**IN AND FOR THE STATE OF FLORIDA**
**FLORIDA SUPREME COURT**

Case No. SC05-156

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| ADVISORY OPINION TO THE | ) |
| ATTORNEY GENERAL | ) |
| RE: FLORIDA MARRIAGE PROTECTION | ) |
| AMENDMENT | ) |
| _____ | ) |

# INITIAL BRIEF OF FLORIDA4MARRIAGE.ORG


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## INTRODUCTION

Florida4Marriage.org ("Proponent") is the proponent of the Florida Marriage Protection Amendment (the "Amendment"), an initiative to amend the Florida Constitution to preserve marriage as the union of one man and one woman. Proponent submits this brief to demonstrate that the Amendment complies with Article XI, § 3 of the Florida Constitution in that it addresses the single subject of the protection of marriage as the union of one man and one woman. Furthermore, the Amendment's title and summary comply with Fla. Stat. § 101.161, in that they clearly and unambiguously inform voters that the chief purpose of the Amendment is to preserve marriage as the union of one man and one woman.

## STATEMENT OF THE CASE AND FACTS

### I. HISTORICAL BACKGROUND.

#### A. Constitutional Challenges To The Traditional Definition Of Marriage Gave Rise To Federal And State Defense Of Marriage Acts.

Since at least 1829, marriage in Florida has been defined as the union of one man and one woman. *See* Fla. Stat. § 741.04. That definition, like similar definitions throughout the country, seemed unassailable until the Hawaii Supreme Court queried whether marriage as the union of one man and one woman might

implicate the state's equal protection clause. *See Baehr v. Lewin*, 74 Haw. 645 (1993). The *Baehr* court remanded the case to the trial court to consider the question of whether defining marriage as the union of one man and one woman violated equal protection under the state constitution. While the case was on remand to the trial court, the people of the state of Hawaii, by a margin of almost 70 percent, adopted a state constitutional amendment which provides, "The legislature shall have the power to reserve marriage to opposite-sex couples." Art. I, §23, Haw. Const. (1998). The legislature then defined marriage as between one man and one woman. Haw. Rev. Stat. §572-1. The Hawaii Supreme Court consequently vacated its decision. *See Baehr v. Miike*, 92 Haw. 634 (1999). The *Baehr* decision opened a virtual Pandora's box as other states feared the effect that the Hawaii case would have under the U.S. Constitution's Full Faith and Credit Clause.

In 1996, in response to those concerns, Congress enacted and President Clinton signed the federal Defense of Marriage Act ("DOMA"), which provides that no state shall be required to give effect to another state's recognition of same-sex marriage or same-sex relationships that are treated as marriages. 28 U.S.C. § 1738C. Thirty-nine states, including Florida, followed suit and enacted their own

state Defense of Marriage Acts, also referred to as DOMAs.[1] Florida's DOMA was adopted in 1997 and codified as Fla.Stat. § 741.212.

### B. Four States Have Established Marriage Equivalents For Same-Sex Couples.

In four states, legislatures and/or courts have created marriage equivalents for same-sex couples. Going beyond merely permitting same-sex partners to register and obtain some contractual or statutory rights that might also be afforded to married spouses, these laws grant same-sex couples all or virtually all of the rights granted to married couples under state law.

#### *1. Massachusetts.*

Massachusetts has gone further than any other state and actually permits same-sex couples to marry following the Supreme Judicial Court's refinement of

[1] *See* Ala. Code § 30-1-19; Alaska Stat. § 25.05.013; Ariz. Rev. Stat. § 25-101; Ark. Code § 9-11-107, 109 and 208; Cal. Fam. Code § 308.5; Colo. Rev. Stat. § 14-2-104; Del. Code tit. 13 § 101; Fla. Stat. § 741.212; Ga. Code § 19-3-3.1; Haw. Rev. Stat. § 572-1, 1-3 and 1.6; Idaho Code § 32-209; 750 Ill. Comp. Stat. § 5/212 and 5/213.1; Ind. Code § 31-11-1-1; Iowa Code § 595.2; Kan. Stat. § 23-101; Ky. Rev. Stat. § 402.020, 040 and 045; La. Civ. Code Art. 89 and 3520; La. Rev. Stat. § 9:272, 273 and 275; Me. Rev. Stat. tit. 19-A § 701; Md. Code Fam. § 2-201; Mich. Comp. Laws § 555.1 and 271; Minn. Stat. § 517.01 and .03; Miss. Code § 93-1.1; Mo. Rev. Stat. § 451.022; Mont. Code § 40-1-401; Nev. Rev. Stat. § 122.020; N.H. Rev. Stat. § 457:1-2; N.C. Gen. Stat. § 51-1.2; N.D. Cent. Code § 14-03-01; Ohio Rev. Cod Ann. § 3101.01; Okla. Stat. tit. 43 § 3.1; 23 Pa. Const. Stat. § 1102 and 1704; S.C. Code § 20-1-15; S.D. Codified Laws § 25-1-1and 1-38; Tenn. Code § 36-3-113; Tex. Fam. Code § 2.001; Utah Code § 30-1-2; Va. Code § 20-45.2; Wash. Rev. Code § 26.04.010 and 020; W. Va. Code § 48-2-104 and 603.

the marriage laws to legalize same-sex marriage. *See Goodridge v. Department of Public Health*, 440 Mass. 309 (2003). Since May 2004, Massachusetts officials have been issuing "marriage licenses" to same-sex couples.

*2. California.*

In March 2000, California voters passed Proposition 22, which, like Florida's DOMA, established a statutory definition of marriage as the union of one man and one woman, and provided that only marriages between one man and one woman are valid or recognized in California.[2] The text of Proposition 22 was codified as California Family Code § 308.5. In 2003, the California Legislature adopted AB 205, which granted "the same rights, protections, and benefits" and imposed "the same responsibilities, obligations, and duties under law . . . as are granted to and imposed upon spouses" to registered domestic partners. AB 205 became effective on January 1, 2005. As a result, domestic partners in California became substantially equivalent to married couples, gaining "the same rights, protections, and benefits" and "the same responsibilities, obligations, and duties under law . . . as are granted to and imposed upon spouses."

[2] Under California law, voters are permitted to enact statutory laws through the initiative process. Through this process, voters act as a "Super Legislature" to enact legislation directly regardless of whether it can be enacted through the typical legislative process. Proposition 22 was such an initiative.

*3. Vermont.*

In 1999, the Vermont Supreme Court required that the legislature "extend all or most of the same rights and obligations provided by the law to married partners." *Baker v. State of Vermont*, 744 A.2d 864, 886 (Vt. 1999). In response, the Vermont legislature enacted a "civil union" law, which provides that "Parties to a civil union shall have all the same benefits, protections and responsibilities under law . . . as are granted to spouses in marriage." Vt. Stat. Ann. tit. 15, § 1204(a) (2000). "A party to a civil union shall be included in any definition or use of the terms 'spouse,' 'family,' 'immediate family,' 'dependent,' 'next of kin,' and other terms that denote the spousal relationship, as those terms are used throughout the law." Vt. Stat. Ann. tit. 15, § 1204(b) (2000). The law became effective on July 1, 2000. As a result, unmarried couples who entered a "civil union" under Vermont law became substantially equivalent to married couples, having all the "benefits, protections and responsibilities under law. . . .as are granted to and imposed upon spouses."

*4. Connecticut.*

In 2005, Connecticut enacted a comprehensive "civil union" law that, like Vermont's, grants "all the same benefits, protections and responsibilities under law. . .as are granted to spouses in a marriage . . ." to same-sex couples. Conn. Pub. Act. No. 05-10, § 14. As of October 1, 2005, same-sex couples will be able to

obtain "civil union" licenses and have their relationship solemnized by the same public officials or licensed clergy who can perform marriages. Conn. Pub. Act No. 05-10, §4.

This creation of same-sex marriage in Massachusetts and marriage equivalents in California, Vermont and Connecticut have fueled constitutional challenges to state DOMAs in several states, including Arizona, Arkansas, California, Florida, Georgia, Indiana, Maryland, Nebraska, New Jersey, New Mexico, New York, Oregon, Washington, and West Virginia. At one point, Florida's DOMA was being challenged in eight separate lawsuits brought by same-sex couples who claimed that the state law violated the Florida Constitution. Seven of those lawsuits have been resolved or dismissed, but one, *Higgs v. Kolhage*, is still proceeding in Monroe County. (Case No. 04-CA-411-K).

## II. THE PROPOSED MARRIAGE PROTECTION AMENDMENT.

In response to these challenges, the Florida Marriage Protection Amendment seeks to protect and preserve marriage as the union of one man and one woman. Last year alone, 13 states adopted amendments to their state constitutions to protect marriage as one man and one woman. Eleven of those amendments were approved by voters in the November 2004 general election. Adding these 13 states to those that adopted constitutional amendments since 1996, including those adopted this year, brings the total number of states having adopted constitutional amendments

expressly defining marriage as the union of one man and one woman to 17.[3] Every state which has placed the matter to popular vote has passed these amendments by a margin of 57 to 82 percent.

To protect marriage in Florida as the union of one man and one woman, Proponent's Amendment would add the following language to Article I of the Florida Constitution:

> Inasmuch as marriage is the legal union of only one man and one woman as husband and wife, no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized.

Proponent has prepared the following ballot title and summary for the proposed Amendment:

> Florida Marriage Protection Amendment.
>
> This amendment protects marriage as the legal union of only one man and one woman as husband and wife and provides that no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized.

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[3] These states include: AK, AR, GA, KS, KY, LA, MI, MS, MO, MT, ND, NE, NV, OH, OK, OR and UT. As noted, California also passed a statewide voter initiative in 2000 by a margin of 61.4%. However, that initiative did not amend the state's constitution. Also, Hawaii passed a voter initiative to its state's constitution. While that initiative did amend the state constitution it did not define marriage. Rather, it expressly delegated the task of defining marriage to the state legislature. Adding these two statewide voter initiatives to the above figure brings the total number of voter-approved initiatives to 19. There are currently many voter initiatives seeking to amend state constitutions pending more than a dozen more states.

Pursuant to Fla. Stat. 16.061, Attorney General Charles J. Crist, Jr., has petitioned this Court for an advisory opinion regarding whether the text of the Amendment complies with Article XI, § 3 of the Florida Constitution and whether the ballot title and summary comply with Fla. Stat. § 101.161.

## SUMMARY OF ARGUMENT

The singular purpose of Proponent's Amendment is the protection and preservation of marriage as the legal union of one man and one woman as husband and wife. In light of recent legislative and judicial enactments that have established same-sex marriage in Massachusetts and marriage equivalents in California, Vermont and Connecticut, the Amendment clarifies that any legal union other than marriage between one man and one woman that is treated as marriage or the substantial equivalent thereof shall not be valid or recognized in Florida. Legal unions between unmarried persons that provide less than the panoply of rights, protections, benefits, obligations, responsibilities and duties afforded to married spouses are not affected by the proposed Amendment. The domestic partnership registries currently in several Florida jurisdictions will not be affected by the Amendment; nor will domestic violence laws which the statute and the courts have specifically ruled are applicable to unmarried persons.

Proponent's Amendment complies with the "single subject rule" of Article I, § 3 of the Florida Constitution. The Amendment has one common purpose – the

protection of marriage as the union of one man and one woman as husband and wife.

In addition, Proponent's title and summary are virtually a verbatim recitation of the language of the Amendment. Therefore, the title and summary provide fair notice of the chief purpose of the Amendment and are not vague or misleading. As a result, the title and summary comply with Fla. Stat. § 101.161.

## LEGAL ARGUMENT

### I. THIS COURT'S REVIEW IS LIMITED TO WHETHER THE AMENDMENT ADDRESSES A SINGLE SUBJECT AND WHETHER THE TITLE AND SUMMARY ARE CLEAR AND UNAMBIGUOUS.

As this Court said in *Advisory Opinion to the Attorney General re the Medical Liability Claimant's Compensation Amendment,* 880 So.2d 675, 677 (Fla. 2004), when analyzing the validity of a proposed amendment the Court does not review the merits of the initiative. Instead, this Court's review is strictly limited to whether the Amendment satisfies the single-subject requirement of Article XI, § 3 of the Florida Constitution and whether the ballot title and summary are printed in clear and unambiguous language as required under Fla. Stat. § 101.161. *Medical Liability,* 880 So.2d at 676.

> There is no lawful reason why the electors of this State should not have the right to determine the manner in which the Constitution may be amended. This is the most sanctified area in which a court can exercise power. Sovereignty resides in the people and the electors have a right to approve or reject a proposed amendment to the organic

> law of this State, limited only by those instances where there is an entire failure to comply with a plain and essential requirement of [the law].

*Pope v. Gray*, 104 So.2d 841, 842 (Fla.1958).

> This deference is especially appropriate in the case of proposed constitutional amendments arising through the citizen initiative process. Because such amendments often are initiated by ad hoc groups of concerned lay persons without formal legal training or prior experience in the field, such amendments are reviewed under a forgiving standard and will be submitted to the voters if at all possible: [A] court's duty is to uphold the proposal unless it can be shown to be "clearly and conclusively" defective.

*Advisory Opinion to the Attorney General re Right to Treatment & Rehabilitation for Non-Violent Drug Offenses*, 818 So.2d 491, 494 (Fla. 2002).

In this case, the proposed Amendment succinctly states the chief purpose of protecting and preserving marriage as the legal union of one man and one woman. In addition, the essentially verbatim recitation of the Amendment's terms in the title and summary clearly and succinctly inform the voters that they are determining whether marriage should remain, as it has for many decades, as the legal union of one man and one woman. Both the text of the Amendment and the title and summary are straightforward, factual descriptions of a proposal that has been approved by voters in many other states, and which has been part of Florida law since before the state's inception. The statements are neither deficient nor defective.

## II. PROPONENT'S AMENDMENT ADDRESSES THE SINGLE SUBJECT OF PROTECTING AND PRESERVING MARRIAGE AS THE UNION OF ONE MAN AND ONE WOMAN.

The initial question that this Court must answer is whether Proponent's Amendment embraces "but one subject and matter directly connected therewith," as required under Article XI, § 3 of the Florida Constitution. This Court must find that Proponent's Amendment does not violate the rule if it can be "logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme." *Advisory Opinion to the Attorney General re: Limited Political Terms in Certain Elected Offices,* 592 So. 2d 225, 227 (Fla. 1991). The Amendment must show a "logical and natural oneness of purpose." *Advisory Opinion to the Attorney General re: Amendment to Bar Government from Treating People Differently Based on Race in Public Education*, 778 So. 2d 888, 892 (Fla. 2000). "Unity of object and plan is the universal test." *Advisory Opinion to the Attorney General re: Florida Locally Approved Gaming,* 656 So.2d 1259, 1263 (Fla. 1995). Contrary to the claim of Interested Parties[4] Proponent's

[4] A group of "Interested Parties," consisting of Richard Nolan and Robert Pingpak, Robert Sullivan and Jon Durre, Dee Graham and Sign Quandt, Richard Rogers and Bill Mullins, Teresa Ardines and Melissa Bruck, Juan Talavera and Jeffrey Ronci, American Federation of State, County and Municipal Employees – AFL-CIO, the ACLU of Florida and Equality Florida, have submitted a brief for this Court's consideration. Proponent shall refer to this group of people collectively as "Interested Parties."

Amendment does not "roll two separate subjects into a single amendment." (Interested Parties' Brief, p. 15).

The text of Proponent's Amendment mirrors the language of Florida's DOMA, Statutes, like constitutional amendments, can only address a single subject. "Every law shall embrace but one subject and matter properly connected therewith...." Florida Const. Art. III, § 6. Florida's DOMA was enacted in 1997 with virtually the same language contained in Proponent's Amendment. Interested Party Equality Florida, represented by the some of the same attorneys as are representing them in this action, has brought a lawsuit in Monroe County, *Higgs v. Kolhage*, which challenges the constitutionality of Florida's DOMA. Seven other similar lawsuits were brought in state and federal courts throughout Florida, but have been dismissed.[5] Notably, neither Equality Florida in the *Higgs* lawsuit nor the Plaintiffs in the other lawsuits claimed that Florida's DOMA violated the single subject rule. Interested Parties' sudden claim that the nearly identical language in

[5] *Sullivan v. Bush*, No. 04-CV-21118 (S.D. Fla, 2005), *Wilson v. Ake*, 354 F.Supp.2d 1298; (M.D. Fla. 2005); *Ash v. Forman*, No. CACE 0400327905 (Fla. 17th J. Cir. Ct., 2005); *Berman v. Wilkin*, No. SO2004CA006665XXXXMB, (Fla. 15th J. Cir., 2005); *Clayton v. Ake*, No. 04-06353 (Fla. 13th J. Cir. Ct., 2005); *Higgs v. Kolhage*, No. 04-CA-411-K (Fla. 16th J. Cir. Ct., 2005); *Kelley v. Green*, No. 04-CA-3082, Fla. 12th J. Cir. Ct., 2005); *Merritt v. Gardner*, No. 04-CA-5823 (Fla. 9th J. Cir. Ct., 2005).

Proponent's Amendment is wholly unsubstantiated.[6] By casting their ballot in favor of marriage as the union of one man and one woman, voters are not being asked to reject rights and protections for same-sex or unmarried couples. The proposed Amendment presents no such Hobson's choice. As already noted, extending individual rights, protections, benefits, responsibilities, obligations or duties to unmarried persons does not violate the Amendment. Nor to the domestic partnership registries mentioned by the Interested Parties in several Florida jurisdictions violate the Amendment.[7]

As discussed more fully below, Proponent's Amendment does not address the definition of marriage, and then the validity of other forms of legal recognition for same-sex relationships. Instead, Proponent's Amendment carries forth the unified objective of preserving marriage as the legal union of one man and one

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[6] Although the "properly connected" requirement for legislative enactments is less stringent than the "directly connected" requirement for amendments passed by citizen initiative, the fact remains that Florida's DOMA has a singular purpose and it has never been challenged to the contrary.

[7] Interested Parties alleged that some seek federal benefits. *See* Interested Parties Brief at 8. However, even if Florida were to adopt same-sex marriage as a matter of state law that would not affect federal law. For purposes of federal statutes, rules or regulations, the federal DOMA defines "marriage" "only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers to a person of the opposite sex who is a husband or a wife." 1 U.S.C. § 7. Thus, even in Massachusetts, where same-sex marriage is legal, same-sex couples may not thereby claim entitlement to federal benefits. Federal benefits are the pejorative of federal law.

woman by restating the definition of marriage and clarifying that only the legal union of one man and one woman as husband and wife shall be recognized as marriage.

### A. The Amendment Restates The Longstanding Definition Of Marriage.

The portion of the proposed Amendment which states, "Inasmuch as marriage is the legal union of only one man and one woman as husband and wife," is simply a restatement of what has been true in Florida since territorial days – marriage is the union of one man and one woman. Since at least 1829, Florida's statutory law has stated that only couples consisting of one woman and one man can obtain a marriage license. Fla. Stat. § 741.04.

In 1997 the Legislature followed the lead of the U.S. Congress and a number of other states by passing a state DOMA which provides that "the term 'marriage' means only a legal union between one man and one woman as husband and wife, and the term 'spouse' applies only to a member of such a union." Fla. Stat. §741.212(c). The Legislature further clarified that

> "Marriages between persons of the same sex . . . or relationships between persons of the same sex which are treated as marriages in any jurisdiction . . . are not recognized for any purpose in this state."

Fla. Stat. §741.212(a). Proponent's Amendment now seeks to place that definition into the Constitution.

### B. The Amendment Clarifies That Only The Legal Union Of One Man And One Woman Shall Be Recognized As Marriage.

Flowing from the historically recognized definition of marriage, the proposed Amendment states that "no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized." This statement carries forward the singular and dominant theme of the preservation of marriage as the union of one man and one woman. The recent creation of same-sex marriage in Massachusetts and marriage equivalents in the form of California's AB 205, Vermont's Civil Unions and Connecticut's Civil Unions demonstrates that protecting and preserving marriage requires more than merely stating that marriage is defined as the union of one man and one woman. Marriage is more than a label. Marriage has substance. The proposed Amendment protects marriage by declaring that marriage is the legal union of only one man and one woman as husband and wife and no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized.

*1. The Amendment does not affect laws which do not provide the same rights, protections and benefits and impose the same responsibilities, obligations and duties as are granted to and imposed upon married couples.*

By limiting the prohibition to legal unions "treated as marriage or the substantial equivalent thereof," the Amendment includes the language necessary to prevent the undermining of marriage that occurred in Massachusetts, California, Vermont and Connecticut without affecting non-equivalent legal unions such as the domestic partnership registries currently in place in several Florida jurisdictions. Therefore, the concerns raised by Interested Parties about supposed losses of rights are in fact non-existent. So long as a law, ordinance or regulation does not grant unmarried couples the same panoply of rights, protections, benefits, responsibilities, obligations and duties as are granted to and imposed upon married couples, it will not be affected by the proposed Amendment. Neither existing domestic partnership laws, such as the ones under which Richard Nolan and Robert Pingpank and Richard Rogers and Bill Mullins have registered, nor any future such laws which grant less the full panoply of rights, protections, benefits, responsibilities, obligations and duties of marriage (which are of concern to Dee Graham and Signa Quandt, Teresa Ardines and Melissa Buck, Robert Sullivan and Jon Durre, Juan Talavera and Jeffrey Ronci, AFSCME, ACLU and Equality Florida) will be affected by Proponent's Amendment.

The Fourth District Court of Appeals thoroughly explained the distinction between domestic partnership laws currently in place in Florida and the marriage equivalents addressed in the Florida DOMA, which provides that "Marriages between persons of the same sex . . . or relationships between persons of the same sex which are treated as marriages in any jurisdiction . . . are not recognized for any purpose in this state." Fla.Stat. 741.212(a). In *Lowe v. Broward County*, 766 So.2d 1199 (Fla. 4th DCA 2000), a taxpayer filed a declaratory relief action claiming that the Broward County domestic partnership ordinance improperly legislated in the area of domestic relations. The court of appeals rejected Lowe's claim, stating that Broward County's Domestic Partnership Act ("DPA") "does not curtail any existing rights incident to a legal marriage, nor does it alter the shape of the marital relationship recognized by Florida law." *Id.* at 1205. The court disagreed with Lowe's contention that the DPA created a new "marriage-like" relationship, stating that "the Act does not address the panoply of statutory rights and obligations exclusive to the traditional marriage relationship." *Id.* "Domestic partners under the [Act] ... do not ... enjoy the numerous additional rights reserved exclusively to partners in marriage," including joint adoption, equal rights in property, the right to an elective share of an estate and certain state and federal tax benefits. *Id.* "The Act does not create a legal relationship that, because of the interest of the state, gives rise to rights and obligations that survive the termination

of the relationship." *Id.* at 1206."Unlike a traditional marriage, a domestic partnership is purely contractual, based on the mutual agreement of the parties." *Id.*

The *Lowe* court also specifically dismissed the plaintiff's contention that Broward County's DPA conflicted with Florida's DOMA. "The statute [Fla. Stat. § 741.212] is directed at 'marriages between persons of the same sex' and 'relationships between persons of the same sex which are *treated as marriages* in any jurisdiction." *Id.* at 1207. "We agree with the trial court that the DPA's extension of limited employment benefits does not create a 'marriage-like relationship' in contravention of the statute." *Id.* "The statute is directed at same sex marriages, with all the rights and obligations of traditional marriages, or their equivalent by any other name." *Id.* at 1208. Broward County's domestic partnership law "does not create that plethora of rights and obligations that accompany a traditional marriage." *Id.* Therefore, the domestic partnerships recognized in Broward County did not violate Florida's DOMA. For the same reasons, they will not violate Proponent's Amendment, which substantially mirrors the language in Florida's DOMA. Consequently, Interested Parties Richard Rogers and Bill Mullins' rights as domestic partners in Broward County will not be

affected by the Amendment.[8] In addition, the domestic partnership ordinances in Miami Beach, West Palm Beach and Key West will not conflict with Proponent's Amendment, since they, like Broward County, confer only limited rights on domestic partners.

Miami Beach's Registered Domestic Partnership law defines a Registered Domestic Partnership as a committed relationship between two persons who consider themselves to be a member of each other's immediate family. Miami City Code § 62-130. Registered domestic partners in Miami Beach obtain rights to health and correctional facility visitation, health care decisionmaking, educational participation, funeral/burial decisionmaking, and pre-need guardian designation. Miami City Code § 62-132. The Miami City Code also specifically states that "nothing in this article shall be construed as recognizing or treating a Registered Domestic Partnership as a marriage," Miami City Code § 62-133. For the same reasons set forth in *Lowe*, the Miami Beach domestic partnership ordinance does not treat that unmarried relationship as marriage or the substantial equivalent thereof and therefore is not affected by Proponent's Amendment.

Similarly, West Palm Beach's Domestic Partnership Registration law will not be affected by Proponent's Amendment. Nearly identical to Miami Beach's

[8] Nor will the domestic partnership benefits for the members of the AFL-CIO be affected by the Proposed Amendment. *See* Interested Parties Brief at 11. Moreover, the Amendment does not affect private agreements or private employers.

ordinance, the West Palm Beach ordinance also grants domestic partners rights related to health care visitation and decisionmaking, education participation and guardianship, and specifically states that domestic partnerships shall not be treated as marriages. West Palm Beach City Code §§ 42-49, 42-50. Therefore, Interested Parties Richard Nolan and Robert Pingpank's concern that they might lose the rights they have under West Palm Beach's domestic partnership law is unfounded. Neither their rights nor the rights of any other domestic partners in West Palm Beach will be affected.

Key West's Declaration of Domestic Partnership Form states merely that the partners consider each other immediate family, are jointly responsible for each other's basic living expenses, are not related by blood and are of legal age to enter into a contract. Like Broward County, Miami Beach and West Palm Beach, the Key West ordinance does not grant the same rights, protections and benefits and impose the same responsibilities, obligations and duties as are granted to and imposed upon spouses. The relationship created by the Key West ordinance is not treated as marriage or the substantial equivalent thereof and is not affected by Proponent's Amendment.

*2. The Amendment addresses only relationships that mimic Marriage.*

In contrast to the garden variety domestic partnership registries, the Massachusetts Supreme Judicial Court and the legislators in California, Vermont

and Connecticut have explicitly granted unmarried couples the "plethora" and "panoply of rights and obligations that accompany a traditional marriage" referenced by the *Lowe* court. The Massachusetts Supreme Judicial Court, and legislators in these three states took the institution of marriage, with all of its rights, protections, benefits, responsibilities, obligations and duties, stripped it of the name "marriage" and re-labeled it either same-sex marriage (Massachusetts), a California AB 205, a Vermont Civil Union or a Connecticut Civil Union. To borrow from the vernacular, "If it walks like a duck and talks like a duck, it's a duck." "If it acts like marriage and looks like marriage, it's marriage or the substantial equivalent thereof," no matter what the label might say. It is these marriage equivalents, and not other forms of domestic partnerships or unions, that are the subject of the Amendment.

Examination of the language utilized in California, Vermont and Connecticut illustrate how Proponent's Amendment addresses only the protection and preservation of marriage, not other types of partnerships or unions. California Family Code § 297.5, the codified version of California's Domestic Partner Rights and Responsibilities Act of 2003, provides:

> Registered domestic partners shall have **the same rights, protections, and benefits,** and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common

> law, or any other provisions or sources of law, as are **granted to and imposed upon spouses.** (Emphasis added).

Similarly, Vermont's Civil Union law, Vt. Stat. Ann. tit. 15, § 1204(a). provides:

> Parties to a civil union shall have **all the same benefits, protections and responsibilities under law**, whether they derive from statute, administrative or court rule, policy, common law or any other source of civil law, **as are granted to spouses in a marriage**. (emphasis added).

Connecticut's Civil Union law, Pub. Act No. 05-10, §14 provides:

> Parties to a civil union shall have **all the same benefits, protections and responsibilities under law**, whether derived from the general statutes, administrative regulations or court rules, policy, common law or any other source of civil law, **as are granted to spouses in a marriage**, which is defined as the union of one man and one woman. (emphasis added).

In each instance, the legislature's clear intent was to create a marriage equivalent for unmarried or same-sex couples, not merely give them some rights similar to those available to married couples. The intent to package marriage under another name is most apparent in Connecticut, where the legislation explicitly acknowledges that "marriage" is the union of one man and one woman, but that the same bundle of rights can be also be called a "civil union" and made available to same-sex couples. California's legislature was less obvious in failing to explicitly acknowledge the voter-enacted definition of marriage as the union of one man and one woman while creating a parallel relationship for unmarried same-sex couples.

California's experience illustrates the importance of including the clarifying language that "no other legal union that is treated as marriage or the substantial equivalent thereof shall not be valid or recognized" in Proponent's Amendment. In March 2000, California voters overwhelmingly approved Proposition 22 by a margin of 61.4 percent. Being added to the Family Code § 308.5, Proposition 22 states: "Only marriage between a man and a woman is valid or recognized in California." Proponents of same-sex marriage then went to the legislature to seek all the rights, protections, benefits, responsibilities, obligations and duties of marriage, and the legislature adopted AB 205. California's AB 205 grants all the rights, protections and benefits of marriage and imposes all of the obligations, responsibilities and duties of marriage on registered same-sex couples. When voters challenged the measure as an impermissible amendment to an initiative without voter approval, the California Court of Appeals held that the law did not amend Proposition 22. *See Knight v. Superior Court*, 128 Cal.App.4th 14 (2005). In *Knight*, the California court held that "the plain, unambiguous language of Proposition 22 is concerned only with who is entitled to obtain the status of marriage, and not with the rights and obligations associated with marriage..." *Id.* at 25. The court said that if the proponents of Proposition 22 intended to address the rights and obligations associated with marriage instead of merely the status of marriage, then the Proposition had to contain language showing an intent "(1) to

limit the benefits associated with marriage to marriages between men and women, and (2) to prohibit the recognition of other types of domestic unions or partnerships." *Id.* Since Proposition 22 did not contain such language, it "unambiguously limits its scope to whether California will recognize the validity of *marriages* between persons of the same sex; it says nothing about whether other types of relationships may be permitted to enjoy the rights typically conferred upon married couples." *Id.*

In other words, the *Knight* court essentially concluded that when the voters passed an amendment providing that "Only marriage between a man and a woman is valid or recognized in California," the result merely trademarked the label of marriage but not its essence. The *Knight* court thus permitted "marriage" to be extended to unmarried couples so long as the legal union did not carry the name "marriage." The *Knight* decision pointed to other state constitutional amendments, including Nebraska, Arkansas, Georgia, Kentucky, Louisiana and Ohio, as well as Texas' statutory enactment, as examples of the language necessary to protect both the label and the essence of marriage. *Knight*, 128 Cal.App.4th at 25.[9]

[9] Art. I, § 29 of the Nebraska Constitution provides: "Only marriage between a man and a woman shall be valid or recognized in Nebraska. The uniting of two persons of the same sex in a civil union, domestic partnership, or other similar same-sex relationship shall not be valid or recognized in Nebraska." Arkansas Constitution, Amend. 83, § 2 provides, "Legal status of unmarried persons which is identical or substantially similar to marital status shall not be valid or recognized

The common purpose of the Proponent's Amendment is the protection and preservation of marriage as the union of one man and one woman as husband and wife. The Amendment clearly sets forth this purpose by stating that no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized.

*3. The Amendment will not diminish protection for same-sex couples against domestic violence.*

Since the Amendment addresses only the grant of rights, protections and benefits and the imposition of responsibilities, obligations and duties that are granted to spouses, it will not affect statutory protections offered to same-sex couples and other unmarried family members under Florida's domestic violence law.[10]

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in Arkansas, except that the Legislature may recognize a common law marriage from another state between a man and a woman." Georgia Constitution, Art. I, §4, I(b) provides that "No union between persons of the same sex shall be recognized by this state as entitled to the benefits of marriage." Texas Family Code §6.204 provides that "a marriage between persons of the same sex or a civil union granting to the parties of the relationship the legal protections, benefits, or responsibilities granted to the spouses of a marriage is contrary to public policy and void." The text of the Louisiana, Kentucky and Ohio amendments are reproduced *infra*.

[10] As the discussion below makes apparent, this issue is not relevant to the proposed Amendment. However, Proponent is presenting this issue to the Court because opponents of the Amendment have indicated in press statements that they believe that the Amendment will threaten domestic violence laws. *See Fla. Marriage Amendment Close to Gathering Sufficient Signatures,* <http://www.sovo.com/thelatest/thelatest.cfm?blog_id=2196> (last visited September 13, 2005).

Fla. Stat. § 741.28 provides:

> (2) "Domestic violence" means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.
> (3) "Family or household member" means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

Fla. Stat. § 741.30 provides that any "family or household member" as defined in Section 741.28(3) may seek an injunction if he or she is a victim of "domestic violence" or is in imminent danger of becoming a victim of domestic violence. Fla. Stat. §741.30(1)(e) provides that, "No person shall be precluded from seeking injunctive relief pursuant to this chapter solely on the basis that such a person is not a spouse." In *Peterman v. Meeker,* 855 So.2d 690, 691 (Fla. 2d DCA 2003), the Second District Court of Appeals confirmed that the rights afforded under Sections 741.30 were available to same-sex couples even though same-sex couples are not permitted to marry.

The domestic violence statutes specifically state that they are not limited to spouses. Domestic violence statutes do not treat unmarried relationships as marriage or the substantial equivalent thereof. Such statutes do not confer the panoply of "rights, protections, benefits, responsibilities, obligations and duties granted to and imposed upon married couples" and would not be affected by Proponent's Amendment.[11]

### C. Proponent's Amendment Mirrors Marriage Protection Amendments In Other States Upheld As Consistent With The Single Subject Rule.

Other state courts have examined similarly worded marriage protection amendments and found them consistent with the single subject rule. Their findings are instructive for a similar determination regarding Proponent's Amendment.

#### *1. Louisiana's Supreme Court held that an amendment similarly addressing marriage equivalents complied with the single subject rule.*

In 2004, Louisiana voters approved the following amendment, which like Proponent's, addresses the issue of marriage equivalents:

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[11] The Ohio Court of Appeals recently reached a similar conclusion regarding a challenge to domestic violence laws brought under Ohio's much more expansive marriage protection amendment. *State v. Newell*, 2005 WL 1364937 (Ohio Ct. App. 5th District 2005). Ohio's amendment provides: "Only a union between one man and one woman may be a marriage valid in or recognized by this state and its political subdivisions. This state and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effect of marriage." Ohio Const. Art. XV, § 11.

> Marriage in the state of Louisiana shall consist only of the union of one man and one woman. No official or court of the state of Louisiana shall construe this constitution or any state law to require that marriage or the legal incidents thereof be conferred upon any member of a union other than the union of one man and one woman. **A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized.** No official or court of the state of Louisiana shall recognize any marriage contracted in any other jurisdiction which is not the union of one man and one woman.

La. Const. Art. XII, § 15 (emphasis added). Several Plaintiffs challenged the amendment on the grounds that, *inter alia*, it violated Article XIII, § 1 of the Louisiana Constitution, which requires that constitutional amendments be confined to a single subject. *See Forum for Equality PAC v. McKeithen*, 893 So.2d 715 (La. 2005). The Plaintiffs contended that the Louisiana amendment encompassed three subjects: (1) to reinforce the ban on same-sex marriage that already exists in Louisiana law; (2) to change the law by creating a ban on civil unions; and (3) to reverse existing law by destroying the right of unmarried couples to enter into contracts and other legal documents to protect themselves, their property, and their relationship. *Id.* at 734. In essence the Plaintiffs dissected the amendment sentence by sentence and interpreted every provision as advancing a separate and distinct plan or object. *Id.* at 734-735.

The Louisiana Supreme Court rejected the Plaintiffs' single subject challenge.

> [T]he object of this amendment is to defend marriage. Unquestionably, any adequate defense of marriage would have to be premised upon the understanding that our civil tradition of marriage necessarily entails both the concept of marriage and the civil effects and legal incidents flowing directly from marriage as provided by our civil law and our Civil Code.

*Id.* at 736. The Louisiana court examined the amendment in detail and found that it constituted a "single plan to defend our civil tradition of marriage." *Id.*

> Sentence one obviously defines marriage: "Marriage in the state of Louisiana shall consist only of the union of one man and one woman." Sentence two refers to the effects and legal incidents of marriage: "No official or court of the state of Louisiana shall construe this constitution or any state law to require that marriage or the legal incidents thereof be conferred upon any member of a union other than the union of one man and one woman." Continuing the focus on the effects and incidents of marriage, sentence three refers to the legal status of marriage: "A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized." Concluding, sentence four refers to recognition of out-of-state marriages: "No official or court of the state of Louisiana shall recognize any marriage contracted in any other jurisdiction which is not the union of one man and one woman."

*Id.* "In effect, the amendment provides the only contract or legal instrument whereby the state is mandated to bestow all or substantially all the rights, civil effects, and legal incidents of marriage upon the parties in recognition of the legal status created or established by said contract or instrument is the contract of marriage between one man and one woman." *Id.*

Similarly, Proponent's Amendment constitutes a single purpose to preserve the civil tradition of marriage in Florida. The Amendment defines marriage as the

legal union of one man and one woman and provides that no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized. Therefore, this Court should find, as did the Louisiana Supreme Court, that the Amendment addresses only one subject.

*2. The Massachusetts Supreme Judicial Court upheld a proposed amendment addressing marriage equivalents as encompassing a common purpose of restricting marriage to opposite sex couples.*

The Massachusetts Supreme Judicial Court rejected a single subject challenge to an initiative that also addressed marriage equivalents. The proposed amendment read:

> It being the public policy of this Commonwealth to protect the unique relationship of marriage in order to promote, among other goals, the stability and welfare of society and the best interests of children, only the union of one man and one woman shall be valid or recognized as a marriage in Massachusetts. **Any other relationship shall not be recognized as a marriage or its legal equivalent, nor shall it receive the benefits or incidents exclusive to marriage** from the Commonwealth, its agencies, departments, authorities, commissions, offices, officials and political subdivisions. Nothing herein shall be construed to effect an impairment of a contract in existence as of the effective date of this amendment. (emphasis added).

*Albano v. Attorney General*, 437 Mass. 156 , 158 n. 4 (2002). The Massachusetts court noted that the stated purpose of the proposed amendment was to protect "the unique relationship of marriage in order to promote ... the stability and welfare of society and the best interests of children." *Id.* The Court held that the proposed amendment successfully addressed only one purpose:

> Here, the entire petition relates to the common purpose of restricting the benefits and incidents of marriage to opposite-sex couples. Although the plaintiffs list many statutes that may be affected should the measure be adopted, each statute affected creates a benefit or responsibility that arises from married status. A measure does not fail the relatedness requirement just because it affects more than one statute, as long as the provisions of the petition are related by a common purpose. *Id*. at 161.

Similarly, Proponent's Amendment relates to the singular purpose of protecting and preserving marriage as the union of one man and one woman. The provision stating that any other legal union that is treated as marriage or the substantial equivalent thereof shall not be valid or recognized relates to the singular purpose of protecting the essence of marriage. As Florida law currently provides, the Amendment would ensure that neither common law, polygamous, polyamorous (group marriage), or same-sex marriage shall be valid or recognized. Nor may any other legal union, irrespective of its label, be valid or recognized that seeks to confer upon persons other than married spouses all the rights, protections, benefits, responsibilities, obligations and duties granted to and imposed upon married couples. As the Massachusetts court found in *Albano*, this Court should find that the provisions in Proponent's Amendment are related to the common purpose – i.e., the single subject – of the preservation of marriage as the union of one man and one woman.

*3. A Kentucky trial court has determined that Kentucky's Marriage Amendment addressing the definition of marriage and marriage equivalents addresses a single*

*subject.*

Kentucky's Marriage Amendment, like Proponent's Amendment and the amendments in Louisiana and Massachusetts, addressed the definition of marriage and marriage equivalents, and like the amendments in Louisiana and Massachusetts, was found to comply with the single subject rule. In *Wood v. Commonwealth of Kentucky*, the Franklin Circuit Court dismissed a constitutional challenge brought by a group of voters. 2005 WL 1258921 (Ky.Cir.Ct. 2005) On November 2, 2004, Kentucky voters, by a 3-to-1 margin, approved the following question:

> Are you in favor of amending the Kentucky Constitution to provide that only a marriage between one man and one woman shall be a marriage in Kentucky, and that a legal status identical to or similar to marriage for unmarried individuals shall not be valid or recognized?

As a result of the vote, the following provision was added as Section 233A of the Kentucky Constitution:

> Only a marriage between one man and one woman shall be valid or recognized as a marriage in Kentucky. A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized.

The *Wood* plaintiffs alleged that the measure violated Kentucky's single subject rule "because is effectively creates two unrelated amendments to the Kentucky Constitution, the first being a ban on same sex marriages; the second being a provision that would prohibit the legal recognition of any legal relationship

between unmarried individuals." *Wood*, 2005 WL 1258921 (Ky.Cir.Ct. 2005). The plaintiffs claimed that the terms "legal status" and "substantially similar" in the Kentucky measure were vague and ambiguous and caused the amendment to "reach far beyond the scope of marriage causing a multiplicity of unrelated subject matters to fall under the purview of the amendment." *Id.* at *5 By contrast, the Defendants in *Wood* argued that the ballot question proposed a single subject – the kind of relationship to which marital status will be extended in Kentucky. *Id.* at *5. Defendants said that the first sentence "incorporates the 'age-old' meaning of marriage into the Constitution and the second sentence proscribes extending the official status to marriage imitations or substitutes." *Id.*

The Circuit Court agreed with Defendants and dismissed Plaintiffs' complaint. The court stated that the purpose of the single subject rule is to determine "whether the whole matter found in the amendment is so related to the general subject of the amendment as to have a natural connection with it, or is so foreign to it as to have no bearing upon the general subject matter and the object sought to be accomplished." *Id.* at *7 (citing *Hatcher v. Meridith*, 173 S.W. 2d 665, 667 (Ky. 1943)). The *Wood* court noted that "courts should be reluctant to declare legislative acts unconstitutional, and will resolve doubts in favor of their validity and will sustain such acts unless clearly in conflict with constitutional limitations." *Id.* Utilizing those precedents, the Franklin Circuit Court found that

the Kentucky Marriage Amendment complied with the single subject rule. *Id*. at *8.

As was true with the Kentucky amendment, Florida's Marriage Protection Amendment expresses a single purpose – the preservation of marriage as the legal union of one man and one woman as husband and wife. The proposed Amendment contains the "age-old" definition of marriage and proscribes any other legal union that is treated as marriage or the substantial equivalent thereof. Just as the Kentucky court found that the marriage amendment complied with Kentucky's single subject rule, this Court should find that Proponent's Amendment complies with Florida's single subject rule.

## III. PROPONENT'S BALLOT TITLE AND SUMMARY CLEARLY AND UNAMBIGUOUSLY STATE THAT THE CHIEF PURPOSE OF PROPONENT'S AMENDMENT IS TO PRESERVE MARRIAGE AS THE UNION OF ONE MAN AND ONE WOMAN.

Proponent's succinct summary of the provisions of the Amendment satisfy the ballot title and summary established in Fla. Stat. § 101.161 (1):

> [T]he 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.

As this Court explained in *Advisory Opinion to the Attorney General - Save Our Everglades*, 636 So.2d 1336, 1341 (Fla. 1994), Section 101.61 requires that a title and summary:

> state in clear and unambiguous language the chief purpose of the measure. This is so that the voter will have notice of the issue contained in the amendment, will not be misled as to its purpose, and can cast an intelligent and informed ballot. However, it is not necessary to explain every ramification of a proposed amendment, only the chief purpose.

Therefore, the question of whether a title and summary comply with Fla. Stat.§ 101.161 requires determination of two issues: (1) whether the ballot title and summary fairly inform the voter of the chief purpose of the amendment, and (2) whether the language of the title and summary mislead the public. *See Advisory Opinion to the Attorney General re Right to Treatment & Rehabilitation for Non-Violent Drug Offenses,* 818 So.2d 491, 497 (Fla. 2002). "Above all, the title and summary must be accurate and informative." *Advisory Opinion to the Attorney General re: the Medical Liability Claimant's Compensation Amendment,* 880 So.2d 675, 678 (Fla. 2004).

### A. Proponent's Title And Summary Fairly Inform The Voters That The Chief Purpose Of The Amendment Is To Preserve Marriage As The Union Of One Man And One Woman.

Proponent's title and summary are essentially verbatim recitations of the language of the Amendment. The title is consistent with the purpose. The title of the Amendment is "Florida's Marriage Protection Amendment." The voter is informed that the Amendment pertains to protecting marriage. In the summary, Proponent has neither added to nor taken away anything from the text of the

amendment, and therefore has neither embellished nor diminished its potential effects.

Unlike the ballot summary invalidated in *Advisory Opinion to the Attorney General re Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans,* 902 So.2d 763(2005) ("*Land Use Plans*"), Proponent's summary does not editorialize about the effects of the proposed Amendment. In *Land Use Plans*, the proposed amendment would have required that comprehensive land use plans be subject to a local referendum before being adopted. In their summary, the proponents said that "Public participation in local government comprehensive land use planning benefits Florida's natural resources, scenic beauty and citizens." *Id*. at 764. This Court held that the statement did not fully inform the public about the proposal, since land use plans address more than merely aesthetics and environmental issues. *Id.* at 772. The proponents failed to faithfully summarize the purpose of the amendment. *Id.* Furthermore, the statement was an editorial comment, contained impermissible emotional rhetoric, and went beyond an accurate synopsis of the amendment. *Id.*

Proponent's summary, by contrast, resembles the summary this Court found valid in the *Medical Liability* case. There the proponents' summary came very close to reiterating the precise language of the amendment itself. 880 So.2d at 679. The summary provided:

> Proposes to amend the State Constitution to provide that an injured claimant who enters into a contingency fee agreement with an attorney in a claim for medical liability is entitled to no less than 70% of the first $250,000.00 in all damages received by the claimant, and 90% of damages in excess of $250,000.00, exclusive of reasonable and customary costs and regardless of the number of defendants. This amendment is intended to be self-executing.

*Id.* at 676. The amendment provided:

> In any medical liability claim involving a contingency fee, the claimant is entitled to receive no less than 70% of the first $250,000.00 in all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgment, settlement, or otherwise, and regardless of the number of defendants. The claimant is entitled to 90% of all damages in excess of $250,000.00, exclusive of reasonable and customary costs and regardless of the number of defendants. This provision is self-executing and does not require implementing legislation.

*Id.* There were no "material or misleading discrepancies between the summary and the amendment," and both the title and summary were valid under Fla. Stat. § 101.161(1). *Id.* at 679.

Similarly, here there are no discrepancies between the language of the Amendment and the summary. The summary states:

> This amendment protects marriage as the legal union of only one man and one woman as husband and wife and provides that no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized.

The text of the proposed Amendment reads as follows:

> Inasmuch as marriage is the legal union of only one man and one woman as husband and wife, no other legal union that is treated as

marriage or the substantial equivalent thereof shall be valid or recognized.

Since there is virtually no difference between the wording of the summary and of the proposed Amendment, the summary meets the statutory standard of reciting the chief purpose of the amendment. *See Medical Liability*, 880 So.2d at 679.

### B. The Title And Summary Do Not Mislead The Public About The Purpose Of The Amendment.

The purpose of ballot title and summary statute is "to provide fair notice of the content of the proposed amendment so that the voter will not be misled as to its purpose, and can cast an intelligent and informed ballot." *Medical Liability,* 880 So.2d at 679. "In sum, it is this Court's 'responsibility ... to determine whether the language of the title and summary, as written, misleads the public.'" *Id.* "When the summary of a proposed amendment does not accurately describe the scope of the text of the amendment, it fails in its purpose and must be stricken." *Id.*

#### *1. The title and summary provide fair notice of the content of the Amendment.*

As noted, the title is straightforward: "Florida Marriage Protection Amendment." The voter is provided fair notice that the proposed Amendment deals with protecting marriage. The summary succinctly states the content of the proposed Amendment. Since the language in the summary is virtually identical to the text of the Amendment, there is no "divergence in terminology" that this Court

has found to be misleading. *See Advisory Opinion to the Attorney General re Right of Citizens to Choose Health Care Providers*, 705 So.2d 56, 566 (Fla. 1998). In *Right of Citizens*, this Court found that the discrepancy between the term "every natural person" in the amendment and "citizens" in the summary was material and misleading. *Id.* "This divergence in terminology is ambiguous in that it leaves voters guessing whether the terms are intended to be synonymous or whether the difference in terms was intentional." *Id.*

By contrast, in *Medical Liability*, this Court found that use of the term "claim for medical liability" in the summary and "medical liability claim" in the amendment were not materially misleading. 880 So.2d at 679. The use of those terms did not create a discrepancy between the amendment and summary because those terms were used consistently between the summary and the amendment. *Id.*

In this case, Proponent has used the same terminology to express the purpose of the proposed Amendment. Both the summary and text of the Amendment use the phrase "legal union of only one man and one woman as husband and wife." In addition, both the Amendment and the summary use the phrase "no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized." There is no discrepancy nor divergence in terms between the summary and Amendment. Voters reading the summary will have no doubt that the Amendment defines marriage as the legal union of only one man and one woman

as husband and wife and provides that only that no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized.

*2. The amendment contains no terms that might require further definition and the title and summary are not misleading.*

In *Medical Liability*, this Court noted that some of the terms utilized in the amendment and the summary might require further refinement after the amendment passed, but held that the absence of a precise meaning at the initiative stage did not render the summary misleading. *Medical Liability*, 880 So.2d at 679

> Although the opponents argue that the efficacy of the amendment is at issue because of the vague "medical liability" term, the issue as to the precise meaning of this term is better left to subsequent litigation, should the amendment pass. Under the scope of our review, we find the wording of the title and summary sufficient to communicate the chief purpose of the measure. Thus, we conclude that the ballot summary explains the "chief purpose" of the proposed amendment and meets the statutory requirements of section 101.161(1), Florida Statutes.

*Id.* Similarly, in this case, to the extent that any of the terms utilized in the summary and amendment might require more precise definition, such refinement is beyond the scope of this limited proceeding.

In determining the meaning of a term in a citizen initiative, this Court has previously resorted to a dictionary definition when no definition was provided in the amendment text. *Advisory Opinion to Attorney General re Protect People from the Health Hazards Of Second-hand Smoke*, 814 So. 2d 415, 421 n5 (Fla. 2002)

("*Protect People*"). Looking at the dictionary definition of "substantial equivalent" demonstrates the common understanding of its meaning that will be easily recognized by voters. *Black's Law Dictionary* (1991) defines "substantially" as: "Essentially; without material qualification, in the main, in substance; materially; in a substantial manner. About, actually, competently and essentially." *Black's* defines "substantial equivalent of a patented device" as:

> Same as the thing itself, so that if two devices do same work in a substantially same way and accomplish substantially same results, they are equivalent, even though differing in name, form and shape.

*Black's Law Dictionary, Fifth Edition* (West 1991).

*Merriam-Webster's On-line Dictionary* defines substantial as: "consisting of or relating to substance; not imaginary or illusory; real, true; important, essential," and equivalent as "corresponding or virtually identical especially in effect or function." Taken together, a "substantial equivalent" of marriage means virtually identical to marriage – *i.e.*, having the panoply of rights, protections, benefits, obligations, responsibilities and duties that are granted to or imposed upon married spouses.

Applying these definitions to Proponent's Amendment, it is clear that the Amendment concerns solely marriage as the legal union of only one many and one woman as husband and wife. No other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized. Extending less than the

panoply of rights, protections, benefits, obligations, responsibilities and duties upon married spouses does not treat the union as marriage or the substantial equivalent of marriage. But when marriage is compared to an unmarried union and the two unions are substantially equivalent to each other, then the Amendment protects the former and prohibits the latter.

This Court's rulings in *Advisory Opinion to the Attorney General re: People's Property Rights Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects*, 699 So. 2d 1304, 1311 (Fla. 1997) and *Advisory Opinion to the Attorney General re Amendment to Bar Government From Treating People Differently Based on Race in Public Education*, 778 So.2d 888, 899 (Fla. 2001), in which ballot summaries were stricken as ambiguous are distinguishable in that those cases, unlike this case, dealt with undefined legal terms such as "common law nuisance" and "bona fide qualifications based on sex." By contrast, the term "substantial equivalent" in Proponent's Amendment is not a legal term, but commonly understood language.

Virtually every constitutional amendment requires some judicial application of the law to the facts. The current constitutional provisions providing for due process, freedom of speech, free exercise of religion, establishment of religion, equal protection, the right to privacy, and others require courts to flesh out the applications of the law to a fact specific context. The question is not whether a

court must apply the proposed Amendment in a given circumstance, but whether the terms are vague or misleading. They are not. The proposed Amendment is clear and unambiguous. Marriage is the legal union of only one man and one woman as husband and wife. No other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized.

*3. Use of the word "Protect" in the title is not misleading.*

Practically the only word that appears in the title and summary but not in the text of the amendment is the word "protect" in the title and summary. Interested Parties contend that the use of that single word renders the title and summary so misleading as to doom the entire Amendment. This Court has held otherwise. In *Protect People*, this Court held that "use of the term 'protect' does not constitute impermissible political rhetoric or the adjudication of a fact." 814 So.2d at 421. As Interested Parties allege in this case, opponents of the amendment in *Protect People* alleged that term "protect" "has political or emotional underpinnings." *Id.* The opponents in *Protect People*, like Interested Parties here, argued that this Court's holding in *Advisory Opinion to the Attorney General - Save Our Everglades*, 636 So. 2d 1336, 1341 (Fla. 1994), requires a finding that "protect" is an emotionally, politically charged term. This Court disagreed, noting that in prior opinions it had stated that "protect" was a neutral term. *Id.* In addition, this Court noted that inclusion of the title and summary is not an agreement or adjudication as

to whether the measure will actually "protect" rights or prevent harm – "those considerations are reserved for the voters." *Id.* "The ballot summary and title in the instant proposal are not misleading, nor are they 'clearly and conclusively defective.'" *Id.* The same is true in this case.

The nearly verbatim recitation of the terms of the Amendment in the title and summary concisely and accurately convey the chief purpose of the Amendment – the preservation of marriage as the legal union of one man and one woman as husband and wife. Consequently, the title and summary do not mislead the voters and fully comply with Fla. Stat. § 101.161.

## CONCLUSION

Proponent's Amendment addresses the single subject of the protection of marriage as the legal union of one man and one woman as husband and wife. The title and summary provide a nearly verbatim recitation of the provisions of the Amendment and therefore sufficiently inform the voter of the chief purposes of the Amendment. For these reasons, this Court should determine that the Amendment complies with Article

I, § 3 of the Florida Constitution and that the title and summary comply with Fla. Stat. § 101.161.

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by U.S. Mail delivery this 21st day of September, 2005, to the following:

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## CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Brief was prepared using Times New Roman font, size 14, and that the Brief meets the requirements of Fla. R. App. P. 9.210.

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