

IN THE SUPREME COURT OF FLORIDA

Case No. SC05-1755

**IN RE: ADVISORY OPINION TO THE ATTORNEY GENERAL
RE IMPLEMENTATION OF APPORTIONMENT AND DISTRICTING
COMMISSION IN 2007**

**ANSWER BRIEF OF THE HONORABLE ALLAN G. BENSE,
SPEAKER OF THE FLORIDA HOUSE OF REPRESENTATIVES**

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PRELIMINARY STATEMENT AND NOTICE OF ADOPTION

The proponent of the proposed initiative, the Committee for Fair Elections, will be referred to as “the sponsor.”

The Honorable Allan G. Bense, Speaker of the Florida House of Representatives, adopts the initial briefs of (i) Hons. Mario Diaz-Balart, Lincoln Diaz-Balart, and Ileana Ros-Lehtinen, Members of the United States House of Representatives, and (ii) Hons. Charlie Clary, Alfred Lawson Jr., and Jim Sebesta, Members of the Florida Senate, to the extent applicable. Both briefs were filed on October 20, 2005.

SUMMARY OF ARGUMENT

The ballot summary to the proposed amendment entitled “Implementation of Apportionment and Districting Commission in 2007” is misleading and inaccurate. By omitting important facts, the summary falsely implies that a constitutional amendment is needed to effect redistricting. Specifically, the summary does not mention that current law *already* provides for regular periodic redistricting and that, with or without the adoption of this amendment, legislative districts will be adjusted.

Equally fatal, the summary does not inform voters that late-decade redistricting will result in the use of obsolete census data and lead to the creation of malapportioned districts—in violation of the one person, one vote standard—and cause likely challenges under the Voting Rights Act.

The summary also leads voters to the incorrect conclusion that another provision of the constitution already provides for redistricting in 2007. It suggests that the amendment’s only effect would be to mandate the use of *already-existing* districting plans for the 2008 election. Instead, the chief purpose of the proposed amendment is to create *new* districting plans for the 2008 election.

Because the proposed amendment does not include a “clear and unambiguous” summary of the amendment as required by Section 101.161, Florida Statutes and by decisions of this Court, it should be excluded from the ballot.

ARGUMENT

A. The Summary Omits Critical Facts.

The sponsor's brief contends that the summary includes "all details reasonably necessary to assist the voter in making an informed decision." Sponsor's brief at 12. To the contrary, a critical fact necessary for an informed decision is missing from the summary. The amendment will force redistricting in 2007, but nowhere does the summary mention that redistricting is *already* constitutionally required to take place regularly, with the next redistricting scheduled to take place after the 2010 census. Even without adoption of the proposed amendment, there will be regular, periodic redistricting. The summary ignores this critical fact.

As explained in the Honorable Allan Bense's initial brief (the "Speaker's Initial Brief"), there are undoubtedly voters who believe that adjusting district lines is appropriate. Those voters may favor this amendment, not realizing that redistricting will take place after the 2010 census regardless of this amendment's adoption. By omitting this fact, the summary falsely implies that this amendment is *necessary* to have redistricting. Instead, this amendment would serve only to duplicate redistricting efforts in four short years. Voters who understood its true purpose might not favor the state's incurring the tremendous cost of redistricting,

and its considerable upset to the state's electoral system and the sixty-seven supervisors of elections, only to repeat the process four years later.

The summary also fails to inform voters that late-decade redistricting would rely on inaccurate and obsolete census data, and would therefore be peculiarly susceptible to being stayed pending endless and costly legal challenges. *See White v. Daniel*, 909 F.2d 99, 104 (4th Cir. 1990).

Last, the summary fails to inform voters that the proposal would shorten the terms of office of some state senators, but not others. If this proposal became effective, its complex interplay with staggered senatorial terms under Article III, section 15 of the constitution, and with term limits under Article VI, section 4, will mean that some state senators will be permitted to serve two more years in the Senate than other senators.¹ The summary does not mention this.

Voters are entitled to be fully informed and to understand the full truth so that they can cast an “intelligent and informed ballot.” *In re Advisory Op. to the*

¹ In fact, one-half of the Senate would, in effect, serve four consecutive two-year terms. Senators elected in 2006 will, in 2008, become subject to reelection after the new redistricting plan is adopted in 2007. Some senators will be required to run for reelection in 2010 to “maintain staggered terms.” *See* Art. III, § 15(a), Fla. Const. In 2012, after another redistricting plan has been adopted pursuant to the 2010 census, these senators will again be subject to election, and, to “maintain staggered terms,” they will be subjected to reelection yet again in 2014. Consequently, senators first elected in 2008 will, if reelected in 2010, 2012, and 2014, serve for ten years in the Senate. Art. VI, § 4, Fla. Const.

Att’y Gen. re Save Our Everglades, 636 So. 2d 1336, 1341 (Fla. 1994). The summary in this case provides less than the full truth.

B. The Proposed Amendment’s Summary is Inaccurate, Confusing, and Misleading.

The sponsor’s brief says that the summary “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.” Sponsor’s brief at 10. Only a contorted reading of the summary could yield that result, and the summary does not “plainly” do anything.

The entire summary reads:

Requires that state legislative and congressional districts be established in accordance 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.

According to the sponsor, the first thing the summary does is to explain that the amendment would implement the Independent Commission Initiative in 2007. But the summary indicates that the Independent Commission Initiative will *already* be implemented in 2007. The non-restrictive, parenthetical phrase “creating an Apportionment and Districting Commission in 2007,” set off by commas, modifies

the words it immediately follows: “the amendment to Article III, Section 16.”² Of course, the amendment to Article III, section 16 would not create an Apportionment and Districting Commission in 2007, so the summary will mislead voters.³

The sponsor’s brief says the second thing the summary “plainly discloses” is that the proposed amendment would provide for the 2008 elections to be held pursuant to the 2007 plan. The summary does explain that, but only after it suggests that there *already will be* a 2007 plan. Because the summary incorrectly states that the commission will already be in place in 2007, many voters could support the amendment, reasoning that if the commission is already established, it makes sense to use its work product in 2008 elections.

It is one thing to support using an already-created redistricting plan for the next election cycle. It is quite another to support the creation of a commission for a late-decade redistricting, when the redistricting will take place regardless after a short period of time.

² Parenthetical phrases must be enclosed between commas. *See* William Strunk, Jr., & E.B. White, *The Elements of Style*, Fourth ed., 2-3 (1979).

³ As explained in the Speaker’s Initial Brief, the problem results from a critical drafting error. The parenthetical explanatory phrase apparently was intended to be: “creating an Apportionment and Districting Commission”—without including the words “in 2007.” But because the entire phrase, including “in 2007,” is enclosed between commas, the phrase is read to modify the “amendment to Article III, Section 16.” Regardless of the source of the error, it causes the summary to materially mislead voters.

CONCLUSION

The ballot title and summary do not fairly and unambiguously disclose the chief purpose of the proposed amendment. Instead, they mislead voters, omit critical information about the proposed amendment, and do not provide fair notice to voters.

The people of Florida have every right to amend their constitution to accomplish the purposes of the proposed amendment. But no amendment may be adopted without complying with the constitutional and statutory requirements that ensure a fair petition and election process. The proposed amendment fails to comply with those requirements.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished by U.S. Mail or Hand

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CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENT

I certify that the font used in this brief is Times New Roman 14 point and in compliance with Rule 9.210, Florida Rules of Appellate Procedure.

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