to qualified service providers for treatment. §§ 397.705(1), 397.706, Fla. Stat. (2000). See also, e.g., id. § 893.15 (authorizing trial judges to require drug-possession offenders to participate in a substance abuse program); id. § 945.12 (since 1957 has authorized the Department of Corrections to transfer substance abuse impaired persons to appropriate

treatment facilities or programs); id. § 948.034 (authorizing withholding of adjudication and imposition of probation for certain drug offenses, conditioned on residence at community residential drug punishment center and completion of other requirements, which may include successful completion of a substance abuse education program).

Pursuant to the Marchman Act, and consistent with recommendations of this Court's Treatment-Based Drug Court Steering Committee, the Florida Legislature has established a treatment-based drug court program. See § 397.334, Fla. Stat. (2001). The drug court program is intended to effect a multidisciplinary approach incorporating the expertise of the judiciary and qualified health professionals:

> It is the intent of the Legislature to implement treatment-based drug court programs in each judicial circuit in an effort to reduce crime and recidivism, abuse and neglect cases, and family dysfunction by breaking the cycle of addiction which is the most predominant cause of cases entering the justice system. The Legislature recognizes that the integration of judicial supervision, treatment, accountability, and sanctions greatly increases the effectiveness of substance abuse treatment. The Legislature also seeks to ensure that there is a coordinated, integrated and multidisciplinary response to the substance abuse problem in this state, with special attention given to creating partnerships between the public and private sectors and to the coordinated, supported, and integrated delivery of multiple-system services for substance abusers, including a multiagency team approach to service delivery.

Id. § 397.334(1).

Despite Florida's consistent recognition of the benefits of drug treatment

programs, however, fewer than half of the eligible offenders are afforded treatment. [See A 1 at 3 (citing Crime in Florida: 2000 Uniform Crime Report, FDLE).] This under-utilization of treatment for qualified offenders is a major impetus for the present drug treatment amendment.

Two other states, Arizona and California, have adopted ballot initiatives similar in substance to the Florida drug treatment amendment. In 1996, sixty-five percent (65%) of Arizona voters approved Proposition 200, entitled the "Drug Medicalization, Prevention and Control Act of 1996." Ariz. Rev. Stat. Ann. § 13-901.1 (2000). The Supreme Court of Arizona released a report summarizing the implementation of the act [A 4], and a "report card" revealing that the Arizona program produced a success rate of over sixty percent (60%) and saved the state over $2.5 million in Fiscal Year 1998. [A 4 at 9.]

More recently, sixty-one percent (61%) of California voters approved Proposition 36 in November of 2000. [A 5.] Prop 36, also known as the Substance Abuse and Crime Prevention Act, is similar to the Florida drug treatment amendment. Cal. Penal Code § 1210 (West 2000). California's provision of treatment and rehabilitation has reduced recidivism as much as 72 percent (72%). [A 5 at 7.] Economic impact reports on the Act, produced by the California State Legislative Analyst's Office, estimated that the Act would save the state between $100 and $150

million annually in the first few years of implementation, and would allow the state to avoid a one-time capital outlay of about $500 million by eliminating the need for building an additional prison. [A 5 at 5.]

SUMMARY OF THE ARGUMENT

Because the people's sovereign right to amend their constitution is at stake, this Court has the responsibility to sustain the drug treatment amendment if possible, considering the proposal as a whole and giving effect to the intent of the drafters and the chief purpose of the measure. The standard of review is highly deferential, and the Court's duty is to uphold the proposal unless it can be shown to be clearly and conclusively defective.

The title and ballot summary fully inform voters of the chief purpose of the amendment. The purpose of requiring a title is simply so that there will be a caption "by which the measure is commonly referred to or spoken of." § 101.161, Fla. Stat. (2000). The title of this initiative satisfies the requirements. The ballot summary, which must be read together with the title, likewise satisfies the governing requirements by clearly stating that its purpose is to give nonviolent drug offenders a right to receive treatment and rehabilitation instead of sentencing or incarceration. Thus, there is no possibility that voters could be misled concerning the purpose of the amendment.

The Attorney General's challenges to the particular wording of the summary are misplaced, resulting for the most part from inaccurate and forced misinterpretations of the summary. None of the Attorney General's challenges has merit, and none rises to the level of establishing such a clear and conclusive defect as to justify the Court's preventing the people of Florida from voting on this proposal. The Court should approve the title and ballot summary.

The drug treatment amendment likewise complies with the single-subject requirement because it has a logical and natural oneness of purpose and it may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme. The only purpose of this proposed amendment is to give nonviolent drug offenders the right to receive treatment and rehabilitation instead of incarceration or sentencing. The entire amendment is directed to that objective, and it includes directly connected matters such as definitions and significant details of its scope and operation. The amendment clearly embraces "but one subject and matter directly connected therewith" and thus satisfies the single-subject requirement of Article XI, section 3.

The Attorney General's arguments that the drug treatment amendment improperly affects all three branches of Florida government cannot withstand scrutiny. Any initiative may, and almost all do, "affect" one or more branches of Florida

government, and the Court has stated repeatedly that such an effect is no reason to invalidate a proposed amendment. The amendment does not substantially perform or usurp any executive branch function, as prosecutors are free to charge crimes as they see fit under the amendment just as they are free to do so under current law. The amendment does not substantially perform or usurp any legislative function merely because it alters some aspects of current statutory law – as most constitutional amendments do – or because it might require legislative funding. The amendment does not substantially perform or usurp any judicial function merely because trial court judges will be required to comply with the amendment, which is always true whenever the constitution is amended. Trial court judges will retain control over the processing of each case, determining each offender's eligibility for treatment; receiving, approving, and monitoring treatment plans; and adjudicating compliance with treatment for purposes of final disposition – all of which the trial courts do under current law. The single change that the amendment effects in current law, allowing the offender to elect treatment twice after the trial judge determines eligibility for making that election, is central and directly related to the single subject of the amendment, and is not sufficient to constitute a usurpation of the judicial branch function. Thus, the amendment does not violate the single-subject rule and should be approved for placement on the ballot.

ARGUMENT

I. THE STANDARD OF REVIEW IS HIGHLY DEFERENTIAL AND THE COURT'S REVIEW IS LIMITED.

A. THE PETITION IS ENTITLED TO GREAT DEFERENCE.

Because of the great importance of protecting the people's constitutional right to modify the law of Florida, this Court has always recognized that it should be extremely reluctant to remove a proposed constitutional amendment from the ballot. As noted in Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982), the court "must act with extreme care, caution, and restraint before it removes a constitutional amendment from the vote of the people." The Court's "duty is to uphold an initiative petition unless it can be shown to be `clearly and conclusively defective.´" Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337, 339 (Fla. 1978). The governing standard of review is very deferential.

B. SUBJECTIVE VIEWS OF THE MERITS AND POLITICAL RAMIFICATIONS OF A PROPOSED INITIATIVE ARE IRRELEVANT IN THESE PROCEEDINGS.

In Advisory Opinion to the Attorney General re Tax Limitation, 644 So. 2d 486 (Fla. 1994), the Court explained in more detail the limitations on its authority in reviewing initiative petitions:

This Court's role in these matters is strictly limited to the legal issues

> presented by the constitution and relevant statutes. This Court does not have the authority or responsibility to rule on the merits or the wisdom of these proposed initiative amendments, and we have not done so. Infringing on the people's right to vote on an amendment is a power this Court should use only where the record shows the constitutional single-subject requirement has been violated or the record establishes that the ballot language would clearly mislead the public concerning material elements of the proposed amendment and its effect on the present constitution.

644 So. 2d at 489. See also Pope v. Gray, 104 So. 2d 841, 842 (Fla. 1958) ("There is no lawful reason why the electors of this State should not have the right to determine the manner in which the Constitution should be amended. This is the most sanctified area in which a court can exercise power."); Weber v. Smathers, 338 So. 2d 819, 821-22 (Fla. 1976) ("we are dealing with a constitutional democracy in which sovereignty resides in the people. It is their Constitution that we are construing. They have a right to change, abrogate or modify it in any manner they see fit so long as they keep within the confines of the Federal Constitution. … Neither the wisdom of the provision [initiative petition] nor the quality of its draftsmanship is a matter for our review."). The Court cannot pass judgment on either the wisdom or the merit of a proposed amendment. Advisory Op. to Atty. Gen. re Ltd. Casinos, 644 So. 2d 71, 75 (Fla. 1994).

Any given initiative petition may raise issues that are controversial. That is the inherent nature of the process and one of its most powerful democratic features: to

present issues for consideration and allow the voters themselves to express individual opinions about them. The drug treatment amendment is well within the requirements of the law.

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

The title of the proposed amendment is ""**Right to Treatment and Rehabilitation for Nonviolent Drug Offenses**." The title of the drug treatment amendment meets the word limit of the statute, and is how the proposed amendment is commonly referenced. The Attorney General does not challenge the title on any basis.

The ballot summary provides 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.

A. THE TITLE AND SUMMARY PASS THE APPLICABLE LEGAL TESTS.

Section 101.161(1), Florida Statutes (2000) provides that whenever a constitutional amendment is submitted to the vote of the people, a summary of the amendment shall appear on the ballot. The statute further states as follows:

> The substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

This Court has explained that the ballot summary must be fair and advise the voter sufficiently to enable the voter to cast a ballot intelligently. Askew v. Firestone, 421 So. 2d at 155 (quoting Hill v. Milander, 72 So. 2d 796, 798 (Fla. 1954)). While a ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, they need not explain every detail, ramification, or effect of the proposed amendment, Grose v. Firestone, 422 So. 2d 303, 305 (Fla. 1982); nor specify existing statutory laws that will be changed or invalidated. Advisory Op. to Atty. Gen. re: Prohibiting Pub. Funding of Political Candidates' Campaigns, 693 So. 2d 972, 975-76 (Fla. 1997); Carroll v. Firestone, 497 So. 2d 1204 (Fla. 1986).

The ballot title and summary, read together, must disclose the "chief purpose" of the amendment:

This Court has construed section 101.161(1) [Florida Statutes] to mean

> that the ballot title and summary for a proposed amendment must state the chief purpose of the measure in clear and unambiguous language. ... This is 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. ... However, we have held that the ballot information need not explain every detail or ramification of the proposed amendment.

Limited Casinos, 644 So. 2d at 74 (citations omitted); see also Carroll v. Firestone, 497 So. 2d at 1207 (Boyd, J., concurring) ("The fact that people might not inform themselves about what they are voting for or petitioning for is immaterial so long as they have an opportunity to inform themselves."). All that matters is that the voter is placed on fair notice through clear and unambiguous ballot language, and has an opportunity to become fully informed. The summary of the drug treatment amendment satisfies these requirements.

The ballot summary also meets the word limit of the statute, explains the chief purpose of the amendment, and accurately reflects the text. The summary would have fairly disclosed the chief purpose and ramifications of the amendment if it had stopped after its first sentence, saying only that "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." The summary provides additional detail that is almost certainly not required to make the summary valid, but was furnished in an attempt to be thorough.

Ironically, however, virtually all of the challenges that the Attorney General levels at the summary address the additional details that were added for the very purpose of ensuring full and fair disclosure within the strict word limit. When viewed fairly and subject to the governing standards of review, this summary more than adequately advises the voter of the chief purpose and principal details of the amendment. The summary furnishes no basis for removing the amendment from the ballot.

B. THE SUMMARY IS NOT REQUIRED TO CONTAIN THE LEVEL OF DETAIL THAT THE ATTORNEY GENERAL WOULD REQUIRE OF IT.

The Attorney General raises six questions about the level of detail contained in the ballot summary and the wording of the summary. Each question will be addressed individually below, but all six are answered easily with the unassailable proposition that the sponsor cannot possibly – and is not required to – spell out every detail and ramification of the amendment in the ballot title and summary. Limited Casinos, 644 So. 2d at 74.

1. ***Not Open To Felons*****.** This question by the Attorney General results from a forced and illogical misreading of the proposed amendment by failing to distinguish between the drug offenses themselves and other, non-drug offenses, committed during the same criminal episode. The Attorney General questions whether the ballot

summary expresses "the full intent of the amendment in terms that are 'clear and unambiguous' to the average voter." [A 3 at 4.] He amplifies what he means in this question by arguing that the summary does not inform the voter that the option of treatment or rehabilitation is not available to offenders whose drug offenses constitute felonies. [Id. at 4.] That, however, is not what the amendment says.

The amendment states on its face in subparagraph (a) that it applies to the offenses of possessing or purchasing a controlled substance or drug paraphernalia. The amendment is not limited as to whether the qualifying drug offenses are felonies or misdemeanors. These offenses in and of themselves are commonly felonies. E.g., §§ 893.13(2)(b), (5)(a), (5)(b), (6)(a), Fla. Stat. (2000). Thus, it is incorrect to interpret the amendment as applying only to non-felony-level drug offenses.

The correct interpretation of the amendment, which is clear from a fair reading of its plain language, is that the option of rehabilitation and treatment is not available to drug offenders who commit any other offense constituting a felony in the same episode as the drug offense. Subparagraph (b) of the amendment says just that: "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 . . . ." (Emphasis added.) This language is clear and unambiguous and should not be misinterpreted as the Attorney General has done in raising this objection. When

the text is correctly interpreted, it becomes clear that the summary clearly and accurately discloses the essence of the text.

2. *Consolidation Of Single-Episode Offenses*. The Attorney General's second objection likewise employs a strained interpretation of the amendment, and is unfounded. The Attorney General suggests that because the text of the amendment allows multiple offenses occurring in the same episode to be treated as a single "offense" for purpose of electing treatment or rehabilitation, the voter "might be misled by the summary to believe that any offender who commits three offenses would be ineligible for the treatment option offered by the amendment, completely unaware that the option would remain open if the offender committed the multiple offenses as part of the same criminal episode." [Id.]

The first problem with the Attorney General's objection is that it again presumes that the voter will not take the time to read and understand the text of the amendment, which clearly and unambiguously defines a single criminal episode for purposes of this amendment: "If more than one qualifying offense under this section occurs during a single criminal episode, it shall be considered a single offense." [Amendment ¶ (a).] This provision is a matter "directly connected" to the single subject of the amendment, and thus is authorized by the Florida Constitution. Art. XI, § 3, Fla. Const. The ballot summary fairly discloses that treatment and rehabilitation must be offered for the first

two offenses, and any voter who cares to understand more fully what is meant by the term "offenses" need only proceed to read the text of the amendment. The ballot summary cannot possibly include the detail of the definitions provided in the text, and is not as a matter of law required to do so. Limited Casinos, 644 So. 2d at 74.

The second problem with the Attorney General's objection is that it improperly takes the summary's reference to two offenses out of its context. Viewed in its proper context, the summary is not misleading. The chief purpose of the amendment is to give nonviolent drug offenders a right to elect treatment and rehabilitation instead of sentencing or incarceration. The summary fairly discloses that chief purpose and immediately answers the logical question of how many times a drug offender can elect this diversion in lieu of prosecution: twice. The reference in the summary to two offenses makes that perfectly clear, and is entirely consistent with the expanded detail supplied in the text, which addresses the intended treatment of multiple offenses committed during a single criminal episode.

The text of the amendment necessarily provides more detail than the summary can provide. The added detail in the text ensures that prosecutors cannot deprive the otherwise-qualified drug offender of the right to elect treatment twice by charging multiple offenses separately even though they were committed in a single episode. Otherwise, the right to elect treatment twice would be illusory. For present purposes,

what matters is that the voter is placed on notice that qualifying drug offenders have two opportunities to receive treatment. The details, although important to implementation, need not be provided in the summary, and indeed cannot be provided within the strict word limit.

3. ***The Role Of The Trial Court Judge.*** In this objection, the Attorney General again appears to misinterpret the amendment, and raises what amounts to a disagreement with the merits of the proposal – which is irrelevant here. The only question before the Court is whether the ballot summary fairly discloses the chief purpose and ramifications of the amendment. The Attorney General suggests that it "may not be clear to the voter from the summary that at least for the first two offenses, the court has no role or apparent jurisdiction over the assignment of the individual to drug treatment and rehabilitation," and that the requirement of the text that a "qualified professional" determine the exact course of treatment would "negate" a longstanding tradition of allowing judges to make such determinations. [Id.]

As a practical matter, the Attorney General exaggerates the case, and engages in speculation about how the amendment will be implemented, by asserting that the drug treatment amendment essentially eliminates the role of the trial judge. Under the amendment, the trial judge retains the exclusive authority to determine, in the first place, whether any given offender is eligible to elect treatment and rehabilitation. The

trial judge has the continuing duty to monitor the offender, and the authority to determine whether violations or other problems in the course of treatment merit transfer of the offender to a new program or removal from treatment altogether. The trial judge alone may preside over the recommencement of prosecution of any individual removed from treatment who has not yet been convicted, and the trial judge retains exclusive authority to sentence such individuals and those deemed to be unamenable to treatment. The Attorney General's overly broad criticism of the amendment's merits is inaccurate and provides no basis to strike the amendment from the ballot.

Even though the drug treatment amendment creates a right to treatment or rehabilitation under narrowly defined circumstances, and thus changes current law in that respect, its summary is not fatally misleading for failing to list in detail the role that the trial judge will occupy after adoption of the amendment. The very point of a constitutional amendment is to change the law, either in substance by adding new provisions or amending existing laws, or in status by elevating certain aspects of current law to constitutional status, or both. The fact and nature of the change proposed in the drug treatment amendment are clearly and fairly disclosed to the voter, who may then exercise the democratic right to voice an opinion on the subject. A change in the law or "tradition" is no reason to strike a proposed amendment from

the ballot, else there would be no amendments at all and the constitutional right of initiative would be illusory.

The remainder of this objection is that the voter might not be aware that the amendment changes the role of the trial judge by allowing a qualified treatment professional, rather than the trial court judge, to determine the exact nature and course of the offender's treatment and rehabilitation. This objection is unfounded, in the first place, because the summary is not required to disclose anything other than the chief purpose and ramifications of the amendment. This summary meets that requirement regardless of the level of detail it includes about the interplay of the trial court and treatment professionals.

Even if the role of the trial judge under the amendment were something that had to be discussed in the ballot summary, the summary is sufficient because it expressly states that the trial court's discretion to offer treatment and rehabilitation continues to exist after the offender has had the two chances guaranteed by the amendment: "discretionary with court thereafter [after first two offenses.]" The summary thus expressly addresses the role of the court and makes it perfectly obvious that the option rests with the offender for the first two offenses and with the trial judge thereafter. It is neither necessary nor possible for the summary to spell out within its 75 words, in addition to the chief purpose, the detailed implications of the amendment. The voter

is placed on notice, by the very nature of the amendment and the express language of the summary discussing the offender's right to elect treatment and the resumption of the trial court's discretion "thereafter," how the role of the judge will be affected in these cases. No more is required of the summary.

4. ***Eighteen-Month Deadline*****.** The Attorney General next seizes on a difference in the wording of the summary and the text, suggesting that the summary's reference to "eighteen months in treatment," may mean something different than the text's explanation that treatment will terminate eighteen months after the individual elects to receive treatment. The fact that the wording is slightly different is of no consequence, because the summary and the text remain consistent in their substance. Paragraphs (d) and (e) in the text of the amendment establish criteria for determining when treatment shall be terminated: (1) when an offender is deemed unamenable to treatment (in which case the offender returns to the criminal justice system); or upon the first to occur of (2) successful completion of the prescribed treatment program, (3) a qualified mental health professional's finding of successful treatment (short of the entire treatment term), or (4) the passage of eighteen months after the election of treatment. These details of implementation provide certainty and closure and allow for fiscal planning, by placing outside limits on the course of treatment.

The summary, which is not allowed enough words to repeat these details,

summarizes for the voter the fact that drug offenders who successfully complete their treatment in less than eighteen months, or who participate in the maximum course of treatment but nevertheless do not achieve success, cannot be prosecuted or sentenced. The summary expressly mentions the eighteen-month limit and thus places the voter on notice to inquire further for additional details, which are provided in the text. That is disclosure enough to satisfy the applicable criteria.

The fact that the summary uses the phrase "in treatment," whereas the text amplifies that the eighteen months runs from the date of "election of" treatment, is inconsequential. The Attorney General apparently means to suggest that technically, if there is any delay between the date of election of treatment and the date when treatment commences, and if the summary means that offenders are guaranteed a full eighteen months of treatment, then the summary might mislead voters into thinking all offenders get the full eighteen months of treatment whereas the text creates the possibility that the course of treatment might be shorter if treatment is considered to commence at some date after the date of election of treatment. The only way this difference in terminology could be misleading would be if the summary were construed as guaranteeing the offender a full eighteen months in a treatment program, and if the phrase "in treatment" were construed to exclude any time after the election of treatment but leading up to the first therapy or other intervention session itself.

The summary cannot be so construed, because the summary itself makes it clear that there is no such guarantee of a full eighteen months of treatment. To the contrary, the summary discloses on its face that those unamenable to treatment may be prosecuted or sentenced instead. Further, nothing supports construing the summary's use of the phrase "in treatment" as meaning literally participating in therapy or a similar course of treatment. Rather, the more logical interpretation of "in treatment" is to construe it as referring to the treatment phase of disposition, which commences, as the text specifies, upon the election of treatment.

The text addresses the problem of potential delays in commencing treatment after electing treatment, and necessarily contains more detail than would fit in the summary. The summary discloses the appropriate time limit, and the inability of the summary to explain within its 75-word limit exactly how the eighteen-month limit would work in practice is far from fatal. The key is that there is a time limit, and that time limit is accurately disclosed in the summary so that the voter may become further educated about the details of its operation if the voter so chooses.

5. *Transfers Among Kinds Of Treatment.* Another misinterpretation of the summary leads the Attorney General to criticize the summary as leading the voter to believe the offender would be prosecuted and sentenced after only one chance at treatment, whereas, he argues, the text "offers the offender numerous chances." [Id.

at 6.] The Attorney General is incorrect: the summary does not state that the offender has only one chance. The summary discloses that an "individual unamenable to treatment may be prosecuted or sentenced." Contrary to the Attorney General's attempt unilaterally to impose his own single-chance definition on the phrase "unamenable to treatment," nothing in this phrase either expressly or impliedly limits the offender to a single opportunity to succeed in the treatment program.

The use of the phrase "unamenable to treatment" raises the question of what that means in practical application, and the answer to the question is provided in the text. The logical question of what happens to offenders who do not make good faith efforts to participate in treatment programs, or who fail to complete their programs for one reason or another, is a permissible matter directly connected with the amendment, but is not required to be amplified in the ballot summary itself.

The summary cannot possibly address all of the potential scenarios that may occur once an offender enters treatment, and so it fairly discloses to the voter that an "[I]ndividual unamenable to treatment may be prosecuted or sentenced." Thus, the voter is assured that an offender must make a meaningful effort toward rehabilitation and cannot merely elect treatment as an easy out. Nothing in the summary of these provisions says, or suggests, or implies, that the offender only has one chance to make that meaningful effort. Thus, the summary accurately reflects the text and is not

misleading. The summary discloses the concept of an individual "unamenable to treatment," and allows the voter the opportunity to become educated as to what that means. That is enough.

6. ***Sentence Fragment.*** Finally, the Attorney General criticizes the summary's use of a two-word phrase, "Legislative implementation," suggesting that the absence of a verb may create uncertainty as to whether legislative implementation is merely authorized, or required. [Id.] This objection is meritless for at least two reasons. First, the subject of legislative implementation is disclosed and the intended meaning is clear enough: the amendment is not fully self-executing, and additional details of its implementation remain to be developed. Second, a 75-word ballot summary has never been subjected to grammatical rules reserved for formal narrative writing, and the Court should not start doing that now. Neither this nor any other question that the Attorney General raises about the summary suffices to justify striking the amendment from the ballot.

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

Significantly, the Attorney General does not suggest that the drug treatment amendment contains more than one subject or that it amends more than one provision of the Florida Constitution. Rather, the Attorney General's single-subject attack

focuses on the asserted impact that the amendment would have on the branches of Florida government. As discussed in detail below, none of the Attorney General's challenges withstands scrutiny or establishes a violation of the single-subject rule. Accordingly, the Court should approve the amendment for placement on the ballot.

A. THE AMENDMENT EMBODIES ONLY ONE DOMINANT PURPOSE, AND IS NOT GUILTY OF LOGROLLING.

Article XI, Section 3, Florida Constitution, specifies that any amendment, except for those limiting the power of government to raise revenue, "shall embrace but one subject and matter directly connected therewith." The purpose of the single-subject provision is to prevent "logrolling," a practice in which separate issues are rolled into a single initiative in order to aggregate votes or secure approval of an otherwise unpopular issue. In re Advisory Op. to Atty. Gen.—Save Our Everglades, 636 So. 2d 1336 (Fla. 1994). A proposed constitutional amendment meets 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.—Limited Political Terms in Certain Elective Offices, 592 So. 2d 225 (Fla. 1991). In Florida Locally Approved Gaming, this Court explained that a proposed amendment meets the single-subject test "when it 'may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme. Unity of object and plan is the universal test.' City of Coral Gables v. Gray, 154 Fla. 881, 883-884, 19 So. 2d 318, 320 (1944)." Advisory Op. to Atty. Gen. re Florida Locally Approved Gaming, 656 So. 2d 1259, 1263 (Fla. 1995).

There can be no doubt that the single dominant plan or scheme of the drug

treatment amendment is to give nonviolent drug offenders a right to receive treatment and rehabilitation instead of sentencing or incarceration. All the provisions in the amendment relate directly to the implementation of this objective. No portion of this amendment is directed toward any other purpose. The Attorney General does not contend otherwise. The amendment meets the single-subject requirement of Article XI, Section 3, Florida Constitution.

B. THE AMENDMENT DOES NOT PERFORM THE FUNCTIONS OF MULTIPLE BRANCHES OF GOVERNMENT.

The Attorney General suggests that this amendment violates the single-subject rule by performing or substantially altering the functions of all three branches of Florida government. [A 3 at 8.] The Court has recently stated this rule as meaning that "identifiable changes in the functions of different levels and branches of government are sufficient to warrant invalidating the amendments." Advisory Op. to Atty. Gen. re Amend. to Bar Gov't from Treating People Differently Based on Race in Pub. Educ., 778 So. 2d 888, 896 (Fla. 2000). However, the Court also has stated consistently that an amendment may affect multiple branches or levels of government without violating the single-subject rule:

> As the proponents of the amendment point out, the fact that an amendment affects multiple functions of government does not automatically invalidate a citizens' initiative. As we explained in detail in Limited Casinos:

> We recognize that the petition, if passed, could affect multiple areas of government. In fact, we find it difficult to conceive of a constitutional amendment that would not affect other aspects of government to some extent. However, this Court has held that a proposed amendment can meet the single-subject requirement even though it affects multiple branches of government.

Advisory Op. to Atty. Gen. re: Florida Transp. Initiative (High Speed Rail), 769 So. 2d 367, 369-70 (Fla. 2000) (quoting Limited Casinos, 644 So. 2d at 74). Thus, the fact that an amendment affects multiple branches of government does not invalidate it. The Court will not deprive the voters of the opportunity to pass upon a proposed amendment unless the amendment goes further, usurping or otherwise substantially affecting the functions of more than one branch or level of government. This amendment does not cross that line.

The Attorney General's multiple-branch arguments rest upon an invalid analytical foundation. The Attorney General relies on separation of powers cases, none of which arose in the context of a citizens' initiative. While separation of powers cases may illustrate how a member of one branch of state government, or a statutory law, may violate the separation of powers doctrine by encroaching on the exclusive authority of another branch, this Court has never applied that analysis to determine whether a citizens' initiative satisfies the single-subject rule. The context here is different, and the difference is significant.

The Court has stated that "short of constitutional amendment," the balance of power set forth in the Florida Constitution cannot be reallocated. Chiles v. Children A-F, 589 So. 2d 260, 268-69 (Fla. 1991) (emphasis added). This, of course, is a constitutional amendment, and although it does not reallocate the balance of power in state government, the point is that the proper analysis to be applied is that developed in the context of constitutional amendments, not legislation or agency action or local governmental action as in the cases cited by the Attorney General.

Within the relevant context of citizens' initiatives to amend the constitution, the Court recognizes that most such amendments will necessarily affect multiple branches of government. Limited Casinos, 644 So. 2d at 74. The line that amendments may not cross is drawn in favor of allowing initiatives to go to the voters unless the initiative effects "precipitous" and "cataclysmic" changes in multiple branches or levels of state government or "substantially" alters their functions. High-Speed Rail, 769 So. 2d at 369 (approving amendment even if it limits gubernatorial veto power in addition to affecting other branches of government, because the effect is not so precipitous or cataclysmic as to violate the single-subject rule); Advisory Op. To Atty. Gen. re Fish & Wildlife Conservation Comm'n, 705 So. 2d 1351, 1353 (Fla. 1998) (permissible to affect more than one branch of government as long as it does not substantially alter them); Fine v. Firestone, 448 So. 2d at 988 (must "protect against multiple precipitous

changes").

The common analytical thread in this aspect of the Court's citizens' initiative decisions has always been to determine whether the impact that the proposed amendment will have on each branch of government is limited to that specifically related to the single subject of the amendment. If so, the Court approves the amendment. See, e.g., Advisory Op. to Atty. Gen. re Term Limits Pledge, 718 So. 2d 798, 802 (Fla. 1998) (amendment could impact multiple functions of government if related specifically to the single subject of the amendment, "as the constitutional expansion of the Secretary of State's powers is related specifically to the issue of the term limits pledge"); Public Funding, 693 So. 2d at 975 ("although the proposed amendment in the instant case limits public funding for four separate offices [encompassing multiple branches of government], the only subject that the proposed amendment addresses is the prohibition of public financing for specified public elective offices … the amendment simply addresses the process for electing candidates to these respective offices"); Limited Political Terms, 592 So. 2d at 227 (although amendment affected officeholders in all branches of government, amendment did not violate single-subject rule because the impact was limited to the identifiable single subject of the amendment); In re Adv. Op. to Atty. Gen., English – The Official Language of Fla., 520 So. 2d 11, 13 (Fla. 1988) (although amendment

would have "broad ramifications" on all aspects of government, "on its face it deals with only one subject," and did not substantially alter or perform functions of multiple branches because its implementation provisions were "directly connected to [the single subject of] establishing English as the official state language"); Carroll v. Firestone, 497 So. 2d at 1205-06 (amendment valid although it legalized lottery, created a trust fund, and mandated deposits into the fund and appropriations by the Legislature, because provisions were "directly connected to the primary purpose of authorizing a lottery"); Smathers v. Smith, 338 So. 2d 825, 831 (Fla. 1976) (legislative initiative providing for legislative overview of executive rules did not impermissibly perform multiple government functions where its impact was functionally relevant and reasonably germane to the constitutional provision; "The functional relevance of one to the other (though minimal) being established, our inquiry of necessity is curtailed.").

All of these cases illustrate that the proper analysis is whether a proposed citizens' initiative impacts government in a manner limited to the identifiable single subject of the amendment. In this way the Court may ensure that an amendment's impact on Florida government is neither cataclysmic nor precipitous, because it is limited to a single identifiable subject, while protecting the right of the people to amend their constitution as they see fit. As in all of the cases cited above, the drug

treatment amendment, although it will impact each branch of government in some way by requiring compliance with its provisions, does not impermissibly, cataclysmically, or precipitously change the functions of government in any manner beyond that required to comply with the single subject of the amendment. It therefore does not violate the single-subject rule, and should be approved for submission to the voters.

A second important principle that emerges from the Court's citizen initiative cases also applies here. The Court has held that where an amendment merely builds on current law, it does not substantially alter the governmental function at issue. Fish & Wildlife, 705 So. 2d at 1354-55 (no single-subject violation in amendment that "builds upon an established constitutional entity, which already possesses" powers of more than one branch of government); Advisory Op. to Atty. Gen. – Fee on Everglades Sugar Production, 681 So. 2d 1124, 1128 (Fla. 1996) (proposed sugar tax would not perform multiple government functions because it "is a levy by an existing agency"). Here, too, the drug treatment amendment merely builds on the current state of Florida law, which already not only encourages but requires that treatment be provided to drug offenders. Thus, the amendment cannot be said to substantially alter or perform these functions of government that already exist.

1. ***Judicial Branch*****.** The Attorney General states that the amendment "affects the judiciary" by limiting a court's ability to sentence qualifying offenders

who elect treatment and rehabilitation. [Id. at 8 (emphasis added).] The Attorney General also argues that the amendment will remove from the trial judge the decision-making duty of imposing sentence, by allowing the offender to elect treatment. [Id. at 9.] But the Attorney General's own choice of words reveals the weakness of this objection. Nothing prohibits an amendment from "affecting" the judicial branch. The amendment does not perform the judicial function, but rather it preserves the judicial function in a manner consistent with the purpose of the amendment and consistent with the State's current drug court programs.

The drug treatment amendment is not invalid for giving certain offenders the initial election of treatment for the first two offenses, rather than allowing the trial judge to make that determination. Because the impact on the judiciary is so minimal in light of current law and the drug court program, the change does not rise to the level required to constitute a substantial performance of a judicial branch function. Judges always operate within the framework of the law. When laws are changed, judges necessarily apply the law differently than before in matters governed by the changed laws, but this does not constitute a substantial alteration of the judicial branch function.

2. ***Executive Branch*****.** The Attorney General suggests that the amendment impacts the executive branch because it "limits prosecutorial discretion," thereby

"altering" an executive branch function. [Id. at 8 (emphasis added).] Further, the Attorney General suggests that the amendment "substantially interferes" with the executive branch prosecutorial function by allowing qualified offenders to be diverted out of the criminal justice system. The Attorney General's argument is factually unsound, because the amendment does not affect the power of prosecutors to charge crimes as they see fit. To the contrary, the amendment contemplates that the charging of drug offenses and other offenses committed in the same episodes will proceed just as it always has. In addition, Florida law currently allows diversion to treatment on motion of either party or the trial court itself. See, e.g., § 397.12, Fla. Stat. (2001) (stating legislative intent to "provide, for substance abuse impaired adult and juvenile offenders, an alternative to criminal imprisonment by encouraging the referral of such offenders to service providers not generally available within the correctional system instead of or in addition to criminal penalties"); id. § 397.334(3)(c), (d) ("Eligible participants [for drug court program] are identified early and promptly placed in the drug court program. … Drug court programs provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.); id. § 948.08 (pretrial diversion program, subject to stated exceptions). Therefore, because prosecutors do not currently exercise control over the ultimate dispositions of cases, the amendment does not deprive prosecutors of any power that they currently possess.

Thus, the amendment does not invade the province of the executive branch, and does not violate the single-subject rule.

3. ***Legislative Branch*****.** Finally, the Attorney General suggests that the amendment will substantially affect the Legislative functions of prescribing penalties for crimes, and appropriating funds. [Id. at 8.] The Attorney General overlooks the fundamental principle that an amendment is not invalid because it changes current statutory law. Rather, the statutes simply yield when a constitutional amendment makes it necessary.

The Court has never held that the fact that a constitutional amendment changes the current statutes is grounds to invalidate the amendment, even if the amendment for the first time establishes that certain activities constitute crimes, and even if the amendment designates the categories of penalties that will apply to violations of its provisions. The Net Ban amendment did just that, criminalizing the use of specified types and sizes of nets, and requiring that violations be punished pursuant to a single statute specified in the amendment. Advisory Op. to Atty. Gen. – Ltd. Marine Net Fishing, 620 So. 2d 997, 998-99 (Fla. 1993). The Net Ban amendment deprived the Legislature of the right to designate certain behavior as criminal, and deprived the Legislature of the right to punish violations in any way other than the way designated by the amendment. Applying the same logic that the Attorney General applies to the

drug treatment amendment would produce the conclusion that the Net Ban amendment, expressly designed to be self-executing, also deprived the executive branch agency having jurisdiction over saltwater fishing, the Department of Natural Resources, of any ability to implement a contrary or different policy with respect to marine net usage. The Net Ban Court, however, refused to find that the amendment improperly performed the functions of multiple branches of government or otherwise violated the single-subject rule, concluding instead that "the amendment is functionally and facially unified and therefore complies with the single-subject requirement." Id. at 999. The drug treatment amendment is far less invasive than was the Net Ban amendment, and so much the more should be approved for submission to the voters.

The Attorney General's second objection, with respect to appropriations, mirrors a popular theory of opponents to constitutional amendments: that amendments should be invalidated under the single-subject rule because their implementation will require Legislative appropriations. The Court, however, has always rejected the argument. See High Speed Rail, 769 So. 2d at 370-71 (firmly rejecting the argument and citing other cases in which the argument was rejected). Unless an amendment "require[s] the Legislature to spend a specific percentage of the budget or even a specific amount," it does not improperly perform the Legislative appropriation

function. Id. This amendment will have to be implemented, and the Legislature may have to appropriate funds to implement it, although the experience of other states with similar laws indicates that the drug treatment amendment will have the opposite effect, producing a significant savings of state revenues. In any event, the drug treatment amendment leaves the performance of that function entirely up to the Legislature. The amendment does not substantially perform or alter any Legislative function, and does not violate the single-subject rule. It should go before the voters.

CONCLUSION

The standard for reviewing initiative petitions is highly deferential. The drug treatment amendment does not violate the governing legal standards in any respect. The amendment is far from being clearly and conclusively defective, and to the contrary is well within the bounds of the governing law.

The drug treatment amendment "embraces but one subject and matter directly connected therewith." Its single subject is to give certain nonviolent drug offenders a right to receive treatment and rehabilitation in lieu of sentencing or incarceration. The title and ballot summary accurately explain this chief purpose and significant ramifications of the amendment, and are not misleading. The text of the amendment properly contains only such additional details as are directly connected with the single subject of the amendment. The impact of the amendment is limited to the identifiable

single subject of the amendment. It certainly does not fall to the level of creating precipitous or cataclysmic changes in the functions of different branches of Florida government. The Court should approve the amendment for submission to the voters.

Respectfully submitted this 10th day of October, 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; and by hand delivery 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 10th day of October, 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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