

IN THE SUPREME COURT OF FLORIDA

Case No.: SC 05-1755

**ADVISORY OPINION
TO THE ATTORNEY GENERAL**

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

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

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STATEMENT OF THE CASE

On October 20, 2005, Committee for Fair Elections, the sponsor of the “2007 Apportionment Initiative,” submitted its Initial Brief in support of the amendment. That same day, the Honorable Allan G. Bense, Speaker of the Florida House of Representatives, filed an Initial Brief in opposition (“Speaker’s Brief”). The Speaker’s Brief purports to be filed on behalf of the interests of the people of the State of Florida. Speaker’s Br. at 3.

SUMMARY OF ARGUMENT

The ballot title and summary of the 2007 Apportionment Initiative fairly inform the voter of the chief purpose of the amendment, and as written, do not mislead the public. Although the Speaker has raised numerous objections to the title and summary, both state in clear and unambiguous language the chief purpose of the measure, and need not explain every detail, ramification or effect of the 2007 Apportionment Initiative.

The 2007 Apportionment Initiative petition that the Committee for Fair Elections has circulated does not violate the single-subject requirement. The Division of Elections approved the language of the amendment, and the method of uniting this petition with two other related petitions was approved of by this Court in *Advisory Op. to Att’y Gen. re Fee on the Everglades Sugar Production*, 681 So. 2d 1124 (Fla. 1996).

ARGUMENT

As stated in the Initial Brief, this Court's inquiry is limited to two legal issues: (1) whether the petition satisfies the single-subject requirement of Article XI, Section 3 of the *Florida Constitution*; and (2) whether the ballot title and summary are printed in clear and unambiguous language pursuant to Section 101.161, Florida Statutes. "In determining the propriety of the initiative petitions, the Court does not review the merits of the proposed amendments." *Advisory Op. to Att'y Gen re Amendment to Bar Government from Treating People Differently Based on Race in Public Education*, 778 So. 2d 888, 890-91 (Fla. 2000).

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

This Court should ask two questions when determining whether the ballot title and summary of the 2007 Apportionment Initiative comply with Section 101.161, Florida Statutes and controlling precedent: (1) whether the ballot title and summary 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. *See Advisory Op. to Att'y Gen. re Additional Homestead Tax Exemption*, 880 So. 2d 646, 651-52 (Fla. 2004). While a ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, they need not explain

every detail, ramification or effect of the proposed amendment. *See Grose v. Firestone*, 422 So. 2d 303, 305 (Fla. 1982). As argued in the Initial Brief, the ballot title and summary of the 2007 Apportionment Initiative satisfy these requirements.

The Speaker offers several arguments why the ballot title and summary are allegedly misleading: (1) the summary omits “critical” information that redistricting is already required to take place regularly under the *Florida Constitution* (Speaker’s Br. at 6); (2) the summary misleads voters into concluding that the Independent Commission Initiative already creates an Apportionment and Districting Commission in 2007 (Speaker’s Br. at 9); and (3) the summary fails to inform voters that the proposed amendment would require a late-decade redistricting (Speaker’s Br. at 12).

The title of the initiative is “Implementation of Apportionment and Districting Commission in 2007.” The summary of the initiative is:

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 Speaker first argues that the amendment omits “critical” information that redistricting is already constitutionally required to take place regularly, with

the next scheduled redistricting scheduled to take place after the 2010 census. *See* Speaker Br. at 6-9. The summary is not required to explain every detail or ramification of the proposed amendment. The language of the summary is an objective, accurate and neutral summary of the 2007 Apportionment Initiative. The summary does not mislead the public or create a negative implication. It informs the voters that if the Independent Redistricting Commission Initiative passes, then it shall be implemented in 2007 for elections in 2008.¹ Further, this Court, in *Advisory Op. to Att’y Gen. re Right to Treatment & Rehab. For Non-Violent Drug Offenses*, 818 So. 2d 491 (Fla. 2002) held, regarding the ballot title and summary:

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. Under our system of free elections, the voter must acquaint himself with the details of a proposed ordinance on a referendum together with the pros and cons thereon before he enters the voting booth. If he does not, it is no function of the ballot question to provide him with that needed education. What the law very simply requires is that the ballot give the voter fair notice of the question he must decide so that he may intelligently cast his vote.

Id. at 498 (quoting *Metropolitan Dade County v. Shiver*, 365 So. 2d 210, 2213 (Fla. 3d DCA 1978).

¹ This Court is currently reviewing the Independent Commission Initiative in Case No. SC05-1754.

Regarding the Speaker's second argument, that the summary misleads voters into concluding that the Independent Commission Initiative already creates an Apportionment and Districting Commission in 2007 (Speaker's Br. at 9-11), the summary clearly states:

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.

Summary to 2007 Apportionment Initiative (emphasis added). The ballot summary clearly informs voters that the instant initiative is contingent on the passage of the Independent Commission Initiative. The Speaker's arguments that because of misplaced commas, the summary misleads the voters, is especially disingenuous since he purports to be representing the rights of the people of Florida in his Brief. It can be presumed "that the average voter has a certain amount of common understanding and knowledge." *Advisory Op. to Att'y Gen. re Local Trustees*, 819 So. 2d 725, 732 (Fla. 2002). The voters will not be misled into believing that the commission will already exist in 2007 because the summary clearly provides that a separate amendment must be adopted by the electorate.

The Speaker finally argues that the summary fails to inform voters of the effect of a late-decade redistricting. *See Speaker's Br. at 12-15*. The Speaker's

arguments on this point are aimed at the merits of the proposal, instead of whether the summary is actually misleading. Further, it ignores the fact that current districts are based on census data that was provided at the beginning of this decade. In any event, the summary fairly informs the voters of the chief purpose of the amendment—that if the Independent Commission Initiative is adopted by the electorate, that the commission shall redraw districts in 2007 and general elections in 2008 shall be held pursuant to this plan. Given the limitation of 75 words, it is not required to “explain every detail or ramification of the proposed amendment.” *Advisory Op. to Att’y Gen. re Prohibiting Public Funding of Political Candidates’ Campaigns*, 693 So. 2d 972, 975 (Fla. 1997).

II. THE PETITIONS THAT THE COMMITTEE FOR FAIR ELECTIONS CIRCULATED COMPLY WITH ALL APPLICABLE REQUIREMENTS.

The Speaker contends that the 2007 Apportionment Initiative petition as circulated violates the single-subject requirement because the Committee for Fair Elections united the petition with two other related petitions.² Committee for Fair Elections received approval from the Division of Elections pursuant to Rule 1S-2.009, Florida Administrative Code, regarding the wording of the 2007 Apportionment Initiative and the other two initiative petitions. The three petitions were then united by fastening them together for circulation. Each petition states “SIGN ALL THREE PETITIONS.” The petitions, as circulated, do not contain any changes whatsoever to their previously-approved wording. The petitions each contain separate signature lines, ballot titles, summaries and texts of the three initiatives.

In *Advisory Op. to Att’y Gen. re Fee on the Everglades Sugar Production*, 681 So. 2d 1124 (Fla. 1996), this Court rejected a similar challenge. The proponents in that case circulated three similar petitions that were unified. The proponents had received approval from the Division of Elections on the wording of each petition, but did not seek approval of the unified petition. The consolidated

² The other initiatives were the Independent Commission Initiative (which is currently pending before this Court in Case No. SC05-1754) and a “Standards” amendment, which Committee for Fair Elections has withdrawn from consideration.

petition contained separate signature lines, ballot titles, summaries, and texts of the three initiatives. In bold type, the petitions stated “THREE PETITIONS. READ EACH CAREFULLY. SIGN *AND DATE* ANY OR ALL.” *See id.* at 1131.

The Court ruled that the unified petition did not violate the single-subject rule because, “as presented to the signers of the unified petition, each proposal addresses a single subject, each is clearly freestanding, and signers could support or reject one or more of them.” *Id.* The same situation is present here, and for the same reason, this Court should reject the opponent’s single subject arguments regarding the united petition. Committee for Fair Elections complied with this Court’s decision in *Everglades Sugar Production* in uniting the three petitions, and has otherwise complied with Rule 1S-2.009 in securing approval of the wording of the three petitions.

CONCLUSION

Based on the foregoing, 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.

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I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. mail this 9th day of November, 2005 to:

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CERTIFICATE OF COMPLIANCE

I hereby certify that this Answer 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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