IN THE SUPREME COURT OF FLORIDA

Case No.: SC08-1149

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

INITIAL BRIEF OF SPONSOR FairDistrictsFlorida.org

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STATEMENT OF THE CASE

On May 19, 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 June 18, 2008. The substance of the proposed Redistricting Amendment reads as follows:

> Add a new Section 21 to Article III
>
> > Section 21. STANDARDS FOR ESTABLISHING CONGRESSIONAL DISTRICT BOUNDARIES
> >
> > In establishing Congressional 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 CONGRESSIONAL REDISTRICTING

Congressional 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 THE ARGUMENT

This proposal presents a clear and unified issue to the electorate: whether to establish standards to be followed by the Legislature in defining congressional districts after each decennial census, or when otherwise required. The proposed Redistricting Amendment thus complies with the single subject requirement of Article XI, Section 3, Florida Constitution. 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 the initiative rejected by this Court in *Advisory Opinion to the Attorney General re: Independent Nonpartisan Comm'n to Apportion Legislative and Congressional Districts which Replaces Apportionment by the Legislature*, 926 So. 2d 1218 (2006), where the unsuccessful amendment not only established standards for reapportionment, but a created an independent commission to perform the function of drawing 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 for congressional districts, and by making reference to each of such standards. Nothing in the title or summary is misleading. The

Attorney General's letter suggests that the summary may be misleading because the proposal may require single member districts. The proposal does not do this, and such a result is not intended. However, more importantly, the argument is irrelevant because federal law prohibits the creation of multi-member congressional districts. There is no ambiguity in the title and summary because the proposed initiative provides state standards for congressional districts that will be drawn to also comply with federal law as they have been in the past.

ARGUMENT

I. THE REDISTRICTING AMENDMENT COMPLIES WITH THE SINGLE SUBJECT RULE BECAUSE IT HAS THE UNIFIED PURPOSE OF PROVIDING STANDARDS FOR REDISTRICTING, AND BECAUSE THE PROPOSAL AFFECTS ONLY THE LEGISLATIVE BRANCH.

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. *See, e.g., Advisory Opinion to the Attorney Gen. re Extending Existing Sales Tax to Non-Taxed Servs. where Exclusion Fails to Serve Public Purpose*, 953 So. 2d 471, 477-78 (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." *Advisory Opinion to the Attorney Gen. re Florida Marriage Protection Amendment*, 926 So. 2d 1229, 1233 (Fla. 2006) (quoting *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984)). Otherwise stated, the single subject requirement mandates that a proposed initiative "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 (quoting *Advisory Opinion to the Attorney Gen. re Fairness Initiative Requiring Legis. Determination that Sales Tax Exemptions & Exclusions Serve a Publ. Purpose*, 880 So. 2d 630, 634 (Fla. 2004)).

The proposed 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 congressional 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. As this Court explained:

> 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 the imposition of these standards for redistricting and is not compelled to accept or reject any other governmental function in order to record his or her preference.

II. THE BALLOT TITLE AND SUMMARY ARE CLEAR, ACCURATE AND UNAMBIGUOUS.

This 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, is likely to

mislead the public. *See, e.g., Florida Marriage Protection Amend.*, 926 So. 2d at 1236; *but see Advisory Opinion to the Attorney Gen. Re Protect People from the Hazards of Second-Hand Smoke by Prohibiting Workplace Smoking*, 814 So. 2d 415, 419 (Fla. 2002) (because of the statutory word limits, the summary and title cannot detail every aspect of a proposed initiative). The title and summary for the proposed Redistricting Amendment accomplish the fundamental purpose of explaining the "true meaning and ramifications" of the amendment. *Advisory Opinion to the Attorney Gen. re Tax Limitation*, 644 So. 2d 486, 490 (Fla. 1994). The title and summary tell voters the chief purpose of the amendment – to establish standards for congressional redistricting – and the summary explains each of the standards included in the amendment. There is nothing either expressed or implicit in the amendment that would mislead a voter. Nor do the title and summary include emotional language or political rhetoric that might be seen as editorial in nature. *Cf. Advisory Opinion to the Attorney Gen. re Additional Homestead Tax Exemption*, 880 So. 2d 646, 653 (Fla. 2004) (citing *In re Advisory Opinion to the Attorney Gen. – Save Our Everglades*, 636 So. 2d 1336, 1341-42 (Fla. 1994)).

In his letter referring the initiative to this Court, 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, federal law prohibits multi-member congressional districts:

> In each State entitled in the Ninety-first Congress or in any subsequent Congress thereafter to more than one Representative under an apportionment made pursuant to the provisions of section 2a(a) of this title, ***there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled***, and Representatives shall be elected only from districts so established, ***no district to elect more than one Representative*** (except that a State which is entitled to more than one Representative and which has in all previous elections elected its Representatives at Large may elect its Representatives at Large to the Ninety-first Congress).

2 U.S.C. § 2c (emphasis added).

The Redistricting Amendment cannot abridge a legislative power that does not exist. Unlike the amendment at issue in *Independent Nonpartisan Comm'n*, which expressly prohibited multi-member districts in both congressional and legislative redistricting plans, the instant Redistricting Amendment only addresses congressional districts. The Redistricting

Amendment establishes standards for congressional redistricting and does not change the legislature's powers under Article III, Section 16(a). This purpose is made abundantly clear through the ballot title and summary. Voters thus "have fair notice of the decision [they] must make." *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982).

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. mail this, _____ day of July, 2008 to The Honorable Bill McCollum, Esquire, Office of the Attorney General, PL 01, The Capitol, Tallahassee, Florida, 32399-1050.

_____
Attorney

CERTIFICATE OF TYPEFACE COMPLIANCE

I HEREBY CERTIFY that this 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.

_____
Attorney