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**IN THE SUPREME COURT OF FLORIDA  
CASE NO. SC04-943**

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Upon Request From The Attorney General  
For An Advisory Opinion As To The  
Validity Of An Initiative Petition

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**ADVISORY OPINION  
TO THE ATTORNEY GENERAL  
RE: FLORIDA MINIMUM WAGE AMENDMENT**

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**CORRECTED INITIAL BRIEF OF THE SPONSOR,  
FLORIDIANS FOR ALL PAC**

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

The Attorney General has requested the Court's opinion on a proposed constitutional amendment, the Florida Minimum Wage Amendment (the "Amendment"), which would create a Florida minimum wage for all workers in the state covered by the federal minimum wage.<sup>1</sup> The Court has jurisdiction pursuant to article IV, section 10 and article V, section 3(b)(10) of the Florida Constitution.<sup>2</sup>

Floridians For All PAC ("Floridians For All") is proposing the Amendment, through the initiative petition process of article XI, section 3, of the Florida Constitution, for inclusion on the November 2004 general election ballot. As set forth below, the Amendment complies with the requirements of the Florida Constitution as well as the requirements of Florida Statute section 101.161.

Florida is one of only seven states without a state minimum wage law. See U.S. Dep't. of Labor, Minimum Wage Laws in the States. The purposes of the Amendment, as expressed in section (a) of its text, are to ensure that working Floridians earn a wage sufficient to provide them a decent and healthy lifestyle, protect employers from unfair low wage competition and lessen working Floridians' reliance on tax-payer funded public services.

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<sup>1</sup> In his June 7, 2004, request for an advisory opinion, the Attorney General expressed no concerns regarding the Amendment.

<sup>2</sup> Pursuant to Florida Statute section 15.21, on May 11, 2004, the Secretary of State submitted the Amendment to the Attorney General, certifying that Floridians For All had successfully met the signature requirements.

The ballot summary for the proposed Amendment states:

This amendment creates a Florida minimum wage covering all employees in the state covered by the federal minimum wage. The state minimum wage will start at \$6.15 per hour six months after enactment, and thereafter be indexed to inflation each year. It provides for enforcement, including double damages for unpaid wages, attorney's fees, and fines by the state. It forbids retaliation against employees for exercising this right.

The ballot title is:

Florida Minimum Wage Amendment

The text of the proposed Amendment is:

(a) Public Policy. All working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship.

(b) Definitions. As used in this amendment, the terms "Employer," "Employee" and "Wage" shall have the meanings established under the federal Fair Labor Standards Act (FLSA) and its implementing regulations.

(c) Minimum Wage. Employers shall pay Employees Wages no less than the Minimum Wage for all hours worked in Florida. Six months after enactment, the Minimum Wage shall be established at an hourly rate of \$6.15. On September 30th of that year and on each following September 30th, the state Agency for Workforce Innovation shall calculate an adjusted Minimum Wage rate by increasing the current Minimum Wage rate by the rate of inflation during the twelve months prior to each September 1st using the consumer price index for urban wage earners and clerical workers, CPI-W, or a successor index as calculated by the United States Department of Labor. Each adjusted Minimum Wage rate calculated shall be published and take effect on the following January 1st. For tipped Employees meeting eligibility requirements for the tip credit under the FLSA, Employers



may credit towards satisfaction of the Minimum Wage tips up to the amount of the allowable FLSA tip credit in 2003.

(d) **Retaliation Prohibited.** It shall be unlawful for an Employer or any other party to discriminate in any manner or take adverse action against any person in retaliation for exercising rights protected under this amendment. Rights protected under this amendment include, but are not limited to, the right to file a complaint or inform any person about any party's alleged noncompliance with this amendment, and the right to inform any person of his or her potential rights under this amendment and to assist him or her in asserting such rights.

(e) **Enforcement.** Persons aggrieved by a violation of this amendment may bring a civil action in a court of competent jurisdiction against an Employer or person violating this amendment and, upon prevailing, shall recover the full amount of any back wages unlawfully withheld plus the same amount as liquidated damages, and shall be awarded reasonable attorney's fees and costs. In addition, they shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, reinstatement in employment and/or injunctive relief. Any Employer or other person found liable for willfully violating this amendment shall also be subject to a fine payable to the state in the amount of \$1000.00 for each violation. The state attorney general or other official designated by the state legislature may also bring a civil action to enforce this amendment. Actions to enforce this amendment shall be subject to a statute of limitations of four years or, in the case of willful violations, five years. Such actions may be brought as a class action pursuant to Rule 1.220 of the Florida Rules of Civil Procedure.

(f) **Additional Legislation, Implementation & Construction.** Implementing legislation is not required in order to enforce this amendment. The state legislature may by statute establish additional remedies or fines for violations of this amendment, raise the applicable Minimum Wage rate, reduce the tip credit, or extend coverage of the Minimum Wage to employers or employees not covered by this amendment. The state legislature may by statute or the state Agency for Workforce Innovation may by regulation adopt any measures appropriate for the implementation of this amendment. This

amendment provides for payment of a minimum wage and shall not be construed to preempt or otherwise limit the authority of the state legislature or any other public body to adopt or enforce any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits, or that extends such protections to employers or employees not covered by this amendment. It is intended that case law, administrative interpretations, and other guiding standards developed under the federal FLSA shall guide the construction of this amendment and any implementing statutes or regulations.

(g) Severability. If any part of this amendment, or the application of this amendment to any person or circumstance, is held invalid, the remainder of this amendment, including the application of such part to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the parts of this amendment are severable.

## **SUMMARY OF THE ARGUMENT**

The Court's review of the sufficiency of an amendment to the Florida Constitution proposed by initiative is limited to two legal issues: (1) whether the amendment satisfies the single-subject requirement in article XI, section 3, of the Florida Constitution; and (2) whether the ballot title and summary are set forth in clear and unambiguous language as required by Florida Statute section 101.161(1). The Amendment easily satisfies both these requirements and should be approved for inclusion on the November 2004 general ballot.

Specifically, the Amendment, which proposes the creation of a state minimum wage for Floridians covered by the federal minimum wage, concerns only a single subject. Each section of the Amendment relates to its one unified purpose of creating a state minimum wage. Moreover, the Amendment does not substantially alter or perform the functions of multiple branches of government or impact provisions of the current Florida Constitution. Because it clearly embraces a single subject and each section directly concerns that subject, the Amendment meets the requirements of the Florida Constitution.

The Amendment also meets the requirements of section 101.161(1). The ballot title and summary clearly and accurately inform voters of the chief purpose of the Amendment. Moreover, the language of the ballot summary is unambiguous and does not contain any technical terms that may mislead voters.



## **STANDARD OF REVIEW**

The Court may declare a proposed constitutional amendment invalid only if the record shows that the proposal is clearly and conclusively defective. Advisory Op. to the Atty. Gen. Re: Authorizes Miami-Dade and Broward County Voters to Approve Slot Machines in Parimutuel Facilities, No. SC03-857, 2004 WL 1064930, at \*2 (Fla. May 13, 2004) (recognizing that the Court must act with “extreme care, caution and restraint before it removes a constitutional amendment from the vote of the people”) (quoting Askew v. Firestone, 421 So. 2d 151, 154 (Fla. 1982)).

Deference is “especially appropriate” where, as here, a proposed amendment arises through the citizen initiative process. Advisory Op. to the Atty. Gen. re Right to Treatment and Rehab., 818 So. 2d 491, 494 (Fla. 2002). “Because such amendments often are initiated by ad hoc groups of concerned lay persons without formal legal training . . . , such amendments are reviewed under a forgiving standard . . .” Id.

Moreover, the Court’s role in reviewing a proposed amendment is “strictly limited to the legal issues presented.” Advisory Op. to the Atty. Gen. re: Tax Limitation, 644 So. 2d 486, 489 (Fla. 1994). The Court lacks the authority to pass on the merits, wisdom, draftsmanship, or constitutionality of the proposed amendment. Id.



## **ARGUMENT**

The Court's review of the validity of an amendment to the Florida Constitution proposed by initiative for placement on the ballot is limited to determining two legal issues: (1) whether the amendment satisfies the single-subject limitation in article XI, section 3, of the Florida Constitution; and (2) whether the ballot title and summary are set forth in clear and unambiguous language. See Slot Machines in Parimutuel Facilities, 2004 WL 1064930, at \*2. In evaluating these two issues, the Court has expressed its reluctance to interfere with the right of citizens to propose initiatives to the Florida Constitution:

Infringing on the people's right to vote on an amendment is a power this Court should use only where the record shows the constitutional single-subject requirement has been violated or the record establishes that the ballot language would clearly mislead the public concerning material elements of the proposed amendment and its effect on the present constitution.

Tax Limitation, 644 So. 2d 486 at 489. The Amendment satisfies both these legal requirements and should be approved for inclusion on the November 2004 general election ballot.

## **I. THE AMENDMENT SATISFIES THE SINGLE-SUBJECT REQUIREMENT OF ARTICLE XI, § 3, OF THE FLORIDA CONSTITUTION**

The Amendment, which does not seek to limit the power of the government to raise revenue, is required by the Florida Constitution to “embrace but one subject and matter directly connected therewith.” Fla. CONST. art. XI, § 3. The single subject requirement serves as a rule of restraint that allows “the citizens, by initiative petition, to propose and vote on singular changes in the functions of our governmental structure.” Advisory Op. to the Atty. Gen. re: Prohibiting Pub. Funding of Political Candidates’ Campaigns, 693 So. 2d 972, 975 (Fla. 1997).

The Court has held that the “universal test” for satisfying the single subject requirement is a “[u]nity of object and plan.” Advisory Op. to the Atty. Gen. re Ltd. Casinos, 644 So. 2d 71, 73 (Fla. 1994). In other words, “the proposed amendment must have a ‘natural relation and connection as component parts or aspects of a single dominant plan or scheme.’” Id. (quoting Fine v. Firestone, 448 So. 2d 984, 990 (Fla. 1984)). In determining whether a proposed amendment meets the single subject requirement, the Court considers three related factors.

First, the Court examines whether an amendment is “logrolling” multiple issues into a single proposal, raising the specter that a popular provision will be used to secure the passage of a separate unpopular one. Advisory. Op. to the Atty. Gen. re: Voluntary Universal Pre-Kindergarten Educ., 824 So. 2d 161, 165 (Fla.



2002). Second, the Court considers whether a proposed initiative would substantially alter or perform the functions of multiple branches of government. See Advisory Op. to the Atty. Gen. re Fla. Transp. Initiative for Statewide High Speed Monorail, 769 So. 2d 367, 369 (Fla. 2000). Consideration of this factor “protects against multiple precipitous and cataclysmic changes in the constitution” and the functions of the different branches of Florida government. Advisory Op. to the Atty. Gen. re Florida’s Amendment to Reduce Class Size, 816 So. 2d 580, 583 (Fla. 2002). Finally, the Court considers whether a proposed amendment affects other articles or sections of the Florida Constitution. Tax Limitation, 644 So. 2d at 494. Since the Amendment does not impact any portion of the Florida Constitution, this factor is irrelevant here.

As set forth below, an evaluation of the role of these factors demonstrates that the Amendment clearly manifests the “logical and natural oneness of purpose” necessary to satisfy the single-subject rule. Pre-Kindergarten Educ., 824 So. 2d at 165; see also Advisory Op. to the Atty. Gen. Re Fish & Wildlife Conservation Comm’n, 705 So. 2d 1351, 1354 (Fla. 1998) (finding that structurally analogous amendment, consisting of a statement of policy, sections regarding the purpose and implementation of the amendment and a severability section, satisfied the single subject requirement).

**A. The Amendment Concerns A Single Issue and, Therefore, Satisfies The Prohibition Against “Logrolling”**

A primary purpose of the single subject restriction is to prevent logrolling, “a practice wherein several separate issues are rolled into a single initiative in order to aggregate votes or secure approval of an otherwise unpopular issue.” Advisory Op. to the Atty. Gen.--Save Our Everglades, 636 So. 2d 1336, 1339 (Fla. 1994). The Amendment raises no logrolling concerns. As is clear from its title and text, it concerns only one issue – the creation of a state minimum wage for Florida workers covered by the federal minimum wage.

Each portion of the text relates to that single unifying goal. Section (a) articulates a public policy basis for creating a state minimum wage. Prop. Am. section (a). The Court has repeatedly held that incorporation of a policy statement into a proposed amendment does not constitute logrolling. See Reduce Class Size, 816 So. 2d at 582-83 (approving initiative that had policy statement describing education of children as a fundamental value); Fish & Wildlife Conservation, 705 So. 2d at 1354-55 (finding amendment satisfied single-subject rule where text incorporated policy statements relating to the management of marine, freshwater and wildlife resources for the benefit of future generations).

The remaining sections – (b) through (g) – set forth the mechanics of implementation and enforcement of a state minimum wage. Specifically, these sections contain definitions (section (b)); the method for setting and adjusting the

minimum wage (section (c)); the process for enforcement (sections (d) and (e)); guidelines for construing the Amendment (section (f)); and a severability clause (section (g)). Prop. Am. sections (b)-(g).

Each of these component parts clearly is an aspect of, and relates to, a functionally unified plan to create a state minimum wage. The Court has found that amendments with analogous related component parts satisfy the single-subject requirement. For example, in Pre-Kindergarten Educ., a provision of an amendment requiring the Legislature to fund a pre-kindergarten program “d[id] not constitute impermissible logrolling, but rather provides the details of how the amendment will be implemented.” 824 So. 2d at 165. Here, sections (b) through (g) similarly provide the details of implementation and enforcement of a state minimum wage. See Prop. Am. sections (b)-(g). Cf. Advisory Op. to the Atty. Gen. re Limiting Cruel and Inhumane Confinement of Pigs During Pregnancy, 815 So. 2d 597, 599 (Fla. 2002) (section setting forth definitions is part of a functionally unified proposal); Advisory Op. to the Atty. Gen. re Stop Early Release of Prisoners, 661 So. 2d 1204, 1206 (Fla. 1995) (portion of amendment providing enforcement procedure does not violate single-subject criteria); Advisory Op. to the Atty. Gen., Limitation of Non-Econ. Damages in Civ. Actions, 520 So. 2d 284, 287 (Fla. 1988) (finding severability clause and section concerning implementation details to relate to the single-subject of placing a cap on non-

economic damages). The provision making the Amendment self-executing also satisfies the single-subject requirement. See Pigs During Pregnancy, 815 So. 2d at 600 (finding amendment, with identical language making amendment self-executing, satisfied the single subject requirement).

Where the Court has rejected proposed amendments for logrolling, it has found an impermissible duality of purpose not present here. See, e.g., Advisory Op. to the Atty. Gen. re Authorization for County Voters to Approve or Disapprove Slot Machines Within Existing Pari-Mutuel Facilities, 813 So. 2d 98, 101-102 (Fla. 2002) (striking a proposal that would both authorize and tax slot machines for a particular purpose and remove the new tax from the ambit of the supermajority voting requirement); Save Our Everglades, 636 So. 2d at 1341-42 (finding the initiative improperly included two separate objectives: (1) restoring the Everglades; and (2) compelling the sugar industry to fund the restoration).

In contrast, the Amendment has one single purpose and each of its subsections supports the “logical and natural oneness of purpose”; i.e., to create a minimum wage for all working Floridians covered by the federal minimum wage. Thus, the Amendment presents no danger of logrolling.

**B. The Amendment Does Not Substantially Alter Or Perform The Functions Of Multiple Branches of Government**

The second factor the Court considers in determining whether an amendment satisfies the single-subject restriction is whether it substantially alters or performs the functions of multiple branches of government. High Speed Monorail, 769 So. 2d at 369. Consideration of this factor both guards against multiple sudden changes to different branches of government and provides a red flag that the amendment concerns more than a single subject. Evans v. Firestone, 457 So. 2d 1351, 1354 (Fla. 1984) (“where a proposed amendment changes more than one government function, it is clearly multi-subject.”). In examining the effect of an amendment on the multiple branches of government, the Court will consider whether the amendment alters or performs the functions of multiple branches of government at both the state and local levels. See Advisory Op. to the Atty. Gen. re Treating People Differently Based on Race, 778 So. 2d 888, 895 (Fla. 2000) (Court considered amendment’s effect on both state and local government entities).

The Court has recognized that virtually every amendment will have some effect on multiple branches of government:

[W]e find it difficult to conceive of a constitutional amendment that would not affect some 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.

Limited Casinos, 644 So. 2d at 74 (holding that amendment dealt with only one subject even though it “could have broad ramifications”); see also Advisory Op. to the Atty. Gen. English--The Official Language of Florida, 520 So. 2d 11, 13 (Fla. 1988) (same). Thus, the inquiry is not whether the proposed amendment merely affects more than one branch of government, but whether such an effect substantially alters or performs the functions of more than one branch. See, e.g., Advisory Op. to the Atty. Gen. – Ltd. Political Terms In Certain Elective Offices, 592 So. 2d 225, 227 (Fla. 1991) (finding amendment which “affects officeholders in three different branches of government” by imposing term limits satisfied the single subject requirement because “the sole subject of the proposed amendment” was the imposition of terms limits.).

Thus, even when considering a proposed amendment’s effect on multiple branches of government, the Court’s focus is on whether “the amendment is functionally and facially unified.” Right to Treatment, 818 So. 2d at 496 (recognizing that proposed amendment limits legislative authority but finding it did not usurp function of the Legislature and focusing on fact that the amendment was functionally and facially unified); Advisory Op. to the Atty. Gen.--Ltd. Net Marine Fishing, 620 So. 2d 997, 999 (Fla. 1993) (applying the “functionally and facially unified” test).

Indeed, the Court has approved amendments that affected multiple branches

by: (1) authorizing a statewide board of governors to operate the state university system; (2) capping damages and providing jury instructions; (3) setting a process for electing candidates to legislative and executive offices; and (4) requiring the legislature to fund a high speed railway, resulting in a limitation of the Governor's veto powers. See Advisory Op. to the Atty Gen. re Local Trs., 819 So. 2d 725, 730 (Fla. 2002); Limitation on Non-Econ. Damages, 520 So. 2d at 287; Prohibiting Public Funding; 693 So. 2d at 975, High Speed Monorail, 769 So. 2d at 370. In each instance, the Court found that the amendment, although it had some affect on multiple branches of government, had only one subject.

Here, the “sole subject” of the Amendment is the creation of a state minimum wage applicable to Floridians covered by the federal minimum wage. The Amendment will have a de minimis effect on the legislative branch at the state level because it engages in policy making activity. See Save Our Everglades, 636 So. 2d at 1340 (the implementation of a public policy decision of statewide significance is essentially a legislative function). The amendment does not require the Legislature to enact any statutes and specifically retains, in section (f), the power of the state legislature to “adopt or enforce any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits. . . .” Prop. Am. section (f). Further, the Amendment does not substantially alter or perform the important legislative

function of collecting funds and allocating appropriations. In fact, it imposes no obligations on the Legislature regarding funding. See Pre-Kindergarten Educ., 824 So. 2d at 164 (proposed amendment establishing a pre-kindergarten education program does not alter or perform the function of the legislature because it “does not require the legislature to spend a specific percentage of the budget or a specific amount”); see also High Speed Monorail, 769 So. 2d at 370-71 (same); Reduce Class Size, 816 So. 2d at 584 (same).<sup>3</sup>

Thus, the Amendment’s impact on the legislative branch is a minimal one that does not substantially alter or perform the Legislature’s function. See Advisory Op. to the Atty. Gen. re: Funding for Criminal Justice, 639 So. 2d 972, 973-4 (Fla. 1994) (approving amendment that affected the legislative branch by creating a criminal justice trust fund, but preserved the funding and allocation of the monies to discretion of the Legislature and finding that “the amendment did not augment or detract from any of the legislative powers enumerated in the constitution.”).

As for the other two branches of government, the Amendment has virtually no impact on the function of the judiciary and executive branches. While the Amendment authorizes civil suits and fines, it does not alter or perform any

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<sup>3</sup> Indeed, the Court has repeatedly held that the inclusion of a tax allocation provision in a proposed amendment does not violate the single-subject rule. Slot Machines in Parimutuel Facilities, 2004 WL 1064930, \*4. Nevertheless, the Amendment does not affect the Legislature’s ability to allocate tax revenue.



judicial functions by adjudicating specific facts or altering standards of proof. See Advisory Op. to the Atty. Gen. re Protect People From the Hazards of Second-Hand Smoke by Prohibiting Workplace Smoking, 814 So. 2d 415, 422 (Fla. 2002) (amendment banning smoking in most public places and providing for the enactment of civil penalties and administrative enforcement did not perform judicial function by adjudicating specific facts).

Likewise, section (f), which provides, in part, that the standards developed under the Fair Labor Standards Act (“FLSA”) shall guide construction of the amendment and any implementing statutes and regulations, also does not usurp the judicial function, as the courts remain free to apply these standards as they believe appropriate in interpreting the Amendment. See Prop. Am. section (f). See e.g., Right to Treatment, 818 So. 2d at 496 (amendment which provided that under certain circumstances individual convicted of drug offense may receive treatment rather than incarceration did not usurp function of the judiciary to interpret application of the amendment, enter orders ensuring compliance and terminate treatment where appropriate).

Similarly, the Amendment does not alter or perform the function of the executive branch. Although the Amendment authorizes “the state attorney general or other official designated by the state legislature” to bring actions enforcing the Amendment, it does not command them to do so under any particular set of

circumstances. Thus, a prime function of the executive branch, the ability to exercise discretion in bringing enforcement actions, is untouched. See Right to Treatment, 818 So. 2d at 496-97 (amendment which has no effect on prosecutors' power to charge persons with crimes where appropriate "leaves the prime function of [the executive] branch intact"). Moreover, the Amendment does not affect the executive's ability to veto any particular allocation of funds for government salaries. See High Speed Monorail, 769 So. 2d at 370-71 (amendment mandating construction of high speed railway valid although creates a small limitation on the Governor's veto power as the amendment reserves "wide discretion" to branches of government). Finally, the Amendment does not have any effect on the functions of local government.

Thus, the Amendment is "functionally and facially unified" in that each subsection concerns only the single goal of creating a state minimum wage. The proposed Amendment does not substantially alter the functions of multiple branches of government and any changes resulting from the Amendment are "related specifically to the issue" of the Amendment. See Advisory Op. to the Atty. Gen. re: Term Limits Pledge, 718 So. 2d 798, 802 (Fla. 1998)

In sharp contrast, where the Court has rejected an amendment for substantially altering or performing the functions of multiple branches of government, the amendment had a demonstrable and substantial effect on more

than one branch of government. See Advisory Op. to the Atty. Gen. re Requirement for Adequate Public Educ. Funding, 703 So. 2d 446, 449-50 (Fla. 1997) (rejecting amendment setting a minimum percentage of appropriations for education where the rigid funding percentage requirement performed appropriation function of the Legislature and substantially limited veto power of executive branch); Treating People Differently Based on Race, 778 So. 2d at 895 (invalidating anti-discrimination amendment that substantially altered the Legislature's ability to adopt remedial programs, the judiciary's remedial powers and had a substantial effect on local government entities); Advisory Op. to the Atty. Gen. re People's Prop. Rights Amendments Providing Comp. for Restricting Real Prop. Use May Cover Multiple Subjects, 699 So. 2d 1304, 1308 (Fla. 1997) (finding amendment that sought to expand ability to recover for losses caused by governmental restrictions on the use of property was invalid where amendment substantially alters the legislative appropriations power, the executive enforcement power and further had a "distinct and substantial effect" on state, special district and local governments); Save Our Everglades, 636 So. 2d at 1340 (rejecting amendment seeking to create a trust fund, financed by a tax on the sugar industry, to restore the Everglades; amendment performed the legislative function of setting policy, conferred powers to trustees that impinged on powers of existing executive agencies, and performed the judicial function by rendering a judgment of

wrongdoing and de facto liability on the sugar cane industry).

Because the Amendment concerns a single unified purpose – the creation of a state minimum wage – and does not substantially alter or perform the functions of multiple branches of government, it satisfies the single subject requirement in article XI, section 3 of the Florida Constitution.

## **II. THE BALLOT TITLE AND SUMMARY OF THE AMENDMENT SATISFY THE REQUIREMENTS OF SECTION 101.161**

Whenever an amendment proposed by initiative “is submitted to the vote of the people,” a title of 15 words or less and a ballot summary of 75 words or less shall appear on the ballot. Fla. Stat. § 101.161(1) (2003). The ballot title and summary must clearly and unambiguously explain the “chief purpose” of the proposed amendment. Id.; Slot Machines in Parimutuel Facilities, 2004 WL 1064930, at \*3.

The ballot title and summary requirement provides “voters with fair notice of the contents of the proposed initiative so that the voter will not be misled as to its purpose and can cast an intelligent and informed ballot.” Property Rights Amendments, 699 So. 2d at 1307; English--The Official Language, 520 So. 2d at 13 (quoting Askew, 421 So. 2d at 155) (the ballot summary provides a voter “an opportunity to know and be on notice as to the proposition on which he is to cast his vote. . . . the law requires [] that the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot.”); Prohibiting Public

Funding, 693 So. 2d at 975 (gravamen of the section 101.161(1) inquiry is “to determine whether the language of the title and summary, as written, misleads the public.”). In evaluating the sufficiency of the title and summary, they are to be read together. See Limited Casinos, 644 So. 2d at 75.

Recognizing the strict word limitations set forth in section 101.161(1), the Court has held that the ballot title and summary “need not explain every detail or ramification of the proposed amendment.” Prohibiting Public Funding, 693 So. 2d at 975. Rather, the title and summary are sufficient if they are accurate, informative and state the initiative’s primary purpose in clear and unambiguous language. See Pre-Kindergarten Educ., 824 So. 2d at 166.

**A. The Ballot Summary and Title Clearly and Accurately Summarize The Chief Purpose of the Amendment**

The title of the Amendment, “Florida Minimum Wage Amendment,” does not exceed fifteen words. See Fla. Stat. § 101.161(1). The title is clear and unambiguous, identifying the topic of the Amendment without use of emotion or political rhetoric. Simple, descriptive ballot titles, such as the title here, easily satisfy the requirements of section 101.161. Compare Pre-Kindergarten Educ., 824 So. 2d at 167 (finding simple descriptive ballot title, “Voluntary Universal Pre-Kindergarten Education” sufficient) and Funding for Criminal Justice, 639 So. 2d at 972 (title “Funding for Criminal Justice” does not incorporate misleading or emotional language) with Save Our Everglades, 636 So. 2d at 1341-42 (finding ballot title deficient where a voter considering the term “save” could easily be led into believing that the Everglades ecosystem was lost).

The ballot summary also accurately explains, in less than 75 words, the substance of the Amendment and is not misleading in describing the “chief purpose of the measure.” Prohibiting Public Funding, 693 So. 2d at 975; see also Askew, 421 So. 2d at 156 (a ballot summary is misleading if it fails to advise the electorate of the true meaning, and ramifications, of an amendment.).

In clear and unambiguous language, the ballot summary here provides voters fair notice that they are being asked to decide whether to create a state minimum wage for Floridians covered by the federal minimum wage. The first sentence of

the ballot summary states that the purpose of the Amendment is to create “a Florida minimum wage covering all employees in the state covered by the federal minimum wage.” In addition to explaining the purpose of the Amendment, this sentence also explains the limitation of the amendment’s scope; namely, employees covered by the federal minimum wage.

Indeed, the Amendment explicitly references the federal minimum wage standard by repeatedly referring to the FLSA, adopting the FLSA’s definitions of the terms “Employer,” “Employee” and “Wage,” and explicitly stating its intent that “case law, administrative interpretations, and other guiding standards developed under the federal FLSA shall guide the construction of this amendment and any implementing statutes or regulations.” See Prop. Am. sections (b), (f). In addition, the text of the Amendment also explains that there will be “employers or employees not covered by this amendment.” Prop. Am. section (f). The ballot summary thus accurately reflects the limited application of the Amendment and does not mislead the public as to its scope.

The ballot summary then goes on to provide an overview of the Amendment’s mechanisms for implementation and enforcement. Specifically, the summary informs the public of the initial minimum wage, the method by which increases in that wage will be calculated and further informs the voters that the Amendment contains enforcement and anti-discrimination provisions. Thus, “the

ballot summary does not omit any material information and does not mislead the public with political rhetoric.” Advisory Op. to the Atty. Gen. re Fla. Locally Approved Gaming, 656 So. 2d 1259, 1261 (Fla. 1995).

Although the ballot summary does not and cannot describe each detail of the proposed Amendment, it provides the necessary information “to advise the voter sufficiently to enable him intelligently to cast his ballot.” English--The Official Language, 520 So. 2d at 13. The Court has repeatedly recognized that it is impossible for sponsors of an amendment to explain an initiative in detailed language given the 75 word maximum mandated by section 101.161(1). See Prohibiting Public Funding, 693 So. 2d at 975 (given the word limitation, the ballot title and summary “need not explain every detail or ramification of the proposed amendment.”); Limited Casinos, 644 So. 2d at 74 (rejecting challenge to proposed initiative for lack of detail, finding the word limit “does not lend itself to an explanation of the proposed amendment’s details.”); see also Right to Treatment, 818 So. 2d at 498 (rejecting challenge to summary: given the word limit for the summary “it would have been impossible for the sponsors to include such detailed language concerning pre-existing programs”); Local Trustees, 819 So. 2d at 731 (recognizing it was “virtually impossible to indicate within the word limit of the ballot summary” each ramification the proposed amendment would have); English--The Official Language, 520 So. 2d at 13 (“we cannot accept the contention that



the seventy-five word ballot summary required by the statute must explain in detail what the proponents hope to accomplish by the passage of the amendment”).

In contrast to the ballot summary at issue here, the Court has found previous ballot summaries misleading where the summary clearly and conclusively created a false impression. See, e.g., *Armstrong v. Harris*, 773 So. 2d 7, 18 (Fla. 2000) (finding ballot summary for amendment changing the phrase “cruel or unusual” to “cruel and unusual” misleading where voters could believe they were voting in favor of constitutional rights when in fact they were voting to nullify those rights); *Advisory Op. to the Atty. Gen. re Right of Citizens to Choose Health Care Providers*, 705 So. 2d 563, 566 (Fla. 1998) (finding ballot summary gave the impression of an illusory right to choose a health care provider when in fact the amendment would severely limit the ability to enter into a health care contract); *Advisory Op. to the Atty. Gen. re Casino Authorization, Taxation and Regulation*, 656 So. 2d 466, 469 (Fla. 1995) (finding ballot summary for amendment authorizing casinos misleading because it created a false impression that casinos were allowed in Florida); *Tax Limitation*, 644 So. 2d at 494 (finding ballot title and summary misleading because they incorrectly implied there was presently no cap or limitation on taxes in the constitution). The Court has likewise expressed concern that a summary is misleading where it fails to properly inform the voters regarding the proposed amendment’s “effects and impacts on other constitutional

provisions.” Second Hand Smoke, 814 So. 2d at 419. The Amendment has no effect on any provisions in the current Florida Constitution so this concern is not present here.

Here, the ballot summary is “precisely as this Court has advised . . . in decision after decision: [it] apprise[s] the voter of the chief purpose of the amendment.” Right to Treatment, 818 So. 2d at 498. The ballot summary accurately informs the voter of the intent of the Amendment to create a state minimum wage for employees covered by the federal minimum wage and the proposed method for doing so. The ballot summary concisely explains the chief purpose of the initiative and is consistent with the Amendment’s text. The ballot summary will not mislead voters.

**B. The Ballot Summary Does Not Use Ambiguous Or Technical Terms Which May Mislead Voters**

The Court also examines the language used in the ballot summary to ensure that the terms used are clear and unambiguous to the average voter. In making this determination, the Court assumes that voters will have a “certain amount of common sense and knowledge.” Advisory Op. to the Atty. Gen. -- Tax Limitation, 673 So. 2d 864, 868 (Fla. 1996). The Amendment is unambiguous because it summarizes the purpose, implementation and enforcement of the state minimum wage using terms easily understood by all.

The terms used in the ballot summary are simple enough to inform voters of

the practical impact of the Amendment. The most difficult phrases in the ballot summary are “indexed to inflation” and “double damages for unpaid wages.” Neither of these phrases is ambiguous or obscure. The phrase “indexed to inflation” uses common terms to explain that the state minimum wage will be adjusted by a method related to the inflation rate. Similarly, the phrase “double damages for unpaid wages” explains, in terms understandable to the average voter, that a violation of the minimum wage can result in payment, by the violator, of double the amount of wages that should have been paid under the Amendment. Indeed, the Court has found that the use of more complex terms, such as “non-pecuniary losses” and “maximum amount recoverable may be adjusted by utilizing a consumer price index,” satisfies the requirements of section 101.161(1). Limitation of Non-Economic Damages, 520 So. 2d at 286; see also Local Trustees, 819 So. 2d at 732 (finding that ballot summary’s use of the terms “local,” “accountable operation,” and “procedures for selection” could not reasonably mislead voters).

The ballot summary of the Amendment does not use any language that the average voter would misconstrue. Rather, the ballot summary provides a straightforward analysis of the Amendment’s purpose and provides an overview for how the Amendment will achieve that purpose. Because the ballot summary, in conjunction with the ballot title, accurately sets forth the chief purpose of the

Amendment, they satisfy the requirements of section 101.161 and the Court should approve the Amendment for placement on the ballot.

## **CONCLUSION**

The Amendment easily satisfies the requirements of the Florida Constitution and Florida Statute section 101.161. The Amendment is limited to the sole subject of creating a minimum wage for all working Floridians covered by the federal minimum wage. Moreover, the ballot title and summary accurately reflect the chief purpose of the amendment in clear and unambiguous terms. Therefore, the Court should approve the Amendment for placement on the November 2004 general ballot.

Respectfully submitted this 18<sup>th</sup> day of June, 2004.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by FedEx to the persons on the attached service list this 18<sup>th</sup> day of June, 2004.

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**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that pursuant to Florida Rule of Appellate Procedure 9.210(a)(2), typeface used in this brief is a 14-point Times New Roman.

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