

**IN THE SUPREME COURT OF FLORIDA**

Case No.: SC05-1755

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**ADVISORY OPINION  
TO THE ATTORNEY GENERAL**

**RE: IMPLEMENTATION OF APPORTIONMENT AND  
DISTRICTING COMMISSION IN 2007**

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**INITIAL BRIEF OF THE SPONSOR  
COMMITTEE FOR FAIR ELECTIONS**

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

The Florida Attorney General has requested this Court's opinion on the validity of a constitutional amendment proposed through the initiative petition process of Article XI, Section 3 of the *Florida Constitution*.<sup>1</sup> The title of the amendment is "Implementation of Apportionment and Districting Commission in 2007" (the "2007 Apportionment Initiative"). This Initial Brief is submitted by the sponsor of this amendment initiative, a political committee called Committee for Fair Elections. This Court has jurisdiction. *See* Art. V, § 3(b)(10), *Fla. Const.*

Committee for Fair Elections submits that the title, ballot summary, and text of the 2007 Apportionment Initiative comply with all applicable requirements of law, including Article XI, Section 3 of the *Florida Constitution* and Section 101.161, Florida Statutes (2005). Thus, this Court should approve it for placement on the ballot.

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<sup>1</sup> Article IV, Section 10 of the *Florida Constitution* requires the Attorney General to "request the opinion of the justices of the supreme court as to the validity of any initiative petition circulated pursuant to Section 3 of Article XI." Section 16.061, Florida Statutes, implements this provision by requiring the Attorney General to petition this Court within 30 days after receiving the Secretary of State's certification of entitlement to an advisory opinion, "requesting an advisory opinion regarding the compliance of the text of the proposed amendment or revision with s.3, Art. XI of the State Constitution and the compliance of the proposed ballot title and substance with s. 101.161."

## **TITLE, BALLOT SUMMARY AND TEXT OF THE PROPOSED AMENDMENT**

As already noted, the ballot title for the proposed amendment is  
“Implementation of Apportionment and Districting Commission in 2007.”

The ballot summary for the proposed amendment states as follows:

Requires that state legislative and congressional districts be established with the provisions of the amendment to Article III, Section 16, creating an Apportionment and Districting Commission in 2007, provided that amendment is adopted by the electorate at the general election of 2006, and that elections for state legislative and congressional districts in 2008 shall be held pursuant to plans adopted by the Commission in 2007.

The text of the proposed amendment provides as follows:<sup>2</sup>

Article XIII, Section 26, Florida Constitution, is created to read:

Section 26. Implementation Schedule for Apportionment and Districting Commission – If the proposed amendment to Article III, Section 16, establishing an Apportionment and Districting Commission is adopted by the electorate at the general election of 2006, 15 commissioners shall be certified by the respective appointing authorities, as provided for in Article III, Section 16(a) of that amendment, on or before March 1, 2007. Following certification of the members of the Commission by the respective appointing authorities, the Commission, on or before December 31, 2007, shall establish state legislative and congressional districts in the manner provided in Article III, Section 16. Elections for state legislative and congressional districts in 2008 shall be held pursuant to plans adopted by the Commission in 2007.

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<sup>2</sup> When the 2007 Apportionment Initiative was drafted, Section 26 was the next available section under Article XIII of the *Florida Constitution*. That section continues to be available.

## **SUMMARY OF THE ARGUMENT**

The 2007 Apportionment Initiative complies with the single-subject rule. Its single subject is to implement a schedule for apportionment in 2007, provided the proposed amendment to Article III, Section 16, is adopted by the electorate. It includes provisions related directly to that single subject, explaining the schedule for apportionment of legislative and congressional districts in 2007 and providing that elections for legislative and congressional seats in 2008 shall be held pursuant to the 2007 reapportionment. This citizen's initiative does not engage in logrolling and does not substantially alter or perform the functions of multiple branches of state government.

The ballot title and ballot summary of the 2007 Apportionment Initiative likewise comply with the governing requirements of law. The title is less than 15 words and reflects how the amendment is commonly referenced. The summary is less than 75 words, accurately and fairly reflects the text of the amendment itself, uses clear and unambiguous language, and advises the voter of all salient features of the amendment so as to enable the casting of an intelligent and informed vote. The 2007 Apportionment Initiative complies fully with the legal requirements for citizens' initiatives, and this Court should approve it for placement on the ballot.

## **ARGUMENT**

**Standard of Review:** In *Advisory Op. to the Att’y Gen. re Amendment to Bar Government from Treating People Differently Based on Race in Public Education*, 778 So. 2d 888 (Fla. 2000), this Court summarized its standard of review in initiative petition cases:

The Court’s inquiry, when determining the validity of initiative petitions, is limited to two legal issues: whether the petition satisfies the single-subject requirement of article XI, section 3, Florida Constitution, and whether the ballot titles and summaries are printed in clear and unambiguous language pursuant to section 101.161, Florida Statutes (1999). In order for the Court to invalidate a proposed amendment, the record must show that the proposal is clearly and conclusively defective on either ground. In determining the propriety of the initiative petitions, the Court does not review the merits of the proposed amendments.

*Id.* at 890-91.

“The Court must act with extreme care, caution, and restraint before it removes a constitutional amendment from the vote of the people.” *Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982). Specifically, where citizen initiatives are concerned, “the Court has no authority to inject itself in the process, unless the laws governing the process have been ‘clearly and conclusively’ violated.” *Advisory Op. to the Att’y Gen. re Right to Treatment & Rehabilitation for Non-Violent Drug Offenses*, 818 So. 2d 491, 498-99 (Fla. 2002).



Committee for Fair Elections submits that the 2007 Apportionment Initiative satisfies all applicable legal requirements, and thus this Court should approve it for placement on the ballot.

**I. THE 2007 APPORTIONMENT INITIATIVE SATISFIES THE SINGLE-SUBJECT REQUIREMENT.**

Article XI, Section 3 of the *Florida Constitution* provides that a proposed constitutional amendment arising via the citizen initiative process “shall embrace but one subject and matter directly connected therewith.” As this Court stated in *Advisory Op. to the Att’y Gen. re Additional Homestead Tax Exemption*, 880 So. 2d 646, 648-49 (Fla. 2004), “[t]he single-subject requirement is a ‘rule of restraint’ that was ‘placed in the constitution by the people to allow the citizens, by initiative petition, to propose and vote on singular changes in the functions of our governmental structure.’” (quoting *Advisory Op. to Att’y Gen. re Prohibiting Public Funding of Political Candidates’ Campaigns*, 693 So. 2d 972, 975 (Fla. 1997) and *Fine v. Firestone*, 448 So. 2d 984, 988 (Fla. 1984)).

The single-subject rule prevents an amendment from engaging in either of two practices: (a) “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); *Advisory Op. to Att’y Gen. – Save Our Everglades*, 636 So. 2d 1336, 1339

(Fla. 1994); and (b) “substantially altering or performing the functions of multiple branches of state government.” *High Speed Monorail*, 769 So. 2d at 369.

**A. The 2007 Apportionment Initiative Does Not Engage in Logrolling.**

The 2007 Apportionment Initiative does not engage in logrolling, as it manifests a “logical and natural oneness of purpose.” *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984). Its single subject is to implement a schedule for apportionment in 2007, provided the proposed amendment to Article III, Section 16, is adopted by the electorate. It includes provisions related directly to that single subject, explaining the schedule for apportionment of legislative and congressional districts in 2007 and providing that elections for legislative and congressional seats in 2008 shall be held pursuant to the 2007 reapportionment. Viewed as a whole, it “may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan.” *Id.* (quoting *City of Coral Gables v. Gray*, 154 Fla. 881, 19 So. 2d 318, 320 (Fla. 1944)). Therefore, the 2007 Apportionment Initiative does not engage in logrolling.

**B. The 2007 Apportionment Initiative Does Not Alter or Perform the Functions of Multiple Branches of Government.**

The 2007 Apportionment Initiative does not alter or perform the functions of multiple branches of government, and certainly does not cause “multiple ‘precipitous’ and ‘cataclysmic’ changes in state government.” *Advisory Op. re*

*Right to Treatment & Rehabilitation for Non-Violent Drug Offenses*, 818 So. 2d 491, 495 (Fla. 2002). While this amendment may affect multiple branches of government, this fact alone is insufficient to invalidate an amendment on single-subject grounds. In *Advisory Op. to Att’y Gen. re Fla. Transp. Initiative*, 769 So. 2d 367 (Fla. 2000), this Court held:

As the proponents of the amendment point out, the fact that an amendment affects multiple functions of government does not automatically invalidate a citizen’s initiative. As we explained in detail in [*Advisory Op. to Att’y Gen. re Limited Casinos*]:

We recognize that the petition, if passed, could affect multiple areas of government. In fact, we find it difficult to conceive of a constitutional amendment that would 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.

*Id.* at 369-60 (quoting *Advisory Op. to Att’y Gen. re Limited Casinos*, 644 So. 2d 71, 74 (Fla. 1994) (internal citations omitted)).

In *Advisory Op. to Att’y Gen. re Fish & Wildlife Conservation Comm’n*, 705 So. 2d 1351, 1353-54 (Fla. 1998), this Court stated the controlling test, “[a] proposal that affects several branches of government will not automatically fail; rather, it is when a proposal substantially alters or performs the functions of multiple branches that it violates the single-subject test.”

The 2007 Apportionment Initiative does not substantially alter or perform the functions of multiple branches of government. Rather, it offers an

implementation schedule if the electorate approves the proposed amendment to Article III, Section 16 of the *Florida Constitution*, known as the “Independent Commission Amendment.”<sup>3</sup> Thus, the 2007 Apportionment Initiative satisfies this prong of the single-subject rule.

**II. THE BALLOT TITLE AND SUMMARY OF THE 2007 APPORTIONMENT INITIATIVE FAIRLY AND UNAMBIGUOUSLY DISCLOSE THE CHIEF PURPOSE OF THE AMENDMENT.**

Whenever a constitutional amendment is submitted to the vote of the people, a title and summary of the amendment must appear on the ballot. This title and summary are subject to the following statutory requirements:

Except for amendments and ballot language proposed by joint resolution, 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. . . . The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

Fla. Stat. § 101.161(1) (2005). The basic purpose of this provision is “to provide fair notice of the content of the proposed amendment so that the voter will not be misled as to its purpose, and can cast an intelligent and informed ballot.” *Advisory*

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<sup>3</sup> The Independent Commission Initiative is currently awaiting approval from this Court in Case No. SC05-1575, and is on an identical briefing schedule as the instant amendment. The ballot title for the Independent Commission Initiative is “Independent Nonpartisan Commission to Apportion Legislative and Congressional Districts which Replaces Apportionment by Legislature.”

*Op. to Att’y Gen. re Fee on Everglades Sugar Prod.*, 681 So. 2d 1124, 1127 (Fla. 1996).

In *In re Advisory Op. to the Att’y Gen.—Save Our Everglades*, 636 So. 2d 1336 (Fla. 1994), this Court explained further:

[S]ection 101.161 requires that the ballot title and summary for a proposed constitutional amendment state in clear and unambiguous language the chief purpose of the measure. This is so that the voter will have notice of the issue contained in the amendment, will not be misled as to its purpose, and can cast an intelligent and informed ballot. However, it is not necessary to explain every ramification of a proposed amendment, only the chief purpose.

*Id.* at 1341 (internal quotations and citations omitted). In *Advisory Op. to Att’y Gen. re Additional Homestead Tax Exemption*, 880 So. 2d 646, 651-52 (Fla. 2004), this Court stated that the Court should ask two questions, “[f]irst, whether the ballot title and summary fairly inform the voter of the chief purpose of the amendment[,] [and] [s]econd . . . whether the language of the title and summary, as written, misleads the public.” (internal quotations and citations omitted). The ballot title and summary of the 2007 Apportionment Initiative satisfy these requirements, and thus this Court should approve the amendment to go before the voters.

The title of the 2007 Apportionment Initiative, “Implementation of Apportionment and Districting Commission in 2007,” does not exceed 15 words,

and is the common reference for the proposed amendment. It thus satisfies the legal requirements for ballot titles. *See Fla. Stat. § 101.161(1) (2005).*

The ballot summary also satisfies the applicable legal requirements:

Requires that state legislative and congressional districts be established with the provisions of the amendment to Article III, Section 16, creating an Apportionment and Districting Commission in 2007, provided that amendment is adopted by the electorate at the general election of 2006, and that elections for state legislative and congressional districts in 2008 shall be held pursuant to plans adopted by the Commission in 2007.

The ballot summary does not exceed 75 words, and thus complies with the length requirement. *See Fla. Stat. § 101.161(1) (2005).* The summary also complies with the legal requirement of informing the voter about the chief purpose of the amendment, because it plainly discloses that the amendment would implement the proposed separate amendment to Article III, Section 16 (the “Independent Commission Initiative”) in 2007, and provide for congressional and legislative elections held in 2008 to be held pursuant to the 2007 plan. The summary accurately tracks the text of the amendment itself, including all details reasonably necessary to assist the voter in making an informed decision. The language used is clear and unambiguous, and, read together with the ballot title, provides accurate, informative and fair notice of the chief purpose of the proposed amendment so that the voter can cast an informed ballot. *See Advisory Op. to Att’y Gen. re Voluntary Universal Pre-Kindergarten Educ.*, 824 So. 2d 161, 167 (Fla. 2002).

## **CONCLUSION**

The 2007 Apportionment 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,

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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 20th day of October, 2005 to: Charlie Crist, Attorney General, and Joslyn Wilson, Assistant Attorney General, PL 01, The Capitol, Tallahassee, Florida, 32399-1050.

\_\_\_\_\_  
Mark Herron, Esq.

**CERTIFICATE OF 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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