IN THE SUPREME COURT OF FLORIDA
Case No. SC02-449

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: LOCAL TRUSTEES AND STATEWIDE GOVERNING BOARD TO MANAGE FLORIDA'S UNIVERSITY SYSTEM

INITIAL BRIEF AND APPENDIX OF THE SPONSOR, EDUCATION EXCELLENCE FOR FLORIDA

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INTRODUCTION

Education Excellence for Florida ("EEF") has invoked the initiative petition process of Article XI, Section 3, of the Constitution of the State of Florida ("Florida Constitution") to propose an amendment. The amendment would add a new Section 7 to Article IX for the purpose of creating a system of governance for the State University System. EEF's Petition has been forwarded to the Court by the Attorney General for an advisory opinion. The Attorney General's Request for Opinion[1] raises two issues: ballot title and summary, under Section 101.161, Fla. Stat. (2000), and one subject under Article XI, Section 3, Florida Constitution. The Court has jurisdiction. Art. IV, § 10; art. V, § 3(b)(10), Fla. Const.

STATEMENT OF THE CASE AND FACTS

The mission of Education Excellence for Florida has been to take the best constitutional principles from the best university systems in the country, merge them into a workable whole, and make that governance system part of the Florida Constitution for the lasting benefit of the State and its citizens.

Factual Background

Since 1905, Florida's institutions of higher learning have been governed by systems that have been created, changed, and abolished by the legislature. For the past fifty years, the relationship between the legislature and universities has been contentious and harmful to both sides.[2]

In 1956 the legislature established the Legislative Investigative Committee, more popularly known as the "Johns Committee." The Committee spent its time looking for communist infiltration in the universities, investigated homosexual conduct by faculty and students, and identified authors of books whose contents were felt to be

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[1]The Attorney General's Request for Opinion will be referenced as: "AG's Request"

[2] For a history of the State University System of Florida, see generally HENDRIX CHANDLER, DREAMS AND POLITICAL REALITIES: A 20TH CENTURY HISTORY OF FLORIDA'S UNIVERSITY SYSTEM (1983). The legislative history recounted here can be found at pages 26 through 51.

subversive. The Committee was in operation for nine years. The turmoil resulted in an order of censure by the American Association of University Professors.

In 1962, the Board of Control authorized a comprehensive study of the State University System headed by state business leaders and outside education consultants. The resulting report, entitled the "Space Era Education Study," was released in 1963. The Study was highly critical of the politicization of Florida's university governance system, and was instrumental in the creation of the Board of Regents in 1965. Among the reforms, the four-year terms for members of the former Board of Control were lengthened to nine years for the new Board of Regents, so that a governor could not dominate the board through the appointive power. The American Association of University Professors lifted their order of censure in 1968.

The tension between the legislature and the university governance system did not subside. In 1971, the legislature attempted to abolish the Board of Regents because of differences with the Board's university management policies. In 1978, the voters considered and rejected a constitutional amendment to grant the Board of Regents constitutional status. The legislature resented the attempt. In 1979 and 1980 efforts to abolish the Board of Regents were renewed. The 1980 attempt saw the measure pass both Houses, only to be vetoed by the Governor. Differences continued, and in the legislative session of 2000, the Board of Regents was abolished effective 2003. In 2001, the effective date was advanced to July 1 of that year.

Under the new Florida Education Governance Reorganization Implementation Act, the legislature has given itself ultimate and final control over universities. The Act provides that the legislature has the power to make education policy, enact education laws, appropriate public funds, and allocate those funds to their ultimate destination. 2001 Fla. Laws § 229.0061(2)(a) (SB 1162). The Act's new Florida Board of Education -- with responsibility stretching from kindergarten all the way through university graduate education -- is not a policy-making board. The terms of board members have been returned to four years and the Board's primary responsibility is to "enforce" legislative acts and "force accountability for results." *Id*. Florida is now the only state in the union without a citizen board devoted to higher education.[3]

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[3]THE NORTH CAROLINA CENTER FOR PUBLIC POLICY RESEARCH, INC., GOVERNANCE AND COORDINATION OF PUBLIC HIGHER EDUCATION IN ALL 50 STATES 175-228 (2000), Appendix A.

Intent of the Sponsor

The proposed amendment reflects the venerable American tradition of the people entrusting control of their academic institutions to citizen boards rather than to their elected legislators, governors, or bureaucracies. ASSOCIATION OF GOVERNING BOARDS OF UNIVERSITIES AND COLLEGES, GOVERNING IN THE PUBLIC TRUST: EXTERNAL INFLUENCES ON COLLEGES AND UNIVERSITIES 2, 4 (2001). The amendment incorporates many of the features of the acclaimed North Carolina system, with a statewide board to govern the system and a second tier of boards for each university to administer local affairs.

Elected representatives are understandably concerned about staying in office and must react quickly to the political pressure of the day. Citizen boards with constitutional protection serve as both a buffer and a bridge to provide sustained, consistent, long-term policy leadership in the face of increasing turnover and turbulence in state political leadership. Constitutional status for the university governance system would enable those in universities to spend less of their extraordinary talents and less of the state's limited resources on political controversy and more of their time and talents to efficiently achieve stability, academic quality, and education excellence.

Title, Summary, and Text of the Amendment

The eleven-word ballot title[4] as it appears in the Petition is:

> LOCAL TRUSTEES AND STATEWIDE GOVERNING BOARD TO MANAGE FLORIDA'S UNIVERSITY SYSTEM

The seventy-five-word ballot summary as it appears in the Petition is:

> A local board of trustees shall administer each state

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[4] § 101.161(1), Fla. Stat. (2000) states that the ballot title shall not exceed 15 words in length, and the ballot summary shall not exceed 75 words in length.

university. Each board shall have thirteen members dedicated to excellence in teaching, research, and service to community. A statewide governing board of seventeen members shall be responsible for the coordinated and accountable operation of the whole university system. Wasteful duplication of facilities or programs is to be avoided. Provides procedures for selection and confirmation of board members, including one student and one faculty representative per board.

The full text of the proposed Amendment as it appears in the Petition is:

Article IX of the Florida Constitution is hereby amended to add the following as Section 7:

TEXT: State University System.--

(b) State University System. There shall be a single state university system comprised of all public universities. A board of trustees shall administer each public university and a board of governors shall govern the state university system.

(c) Local Boards of Trustees. Each local constituent university shall be administered by a board of trustees consisting of thirteen members dedicated to the purposes of the state university system. The board of governors shall establish the powers and duties of the boards of trustees. Each board of trustees shall consist of six citizen members appointed by the governor and five citizen members appointed by the board of governors. The appointed members shall be confirmed by the senate and serve staggered terms of five years as provided by law. The chair of the faculty senate, or the equivalent, and the president of the student body of the university shall also be members.

(d) Statewide Board of Governors. The board of

> governors shall be a body corporate consisting of seventeen members. The board shall operate, regulate, control, and be fully responsible for the management of the whole university system. These responsibilities shall include, but not be limited to, defining the distinctive mission of each constituent university and its articulation with free public schools and community colleges, ensuring the well-planned coordination and operation of the system, and avoiding wasteful duplication of facilities or programs. The board's management shall be subject to the powers of the legislature to appropriate for the expenditure of funds, and the board shall account for such expenditures as provided by law. The governor shall appoint to the board fourteen citizens dedicated to the purposes of the state university system. The appointed members shall be confirmed by the senate and serve staggered terms of seven years as provided by law. The commissioner of education, the chair of the advisory council of faculty senates, or the equivalent, and the president of the Florida student association, or the equivalent, shall also be members of the board.

Course of the Proceedings

On September 28, 2001, the Secretary of State approved the format of the Petition. (Appendix 1). EEF then began the process of gathering sufficient signatures for placement of the Petition on the ballot for the general election to be held in November, 2002.

In due course, EEF submitted to the Office of the Secretary of State the requisite number of signed petitions to initiate the advisory opinion process. On February 12, 2002, the Office of the Secretary of State confirmed that county supervisors had verified a sufficient number of signatures on the Petition to request an advisory opinion from the Court, and it delivered the Petition to the Attorney General. (Appendix 3). On March 4, 2002, the Attorney General transmitted the Petition to the Court for an advisory opinion. (Appendix 4).

On March 5, 2002, the Court set March 20th and April 4th as the dates for initial and responsive briefs to be filed by interested parties. This brief is filed by Education Excellence for Florida in support of the Petition.

SUMMARY OF ARGUMENT

In this advisory opinion proceeding, the Court determines only if an initiative petition complies with two requirements. First, the ballot title and summary must meet a statutory test and accurately reflect the substance and effect of the proposal in clear and unambiguous language so as to give electors fair notice of the proposal's purpose. § 101.161(1), Fla. Stat. (2000). Second, a proposed amendment must meet a constitutional test and consist of "but one subject and matter directly connected therewith." Art. XI, § 3, Fla. Const. The Court's standard of review is *de novo*, and has always been tempered by the principal that the sovereign right of the people to amend their constitution should be preserved unless a proposed amendment is "clearly and conclusively defective."

The ballot title and summary convey the chief purpose of the proposed amendment B to establish a governance system for Florida's universities located within the executive branch. The system is described as a two-tier system, with one tier composed of a statewide governing board and a second tier of boards for each university in order to administer its local affairs. The term "local" is used in the ballot summary to describe the local responsibilities of the campus boards of trustees as compared to the statewide responsibilities of the Board of Governors for the system as a whole.

The amendment was carefully drawn in compliance with the single-subject requirement. With regard to the first of three questions raised by the Attorney General, the proposed university governance system has a "oneness of purpose" logically related and connected as component parts of a single dominant plan. As part of that plan or scheme, the amendment properly and logically enumerates the powers and duties of the boards it creates, much like the powers and duties enumerated in the initiative creating the Fish and Wildlife Conservation Commission previously approved by this Court. The enumeration of powers and duties for university boards is also a logical part of the many constitutional boards created for universities by other state constitutions across the country.

With respect to the Attorney General's second question, the chosen

amendment language imposes a clear limitation on the university system's governance, making it impossible for the management of the executive branch to alter or perform the legislature's exclusive power of appropriation.

Concerning the Attorney General's third question, no other provision of the constitution -- in particular, Sections 1 and 3 of Article IX -- will be changed or removed from the constitution because of the adoption of the proposed amendment. The legislature's authority, while not usurped, will be modified. The modification is a natural consequence of the people's absolute right to preempt legislation by amending the constitution through the initiative process.

The amendment has been studiously drawn to easily meet both the statutory requirement for title and ballot summary and the constitutional requirement for single subject.

ARGUMENT

I. 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." This Court has held that, before it can invalidate an initiative petition, "the record must show that the proposal is clearly and conclusively defective . . . . " *Advisory Op. to the Att'y Gen. Re Amendment to Bar Gov't From Treating People Differently Based on Race in Public Educ.,* 778 So. 2d 888, 891 (Fla. 2000).

II. THE BALLOT TITLE AND SUMMARY CLEARLY AND ACCURATELY STATE THE CHIEF PURPOSE OF THE AMENDMENT

The Attorney General correctly states that the ballot title and summary appear to express the chief purpose of the amendment to establish a governance system for Florida's universities consisting of a local board of trustees for each state university

and a statewide governing board to manage the system. AG's Request, pp. 3, 5. The proposed amendment also complies with the requirements of section 101.161, Fla. Stat., for the fifteen-word limitation for the title and the seventy-five-word limitation for the ballot summary. In addition, the chief purpose of the amendment can easily be put to the voters so that a "yes" vote will indicate approval of the proposal and a "no" vote will indicate rejection. The Attorney General raises two questions concerning the words "local" and "citizen" as they are used in the ballot title and summary:

> BALLOT TITLE AND SUMMARY
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> . . . .
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> . . . [T]he ballot title and summary, as well as the text, refer to a 'local' board of trustees. The amendment places no residence requirement on members of either the boards of trustees or the statewide board other than a mandate that they be "citizens." A voter may not understand that the term 'local' as used in the amendment does not require that members of the board be residents of, or affiliated with, a particular locale or region of the state. In addition, the term "citizen" is not limited to state citizenship but may be read to mean national citizenship.

AG's Request, p. 3.

A. Standard of Review: A Ballot Title and Summary Must Accurately Inform and May Not Mislead Voters About its Purpose

Ballot title and summary issues are measured against the statutory language found in section 101.161(1), Fla. Stat. (2000). The test is whether they are drafted "so the voter will have fair notice of the content of the proposed amendment, will not be misled as to its purpose, and can cast an intelligent and informed ballot." *Advisory Op. to the Att'y Gen. Re Stop Early Release of Prisoners*, 661 So. 2d 1204, 1206 (Fla. 1995) (citation omitted). The test will be met unless the summary is clearly and conclusively defective. *Armstrong v. Harris*, 773 So. 2d 7, 11 (Fla. 2000) (citing *Askew v. Firestone*, 421 So. 2d 151, 154 (Fla. 1982)); *Florida League of Cities v. Smith*, 607 So. 2d 397, 399 (Fla. 1992). The proposed amendment easily complies with the requirement that its title and summary be clear and accurate, and not omit

necessary information.

B. The Term "Local" is Effectively Used to Clearly Distinguish the Responsibility of the Local Boards From the Responsibility of the Statewide Boards

The Attorney General correctly interprets the use of the term "local." Read in context, it speaks to the responsibility of the board and has nothing to do with a residence requirement for its members.

The drafters of the amendment endeavored to avoid any confusion concerning the use of the word "local." The proposed governance system is a two-tier system. The amendment itself devotes a separate paragraph to each of the tiers. A run-in heading is provided for each paragraph. The run-in heading for the boards of trustees paragraph shows that those boards have responsibility for each local university. That heading is juxtaposed with the run-in heading for the board of governors paragraph showing that board as having statewide responsibility for the whole system.

The ballot summary accurately reflects the amendment's juxtaposition of the local boards with the statewide board. A separate sentence is devoted to each tier of the system. The first sentence of the summary speaks to the administration of each state university by a "local" board of trustees. A separate sentence explains that the statewide governing board is responsible for "the whole university system." The membership for the local boards is addressed in another separate sentence that contains no residency limitation for board members. Thus, the Attorney General is correct in his understanding that "the term 'local' as used in the amendment does not require that members of the board be residents of, or affiliated with, a particular locale or region of the state." AG's Request, p. 4. The use of the term "local" accurately reflects the text and meets the requirements of section 101.161(1), Fla. Stat.

C. The Term "Citizen" is Not Used in Either the Title or the Summary and Cannot Violate the Statutory Requirement

The Attorney General's concern about the use of the term "citizen" is puzzling. The term does not appear in either the ballot title or the summary. Since the term doesn't appear, it could not violate the requirements of section 101.161(1). It is

important to note here that no word or concept vital to the voters' understanding has been omitted from the title or summary, thus enabling the electorate to cast an intelligent and informed ballot.

III. THE AMENDMENT EASILY SATISFIES THE SINGLE-SUBJECT TEST

Article XI, Section 3, Florida Constitution, specifies that any amendment to the constitution, except for those limiting the power of government to raise revenue, "shall embrace but one subject and matter directly connected therewith." Section 3 protects against multiple "precipitous" and "cataclysmic" changes in the constitution by limiting to a single subject what may be included in any one-amendment proposal. *See Advisory Op. to the Att'y Gen. Re Amendment to Bar Gov't. from Treating People Differently Based on Race in Pub. Educ.*, 778 So. 2d 888, 891 (Fla. 2000) (quoting *In re Advisory Op. to the Att'y Gen. B Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994)). This rule of restraint prevents the "logrolling" of separate issues into a single proposal, which might result in the passage of an unpopular issue simply because it is paired with a widely-supported one. *Id.* at 891*; Fine v. Firestone*, 448 So. 2d 984, 988 (Fla. 1984).

A. Standard of Review: "Oneness of Purpose"

This Court has considered four principal factors in determining whether an initiative proposal contains a "oneness of purpose," complying with the single subject rule: 1) whether the proposal performs or substantially affects multiple government functions; 2) the impact on other sections of the Florida Constitution; 3) possible collateral impacts of the initiative, especially undisclosed impacts; and 4) the internal unity and coherence of the initiative proposal. *See, e.g.*, *Advisory Op. to the Att'y Gen. Re Tax Limitation*, 644 So. 2d 486, 490 (Fla. 1994) (citations omitted) (addressing functional nature of the single subject test and impact on other parts of the Constitution); *In re Advisory Op. to the Att'y Gen. -- Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1022 (Fla. 1994) (Kogan, J., concurring) (discussing collateral impacts); *Fine v. Firestone*, 448 So. 2d at 990 (reaffirming one-subject limitation as requiring "oneness of purpose").

B. Overall Compliance

The State University System initiative meets each of the four factors of the

single subject test referenced above.

- The State University System amendment performs the single function of creating a system of government for Florida's universities with a statewide governing board and local administrative boards.

- The impact of this amendment on other parts of the constitution is minimal. It is placed within Article IX, the Education Article of the Florida Constitution, and clearly elaborates on the state's preexisting requirements to make provision for higher education.

- There are no hidden, substantial collateral impacts on any level of Florida government. The proposed amendment is nothing more than it appears to be.

- The entity established by the amendment has internal unity and coherence with its responsibility "for the coordinated and accountable operation of the whole university system." (Appendix 2, Ballot Summary).

In short, the State University System initiative demonstrates a "oneness of purpose" and fully complies with the single-subject requirement of Article XI, Section 3.

C. Attorney General's Questions

The Attorney General raises three questions about the single-subject limitation. The first two questions ask whether the terms of the amendment step outside the executive branch and "substantially alter or perform the functions" of the legislative branch. AG's Request, p. 5. The Attorney General identifies both the "Legislature's authority to enact legislation regulating the duties and responsibilities of the local boards of trustees as well as the statewide governing board" and the legislature's "powers over the management of the statewide board of governors to the appropriation of funds" as functions that are considered legislative in nature. AG's Request, p. 5. A third question involves the Attorney General's view that the initiative fails to inform the public that the adoption of the amendment will impact other provisions of the constitution in such a way that certain legislative powers will be usurped. AG's Request, p. 6. This brief deals with the questions in the order raised by the Attorney General, none of which are sufficient to demonstrate a violation of the

single-subject requirement.

D. Question 1: Enumerating the Powers and Duties of the Boards Created for the Proposed Governance System is a Logical Part of a Single Dominant Plan for the Governance System

The more precise test for "oneness of purpose" is whether the amendment proposes a governance system that can "be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme." *Advisory Op. to the Att'y Gen. -- Ltd. Political Terms in Certain Elective Offices,* 592 So. 2d 225, 227 (Fla. 1991) (citations omitted). Although the governance scheme may affect several branches of government and still pass muster, it cannot "substantially *alter* or *perform* the functions of multiple branches . . . ." *In re Advisory Op. to the Att'y Gen. -- Save Our Everglades,* 636 So. 2d 1336, 1340 (Fla. 1994).

The Attorney General correctly concludes that the governance system would be "located within the executive branch of government." AG's Request, p. 5. However, the Attorney General incorrectly concludes that "[the amendment] elevates the university board of trustees to a constitutional office and appears to remove a significant portion of the Legislature's authority to enact legislation regulating the duties and responsibilities of the local boards of trustees as well as the statewide governing board." AG's Request, p. 5.

1. Creation of Boards for the Governance System

The adoption of this proposed amendment will not "elevate" the existing legislative boards of trustees and convert them to a constitutional office.[5] The initiative process is "direct legislation" passed by the people. 16B AM. JUR. 2D *Constitutional Law* § 640 (1998). The practical effect of the amendment is to call upon the executive

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[5] The existing boards were created pursuant to section 229.008, Fla. Stat., as part of the Florida Education Governance Reorganization Implementation Act passed in the 2001 legislative session. Section 229.0081 of the Act enumerates the powers and duties of the boards of trustees.

branch to administer the organic constitutional law made by the people through the initiative process in place of the statutory law made by the legislature. By installing the initiative process in Article XI, Section 3 of the Florida Constitution, the people reserved the right to replace the legislature's statutorily-created university governance system with one of their own. The adoption of the amendment would establish a university governance system consisting of a statewide board and a second tier of boards for each university to administer local affairs. The board of governors would be a new board. The local boards of trustees created by the people would supplant the boards of trustees created by the legislature.

2. Enumerating Powers and Duties is a Logical and Necessary Part of Board Creation

This Court has recently considered whether enumerating the powers and duties of a board proposed in a constitutional amendment complies with the single-subject limitation. In 1998, the Attorney General petitioned this Court for an advisory opinion on the validity of the initiative creating the Fish and Wildlife Conservation Commission, a citizen board. *Advisory Op. to the Att'y Gen. Re Fish and Wildlife Conservation Comm'n,* 705 So. 2d 1351, 1352 (Fla. 1998). The Court's opinion addressed the question of whether that part of the proposed initiative setting forth the powers and duties of the new board was consistent with the "oneness of purpose" rule for the creation of one governmental entity. *Id.* at 1353-55. The Court specifically held that the operative section setting forth the powers and duties of the new commission did not substantially change or perform the functions of multiple branches of government, served "to form one entity that governs all matters concerning wild animal life, fresh water aquatic life, and marine aquatic life . . . [and has] a oneness of purpose. No danger of logrolling is present." *Id.* at 1355.

The holding in *Fish and Wildlife* applies equally to the creation of constitutional boards for higher education. Unlike some of the initiatives this Court has been required to confront -- occasionally involving legislative subject matter -- this initiative consists of recognized constitutional fare.[6] The constitutions of thirty-three

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[6]In our nation's constitutional scheme, the powers not delegated to the federal government are reserved to the states. U.S. CONST. amend. X. Public education -- including "the establishment, maintenance, and operation of institutions of higher learning" -- is a "fundamental value" and a "paramount duty of the state." Art.

states provide in some fashion for higher education.[7] Many of these constitutional provisions establish governance systems. All the boards created within these systems reside in the executive branch of government. Regardless of how the boards are labeled (regents, trustees, governors, supervisors, curators), the enumeration of their powers and duties appears to be an inherent part of establishing the boards in the first place. The constitutional provisions creating these boards either enumerate their specific powers and duties (*e.g.*, NEB. CONST. art. VII, § 14) or delegate that task to their legislatures (*e.g.*, ARIZ. CONST. art. 11, § 3).

Time and again it can be seen that the powers and duties of a board are enumerated by the entity creating that board. If the board is created in the legislature, the legislature enumerates the powers and duties. *See* §§ 229.008, 229.0081, Fla. Stat. (2001) (addressing the creation and powers of boards of trustees). If the board is created by the people through initiative, the people enumerate the powers and duties. *See Fish and Wildlife Conservation Comm'n*, 705 So. 2d at 1354 (approving proposed section setting forth powers and duties). It is difficult to see how a system of governance -- whether established by legislation or constitution -- could create boards to administer the business of the system without the authority to enumerate the duties and responsibilities of those boards.

IX, § 1, Fla. Const.

[7]Some states include references to the institution by name, others simply refer to "university," "college," "institutes of higher education" or "postsecondary institutions." However denominated, the state constitutions include: ALA. CONST. §§ 264, 266; ALASKA CONST. art. VII, § 2; ARIZ. CONST. art. 11, §§ 5-6; ARK. CONST. art. 14, §§ 12-13; CAL. CONST. art. 9, § 9; COLO. CONST. § 5; CONN. CONST. art. Eighth, § 2; GA. CONST. § IV, ¶ 1; HAW. CONST. art. X, § 5; IDAHO CONST. art. IX, § 10; IOWA CONST. art. 2d, § 2; KAN. CONST. § VII, § 5; ME. CONST. art. VII, § 1; MASS. CONST. ch. V, § 1; MICH. CONST. art. VIII, § 5; MINN. CONST. art VII, § 3; MO. CONST. art. IV, § 9(b); MONT. CONST. art. X, §9; NEB. CONST. art VII, §§ 10-14; NEV. CONST. §§ 4, 8; N.M. CONST. § 11; N. Y. CONST. art. V,§ 4, and art. XI, § 2; N. C. CONST. § 8; N. D. CONST. art. VII, § 6; OKLA. CONST. § XIII; TENN. CONST. § 12; TEX. CONST. art. 7, §§ 10, 13, 17-18; UTAH CONST. art. X, § 4; WIS. CONST. § 6; WYO. CONST. 97-7-015.

As in *Fish and Wildlife*, the sole purpose of the proposed amendment is to define one governmental unit -- in this case a governing system for Florida's universities -- and nothing else. The prevailing constitutional principle provides that the amendment must have a "oneness of purpose." To create a board without being able to provide for what it is supposed to do would be something less than the fulfillment of the "oneness of purpose" to which the sponsor is entitled. The enumeration of the duties and responsibilities of the boards created by the proposed amendment is a necessary component part of a single dominant plan that complies with the requirements of Article XI, Section 3, Florida Constitution.

E. Question 2: The Amendment Was Carefully Drawn to Assure No Encroachment on the Legislature's Power to Appropriate Funds

The Attorney General also suggests that Section 7(d) of the amendment enumerating the responsibilities of the board of governors "would limit the Legislature's powers over the management of the statewide board of governors to the appropriation of funds." AG's Request, p. 5. This aspect of the single-subject limitation has less to do with a single dominant plan, and more to do with where the proposed system is located within the constitutional branches of government. Here, the test for "oneness of purpose" is whether the proposed amendment substantially alters or performs the functions of more than one branch of government. *Save Our Everglades*, 636 So. 2d at 1340; *Evans v. Firestone*, 457 So. 2d 1351, 1354 (Fla. 1984).

The drafters of the proposed amendment realized that the governance system specified for the State University System would be located within the executive branch. The only descriptive terms used in the Title ("manage"), Ballot Summary ("administer," "operation"), and Text ("administer," "administered," "operate, regulate, control," "management") of the proposed amendment are those calling for the exercise of executive responsibility.

In contrast, the power to appropriate is clearly a legislative function. *Chiles v. Children A, B, C, D, E, and F*, 589 So. 2d 260, 265 (Fla. 1991). There is no bright line to delineate just where the legislature's power to appropriate ends and the executive's power to administer begins. The language of the amendment proposed in the 1978 Florida Constitutional Revision Commission Committee on Education Report eliminated any possible conflict between the executive and legislative branches

by providing that the governing board (then the Board of Regents)

> shall operate, regulate, control, and be fully responsible for the management of the State University System *subject to the powers of the legislature to authorize the expenditure of monies and the board shall account for such expenditures as provided by law*.

REPORT ON THE COMMITTEE ON EDUCATION, CONSTITUTIONAL REVISION COMMISSION, p. 1 (February 9, 1978) (emphasis added).

The Report went on to explain the reasons for the recommended provision and how it would avoid questions about encroachment upon the legislature's power to appropriate:

> [T]he proposed language does not subvert the inherent power of the legislature to appropriate public funds for the operation of (sic) university system. The provision does not mandate lump-sum appropriation to the universities and would not interfere with the appropriations process; it being well established that appropriation is the legislative prerogative. The legislature would, therefore, maintain the ability to exercise control over the university system through the appropriations process . . . .
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> . . . related to this concept of legislative control over appropriations is the concomitant and implied power of the legislature to require the state university system to account for the expenditure of funds *vis-à-vis* the post audit process. The proposed language is explicit in this point. Thus, the important legislative function of public accountability is maintained.

REPORT ON THE COMMITTEE ON EDUCATION, CONSTITUTIONAL REVISION COMMISSION, p. 7 (February 9, 1978).

The amendment proposed here by Education Excellence for Florida adopts the language of the amendment recommended to the 1978 Constitutional Revision Commission. That language ensures that the executive branch will be kept out of the business of the legislative branch. The concept is that the management role of the executive branch begins where the legislative power of appropriation ends.

The result is a limited proposal, instantly distinguishable from those amendments this Court has rejected. Unlike the failed Save Our Everglades amendment, for example, the instant initiative does not raise and distribute its own taxes, but contents itself with the managerial exercise of purely executive functions. *Cf. Save Our Everglades*, 636 So. 2d at 1340. Also, unlike other initiatives approved by this Court, the instant proposal does not mandate or compel any legislative actions, whether regulatory or fiscal. *Cf. Advisory Op. to the Att'y Gen. Re Limited Casinos*, 644 So. 2d 71, 74 (Fla. 1994); *Floridians Against Casino Takeover v. Let's Help Florida*, 363 So. 2d 337, 341 (Fla. 1978). In both those cases, this Court allowed as "incidental and reasonably necessary" initiatives which required legislative implementation and taxation, and even the designation of tax revenues to specific, favored purposes. *Limited Casinos*, 644 So. 2d at 74. The State University System initiative, by contrast, leaves untouched the quintessential legislative powers of taxing and appropriation, and just as importantly, touches upon no judicial functions whatsoever. *Id.* The proposed amendment does not violate the single-subject requirement of Article XI, Section 3, Florida Constitution.

F. Question 3: The Proposed Amendment Would Not Change Other Sections of the Constitution

In raising the third question, the Attorney General cites the law requiring that the initiative notify voters of contemplated changes in other sections of the *constitution*.[8]

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[8] AThis Court has previously recognized that it is important for an initiative to identify the provisions of the Constitution substantially affected by it so that the public will understand the contemplated changes in the Constitution and the initiative's effect on other unnamed provisions is not left unresolved and subject to various interpretations. *Advisory Opinion to the Attorney General -- People's Property Rights Amendment*, 699 So. 2d 1304, 1307 (Fla. 1997); *Advisory Opinion to the Attorney General -- Tax Limitation*, 644 So. 2d 486 (Fla. 1994)." AG's Request, p. 5-6.

The Attorney General then misapplies that law to contemplated changes this initiative would make to *legislation*:

> Article IX, section 1, Florida Constitution, provides that "[a]dequate provision *shall be made by law* . . . for the establishment, maintenance, and operation of institutions of higher learning . . . ." (e.s.) The proposed amendment would appear to affect this constitutional provision but fails to advise the voters of its impact . . . . Further, that Article IX, section 3, Florida Constitution, provides that "[m]embers of any appointive board dealing with education may serve terms in excess of four years *as provided by law*." (e.s.) The proposed amendment establishes a five year term for the local boards of trustees and a seven year term of the statewide board of governors without informing the voter that the Legislature's authority in this matter has been usurped.

AG's Request, p. 6.

The test previously established by this Court is whether the proposed amendment would change or substantially affect other provisions of the constitution without identifying such changes to the voters. *Advisory Op. to the Att'y Gen. Re Tax Limitation*, 644 So. 2d 486, 490 (Fla. 1994). The Court's rationale, as expressed in *Fine v. Firestone*, 448 So. 2d 984, 989 (Fla. 1984), is that that the Court should not "be placed in the position of redrafting substantial portions of the constitution by judicial construction. This . . . would be a dangerous precedent."

The EEF initiative meets the constitutional standard. The adoption of the amendment would leave Section 1 of Article IX unchanged. Section 1 gives the legislature the authority to establish, maintain, and operate institutions of higher learning. The obligation of the State to continue to make "adequate provision" for establishment, maintenance and operation of institutions of higher learning would remain.

Section 3 of Article IX would also remain unchanged. Section 3 authorizes the legislature to set terms of office in excess of four years for members of any appointive

boards dealing with education. The legislature will remain obligated to set terms of office exceeding four years for members of appointive boards of community colleges and any other appointive boards in the state's education establishment.

The Attorney General's stated concern is not with respect to the constitution, but "that the *Legislature's* authority in this matter has been usurped." AG's Request, p. 6 (emphasis added). This concern is difficult to understand, since the people have the absolute right to preempt legislation by amending the constitution through the initiative process. Art. XI, § 3, Fla. Const.

CONCLUSION

The title and ballot summary accurately and understandably explain the chief purpose of the amendment to establish a system of governance for Florida=s universities. The amendment consists of one governmental unit located in the executive branch of government that is in compliance with the single subject limitation. The amendment therefore meets the legal requirements for ballot placement and should be approved.

Respectfully submitted,

GIBSON, VALENTI & ASHLEY

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of this Initial Brief with its appendix have been furnished by Federal Express overnight mail to the Clerk of the Supreme Court, with copy to the Hon. Robert A. Butterworth, Attorney General of the State of Florida, The Capitol, Tallahassee, FL 32399-1050, on this 19th day of March, 2002.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief was prepared using Times New Roman 14 point type, a font that is proportionately spaced, in accordance with Fla. R. App. P. 9.210(a)(2).

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Robin Gibson, Esq.

INDEX TO APPENDIX