IN THE SUPREME COURT OF FLORIDA

Case No.: SC08-1149

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

AMENDED ANSWER BRIEF OF SPONSOR FairDistrictsFlorida.org

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SUMMARY OF ARGUMENT

The proposed Congressional Redistricting Amendment presents a unified and coherent plan which establishes standards for Congressional redistricting. The Legislature argues that the presence of eight standards for drawing districts presents the voters with a series of choices and thus constitutes logrolling. That argument is contrary to this Court's consistent findings that the inclusion of various criteria as part of a dominant theme does not violate the single subject requirement of Article XI, Section 3, Florida Constitution.

For example, different criteria in the class size amendment properly defined different sizes for different class levels. *See Advisory Opinion to the Atty. Gen'l re Florida's Amendment to Reduce Class Size*, 816 So. 2d 580, 581-82 (Fla. 2002). Those criteria provided "the details of how the ballot initiative will be implemented." *Id.* at 583. Similarly, the indoor smoking amendment had a series of exemptions that were held to define the scope of the proposal. *See Advisory Opinion to the Atty. Gen'l re Protect People From the Hazards of Second-Hand Smoke*, 814 So. 2d 415, 422 (Fla. 2002).

The ballot title of the proposed Congressional Redistricting Amendment gives notice to the voter that it will establish "STANDARDS FOR LEGISLATURE TO FOLLOW IN CONGRESSIONAL

REDISTRICTING." The single purpose of the amendment is to provide the Legislature with a unified set of criteria to follow in the creation of congressional districts. The standards are meant to work together as a whole to define the parameters of one task that the Legislature is already required to perform. Consequently, this proposal is narrow, specific and affects only one task assigned to the legislative branch of state government.

The Legislature argues that the amendment also violates the single subject rule by substantially impacting the judicial branch as well as the legislative branch. This argument ignores the basic fact that presently, the judiciary can and does interpret all constitutional provisions. The instant proposal, if enacted, would affect the judiciary no differently than any other amendment to the constitution. The court's exercise of its traditional role of interpreting and applying a new constitutional provision does not amount to a substantial impact on the functions of the judicial branch.

The ballot title and summary for the proposal give voters fair notice of the chief purpose of the amendment and the decision they must make. The "chief purpose" of the amendment is to provide a cohesive set of standards for Congressional redistricting. The Legislature complains – among other things - that the summary fails to advise voters about a possible impact on the judiciary; that the summary substitutes the word "to" for "with intent to";

and that the title advises that the standards are for the Legislature to follow while the amendment does not mention the Legislature. These arguments (and the others on this point) are all unfounded. The title and summary need not (and cannot because of the 75 word limit) state every possible speculative ramification, incorporate the text of the amendment or define every term. The law only requires that they state clearly what the proposed amendment will do and do not mislead the voter as to the effect of the amendment. The ballot title and summary for the Congressional Redistricting Amendment are clear and they are not misleading. They should be approved by this Court.

ARGUMENT

The Florida Legislature, opposing the proposed amendment, argues in its initial brief that the initiative constitutes impermissible logrolling, has substantial effects on multiple branches of government, and has a defective ballot title and ballot summary. These arguments are unsupported by this Court's precedents. There is no violation of the single subject rule and the ballot title and summary are not misleading to voters in any way.

I. THE PROPOSED CONGRESSIONAL REDISTRICTING AMENDMENT DOES NOT VIOLATE THE SINGLE SUBJECT RULE.

The proposed Congressional Redistricting Amendment provides a limited, unified, prioritized and interdependent set of criteria to be employed when congressional districts are drawn. The criteria work together in combination with each other and are prioritized in an attempt to create fair, community-based and logical district boundaries without interfering with rights of language and racial minorities. That is its single and dominant purpose.

Article XI, Section 3, Florida Constitution, specifies that any amendment to the Constitution, except for those limiting the power of government to raise revenue, "shall embrace but one subject and matter directly connected therewith." The single subject requirement is intended to prevent multiple "precipitous" and "cataclysmic" changes in the Constitution. *See Advisory Opinion to the Atty. Gen'l re Authorization for County Voters to Approve or Disapprove Slot Machines Within Existing Pari-Mutuel Facilities,* 813 So. 2d 98, 100 (Fla. 2002); *Advisory Opinion to the Atty. Gen'l - Save Our Everglades,* 636 So.2d 1336, 1139 (Fla. 1994). The rule was placed in the Constitution because initiative proposals do not afford the same opportunity for public hearing and debate that occurs for

those amendments that arise in the Legislature. *See Advisory Opinion to the Atty. Gen'l re Fish & Wildlife Conservation Comm'n*, 705 So. 2d 1351, 1353 (Fla. 1998) (citing *Fine v. Firestone*, 448 So.2d 984, 988 (Fla 1984)).

An outgrowth of the single subject limitation is the prohibition of "logrolling." Logrolling occurs when different issues are combined into one initiative so that voters are forced to accept change they do not want in order to gain something else that they do want. *See Advisory Opinion to the Atty. Gen'l re Fla. Transportation Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation Sys.*, 769 So.2d 367, 369 (Fla. 2000) (quoting *Advisory Opinion to the Atty. Gen'l re Limited Casinos*, 644 So. 2d 71, 73 (Fla. 1994)).

Another rule applied to citizen initiative petitions is that the initiative must not perform or substantially impact multiple functions of government. *Advisory Opinion to the Atty. Gen'l re: Right to Treatment & Rehabilitation for Non-Violent Drug Offenses*, 818 So. 2d 491, 496 (Fla. 2002); *Save Our Everglades*, 636 So. 2d at 1340. This Court has also invalidated initiatives when they substantially impact or change multiple sections of the Constitution. *See Advisory Opinion to the Atty. Gen'l re the Medical Liability Claimant's Compensation Amend.*, 880 So.2d 675, 677-78 (Fla. 2004); *Advisory Opinion to the Atty. Gen'l re Tax Limitation*, 644 So. 2d

486, 490 (Fla. 1994); *In re Advisory Opinion to the Atty. Gen'l – Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1019 (Fla. 1994). The proposed Congressional Redistricting Amendment does not violate any of these prohibitions.

A. There is no logrolling.

The current proposal is in many ways a response to the earlier 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). That initiative would have created an independent commission to perform congressional redistricting and legislative reapportionment and districting, while also requiring single-member districts and imposing a limitation on commission members later seeking election to the Legislature. *Id.* at 1225. This Court found that the combination of establishing the commission and the imposition of standards encompassed multiple subjects and constituted logrolling. *Id.* at 1225-26 ("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."). Importantly, the Court did not find that logrolling occurred within the standards created by the Independent Nonpartisan

Commission initiative, but rather it occurred when these standards were combined with establishment of the new commission to perform the reapportionment and redistricting. *Id.*

The amendment in this case is a limited proposal, instantly and easily distinguishable from its predecessor and other amendments this Court has rejected. Unlike the Independent Nonpartisan Commission amendment or the failed Save Our Everglades amendment, for example, the instant initiative does not establish an implementing body, but restricts itself to the exercise of a single legislative function – the establishment of congressional redistricting standards. *Cf. Save Our Everglades*, 636 So. 2d at 1340. The Congressional Redistricting Amendment leaves untouched the existing legislative function of performing the actual redistricting. It only establishes standards for the legislature to follow when drawing the district lines. It does not impact the executive branch, and just as importantly, changes no judicial functions whatsoever. *Id*

Opponents misunderstand both the purpose and the nature of the single subject requirement's prohibition of logrolling. The Legislature argues that the logrolling prohibition means that a successful initiative must never, under any circumstances, present multiple standards or criteria to the voters. *See* Br. at 11-13. Their reasoning is that, inevitably, some voters

will prefer certain criteria, while rejecting others. This position illogically suggests that no proposal may contain more than one criterion or standard – a position continually rejected by this Court as even the most cursory examination of recent initiative cases will reveal.

Indeed, this Court has repeatedly approved initiative proposals that included multiple standards or criteria, or involved some presentation of multiple issues within a single initiative package. *See, e.g.*, *Advisory Opinion to the Atty. Gen'l re Florida's Amendment to Reduce Class Size*, 816 So. 2d 580 (Fla. 2002); *Advisory Opinion to the Att'y Gen'l re: Voluntary Universal Pre-Kindergarten Educ.*, 824 So. 2d 161, 164 (Fla. 2002); *Advisory Opinion to the Atty. Gen'l re Protect People From the Hazards of Second-Hand Smoke*, 814 So. 2d 415, 419 (Fla. 2002); *Advisory Opinion to the Atty. Gen'l re: Protect People, Especially Youth, from Addiction, Disease, and other Health Hazards of Using Tobacco*, 926 So. 2d 1186 (Fla. 2006); *Slot Machines in Parimutuel Facilities*, 813 So. 2d 98 (Fla. 2002).

In *Reduce Class Size*, this Court upheld an initiative which set different required class sizes for public school children in grades 1-3, 4-8, and 9-12, with the class sizes phased in from 2003 through 2010. 816 So. 2d at 581-82. The Court found that the initiative dealt with a single subject of

reducing class size, noting that it did not constitute logrolling, "but rather provides the details of how the ballot initiative will be implemented." *Id.* at 583. So also, in *Voluntary Universal Pre-Kindergarten Education*, there was no suggestion by the Court that inclusion of multiple standards for free pre-kindergarten education constituted logrolling by forcing those who might favor the funding of some of these standards to approve all or none of them. 824 So. 2d at 165-66.

Similarly, in *Protect People From the Hazards of Second-Hand Smoke*, this Court upheld an initiative which abolished most indoor, workplace smoking, but contained numerous separate exceptions for retail tobacco shops, stand-alone bars and designated smoking rooms in hotels, as well as limiting smoking in private residences if used for child or health care purposes. 814 So. 2d at 416-17. This Court found the entire initiative valid under the general single subject of "second-hand smoke in enclosed indoor workplaces." *Id.* at 422. In *Health Hazards of Using Tobacco*, likewise, this Court upheld, as presenting "a single comprehensive plan for the education of youth about the health hazards related to tobacco," an initiative which included "a list of components such as advertising, school curricula, and law enforcement" the particulars of which were spelled out in great

detail. 926 So. 2d at 1191. The Court found all of the criteria to be "related to the single unifying purpose." *Id.*

Each of the slot machines or casino amendments approved by this Court all included within its single unified purpose an amendment that itself prescribed the locations, both geographic and specific, where the gambling could occur. Thus, in *Slot Machines in Parimutuel Facilities*, voters were asked to approve a package deal of slot machines in existing pari-mutuel facilities only in Miami-Dade or Broward Counties, upon referendum. 880 So. 2d at 522. The Court had previously approved initiatives which offered casino riverboats in all counties with more than 200,000 inhabitants and hotel casinos in counties with more than 500,000 inhabitants. *Advisory Opinion to the Atty. Gen'l re Florida Locally Approved Gaming,* 656 So. 2d 1259, 1261 (Fla. 1995). An earlier approved initiative would have allowed casinos in Broward, Dade, Duval, Escambia, Hillsborough, Lee, Orange, Palm Beach and Pinellas Counties in pari-mutuel facilities and riverboats. *Advisory Opinion to the Atty. Gen'l re Limited Casinos*, 644 So. 2d 71, 72-73 (Fla. 1994). In both cases, opponents challenged as logrolling the geographic choices, as well as the type of locations permitted to offer gaming. The Court held:

> We disagree. The sole subject of the proposed amendment is to authorize privately-owned casinos in Florida. The proposal

> 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. 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 proposal. These features properly constitute matters directly and logically connected to the subject of the amendment.

Limited Casinos, 644 So. 2d at 73.

The point is that each of these initiatives contained multiple criteria, some of which voters might want and others they might reject. This court held that since the various criteria were coherent and directly related to the policy proposal, as is the case with the instant proposal, they did not violate the single subject requirement. All of these proposals had the requisite "oneness of purpose" necessary to comply with the law.[1] *Advisory Opinion to the Atty. Gen'l re Local Trustees & Statewide Governing Board to*

[1] As this Court has often noted, canons of statutory construction require a reviewing court to reject an interpretation of a constitutional or statutory provision that would render it meaningless or lead to an absurd result. *See, e.g., Warner v. City of Boca Raton*, 887 So. 2d 1023, 1033 n.9 (Fla. 2004) (citing *Palm Beach County Canvassing Bd. v. Harris*, 772 So. 2d 1273, 1286 (Fla. 2000)); *Unruh v. State* 669 So. 2d 242, 245 (Fla. 1996). An interpretation such as that offered by the Legislature, which would construe Article XI, Section 3 to prohibit an initiative from containing more than one standard or criterion in a single initiative, would lead to just such an absurd result, require eight separate amendments, and frustrate the intention of the initiative process that allows the people to propose limited, but meaningful amendments to their Constitution.

Manage Florida's University System, 819 So.2d 725, 729 (Fla. 2002) (quoting *Fine*, 448 So. 2d at 990).

Like these other successful amendments, the proposed Congressional Redistricting Amendment has "a natural relation and connection as component parts of a single dominant plan or scheme. Unity of object and plan is the universal test ..." *Floridians Against Casino Takeover v. Let's Help Florida*, 363 So. 2d 337, 339 (Fla. 1978) (quoting *City of Coral Gables v. Gray*, 19 So. 2d 318, 320 (Fla. 1944)). It presents logical, interdependent and cohesive standards for redistricting which are fashioned to work together. Thus, the standards in the first paragraph of the proposal take priority over those in the second paragraph although the third paragraph instructs that the order of standards within a paragraph are not to be considered as signifying higher or lower priority. **This internal organization and combination is important because without express prioritization, standards of compactness or utilization of existing geographic or political boundaries, while important, may conflict with even more fundamental adherence to voting rights principles.**

In short, the standards of the proposed Congressional Redistricting Amendment are intended to work together as a package, with all parts directly related to its purpose of providing explicit standards for

redistricting. There is no logrolling here. This Court should recognize this oneness of purpose and approve the initiative for the ballot.

In opposition, the Legislature relies heavily on two cases in arguing that the proposed Congressional Redistricting Amendment violates the single subject requirement of Article XI, Section 3. In *In re Advisory Opinion to the Attorney General – Restricts Laws Related to Discrimination*, 632 So. 2d 1018 (Fla. 1994), this Court invalidated an initiative that would have listed multiple classifications to be protected from discrimination. That amendment would have applied to all levels and all branches of government. *Id.* at 1020. This broad application is at the heart of this Court's concern that the voters were being asked multiple questions about which classes should enjoy extra protections from which separate levels and branches of state government.

Later, in *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 (Fla. 2000), this Court considered a package of four initiatives which would have barred differential treatment based on race in multiple governmental functions (public education, employment, and contracting). The Court found that the fourth proposal, which applied equally to three separate governmental functions of education, employment

and contracting, constituted logrolling. 778 So. 2d at 893. It also rejected all of the proposals because they applied broadly to multiple levels and branches of state government, and had significant effects on multiple parts of the Constitution. *Id.* at 894-96. The proposed Congressional Redistricting Amendment, by contrast, operates only on the single pre-existing legislative duty of drawing congressional districts. It is a limited, single proposal. It does not create a new function, but merely provides standards for one established function of the Legislature.

B. There is no substantial impact on or alteration of multiple functions or branches of government.

The Legislature further complains that the proposal affects both legislative and judicial functions and thus violates the single subject rule. It argues that courts may be called upon to interpret and apply the standards and that this would create an impact on the judicial branch. This argument is unsupported by the precedents of this Court, and if accepted would have the radical effect of preventing any amendment by initiative other than those which target the judiciary. The fact is that every part of the Constitution, and indeed every law, is subject to judicial interpretation and enforcement. This proposal is no different. Interpreting constitutional provisions is the

business of the courts. If this Court accepts this argument, then no citizen initiative petition could ever succeed.[2]

The proposed Congressional Redistricting Amendment makes no changes to the judicial functions or structure of this State. Nor does the amendment undertake to perform a judicial function. Likewise, the proposal does not modify any portions of the Constitution that apply specifically to the court system.

The proposed Congressional Redistricting amendment affects a single pre-existing legislative function in one limited area: it provides criteria for the Legislature to apply when redistricting congressional seats. This Court has noted that "[a] proposal that **affects** several branches of government will not fail; rather, it is when a proposal substantially alters or performs the functions of multiple branches that it violates the single-subject test." *Fish & Wildlife Conservation Conservation Comm'n*, 705 So. 2d at 1353-54 (emphasis added); *see also High Speed Monorail*, 769 So.2d at 369-70 ("[W]e find it difficult to conceive of a constitutional amendment that would

[2] Unlike the system established for legislative reapportionment under Article III, Section 16, Florida Constitution, there is no automatic process under which this Court reviews every plan and is required to impose a redistricting plan under certain circumstances. Rather, congressional redistricting plans will come to courts only when they are challenged. There are no effects on judicial functions and the proposed amendment makes no change in the operation or application of Article V, Florida Constitution.

not affect other aspects of government to some extent. However, this Court has held that a proposed amendment can meet the single-subject requirement even though it affects multiple branches of government.").

This proposal does not create any new duties or jurisdiction for any court. Whatever incidental effects there may be on the judiciary (if called upon to interpret or apply the Constitution), the proposed amendment does not "substantially alter or perform" the functions of Florida's courts.

C. There is no change to any existing part of the Constitution.

There is no reference to congressional redistricting in any part of the Florida Constitution. Therefore, there can be no change or impact to any existing section of the Constitution or, for that matter, multiple sections of the Constitution.[3]

[3] The mere possibility that a court may be called upon to apply or interpret the Constitution is not a substantial effect. This Court does not invalidate an amendment because there is some "possibility that an amendment might interact with other parts of the Florida Constitution." *Advisory Opinion to the Atty. Gen'l re Term Limits Pledge*, 718 So. 2d 798, 802 (Fla. 1998). Rather, the test is whether there are multiple parts of the Constitution which are substantially affected by the proposed initiative amendment, in order both to inform the public of the proposed changes and to avoid ambiguity as to the effects. *See Medical Liability Claimant's Compensation*, 880 So. 2d at 678; *Tax Limitation*, 644 So. 2d at 490; *Fine v. Firestone*, 448 So. 2d 984, 989 (Fla. 1984).

II. THE BALLOT TITLE AND SUMMARY ACCURATELY AND COMPLETELY STATE THE CHIEF PURPOSE OF THE AMENDMENT AND DO NOT MISLEAD VOTERS.

In a shotgun approach, the Legislature makes a myriad of claims as to why the ballot title and summary are insufficient. However, the Legislature misinterprets and misapplies the standards with regard to the ballot title and summary. Describing all possibilities and likelihoods is not a requirement in the ballot title and summary statutes. The statute requires only the description of the "chief purpose" of the initiative. § 101.161, Fla. Stat. This Court, mindful of the statutory word limits, does not require the ballot summary and title to detail every possible aspect of the proposed initiative. *See Protect People From the Hazards of Second-Hand Smoke*, 814 So. 2d at 419; *Grose v. Firestone*, 422 So. 2d 303, 305 (Fla. 1982). Rather, the ballot title and summary must describe only the major purpose of the initiative. "[I]t is not necessary to explain every ramification of a proposed amendment, only the chief purpose." *Advisory Opinion to the Atty. Gen'l re Right to Treatment & Rehabilitation for Non-Violent Drug Offenses*, 818 So. 2d 491, 497 (Fla. 2002) (quoting *Save Our Everglades*, 636 So. 2d at 1341); *Limited Casinos*, 644 So. 2d at 74.

A. The ballot title and summary together explain that the standards are provided to guide the Legislature in redistricting congressional seats.

The Legislature makes two inconsistent attacks on the title and summary. First, the Legislature claims that the title mentions the Legislature specifically, thereby deceiving voters because a reviewing court would also follow the new constitutional standards. Br. at 28-29. Immediately thereafter the Legislature argues that the ballot summary does not fairly notify voters as to what body is to follow the standards. *See* Br. at 31. These arguments are inconsistent and make no sense. The redistricting of congressional seats is a function performed by the Legislature. *See* 2 U.S.C. § 2c; ch. 8, Fla. Stat. The ballot title informs the voter about what body will be bound to follow the standards. There is no need to mention the Legislature's role in the summary because the ballot title and summary must be considered together and here they advise the voter as to the Legislature's role. *See Voluntary Universal Pre-Kindergarten Educ.*, 824 So.2d at 166. More importantly, there is no need to include or detail the Legislature's role in the redistricting process affected by the amendment because it is already in the law.

B. The title and summary clearly inform the voters that one purpose of the initiative is to eliminate *intentional* political favoritism in the redistricting process.

The ballot summary properly informs the voters about how it will minimize political favoritism in the redistricting process. The Legislature argues that the ballot summary is defective because, rather than repeating the full prohibition of drawing districts "*with intent* to favor or disfavor a political party or incumbent," the summary simply and concisely states that "districts may not be drawn to favor or disfavor an incumbent or political party." *See* Br. at 29. In other words, opponents argue that the summary is defective because it does not explain in detail that legislators are prohibited from acting *with intent* to favor or disfavor a party or an incumbent and it substitutes the word "to" for the phrase "with intent to".

The Legislature might have a valid objection if the summary said something like "districts shall never favor an incumbent or a political party." However, the word "to" as used in the summary encompasses intent and purpose, and the language of the summary is broad enough to include intent. Here the word "to" modifies the verb "drawn" and the natural meaning of "to" in this context is consistent with the phrase "with intent to". In any event, there will be no confusion for voters having "a certain amount of common understanding and knowledge" as they read the summary and make

their decisions on how to vote. *Local Trustees & Statewide Governing Bd. to Manage Florida's Univ. Sys.*, 819 So. 2d at 732 (citing *Protect People from the Hazards of Second-Hand Smoke*, 814 So. 2d at 419).

A ballot summary is defective "if it omits material facts necessary to make the summary not misleading." *Term Limits Pledge*, 718 So. 2d at 803 (quoting *Advisory Opinion to the Atty. Gen'l - Limited Political Terms in Certain Elected Offices*, 592 So. 2d 225, 228 (Fla. 1991)). This Court has held, "We are most concerned with relationships and impact on other areas of law when we consider whether the ballot summary and title mislead the voter with regard to effects and impact on other constitutional provisions." *Protect People from the Hazards of Second-Hand Smoke*, 814 So. 2d at 419 (citing *Treating People Differently Based on Race*, 778 So. 2d at 899-900).

The Legislature also claims that the summary is defective because it creates the impression that districts will not have the *effect* of favoring or disfavoring and incumbent or political party. Br. at 29. The sponsor of this amendment recognizes that any district – no matter how neutral the drafter – will favor or disfavor someone. Knowing that it is impossible to remove political favoritism from the redistricting process, the sponsor included a prohibition of **intentional** political gerrymandering. The summary makes no promises that it cannot keep. The Congressional Redistricting

Amendment does not omit any necessary information required for voters to make a decision on the proposal.

C. The terms used in the summary are clear and not misleading.

The Legislature claims that the summary is misleading because the text of the amendment uses the term "political boundaries" and the summary explains that districts, where feasible, "must make use of existing city, county … boundaries." *See* Br. at 31. This claim ignores the basic purpose of the ballot title and summary. The amendment and the summary both notify the voters that under the new standards, there will be an attempt to make districts community-based – not spread out to multiple counties and for many miles as many are now. The fact that the term "political boundaries" is broader than cities and counties makes no legal difference here, where the challenge is to tell the voter the **gist** of the amendment – not every detail or possible contingency. As this Court has noted:

> 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.

Right to Treatment & Rehabilitation for Non-Violent Drug Offenses, 818 So.2d at 498 (quoting *Metropolitan Dade County v. Shiver*, 365 So. 2d 210, 213 (Fla. 3d DCA 1978)). The statute does not require that the exact operative text appear in the ballot title and summary; it requires only that "the **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**." § 101.161(1), Fla Stat. (emphasis added). Here the mention of city and county boundaries will help the voter to understand that there will have to be an effort to make districts community based. The term "political boundaries" in the summary would likely be confusing to voters, and at any rate is not required.

The Legislature points to another difference between the text of the proposed amendment and the ballot summary and complains that because of it, the summary is misleading. (Br. at 35-36) The summary states, "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." The text of the proposed amendment reads, "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."

Because the sentence is phrased in the negative, the word "or" in this context does not provide a choice between one right and the other. It clearly provides that the abridgement of either right or both rights is prohibited.

Here the summary and the amendment have the exact same meaning. The text of the amendment makes it clear that minority voters are protected from denial of two discrete rights: (1) the opportunity to participate in the political process; and (2) the ability to elect representatives of their choice. The summary clearly reflects the obvious meaning of the text -- that the same two rights will exist in the Constitution. Thus, any "and/or" distinction is not one that will mislead voters as to the result because there is no difference as to ultimate effect. The language of the summary fairly and accurately conveys the chief purpose in a way that voters will understand.

The Legislature's cite of *Armstrong v. Harris*, 773 So. 2d 7, 17-18 (Fla. 2000), to support its argument is inapposite. *See* Br. at 36. In *Armstrong*, the "and/or" distinction was at the heart of an amendment that proposed as its chief purpose to conform the wording of the Florida Constitution to the similar provision in the U.S. Constitution. 778 So. 2d at 17-18. Where the difference in summary terminology would lead a reader to a different understanding of the substance of the amendment, there may be grounds for invalidation. *See, e.g., Treating People Differently Based on*

Race, 778 So. 2d at 896-97 (invalidating an initiative because the word "people" in the summary meant live human beings while the word "persons" in the text would include corporations); *Advisory Opinion to the Attorney General re Right of Citizens to Choose Health Care Providers*, 705 So. 2d 563, 566 (Fla. 1998) (finding that the word "citizens" in the summary, when the amendment used the legally significant term "natural persons" presented entirely different meanings). Here, by contrast, the use of different words that in context have the exact same meaning will not mislead, but rather aid the average citizen in understanding the amendment

The summary and title for the Congressional Redistricting Amendment most resembles the one approved by this Court in *Local Trustees & Statewide Governing Board to Manage Florida's University System*, where this Court found that even inconsistent use of such terms as "local," "accountable operation," and "procedures for selection," were found to be commonly understood and not likely to mislead voters. 819 So. 2d at 732. *See also Advisory Opinion to the Atty. Gen'l re Florida Marriage Protection Amendment*, 926 So. 2d 1229, 1236-37 (Fla. 2006) (upholding an initiative with minor inconsistencies in terms between the text and summary where these would not confuse or mislead voters). Because the purpose and effect of this proposed amendment are clear and straightforward, and

because there are no hidden meanings, any minor wording differences between ballot title and summary and the text of the proposed amendment are not misleading.

The term "language minorities" in the summary is not misleading. This is a term that will be easily and accurately understood by the average voter in context to explain the effect of the proposal. There is no need for the summary to contain a full legal explanation of all the possible ramifications of the term.

D. There is no need for the summary to point to nonexistent impacts on the courts or other laws.

As to the failure of the summary to make clear its effects on the courts, there are no such effects, as is discussed in Part I, *supra*. Because no substantial effect on the judiciary exists, there is no need to make such a statement in a ballot summary. This argument disregards the fact that it is the established duty of Florida courts to interpret and apply all Constitutional provisions – including those added by citizen initiative. Accepting the Legislature's argument would amount to imposing a new requirement for all initiatives to include a statement in their ballot summaries to the effect that the courts may have to interpret them. Citizens must be assumed to understand that courts will interpret and apply all amendments. Considering the 75 word limit, requiring all proposed amendments to include such a

statement would be absurd. Voters with average knowledge and ability will understand that this initiative, while targeted at the Legislature, would not be ignored by a reviewing court.

There is no validity in the Legislature's argument that "the summary [misleadingly] implies that there is no law preventing discrimination against racial or language minorities." *See* Br. at 34. **First of all, there is no such implication in the language of the summary. Secondly, there is no Florida law which provides the protections written into the instant amendment**. So if there were such an implication, it would be true. Florida law does not require a ballot summary to mention all similar laws. It only precludes misleading language and there is no such language here. The case cited by the Legislature on this issue, *Treating People Differently Based Upon Race*, 778 So. 2d at 898, is not on point. The very titles of the failed initiatives in that case suggested strongly that their purpose was to remedy differential treatment and discrimination not addressed by current law. In fact the Court found that there were existing provisions in the Florida Constitution which addressed the same subjects.

In contrast, there are no provisions in our constitution that address Congressional redistricting in general or the specific rights of language and racial minorities in the area of congressional redistricting. There is no

reason for the instant summary to address any change to existing law because there is none.

E. On the face of the title and summary, it is obvious that this amendment will restrict the Legislature's discretion in redistricting, and there is no need to state this.

This amendment on its face restricts legislative discretion. Yet the Legislature complains that the summary does not sufficiently advise voters "that the amendment substantially diminishes the Legislature's constitutional redistricting powers." Br. at 31. However, that is the obvious purpose of providing explicit criteria.[4] It is thus illogical to complain that the ballot title and summary do not explain this point further.

In short, the ballot title and summary meet the requirements of Section 101.161, Florida Statutes, that they accurately and carefully convey to voters the chief purpose and "legal effect" of the proposed Congressional Redistricting amendment. *Advisory Opinion to the Atty. Gen'l re Additional*

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[4] It can come as no surprise to the Legislature that the Constitution operates as a restriction on the discretion of the government, and not as a donation of authority. *See, e.g., Crist v. Florida Ass'n of Criminal Defense Lawyers, Inc.*, 978 So. 2d 134, 141 (Fla. 2006) (quoting *Chiles v. Phelps*, 714 So. 2d 453, 458 (Fla. 1998)) (the Florida Constitution is a "limitation only upon legislative power"); *Cawthon v. Town of De Funiak Springs*, 88 Fla. 324, 326, 102 So. 250, 251 (1924) ("the Constitution affords limitations upon the powers of the Legislature as well as upon the executive and judicial departments."). Thus almost every constitutional amendment works to restrict legislative discretion. To require all summaries to make this point within the statutory word limit would be an undue and unnecessary burden.

Homestead Tax Limitation, 880 So. 2d 646 (Fla. 2004). Voters have "fair notice of the decision [they] must make." *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982).

CONCLUSION

In opposing the initiative, the Legislature has not established clearly and conclusively that the proposed amendment violates the single subject requirement of Article XI, Section 3. The presentation of criteria for the Legislature to follow when drawing congressional seats is a single and unified purpose, working a limited change in the Constitution and substantially affecting only one branch of government. The ballot title and summary carefully, neutrally, and accurately explain this purpose. Accordingly, the sponsor of the amendment, FairDistrictsFlorida.org, respectfully urges this Court to approve the proposed Congressional 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 August, 2008 to The Honorable BILL McCOLLUM, Esquire, Office of the Attorney General, PL 01, The Capitol, Tallahassee, Florida, 32399-1050; JASON VAIL, Esquire, General Counsel, Florida Senate, R. 402, Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100; and JEREMIAH M. HAWKES, Esquire, General Counsel, Florida House of Representatives, R. 422 The Capitol, Tallahassee, Florida 32399-1300.

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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.

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