IN THE SUPREME COURT OF FLORIDA

Case No. SC08-986

ADVISORY OPINION TO THE ATTORNEY GENERAL
RE: STANDARDS FOR ESTABLISHING LEGISLATIVE
DISTRICT BOUNDARIES

ANSWER BRIEF OF SPONSOR

FairDistrictsFlorida.org

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SUMMARY OF ARGUMENT

The Legislature's scattershot attack on the petition fails to identify any defects that rise to the level of substance required by this Court in order to deny the electorate the opportunity to vote on the measure.

The argument that the standards violate the single subject requirement simply because they are not presented in eight separate petitions would apply to any proposal involving multiple components, a proposition that this Court has consistently rejected. This petition complies because the standards "have a natural relation and connection as component parts or aspects of a single dominant plan."

The proposed amendment would change the function of only one branch of Florida government. The speculative scenario presented by the Legislature illustrates only a potential *effect* of the amendment, which this Court has stated is not a violation of the single subject requirement.

The initiative meets the two requirements for a ballot title and summary. It clearly and unambiguously informs the voter of the chief purpose of the amendment and there is nothing in the title or summary that is misleading. The summary is not required to mention every possible effect or ramification of passage of the amendment.

The difference between the term “drawn with the intent to favor or disfavor” used in the amendment and “drawn to favor or disfavor” used in the summary is not misleading. Contrary to the Legislature’s assertion, “drawn to favor” is more indicative of intent than effect. Moreover, courts may look to effect in order to give the element of intent an objective standard. In any case, the summary language is broad enough to include intent and there is nothing about the distinction that would cause a voter to vote for or against the measure.

The fact that the phrase “existing political boundaries” used in the amendment could be interpreted to include towns, villages and special districts in addition to cities and counties is not such a substantive difference as to render the petition materially different from the amendment.

The term “language minority” is reasonably understandable to the average voter and distinguishable from the broad catch-all terms used in the cases cited by the Legislature.

Unlike past petitions that provided the same generic protections to the same classes of persons already protected without so indicating, the current petition imposes specific standards on a particular process that may or may not be covered by the more generic protections included in voting rights and

equal protection provisions. Even the Legislature acknowledges that the standards appear to impose more stringent standards than currently exist.

ARGUMENT

The Legislature sifts the initiative petition through an extremely fine-meshed sieve in an effort to squeeze out every possible misreading of the title and summary, however strained, and every conceivable application to multiple branches, however speculative and unlikely. This Court has long eschewed such a hyper-technical analysis in order to avoid unduly restricting the ability of Florida citizens to amend their constitution through the initiative process. Instead, the Court has adopted a common-sense approach designed to serve the underlying purposes of the single-subject and fair notice requirements without overly burdening the initiative process. Application of those approaches to the petition under review provides the answers to the Legislature's arguments and establishes that the petition meets all requirements for placement on the ballot.

SINGLE SUBJECT

The Legislature argues that the proposed amendment violates the single-subject requirement because it includes eight separate standards. Based upon this theory, the only way the standards could be added to the Constitution would be for the Sponsor to circulate eight separate petitions

and place eight separate amendments on the ballot. The same would be true of most amendments containing separate items or components. Such a restriction would make it extraordinarily difficult, if not impossible, for citizens to amend the Constitution in ways that necessarily require multiple components. It would also be bad public policy, significantly increasing the number of petitions being circulated and the number of proposed amendments on already overcrowded ballots.

This Court has never viewed the single-subject rule as a single-item or single-component restriction. Instead, the Court has looked at whether the various components are an integral part of a "single dominant plan or scheme:"

> This Court has held that to satisfy the single-subject requirement, the proposed amendment must have a "natural relation and connection as component parts or aspects of a single dominant plan or scheme. Unity of object and plan is the universal test."*** In other words, a proposed amendment must manifest a "logical and natural oneness of purpose."

Limited Casinos, 644 So. 2d 71 (Fla. 1994).

Accordingly, the Court has consistently upheld proposed amendments having multiple component parts so long as they were part of a single dominant scheme. *E.g., Local Trustees*, 819 So. 2d 725 (Fla. 2002); *Prohibiting Public Funding of Political Candidates' Campaigns*, 693 So. 2d 972 (Fla. 1997); *Limited Casinos*, 644 So. 2d

at 71; *Fish and Wildlife Conservation Comm'n*, 705 So. 2d 1351 (Fla. 1998); *Limited Political Terms*, 592 So. 2d 225 (Fla. 1991).

The current petition would establish a set of standards to be used by a single body — the "Florida Legislature" — for a single purpose: the drawing of legislative district lines. Contrary to the Legislature's contention that the standards are "unrelated," they are, in fact, integrally related. Because the standards influence the shape of districts that make up a single whole, the application of every standard can affect all others and they must be read *in pari materia*. Moreover, the language of the amendment provision itself makes the standards interdependent.[1] The Legislature's argument that the standards constitute logrolling because a voter is forced to take all or none could have been made (and in some cases was) in each of the above-cited cases. Nevertheless, the Court found that none violated the single-subject requirement.

The Legislature's reliance upon *Laws Related to Discrimination*, 632 So. 2d 1018 (Fla. 1994) and *Race In Public Education*, 778 So. 2d 888 (Fla. 2000), is misplaced and the distinction between those cases and the current

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[1] "(2) Unless compliance with the standards in this subsection conflicts with the standards in subsection (1) * * *."

"(3) The order in which the standards within sub-sections (1) and (2) of this section are set forth shall not be read to establish any priority of one standard over the other within that subsection."

proposed amendment is informative. The proposition reviewed in *Laws Related to Discrimination* would have guaranteed protection from discrimination for ten separate classifications of people. In *Race In Public Education*, the proposed amendment would have prohibited discrimination in the areas of education, employment and contracting. In neither of these cases did the Court suggest that it would have found unacceptable the establishment of multiple standards of conduct, so long as they were applicable to only one class of persons.

The proposed amendment would change a single constitutional function of the legislative branch. The Legislature, however, constructs an elaborate logic that piles one assumption upon another to reach the conclusion that the amendment would impose a duty upon the judicial branch as well as the legislative. The Legislature reasons that it is "humanly impossible" to achieve a districting scheme that is politically neutral and, consequently, "the Legislature will be unable to draft a plan" in compliance with the standards set forth in the amendment and this Court will always be compelled ultimately to perform the redistricting function pursuant to Article III, Sections 16(b) and (f). Despite the Legislature's insistence that, "this effect is certain, not speculative" [Brief of the Florida Legislature, p. 20], it is indeed purely speculative, and such speculation is insufficient to

invalidate a petition. *Limited Casinos*, 644 So. 2d at 71; *English - the Official Language*, 520 So. 2d 11 (Fla. 1988).

In addition to the speculative nature of the Legislature's argument, it confuses a *change in the function* of a branch created by the language of the amendment with an *effect* that might flow from application of the change. The only function changed by the proposed amendment is the redrawing of legislative district boundaries by the Legislature. The scenario contrived by the Legislature is not a change created by the amendment, but an indirect possible effect of the failure of the Legislature to fulfill its duty in applying the standards. This Court has consistently held that the fact that a proposed amendment might affect more than one branch is not alone sufficient reason to invalidate it. *Extending Existing Sales Tax*, 953 So. 2d 471 (Fla. 2007); *Marriage Protection*, 926 So. 2d 1229 (Fla. 2006); *Health Hazards of Using Tobacco*, 926 So. 2d 1186 (Fla. 2006); *Term Limits Pledge*, 718 So. 2d 798 (Fla. 1998); *Fish and Wildlife Conservation Comm'n*, 705 So. 2d 1351 (Fla. 1998).

BALLOT TITLE AND SUMMARY

The Legislature's multiple challenges to the ballot summary fall into two broad categories. First, the Legislature asserts that the summary fails to give notice of all possible effects or ramifications of the amendment. This

includes that the summary doesn't state: that the standards might also have to be applied by this Court in the event that legislative reapportionment should fall to it by virtue of the Legislature's default, that the amendment would diminish the Legislature's discretion, and that the summary doesn't identify constitutional provisions that would be substantially affected.

The title and summary must inform the voter of the chief purpose of the proposed amendment and all material changes *created by the amendment*. It is not necessary for the title and summary to explain all possible effects or ramifications of the amendment. *Extending Existing Sales Tax*, 953 So. 2d at 471; *Independent Nonpartisan Comm'n*, 926 So. 2d 1218 (Fla. 2006); *Grose v. Firestone*, 422 So. 2d 303 (Fla. 1982). In this case, the chief purpose and sole material change created by the proposed amendment is to require the Legislature to apply particular standards to the redistricting process. Both the title and summary state as much in clear and unambiguous language. It is not necessary for the summary to explain that, in the speculative event that the Legislature fails to reapportion in accordance with its constitutional duty and the function then falls to this Court, the existence of the new standards might affect this Court's review. It is also unnecessary for the summary to tell the voter that the standards diminish the Legislature's discretion, a conclusion that any reasonable

person can surmise from the fact alone that it would have to comply with standards that did not previously appear in the Constitution.

The second category of challenges asserted by the Legislature is composed of nitpicking distinctions in the language of the summary compared to the amendment. The amendment provides that "no apportionment plan or district shall be drawn *with the intent* to favor or disfavor a political party or an incumbent" (italics supplied). The Legislature argues that the summary statement differs from the amendment because the summary's phrase "drawn to favor or disfavor," "implies" an effect rather than an intent. In actuality, the term "drawn to" is more reasonably read to imply intent than effect. Moreover, regardless of the language of the amendment, courts might ultimately look to the effect of a plan in order to apply an objective test to the intent requirement, something often done when statutes include an intent element. But this is the type of ramification that the Court has not required to be included in the ballot summary. The phrase "may not be drawn to favor or disfavor" is broad enough to include intent and there is nothing about the summary language that would be misleading to a voter in any material fashion.

The Legislature asserts that the summary is defective because the summary states that districts, where feasible, must make use of existing

"city, county and geographical boundaries," whereas the actual amendment refers to "existing political boundaries." The Legislature argues that the summary is misleading because the phrase "existing political boundaries" can include towns, villages, special tax districts, school districts, and special road and bridge districts as well as cities and counties. It is difficult to conceive of why a voter would be moved to change his or her vote, and therefore be misled, because of the possibility that the Legislature in a given instance might use the boundaries of a town, village or special tax district rather than just a city or county. In any case, the distinction is not so material as to make the proposition "clearly and conclusively defective" as required to strike it from the ballot. *Tax Limitation*, 673 So. 2d 864 (Fla. 1996).

Finally, the Legislature argues that when the summary states that, "districts shall not be drawn to deny racial or language minorities" equal opportunity, the phrase "language minorities" is vague and ambiguous. In the first place, the Legislature fails to explain what meaning the term "language minority" can be interpreted by a voter to mean other than a native language other than English. More importantly, the Legislature fails to explain why a voter would be misled into voting for or against the amendment because of the phrase even if it is vague and ambiguous.

In support of its argument, the Legislature cites *Race In Public Education*, 778 So. 2d at 888 and *People's Property Rights*, 699 So. 2d 1304 (Fla. 1997), in which the Court held, respectively, that the terms "bona fide qualifications based on sex" and "exemption" were so ambiguous as to render the summaries defective. However, those terms in the context of the summaries in which they were used had a misleading effect not present in the case at bar. *Race In Public Education* reviewed four petitions, one of which prohibited differential treatment based on sex, but exempted classifications necessary for privacy or medical or psychological treatment, undercover law enforcement, film, video, audio or theatrical casting, or athletics. The summary referred only to "bona fide qualification based on sex," which the Court found was so broad as to leave the voter guessing as to what the exemptions would be. *People's Property Rights* also reviewed several petitions. The one referred to in the Legislature's brief required voter approval for any new taxes, which the amendment defined to include the removal of an exemption. The summary referred to "eliminating tax exemptions." The Court found that the term "exemptions" was overly broad because the average voter wouldn't know the difference between an exemption and immunity. Such problems do not exist in the current summary.

Finally, the Legislature argues that the summary is misleading because it implies that there is no current law protecting language minorities from discrimination, citing *Race In Public Education*, 778 So. 2d 888 (Fla. 2000). The Legislature argues that in fact language minorities are currently protected by provisions of the federal and Florida constitutions. The circumstances in this case are distinguishable from those in *Race In Public Education.* There, the proposed amendment would provide the same broad protection against discrimination to the same classes of people who were already protected by other provisions of the constitution. Here, the amendment doesn't provide the same generic protections that are provided by voting rights and equal protection provisions. Instead, it would apply new standards to a particular process in which the more general provisions might or might not apply in a given situation. The Legislature itself, in support of a separate argument, asserts that the standards are probably more stringent than currently existing law. [2]

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[2] "The Legislature has considerable discretion in establishing district boundaries that can take political concerns into consideration. *Vieth v. Jubilirer.* Moreover, the courts permit some variation in district populations, which it appears the proposal is intended to eliminate, although that is not clear." Brief of the Florida Legislature, pp. 30-31.

CONCLUSION

The Court is respectfully urged to hold that the petition under review meets the legal requirements as to single subject and ballot title and summary.

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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 this 29th day of July, 2008 to the following:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing document is in compliance with the font requirements of Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure. This document is submitted in Times New Roman 14-point font.

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