

**IN THE SUPREME COURT OF FLORIDA**

**Case No. SC08-986**

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

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**INITIAL BRIEF OF SPONSOR**

**FairDistrictsFlorida.org**

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**TABLE OF CONTENTS**

**Table of Citations..... ii**

**Statement of the Case and Facts..... 1**

**Summary of the Argument ..... 3**

**Argument ..... 4**

**Conclusion ..... 8**

**Certificate of Service ..... 9**

**Certificate of Compliance ..... 9**

## TABLE OF CITATIONS

### Cases

<i>Extending Existing Sales Tax to Non-Taxed Servs.</i> 953 So. 2d 471 (Fla. 2007) .....	4
<i>Florida Hometown Democracy</i> 953 So. 2d 666 (Fla. 2007) .....	6
<i>Florida Marriage Protection Amendment</i> 926 So. 2d 1229 (Fla. 2006) .....	4
<i>Independent Nonpartisan Comm'n to Apportion Legislative and Congressional Districts</i> 926 So. 2d 1218 (2006) .....	3, 4, 5, 6
<i>In re Apportionment Law Appearing as Senate Joint Resolution 1E</i> 414 So. 2d 1040 (Fla. 1982) .....	7
<i>In re Constitutionality of House Joint Resolution 25E</i> 863 So. 2d 1176 (Fla. 2003) .....	7
<i>In re Constitutionality of House Joint Resolution 1987</i> 817 So. 2d 819 (Fla. 2002) .....	7
<i>In re Constitutionality of Senate Joint Resolution 2G</i> 597 So. 2d 276 (Fla. 1992) .....	7
<i>Jackson v. Consolidated Gov't</i> 225 So. 2d 497 (Fla. 1969) .....	8
<i>Wilson v. Crews</i> 34 So. 2d 114 (1948) .....	8

### Florida Constitution

Article XI, Section 3 .....	4
Article III, Section 16(a) .....	6, 7

## **STATEMENT OF THE CASE AND FACTS**

On April 23, 2008 the Division of Elections submitted to the Attorney General an amendment to the Florida Constitution proposed by initiative petition sponsored by FairDistrictsFlorida.org (“the Redistricting Amendment”). The Attorney General sent the Redistricting Amendment to this Court on May 29, 2008. The substance of the Redistricting Amendment reads as follows:

Add a new Section 21 to Article III

### **Section 21. STANDARDS FOR ESTABLISHING LEGISLATIVE DISTRICT BOUNDARIES**

In establishing Legislative district boundaries:

(1) No apportionment plan or district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice; and districts shall consist of contiguous territory.

(2) Unless compliance with the standards in this subsection conflicts with the standards in subsection (1) or with federal law, districts shall be as nearly equal in population as is practicable; districts shall be compact; and districts shall, where feasible, utilize existing political and geographical boundaries.

(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 this subsection.

The title and summary of the Amendment read as follows:

**STANDARDS FOR LEGISLATURE TO FOLLOW IN  
LEGISLATIVE REDISTRICTING**

Legislative districts or districting plans may not be drawn to favor or disfavor an incumbent or political party. Districts shall not be drawn to deny racial or language minorities the equal opportunity to participate in the political process and elect representatives of their choice. Districts must be contiguous. Unless otherwise required, districts must be compact, as equal in population as feasible, and where feasible must make use of existing city, county and geographical boundaries.

## SUMMARY OF ARGUMENT

The Redistricting Amendment meets the requirements of the single subject requirement. It affects a function of only the legislative branch of state government and has a single purpose accomplished by a single plan. Because it does nothing more than establish standards, the proposed amendment is distinguishable from *Independent Nonpartisan Comm'n to Apportion Legislative and Congressional Districts*, 926 So. 2d 1218 (2006) in which the amendment held unconstitutional not only established standards, but in addition created an independent commission to draw district lines.

The ballot title and summary for the Redistricting Amendment meet the requirements of Florida law by stating in clear and unambiguous language the chief purpose of the amendment to create redistricting standards, and by making reference to each of such standards. Nothing in the title or summary is misleading. The standard requiring that district lines be “contiguous” does not require single-member districts. This Court has reviewed the term “contiguous” as used in the districting context four times and has always held that it means touching anywhere except at a common corner. Thus, the use of the term does not foreclose the creation of multi-member districts.

## ARGUMENT

### Single Subject

The parameters of the single subject requirement embodied in Article XI, Section 3 of the Florida Constitution are now well settled. A proposed amendment must not engage in logrolling or substantially alter or perform the functions of multiple branches of government. *Extending Existing Sales Tax to Non-Taxed Servs.*, 953 So. 2d 471 (Fla. 2007). The logrolling prohibition is intended to prevent combining separate issues into a single proposal to secure passage of an unpopular issue. A proposed amendment meets the logrolling test when it manifests “a logical and natural oneness of purpose,” *Florida Marriage Protection Amendment*, 926 So. 2d 1229, 1233 (Fla. 2006) or otherwise stated, that it “may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme.” *Extending Existing Sales Tax*, 953 So. 2d at 481.

The Redistricting Amendment easily meets the single subject requirements. It affects a function of only the legislative branch of state government and has a single purpose accomplished by a single plan. It creates standards for the drawing of legislative districts and nothing more. The Attorney General cites *Independent Nonpartisan Comm’n*, 926 So. 2d at 1218, a case in which the Court found that a proposed amendment violated

the single subject requirement. The amendment reviewed in that case is patently distinguishable from the Redistricting Amendment now under review. The 2006 decision found a logrolling violation because the proposal would not only have established standards, but would also have created an independent commission to perform the redistricting function instead of the Legislature. The Court explained that:

A voter who advocates apportionment by a redistricting commission may not necessarily agree with the change in the standards for drawing the legislative and congressional districts. Conversely, a voter who approves the change in district standards may not want to change from the legislative apportionment process currently in place. Thus, a voter would be forced to vote in the “all or nothing” fashion that the single subject requirement safeguards against.

926 So. 2d at 1226.

The current Redistricting Amendment suffers from no such infirmity. A voter will either approve or disapprove of the imposition of standards for redistricting and is not compelled to accept or reject any other function in order to record his or her preference.

### **Ballot Title and Summary**

The Court’s analysis of the ballot title and summary focuses on two questions: (1) whether the title and summary, in clear and unambiguous language, 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. *Florida Hometown Democracy*, 953 So. 2d 666 (Fla. 2007). The Redistricting Amendment accomplishes that purpose. The title and summary tell the voters the chief purpose of the amendment — to establish standards for legislative redistricting — and notes each of the standards included in the amendment. There is nothing either expressed or implicit in the amendment that would mislead a voter.

The Attorney General suggests that the inclusion of a standard requiring that districts be “contiguous” would prohibit multi-member districts, currently permitted by Article III, Section 16(a), allowing districts to consist of “either contiguous, overlapping or identical territory,” and that the summary is misleading because it fails to inform the voter of this purported change. The Attorney General again cites *Independent Nonpartisan Comm’n*, 926 So. 2d at 1218. In fact, the Redistricting Amendment makes no change in the Legislature’s ability to create districts that are either single-member or multi-member. Unlike the amendment at issue in *Independent Nonpartisan Comm’n*, which expressly prohibited multi-member districts by requiring single-member districts, the Redistricting Amendment only requires that districts be “contiguous,” a term that the Attorney General concludes, without reference to either dictionary or case law definition, means single-member. This Court has disagreed. In

each of the last three reapportionment years, the Court has addressed the meaning of the word “contiguous” in Article III, Section 16(a) of the Florida Constitution. It has consistently defined the term to mean touching along a boundary or at a point other than a common corner. *In re Constitutionality of House Joint Resolution 25E*, 863 So. 2d 1176 (Fla. 2003); *In re Constitutionality of House Joint Resolution 1987*, 817 So. 2d 819 (Fla. 2002); *In re Constitutionality of Senate Joint Resolution 2G*, 597 So. 2d 276 (Fla. 1992); *In re Apportionment Law Appearing as Senate Joint Resolution 1E*, 414 So. 2d 1040 (Fla. 1982). As so defined, the term “contiguous” includes “identical” and “overlapping.”<sup>1</sup> Thus, the proposed Redistricting Amendment would not change the current constitutional provision to the extent that it allows the Legislature to create either single-member or multi-member districts.

No language in the Redistricting Amendment expressly purports to amend or repeal the current constitutional language and the use of the term “contiguous” alone cannot be interpreted to impliedly amend or repeal current language. Implied repeal or amendment of one constitutional provision by a subsequent one is not favored and will not be found unless

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<sup>1</sup> The Court’s definition is consistent with the dictionary definition and, in fact, was originally quoted by the Court from *Webster’s New Collegiate Dictionary*. *In re Apportionment Law*, 414 So. 2d at 1051.

the two provisions are irreconcilably repugnant to each other, and then only to the extent of the repugnancy. *Jackson v. Consolidated Gov't*, 225 So. 2d 497 (Fla. 1969); *Wilson v. Crews*, 34 So. 2d 114 (1948). There is no inconsistency, expressed or implied, between the Redistricting Amendment and current constitutional language with respect to single-member or multi-member districts.

### **CONCLUSION**

The Court is respectfully urged to approve the Redistricting Amendment for placement on the ballot.

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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 1st day of July, 2008 to the following:

Hon. Bill McCollum  
Attorney General of Florida  
The Capitol, PL-01  
Tallahassee, FL 32399

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**M. HOPE KEATING**

**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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**M. HOPE KEATING**

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