IN THE SUPREME COURT OF FLORIDA

Case No.: SC 05-1754

ADVISORY OPINION
TO THE ATTORNEY GENERAL

RE: INDEPENDENT NONPARTISAN COMMISSION TO APPORTION LEGISLATIVE AND CONGRESSIONAL DISTRICTS WHICH REPLACES APPORTIONMENT BY LEGISLATURE

ANSWER BRIEF OF THE SPONSOR COMMITTEE FOR FAIR ELECTIONS

MESSER, CAPARELLO & SELF, P.A.
Mark Herron, Esq.
Florida Bar No.: 0199737
Robert J. Telfer III, Esq.
Florida Bar No.: 0128694
215 South Monroe Street, Suite 701
P.O. Box 1876
Tallahassee, FL 32302-1876
Telephone: (850) 222-0720
Facsimile: (850) 224-4350

Attorneys for the Sponsor Committee for Fair Elections

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STATEMENT OF THE CASE

On October 20, 2005, Committee for Fair Elections, the sponsor of the "Independent Commission Initiative," submitted its Initial Brief in support of the amendment. That same day, three briefs were submitted in opposition to the Independent Commission Initiative: (1) the Initial Brief of the Honorable Allan G. Bense, Speaker of the Florida House of Representatives ("Speaker's Brief"); (2) the Initial Brief of Mario Diaz-Balart, Lincoln Diaz-Balart and Ileana Ros-Lehtinen, Members, United States House of Representatives ("Diaz-Balart Brief"); and (3) the Initial Brief of Charlie Clary, Alfred Lawson Jr. and Jim Sebesta, all of whom are members of the Florida Senate ("Clary Brief").

Committee for Fair Elections notes that all three briefs in opposition to the Independent Commission Initiative are submitted by current incumbent members of the Florida Legislature and the United States House of Representatives. Only the Speaker's Brief purports to be filed on behalf of the interests of the people of the State of Florida. Speaker's Br. at 5.

SUMMARY OF ARGUMENT

The Independent Commission Initiative complies with the single-subject requirement. The initiative does not engage in logrolling and does not substantially alter or perform the functions of multiple branches of government. Contrary to the opponents' arguments, the initiative manifests a logical and natural oneness of purpose—the creation of a fifteen-member independent commission to replace the legislature to apportion legislative and congressional districts in the year following each decennial census. Although the initiative will substantially alter the functions of the Florida Legislature by removing its power to reapportion legislative and congressional districts, the Independent Commission Initiative does not substantially alter or perform the functions of *multiple* branches of government, and does not cause "multiple precipitous" or "cataclysmic" changes in state government.

The ballot title and summary of the Independent Commission Initiative fairly inform the voter of the chief purpose of the amendment, and as written, do not mislead the public. The opponents have raised numerous objections to the title and summary, but both state in clear and unambiguous language the chief purpose of the measure, and need not explain every detail, ramification or effect of the Independent Commission Initiative. The summary does not include improper

editorializing because the use of the words independent and nonpartisan provide an accurate, objective and neutral summary of the amendment.

Finally, the Independent Commission Initiative petition that the Committee for Fair Elections has circulated does not violate the single-subject requirement, nor does its ballot title and summary mislead the public. The Division of Elections approved the language of the amendment, and the method of uniting this petition with two other related petitions was approved of by this Court in *Advisory Op. to Att'y Gen. re Fee on the Everglades Sugar Production*, 681 So. 2d 1124 (Fla. 1996).

ARGUMENT

As stated in the Initial Brief, this Court's inquiry is limited to two legal issues: (1) whether the petition satisfies the single-subject requirement of Article XI, Section 3 of the *Florida Constitution*; and (2) whether the ballot title and summary are printed in clear and unambiguous language pursuant to Section 101.161, Florida Statutes. "In determining the propriety of the initiative petitions, the Court does not review the merits of the proposed amendments." *Advisory Op. to Att'y Gen re Amendment to Bar Government from Treating People Differently Based on Race in Public Education*, 778 So. 2d 888, 890-91 (Fla. 2000).

I. THE INDEPENDENT COMMISSION INITIATIVE SATISFIES THE SINGLE-SUBJECT REQUIREMENT.

A. The Independent Commission Initiative Does Not Engage in Logrolling.

The single-subject requirement of Article XI, Section 3 prevents logrolling, which is the combining of different issues into one initiative so that people have to vote for something they might not want, in order to gain something that they do want. *See Advisory Op. to Att'y Gen. re Florida Transp. Initiative for Statewide High Speed Monorail*, 769 So. 2d 367, 369 (Fla. 2000). In order to determine whether an amendment constitutes logrolling, this Court must examine the amendment to determine whether it "may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or

scheme." *Fine v. Firestone,* 448 So. 2d 984, 990 (Fla. 1984) (quoting *City of Coral Gables v. Gray,* 154 Fla. 881, 19 So. 2d 318, 320 (Fla. 1944)).

The Opponents contend that the Independent Commission Initiative "logrolls" in the following ways: (1) it creates a redistricting commission and creates new standards for legislative districts (*see* Speaker's Br. at 29-31); (2) it alters the way state legislative and congressional districts are created (*see* Speaker's Br. at 31-33; Diaz-Balart Br. at 10-16); and (3) it adds a new qualification for legislators, in addition to its other purposes (*see* Speaker's Br. at 33). However, as the Independent Commission Initiative manifests a "logical and natural oneness of purpose[,]" it does not engage in logrolling. *Fine,* 448 So. 2d at 990.

Regarding the Speaker's first argument—that the initiative creates the redistricting commission and creates new standards for legislative districts—a review of the proposed amendment against the current Article III, Section 16 belies this argument. The current Article III, Section 16(a) states:

> (a) SENATORIAL AND REPRESENTATIVE DISTRICTS. The legislature at its regular session in the second year following each decennial census, by joint resolution, shall apportion the state in accordance with the constitution of the state and of the United States into not less than thirty or more than forty consecutively numbered senatorial districts *of either contiguous, overlapping or identical territory,* and into not less than eighty nor more than one hundred twenty consecutively numbered representative districts *of either contiguous, overlapping or identical territory*. . . .

(Emphasis added). In the Independent Commission Initiative, this section will be replaced with the following:

> (a) APPORTIONMENT AND DISTRICTING COMMISSION. In the year following each decennial census or when required by the United States or by court order, a commission shall divide the state into not less than 30 or more than 40 consecutively numbered *single-member senatorial districts of convenient contiguous territory*, not less than 80 or more than 120 consecutively numbered *single-member districts of convenient contiguous territory* as provided by this constitution or by general law . . . .

(Emphasis added).

The Independent Commission Initiative continues the requirement that the legislative districts be of contiguous territory. Although the Speaker's Brief points out that the Independent Commission Initiative requires single-member districts, and that currently, multi-member districts are still permissible, the proposed amendment codifies the now well-established trend of single-member legislative districts. It certainly does not combine subjects which are dissimilar so as to require voters to accept one proposition they might not support in order to vote for one they favor. *See Advisory Op. to Att'y Gen re Limited Casinos,* 644 So. 2d 71, 73 (Fla. 1994).

As such, it manifests a logical and natural oneness of purpose—that is, it creates a fifteen-member independent commission to replace the legislature to apportion legislative and congressional districts in the year following each decennial census. It includes provisions related directly to that single subject and

which provide the scope and implementation of the provision, including, *inter alia*, that the districts be single-member and contiguous. In *Limited Casinos*, this Court held that a proposed amendment did not constitute logrolling, stating:

> Although the petition contains details pertaining to the number, size, location, and type of facilities, we find that such details only serve to provide the scope and implementation of the initiative petitions. These features properly constitute matters directly and logically connected to the subject of the amendment.

644 So. 2d at 64. *See also Advisory Op. to Att'y Gen. re Stop Early Release of Prisoners*, 661 So. 2d 1204, 1206 (Fla. 1995) (holding that final provision of proposed amendment pertaining to life sentences merely provides detail as to how the proposed amendment will be implemented).

Regarding the second argument raised in the Speaker's Brief and the Diaz-Balart Brief—that the initiative alters the way legislative and congressional districts are created—a similar response is necessary. Again, any purported change to the way legislative and congressional districts are created are part of a logical and natural oneness of purpose—the creation of the commission. The inclusion in the initiative of the redistricting legislative and congressional districts is directly related to this single subject. This Court is compelled to view the amendment as a whole to determine if it "may logically be viewed as having a natural connection as component parts or aspects of a single dominant plan." *Fine*, 448 So. 2d at 990. Clearly, when viewed as whole, the inclusion of redistricting legislative and

congressional districts in an amendment to Article III, Section 16 is logically and naturally connected to the creation of an independent nonpartisan commission that replaces the legislature to conduct redistricting.

The Speaker's third argument is because the amendment calls for the creation of the commission and purportedly adds a new qualification for state legislators, the amendment engages in logrolling. The Independent Commission Initiative requires that "[a]s a condition of appointment, each commissioner shall take an oath affirming that the commissioner will not receive compensation as a paid registered lobbyist, or seek elected office in any legislative or congressional district for a period of four years after concluding service as a commissioner." *Independent Comm'n Initiative*, Art. III, § 16(a)(2)b. The requirement that a commissioner take an oath not to seek elected office in the legislature does not add an additional qualification for legislators—it merely requires the commissioner, as a condition of his or her appointment to the commission, to take an oath. The oath requirement is logically and naturally connected to the creation of an independent nonpartisan commission that replaces the legislature to conduct redistricting.

B. The Independent Commission Initiative Does Not Alter or Perform the Functions of Multiple Branches of Government.

The Independent Commission Initiative does not alter or perform the functions of multiple branches of government. As conceded in the Initial Brief, this amendment will undoubtedly substantially alter functions of the Florida

Legislature by removing its power to reapportion legislative and congressional districts. However, the controlling test is whether it *substantially* alters or performs the functions of multiple branches of government. *See Advisory Op. to Att'y Gen. re Fish & Wildlife Conservation Comm'n,* 705 So. 2d 1351, 1353-54 (Fla. 1998). Moreover, the single-subject requirement is intended to prohibit "precipitous" and "cataclysmic" changes in state government. *See Advisory Op. to Att'y Gen. re Right to Treatment & Rehabilitation,* 818 So. 2d 491, 495 (Fla. 2002).

The opponents argue that the Independent Commission Initiative substantially alters or performs the multiple branches of government in the following ways: (1) it affects the Executive branch by taking away the Governor's role in approving or vetoing a congressional reapportionment plan (Speaker's Br. at 36; Diaz-Balart Br. at 19); (2) it affects the Executive Branch by affecting how the Governor will appoint future Justices to the Supreme Court of Florida (Speaker's Br. at 37); (3) it gives new duties to the Chief Justice of the Supreme Court of Florida by allowing the Chief Justice to select 3 of the 15 members of the commission (Speaker's Br. at 35; Diaz-Balart Br. at 20-21); and (4) it takes away the role of the legislature in redistricting, but gives the legislature the power to appoint members of the commission (Diaz-Balart Br. at 20).

In the Initial Brief, Committee for Fair Elections conceded that the Independent Commission Initiative substantially alters the functions of the legislative branch by removing its power to reapportion legislative and congressional districts. However, despite the arguments of the opponents of the amendment, it does not substantially alter multiple branches of government.[1]

With regard to the opponents' first argument—that it affects the Executive Branch by taking away the Governor's approval or veto power over congressional reapportionment plans—the issue is whether this causes multiple precipitous and cataclysmic changes to state government. It does not. The amendment is intended to create an independent nonpartisan commission that replaces the legislature in conducting redistricting, and while it may affect multiple branches of government, this fact alone is insufficient to invalidate the amendment. *See Advisory Op. to Att'y Gen. re Fla. Transp. Initiative*, 769 So. 2d 367, 369-70 (Fla. 2000).

Further, the Independent Commission Initiative's purported affect on the Governor's approval or veto power on a Congressional Plan does not affect the executive branch at all. The Governor's approval and veto power of legislation is located in Article III, Section 8 of the *Florida Constitution.* Article III, of course, concerns the legislative branch of Florida government, whereas Article IV

[1] For this reason, Committee for Fair Elections will not address the fourth argument of the opponents, that the Independent Commission Initiative takes away the role of the legislature in redistricting, but gives the legislature the power to appoint members of the commission.

concerns the executive branch. The inclusion of the governor's approval and veto power with the powers accorded to the Florida Legislature in the *Florida Constitution* is significant.

Courts have long considered the Governor, when acting with respect to legislation, to be part of the legislative process. In *Thompson v. State*, 56 Fla. 107, 110, 47 So. 816 (Fla. 1908), this Court held that "[u]nder our Constitution, as in that of most of the states, the Governor is a constituent of the Legislature." *See also State ex rel. Boyd v. Deal,* 24 Fla. 293, 308, 2 So. 899, 906 (Fla. 1888) ("The authorities speak of the governor as being a component part of the law-making power in the exercise of these functions."). In *In re Executive Communication Concerning Power of Legislature,* 23 Fla. 297, 6 So. 925 (Fla. 1887), this Court stated:

> The exact legal meaning of the word 'executive' has been many times authoritatively fixed and defined. It means a duty appertaining to the execution of the laws as they exist. It would follow that the law must be enacted according to all the terms prescribed by the constitution, before the duty of executing it can exist. ***Any duty imposed by the constitution on the governor with reference to a bill, before it becomes a law, is not an executive duty. The enactment of laws is a legislative duty, and, when your excellency is required by the constitution to do any act which is an essential prerequisite thereto, such act is legislative, and is performed by you as a part of the lawmaking power, and not as the law-executing power.***

23 Fla. at 298-99 (emphasis added).

The Governor's approval or veto of a Congressional Plan is a mere step in the current legislative process of redistricting. It is not, under the *Florida Constitution* or long-standing jurisprudence, an executive power. As the Committee for Fair Elections has conceded that the Independent Commission Initiative substantially alters the Legislative branch, any change to the Governor's veto power, while certainly not a cataclysmic change, is merely part of the substantial alteration of the Legislature's powers over redistricting.

This Court has previously stated that "[t]here 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." *Pope v. Gray*, 104 So. 2d 841, 842 (Fla. 1958). If this Court were to accept the opponent's argument on this point, the people of the State of Florida would be effectively shut-out of any opportunity to amend the *Florida Constitution* by the initiative process if that amendment affected the Legislative branch. Nearly any change to the Legislature's ability to enact legislation would affect the Governor's approval or veto power. The Committee for Fair Elections submits that such a result would prove unworkable for the sovereign right of the electors to amend their Constitution.

With regard to the opponent's second argument, that the amendment will affect how the Governor will appoint future Justices to the Supreme Court of

Florida, the argument that the Governor will need to consider how a prospective Justice might execute his or her new legislative authority is not the type of precipitous or cataclysmic change that is violative of the single subject requirement.

With regard to the opponent's third argument, that the amendment will give new duties to the Chief Justice of the Supreme Court of Florida by allowing the Chief Justice to select 3 of the 15 members of the commission, again, while the amendment may affect multiple branches of government, it does not result in multiple precipitous or cataclysmic changes in state government. The Independent Commission Initiative proposes to the electors of Florida a singular change to the function of the legislative branch: the creation of an independent nonpartisan commission that replaces the legislature to conduct redistricting. The appointment power given to the Chief Justice is part of this singular change, and is necessary in the creation of the nonpartisan commission.

II. THE BALLOT TITLE AND SUMMARY OF THE INDEPENDENT COMMISSION INITIATIVE FAIRLY AND UNAMBIGUOUSLY DISCLOSE THE CHIEF PURPOSE OF THE AMENDMENT.

This Court should ask two questions when determining whether the ballot title and summary of the Independent Commission Initiative comply with Section 101.161, Florida Statutes and controlling precedent: (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, as written, misleads the public. *See Advisory Op. to Att'y Gen. re Additional Homestead Tax Exemption*, 880 So. 2d 646, 651-52 (Fla. 2004). While a ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, they need not explain every detail, ramification or effect of the proposed amendment. *See Grose v. Firestone*, 422 So. 2d 303, 305 (Fla. 1982). As argued in the Initial Brief, the ballot title and summary of the Independent Commission Initiative satisfy these requirements.

The opponents offer a number of arguments: (1) the use of the word "non-partisan" is misleading and inaccurate because the method of appointing the commissioners is partisan (Speaker's Br. at 8, Diaz-Balart Br. at 37, Clary Br. at 10); (2) the summary includes improper editorializing because of its use of the words "independent" and "nonpartisan" (Speaker's Br. at 11); (3) the limit on commission members from seeking office is misleading because it requires

commissioners to take an oath when limitations on congressional candidates are barred (Diaz-Balart Br. at 39, Clary Br. at 13); (4) the summary fails to inform voters that the Governor's current role in reapportionment is eliminated (Diaz-Balart Br. at 45); (5) the summary fails to inform the voters of the Supreme Court of Florida's current role in redistricting (Diaz-Balart Br. at 46); and (6) the summary omits critical information (Speaker's Br. at 13).

The title of the initiative is "Independent Nonpartisan Commission to Apportion Legislative and Congressional Districts which Replaces Apportionment by Legislature." The summary of the initiative is:

> Creates fifteen member commission replacing legislature to apportion single-member legislative and congressional districts in the year following each decennial census. Establishes non-partisan method of appointment to commission. Disqualifies certain persons for membership to avoid partiality. Limits commission members from seeking office under plan for four years after service on commission. Requires ten votes for commission action. Requires Florida Supreme Court to apportion districts if commission fails to file a valid plan.

According to Riverside Webster's II Dictionary, "nonpartisan" is defined as "not influenced or associated with one political party." According to the Ameican Heritage Dictionary of the English Language, Fourth Edition, "nonpartisan" is defined as "based on, influenced by, affiliated with, or supporting the interests or policies of no single political party: a nonpartisan commission; nonpartisan opinions." A review of the language of the summary and the operative language of

the amendment clearly reveals that the members of the commission will be nonpartisan. The commission will be composed in the following way:

> The president of the senate and the speaker of the house of representatives each shall select and certify three commissioners. Members of minority parties in the senate shall elect one from their number who shall select and certify three commissioners. Members of minority parties in the house of representatives shall elect one from their number who shall select and certify three commissioners. On or before June 1 of the same year, the chief justice of the supreme court shall select three members of the commission, each of whom shall be a registered voter who for the previous two years was not registered as an elector of either or the two largest political parties in the senate and the house of representatives. The chief justice shall select commissioners from recommendations made by the chief judge of each district court of appeal. Each chief judge shall recommend three individuals who otherwise meet the requirements of this section and who reside in that district. From the individuals recommended by chief judges of the district courts of appeal, the chief justice shall select and certify three commissioners. No two commissioners selected by the chief justice shall reside in the same appellate district.

Independent Commission Initiative, Art. III, § 16(a)(1). The drafters of this amendment went to great length to ensure that the commission was independent and nonpartisan.

The opponents argue that the title and summary are misleading in their use of the words independent and nonpartisan, because many of the commission members will be chosen by members of the majority and minority parties of the Florida Legislature. However, the bottom line is that the initiative has created the commission so that its members will not be influenced or associated with one political party. The commission will not be subject to any oversight or control by

the Florida Legislature, legislative leadership or any political party. The commission members will not be required to seek election or reelection to the commission. In short, the commission, and the method of its creation, falls clearly within the definition of "nonpartisan" that the Committee for Fair Elections used in drafting the amendment, its title and summary. The voters will not be mislead by the title or summary because the commission will be nonpartisan. Further, it can be presumed "that the average voter has a certain amount of common understanding and knowledge." *Advisory Op. to Att'y Gen. re Local Trustees,* 819 So. 2d 725, 732 (Fla. 2002).

For similar reasons, the opponents' argument that the summary includes improper editorializing because it includes the words "independent" and "nonpartisan" is misplaced. In *Evans v. Firestone,* 457 So. 2d 1351, 1355 (Fla. 1984), this Court stated that "the ballot summary is no place for subjective evaluation of special impact. The ballot summary should tell the voter the legal effect of the amendment, and no more." In *Evans,* the Court found that the summary's concluding words, "thus avoiding unnecessary costs," constituted an impermissible editorial comment. In *Advisory Op. to Att'y Gen. re Referenda Required for Adoption & Amendment of Local Gov't Comprehensive Land Use Plans,* 902 So. 2d 763, 771-72 (Fla. 2005), this Court found that the opening sentence of the summary, which stated "Public participation in local government

comprehensive land use planning benefits Florida's natural resources, scenic beauty and citizens[]" was in improper editorial comment that failed to provide an "accurate, objective, neutral summary of the proposed amendment[,]" namely because of the use of the words "Florida's natural resources" and "scenic beauty."

The use of the words independent and nonpartisan in the summary provide an accurate, objective and neutral summary of the Independent Commission Initiative. The summary informs the voter of the legal effect of the amendment, as required. The commission members will not be subject to any oversight or control by the Florida Legislature, legislative leadership or any political party, and will not be required to seek election or reelection to the commission. In short, the commission will be independent and nonpartisan, which is the Committee for Fair Election's chief purpose in presenting this amendment to the people of the State of Florida for consideration.

The opponents next argue that the summary's statement that it "[l]imits commission members from seeking office under plan for four years after service on commission" is misleading because the text of the amendment requires commission members to take an oath affirming that they will not seek elected office for a period of four years after concluding service on the commission. The summary is not misleading because the amendment sponsor trusts that the

commissioners will abide by an oath that will be part of the *Florida Constitution.* And, a voter would similarly trust that a commissioner would abide by an oath that is part of the *Florida Constitution.*

The Diaz-Balart Brief predicts a parade of horribles related to this provision, such as: the amendment would place limitations on congressional candidates, in violation of the Qualifications Clause of the *Constitution* and *US Term Limits v. Thornton,* 514 U.S. 779 (1995); the amendment would require the Secretary of State to promulgate regulations regarding the oath requirement; and that the summary is vague as to whether the oath bars a person from receiving compensation as a lobbyist of the Florida Legislature or the United States Congress. The requirement is that a commissioner take an oath. An oath is not an absolute limitation on or an additional qualification for congressional candidates, and therefore does not implicate the Qualifications Clause or *US Term Limits.* Further, an amendment summary, which is limited to 75 words, is not required to "explain every detail or ramification of the proposed amendment." *Advisory Op. to Att'y Gen. re Prohibiting Public Funding of Political Candidates' Campaigns,* 693 So. 2d 972, 975 (Fla. 1997). These particular criticisms in the Diaz-Balart Brief are actually aimed at the merits of the proposal, and not whether the summary is misleading.

The opponents next argue that the summary fails to inform the voters that the Governor's current role in Congressional reapportionment is eliminated. Again, the summary is not required to explain every detail or ramification of the proposed amendment. The language of the title and summary are an objective, accurate and neutral summary of the Independent Commission Initiative. Any affect on the Governor's role in Congressional reapportionment, which, as argued above, is part of the lawmaking process, is incidental to the overall effect of replacing the Legislature in conducting reapportionment of legislative and congressional districts.

The opponents next argue that the summary fails to inform the voters of the Supreme Court of Florida's current role in redistricting, and implies that the Supreme Court of Florida has no present role in redistricting. The summary states, in part, "Requires Florida Supreme Court to apportion districts if commission fails to file a valid plan." Under Article III, Section 16, currently, the Supreme Court of Florida has this role in redistricting. This provision of the summary provides the voting public with a summary of an integral part of the amendment, and does not mislead the public.

Finally, the Speaker argues that the summary omits several other pieces of "critical" information, and also fails to address the provisions of the *Florida Constitution* that it amends. Again, the summary need not "explain every detail or

ramification of the proposed amendment." *Prohibiting Public Funding of Political Candidates' Campaigns*, 693 So. 2d at 975. Many of these specific arguments focus on the merits of the Independent Commission Initiative, which are inappropriate for review before this Court. Further, this Court, in *Advisory Op. to Att'y Gen. re Right to Treatment & Rehab. For Non-Violent Drug Offenses*, 818 So. 2d 491 (Fla. 2002) held, regarding the ballot title and summary:

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

Id. at 498 (quoting *Metropolitan Dade County v. Shiver*, 365 So. 2d 210, 2213 (Fla. 3d DCA 1978).

The Speaker first argues that summary fails to inform the voters that the amendment changes current redistricting standards—that the legislative districts under the Independent Commission Initiative will be single-member districts and contiguous. *See* Speaker's Br. at 14-15. The summary does disclose that the legislative districts will be single member, and, as argued above in Section I-A

above, the contiguous requirement is not a significant change to the redistricting scheme already in place. The summary fairly informs the public of the chief purpose of the amendment and certainly does not mislead the public.

Second, the Speaker argues that the summary fails to disclose the Chief Justice's power to appoint commissioners, which the Speaker contends is a "fundamental change to Florida's organic law." *See* Speaker's Br. at 15-17. The Speaker further argues, at pages 17-18 of his Brief, that the summary fails to disclose the method of commissioner selection and "the likelihood that the selection method will lead to gridlock." The summary states, in part, "Establishes non-partisan method of appointment to commission." It is not necessary for a summary to explain every detail or ramification of a proposed amendment. Although the summary does not discuss in any further detail the intricacies of this appointment scheme, it fairly notifies the public that it is establishing a nonpartisan method of appointing commissioners, which, along with redistricting, is the chief purpose of the amendment.

Next, the Speaker argues that the summary fails to inform the voters that the Independent Commission Initiative will affect Florida's representative form of government and equal rights of minorities. *See* Speaker's Br. at 20-22. The Speaker then speculatively takes aim at the merits of the proposal: the commission may be composed of members from only 3 of Florida's 67 counties; that the

commission could be composed of solely white men; and that the proposal does "nothing" to ensure racial diversity. This Court is constrained from reviewing the merits of a proposed amendment, and should refrain from doing so here. The Independent Commission Initiative does not attempt to change, and will comply with, federal law, including Section 5 of the Voting Rights Act. The Committee for Fair Elections drafted the Independent Commission Initiative to replace the current method of redistricting, and the ballot title and summary both accurately inform the public of this chief purpose.

Finally, the Speaker argues that the summary fails to address the provisions of the *Florida Constitution* that it "substantially amends." *See* Speaker's Br. at 22-26. This really is an argument that the amendment violates the single-subject requirement, which, as argued above, it does not. The amendment only deals with one subject. Any and all changes to redistricting are contained in Article III, Section 16. This Court has previously held that the possibility that an amendment might interact with other parts of the *Florida Constitution* is not a sufficient reason to invalidate a proposed amendment. *See Advisory Op. to Att'y Gen. English – The Official Language of Florida*, 520 So. 2d 11, 12-13 (Fla. 1988). The Independent Commission Initiative only substantially alters the functions of the Legislature, by removing its power to reapportion legislative and congressional districts and replacing it with an independent nonpartisan commission. Further, the Speaker

(along with all opponents) ignores the requirement that a ballot title and summary give fair notice of the chief purpose of the amendment, and that it not mislead the public. As stated over and over in response to the opponents' arguments, the ballot title and summary of the Independent Commission Initiative does just that, and should be approved for placement on the ballot.

III. THE PETITIONS THAT THE COMMITTEE FOR FAIR ELECTIONS CIRCULATED COMPLY WITH ALL APPLICABLE REQUIREMENTS.

The opponents (Speaker's Br. at 38, Clary Br. at 15) contend that the Independent Commission Initiative petition as circulated violates the single-subject requirement and contain a misleading ballot title and summary because the Committee for Fair Elections united the petition with two other related petitions.[2] Committee for Fair Elections received approval from the Division of Elections pursuant to Rule 1S-2.009, Florida Administrative Code, regarding the wording of the Independent Commission Initiative and the other two initiative petitions. The three petitions were then united by fastening them together for circulation. Each petition states "SIGN ALL THREE PETITIONS." The petitions, as circulated, do not contain any changes whatsoever to their previously-approved wording. The petitions each contain separate signature lines, ballot titles, summaries and texts of the three initiatives.

In *Advisory Op. to Att'y Gen. re Fee on the Everglades Sugar Production*, 681 So. 2d 1124 (Fla. 1996), this Court rejected a similar challenge. The proponents in that case circulated three similar petitions that were unified. The proponents had received approval from the Division of Elections on the wording of

[2] The other initiatives were the 2007 Apportionment Initiative (which is currently pending before this Court in Case No. SC05-1755) and a "Standards" amendment, which Committee for Fair Elections has withdrawn from consideration.

each petition, but did not seek approval of the unified petition. The consolidated petition contained separate signature lines, ballot titles, summaries, and texts of the three initiatives. In bold type, the petitions stated "THREE PETITIONS. READ EACH CAREFULLY. SIGN *AND DATE* ANY OR ALL." *See id.* at 1131.

The Court ruled that the unified petition did not violate the single-subject rule because, "as presented to the signers of the unified petition, each proposal addresses a single subject, each is clearly freestanding, and signers could support or reject one or more of them." *Id.* The same situation is present here, and for the same reason, this Court should reject the opponent's single subject arguments regarding the united petition. Committee for Fair Elections complied with this Court's decision in *Everglades Sugar Production* in uniting the three petitions, and has otherwise complied with Rule 1S-2.009 in securing approval of the wording of the three petitions.

The Clary Brief also argues that the ballot title and summary of the initiative that appears first in the united petition—which is not currently under review by this Court—is misleading as to the Independent Commission Initiative. The *Everglades Sugar Production* Court did not deal directly with such a challenge. However, that Court reviewed whether slight wording changes to the petitions after they had been approved were misleading. The Court held that "substantial compliance" with Rule 1S-2.009 was sufficient, and analyzed the opinion of the

Court of Appeals of Oregon in *Barnes v. Paulus*, 36 Or.App. 327, 588 P.2d 1120 (1978). In its analysis, the *Everglades Sugar Production* Court concluded:

> In applying the analysis of *Paulus* to the instant case, we conclude it is unlikely that the noted wording changes in the instant petitions misled, deceived, or produced confusion in signers' minds concerning the impact of the proposed amendments. The errors are without substance, there was no attempt to mislead, and the voters expressed their support for the petitions. On balance, the seriousness of the defects do not outweigh the consequences of invalidating the petitions.

Everglades Sugar Production, 681 So. 2d at 1132.

Committee for Fair Elections' decision to unite the three petitions was not to mislead the electors into signing the petitions. The caveat to "SIGN ALL THREE PETITIONS" provided sufficient instructions to would-be petition-signers that three petitions were included in the united petition. This Court has previously held, in the context of whether a ballot title and summary were misleading, that it can be presumed "that the average voter has a certain amount of common understanding and knowledge." *Advisory Op. to Att'y Gen. re Local Trustees*, 819 So. 2d 725, 732 (Fla. 2002). Because there is no attempt to mislead, and because an average voter would exercise common sense and note that he or she had the opportunity to sign three separate amendments, this Court should reject the opponents' arguments on this point.

CONCLUSION

Based on the foregoing, the Independent Commission Initiative satisfies all governing legal requirements, including the single-subject requirement of Article XI, Section 3 of the *Florida Constitution*, as well as the ballot title and summary requirements of Section 101.161, Florida Statutes. Committee for Fair Elections respectfully requests that this Court approve it for placement on the ballot.

Respectfully submitted,

MESSER, CAPARELLO & SELF, P.A.
215 South Monroe Street, Suite 701
P.O. Box 1876
Tallahassee, FL 32302-1876
Telephone: (850) 222-0720
Facsimile: (850) 224-4359

By:_____
Mark Herron, Esq.
Florida Bar No.: 0199737
Robert J. Telfer III
Florida Bar No.: 0128694

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. mail this 9th day of November, 2005 to:

The Honorable Charlie Crist
Joslyn Wilson
Office of the Attorney General
PL 01, The Capitol
Tallahassee, FL 32399-1050

Barry Richard
Glenn T. Burhans
Greenberg Traurig
101 East College Avenue
Tallahassee, FL 32301

George N. Meros, Jr.
Allen C. Winsor
GrayRobinson, P.A.
Post Office Box 11189
Tallahassee, FL 32302

Miguel DeGrandy
Stephen M. Cody
MIGUEL DE GRANDY, P.A.
800 Douglas Road, Suite 850
Coral Gables, FL 33134-2088

J. Dudley Goodlette
Goodlette, Coleman & Johnson, P.A.
Northern Trust Bank Building
4001 Tamiami Trail North, Suite 300
Naples, FL 34103

The Honorable Tom Lee
President, Florida Senate
Suite 409, The Capitol
404 South Monroe Street
Tallahassee, FL 32399-1100

The Honorable Glenda Hood
Secretary of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399-0250

Dawn K. Roberts, Director
Florida Division of Elections
R.A. Gray Building
500 South Bronough Street
Room 316
Tallahassee, FL 32300-0250

The Honorable John Ellis "Jeb" Bush
Governor of Florida
Executive Office of the Governor
The Capitol
Tallahassee, FL 32399-0001

Mark Herron

CERTIFICATE OF COMPLIANCE

I hereby certify that this Answer Brief was prepared in Times New Roman 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

Mark Herron