

IN THE SUPREME COURT OF FLORIDA

Case No.: SC05-1894

**ADVISORY OPINION
TO THE ATTORNEY GENERAL**

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

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

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STATEMENT OF THE CASE AND FACTS

On August 26, 2005, the Secretary of State, pursuant to Section 15.21, Florida Statutes (2005), certified to the Attorney General that the initiative petition entitled “IMPLEMENTATION OF APPORTIONMENT AND DISTRICTING COMMISSION 2007” (“2007 Apportionment Initiative”) obtained ten percent of the signatures in one fourth of the congressional districts as required by Article XI, Section 1 of the State Constitution. On September 29, 2005, the Attorney General, in accordance with the requirements of Article IV, Section 10 of the State Constitution, and Section 16.061, Florida Statutes (2005), petitioned this Court for an advisory opinion as to whether the initiative complies with Article XI, Section 3 of the Constitution of the State of Florida and Section 101.161, Florida Statutes (2005). On September 30, 2005, this Court entered its scheduling order in that case, Case No. SC05-1755, which remains pending.

On October 14, 2005, the Financial Impact Estimating Conference, in accordance with the requirements of Section 100.371(6), Florida Statutes (2005), transmitted its fiscal impact statement with respect to the 2007 Apportionment initiative to the Attorney General. On October 19, 2005, the Attorney General, in accordance with Section 100.371(6), Florida Statutes (2005), petitioned this Court for an advisory opinion as to whether the fiscal impact statement prepared by the Fiscal Impact Estimating Conference for the 2007 Apportionment initiative

complies with the requirements of Article XI, Section 5(b) of the State Constitution and Section 100.371(6), Florida Statutes (2005). On October 21, 2005, this Court entered its scheduling order in this case.

This brief is submitted on behalf of the Committee for Fair Elections, a political committee which is the sponsor of the 2007 Apportionment initiative.

SUMMARY OF THE ARGUMENT

This Court's inquiry is limited to two issues: (1) whether the fiscal impact statement prepared by the Fiscal Impact Estimating Conference for the Independent Commission addresses the probable financial impact of the proposed initiative on revenues or costs to state or local government; and (2) whether it does so in clear and unambiguous language, not exceeding 75 words. The fiscal impact statement satisfies both of these requirements and should be approved for inclusion on the ballot.

ARGUMENT

THE FINANCIAL IMPACT STATEMENT COMPLIES WITH THE REQUIREMENTS OF ARTICLE XI, SECTION 5(B) OF THE *FLORIDA CONSTITUTION* AND SECTION 100.371, FLORIDA STATUTES (2005).

Standard of Review: The standard of review is *de novo*, and the Court's review is limited to whether the fiscal impact statement complies with Article XI, Section 5(b) of the State Constitution and Section 100.371(6), Florida Statutes (2005).

When determining the validity of a fiscal impact statement, this Court's inquiry is limited to whether the statement relates to the probable financial impact of the proposed initiative on revenues or costs to state or local government and whether it does so in clear and unambiguous language, not exceeding 75 words. *Advisory Op. to the Att'y General re: Repeal of the High Speed Rail Amendment*, 880 So. 2d 628, 629 (Fla. 2004); *Advisory Op. to the Att'y General re: Public Protection from Repeated Medical Malpractice*, 880 So. 2d 686, 687 (Fla. 2004); and *Advisory Op. to the Att'y General re: Authorizes Miami-Dade & Broward County Voters to Approve Slot Machines in Parimutual Facilities*, 880 So. 2d 689, 690 (Fla. 2004).

Article XI, Section 5(b) of the *Florida Constitution*, provides as follows:

(b) The legislature shall provide by general law, prior to the holding of an election pursuant to this section, for the provision of a statement to the public regarding the probable financial impact of any amendment proposed by initiative pursuant to section 3.

Section 100.371(6), Florida Statutes (2005), implements this constitutional provision.

Despite differences in wording between the constitutional provision and the implementing statute, this Court has concluded:

Reading section 100.371(6)(b)(3) in conjunction with section 100.371(6)(a), as well as with Article XI, sections 5(b), Florida Constitution, the phrase “range of potential impacts” in section 100.371(6)(b)(3) must relate to the phrase “probable fiscal impact” set forth in the constitution also must relate to the phrase “to state or local governments” set forth in section 100.371(6)(a).

Repeal of the High Speed Rail Amendment, 880 So. 2d at 629. As noted by Justice Lewis:

The statutory sections implementing Article XI, section 5 of the Florida Constitution have their origins, and only sources of existence, in the language of that underlying constitutional provision, and the subject statutes cannot be interpreted in a manner that would override the constitutional authority. The Constitution limits financial impact statements to providing the “probable financial impact” of any amendment. See Article XI, §5(b), Fla. Const. Regardless of how clear or unambiguous, a statement which exceeds or is contrary to that constitutional parameter...should not appear within a financial impact statement of a citizen’s ballot initiative.

Public Protection from Repeated Medical Malpractice, 880 So. 2d at 688 (Lewis, J., specially concurring.)

The fiscal impact statement prepared by the financial Impact Estimating Conference for the 2007 Apportionment initiative provides as follows:

If the constitutional amendment creating the commission is adopted, the one-time costs for the 2007 redistricting that will result from adoption of this amendment are estimated to range from \$6.7 million to \$13.4 million for state government and \$6.5 million to \$7.5 million for local governments. These estimates include the state costs of the commission and associated staff, data, technology and legal expenses, and the local government costs to the supervisors of elections.

The fiscal impact statement for the 2007 Apportionment initiative prepared by the Financial Impact Estimating Conference complies with the requirements of Article XI, Section 5(b) of the *Florida Constitution* and Section 100.371, Florida Statutes (2005). The fiscal impact statement properly addresses the “probable fiscal impacts” “of the estimated increase or decrease in any revenues or costs to state or local governments resulting from the proposed initiative.” See Article XI, Section 5(b) of the *Florida Constitution* and Section 100.371(6)(a), Florida Statutes(2005). It does so in not more than 75 words.

The purpose of a fiscal impact statement is to provide voters with notice of the “probable fiscal impacts” of the financial effects on state or local government so that the voters can cast an intelligent and informed ballot. The language of the fiscal impact statement for the 2007 Apportionment initiative is clear and unambiguous. It provides that the costs associated with a 2007 redistricting will range between \$6.7 and \$13.4 million at the state level and from \$6.5 million to

\$7.5 million at the local level. It also sets forth factors that will impact upon the probable fiscal impact of the initiative, if adopted. As with the title and ballot summary of an initiative, given the 75 word limitation, a fiscal impact statement cannot explain every potential financial contingency resulting from a proposed amendment. *See, e.g., Advisory Op. to the Att’y General re Local Trustees*, 819 So. 2d 725, 731 (Fla. 2002) (“the title and summary need not explain every detail or ramification of the proposed amendment”).

The fiscal impact statement does not contain language that would confuse or mislead the voters. It does not couch its analysis in terms possible fiscal impacts. *See Repeal of the High Speed Rail Amendment*, 880 So. 2d at 629; *Authorizes Miami-Dade & Broward County Voters to Approve Slot Machines in Parimutual Facilities*, 880 So. 2d at 690. It does not include speculative impacts that may be caused by events other than by adoption of the proposed initiative. *See Public Protection from Repeated Medical Malpractice*, 880 So. 2d at 687. It does not contain “editorializing or politicizing comments.” *See id.* at 688 (Lewis, J., specially concurring.)

Thus, the fiscal impact statement for the 2007 Apportionment initiative satisfies the requirements of the requirements of Article XI, Section 5(b) of the State Constitution and Section 100.371, Florida Statutes (2005).

CONCLUSION

The fiscal impact statement prepared by the Fiscal Impact Estimating Conference for the 2007 Apportionment initiative satisfies the requirements of the requirements of Article XI, Section 5(b) of the *Florida Constitution* and Section 100.371, Florida Statutes (2005). This Court should approve the fiscal impact statement for placement on the general election 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 16th day of November, 2005 to the following:

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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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