

IN THE SUPREME COURT OF FLORIDA

Case No.: SC08-1149

ADVISORY OPINION TO THE ATTORNEY GENERAL
RE: STANDARDS FOR ESTABLISHING
CONGRESSIONAL DISTRICT BOUNDARIES

ANSWER BRIEF OF SPONSOR
FairDistrictsFlorida.org

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SUMMARY OF ARGUMENT

The proposed Congressional Redistricting Amendment presents a unified and coherent plan for establishing standards for Congressional redistricting. The Legislature argues that the presence of eight standards for drawing districts presents the voters with a series of choices and thus constitutes logrolling. That argument is contrary to this Court's consistent findings that the inclusion of various criteria as part of a dominant theme does not violate the single subject requirement of Article XI, Section 3, Florida Constitution.

For example, different criteria in the class size amendment properly defined different sizes for different class levels. *See Advisory Opinion to the Atty. Gen'l re Florida's Amendment to Reduce Class Size*, 816 So. 2d 580, 581-82 (Fla. 2002). Those criteria provided "the details of how the ballot initiative will be implemented." *Id.* Similarly, the indoor smoking amendment had a series of exemptions that were held to define the scope of the proposal. *See Advisory Opinion to the Atty. Gen'l re Protect People From the Hazards of Second-Hand Smoke*, 814 So. 2d 415, 419 (Fla. 2002).

The proposed Congressional Redistricting Amendment establishes standards for the drawing of district lines as a means of accomplishing its single purpose - creation of rational districts. The standards are meant to

work together as a whole to define the parameters of one task that the Legislature is already required to perform. Consequently, this proposal is narrow, specific and has a relatively insubstantial effect on a task assigned to the legislative branch of state government.

The Legislature also argues that the amendment violates the single subject rule because it affects the judicial branch as well as the legislative branch. This argument ignores the basic fact that presently, the judiciary can and does interpret all constitutional provisions. The instant proposal, if enacted, would be no different in impact than any other amendment to the constitution. The court's exercise of its traditional role of interpreting and applying a new constitutional provision does not amount to a substantial impact on the judicial branch.

The ballot title and summary for the proposal give voters fair notice of the chief purpose of the amendment and the decision they must make. The "chief purpose" of the amendment is to provide a cohesive set of standards for Congressional redistricting. The Legislature complains that the summary fails to advise voters about possible impacts on the judiciary; that the summary substitutes the word "to" for "with intent to"; and that the title advises that the standards are for the Legislature to follow while the amendment does not mention the Legislature. These arguments are all

unfounded. The title and summary need not state every possible speculative ramification, or incorporate the text of the amendment. It is enough if they state clearly and accurately what the proposed amendment will do. The ballot title and summary for the Congressional Redistricting Amendment do just that, and should be approved by this Court.

ARGUMENT

As the Sponsor argued in its initial brief, the proposed Congressional Redistricting Amendment provides a limited, unified, prioritized and interdependent set of criteria to be employed when congressional districts are drawn following each decennial census, or when otherwise required. The criteria work together in combination with each other and are prioritized in an attempt to eliminate political Gerrymandering without interfering with rights of language and racial minorities. That is its single and dominant purpose. It is a proportioned and careful response to this Court's invalidation in 2006 of another initiative that sought to establish a redistricting commission while at the same time in the same amendment providing standards for reapportionment and redistricting. *See Advisory Opinion to the Atty. Gen'l re: Independent Nonpartisan Comm'n to Apportion Legislative and Congressional Districts which Replaces Apportionment by the Legislature*, 926 So. 2d 1218 (2006).

The only opponent to the proposed Congressional Redistricting Amendment, the Florida Legislature, argues in its initial brief that the initiative constitutes impermissible logrolling and has substantial effects on multiple branches of government. Br. at 9-19. This argument is unsupported by this Court's precedents. The ballot title and summary are not misleading to voters in any way. Rather, they carefully and fairly set out the chief purpose of the proposed amendment as required by the law.

I. THE INTERDEPENDENT CRITERIA PROPOSED BY THE CONGRESSIONAL DISTRICTING AMENDMENT DEFINE THE UNIFIED PURPOSE OF CREATING FAIR AND LOGICAL DISTRICT BOUNDARIES.

Article XI, Section 3, Florida Constitution, specifies that any amendment to the Constitution, except for those limiting the power of government to raise revenue, "shall embrace but one subject and matter directly connected therewith." The single subject requirement is intended to prevent multiple "precipitous" and "cataclysmic" changes in the Constitution. *See Advisory Opinion to the Atty. Gen'l re Authorization for County Voters to Approve or Disapprove Slot Machines Within Existing Pari-Mutuel Facilities*, 813 So. 2d 98, 100 (Fla. 2002); *Advisory Opinion to the Atty. Gen'l - Save Our Everglades*, 636 So.2d 1336, 1139 (Fla. 1994). The rule was placed in the Constitution because initiative proposals do not

afford the same opportunity for public hearing and debate that occurs for those amendments that arise in the Legislature. *See Advisory Opinion to the Atty. Gen'l re Fish & Wildlife Conservation Comm'n*, 705 So. 2d 1351, 1353 (Fla. 1998) (citing *Fine v. Firestone*, 448 So.2d 984, 988 (Fla 1984)).

Another reason for the single subject limitation is to prevent “logrolling,” which occurs when different issues are combined into one initiative so that voters are forced to accept something they do not want in order to gain something else that they do want. *See Advisory Opinion to the Atty. Gen'l re Fla. Transportation Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation Sys.*, 769 So.2d 367, 369 (Fla. 2000) (quoting *Advisory Opinion to the Atty. Gen'l re Limited Casinos*, 644 So. 2d 71, 73 (Fla. 1994)).

This Court has used three major tests to determine whether a proposed amendment violates the single subject limitation:

- whether the initiative performs multiple functions or substantially affects multiple functions and levels of government;
- whether the initiative substantially impacts or changes multiple sections of the Constitution; and
- whether the proposed initiative has a “logical oneness of purpose” to prevent “logrolling” of disparate and distinct proposals within one initiative.

The proposed Congressional Redistricting Amendment passes all three of these tests.

A. The proposed Congressional Redistricting Amendment is limited to setting standards for redistricting.

The current proposal is in many ways a response to the earlier initiative rejected by this Court in *Advisory Opinion to the Attorney General re: Independent Nonpartisan Comm'n to Apportion Legislative and Congressional Districts which Replaces Apportionment by the Legislature*, 926 So. 2d 1218 (2006). That initiative would have created an independent commission to perform congressional redistricting and legislative reapportionment and districting, while also requiring single-member districts, and also imposing a limitation on commission members later seeking election to the Legislature. *Id.* at 1225. This Court found that the combination of establishing the commission and the imposition of standards encompassed multiple subjects and constituted logrolling. *Id.* at 1225-26 (“A voter who advocates apportionment by a redistricting commission may not necessarily agree with the change in the standards for drawing the legislative and congressional districts.”). Importantly, the Court did not find that logrolling occurred within the standards created by the Independent Nonpartisan Commission initiative, but rather it occurred when these standards were combined with establishment of the new commission to perform the reapportionment and redistricting. *Id.*

The amendment in this case is a limited proposal, instantly and easily distinguishable from those amendments this Court has rejected. Unlike the Independent Nonpartisan Commission amendment or the failed Save Our Everglades amendment, for example, the instant initiative does not establish an implementing body, but restricts itself to the exercise of a single legislative function – the establishment of congressional redistricting standards. *Cf. Save Our Everglades*, 636 So. 2d at 1340. The Congressional Redistricting Amendment leaves untouched the existing legislative function of performing the actual redistricting. It only establishes standards for the legislature to follow when drawing the district lines. It does not impact the executive branch, and just as importantly, changes no judicial functions whatsoever. *Id.*

B. Inclusion of a number of standards in the Congressional Redistricting Amendment does not constitute logrolling because the standards work together to present a single, interdependent, unified package of criteria for redistricting.

Opponents misunderstand both the purpose and the nature of the single subject requirement's prohibition of logrolling. The Legislature argues that the logrolling prohibition means that a successful initiative must never, under any circumstances, present multiple standards or criteria to the voters. *See Br.* at 11-13. Their reasoning is that, inevitably, some voters will prefer certain criteria, while rejecting others. This position illogically

suggests that no proposal may contain more than one criterion or standard – a position continually rejected by this Court as even the most cursory examination of recent initiative cases will reveal.

Indeed, this Court has repeatedly approved initiative proposals that included multiple standards or criteria, or involved some presentation of multiple issues within a single initiative package. *See, e.g., Advisory Opinion to the Atty. Gen'l re Florida's Amendment to Reduce Class Size*, 816 So. 2d 580 (Fla. 2002); *Advisory Opinion to the Att'y Gen'l re: Voluntary Universal Pre-Kindergarten Educ.*, 824 So. 2d 161, 164 (Fla. 2002); *Advisory Opinion to the Atty. Gen'l re Protect People From the Hazards of Second-Hand Smoke*, 814 So. 2d 415, 419 (Fla. 2002); *Advisory Opinion to the Atty. Gen'l re: Protect People, Especially Youth, from Addiction, Disease, and other Health Hazards of Using Tobacco*, 926 So. 2d 1186 (Fla. 2006); *Slot Machines in Parimutuel Facilities*, 813 So. 2d 98 (Fla. 2002).

Thus, in *Reduce Class Size*, this Court upheld an initiative which set different required class sizes for public school children in grades 1-3, 4-8, and 9-12, with the class sizes phased in from 2003 through 2010. 816 So. 2d at 581-82. The Court found that the initiative dealt with a single subject of reducing class size, noting that it did not constitute logrolling, “but rather

provides the details of how the ballot initiative will be implemented.” *Id.* at 583. So also, in *Voluntary Universal Pre-Kindergarten Education*, there was no suggestion by the Court that inclusion of multiple standards for free pre-kindergarten education constituted logrolling by forcing those who might favor the funding of some of these standards to approve all or none of them. 824 So. 2d at 165-66.

Similarly, in *Protect People From the Hazards of Second-Hand Smoke*, this Court upheld an initiative which abolished most indoor, workplace smoking, but contained numerous separate exceptions for retail tobacco shops, stand-alone bars and designated smoking rooms in hotels, as well as limiting smoking in private residences if used for child or health care purposes. 814 So. 2d at 416-17. This Court found the entire initiative valid under the general single subject of “second-hand smoke in enclosed indoor workplaces.” *Id.* at 422. In *Health Hazards of Using Tobacco*, likewise, this Court upheld, as presenting “a single comprehensive plan for the education of youth about the health hazards related to tobacco,” an initiative which included “a list of components such as advertising, school curricula, and law enforcement” the particulars of which were spelled out in great detail. 926 So. 2d at 1191. The Court found all of the criteria to be “related to the single unifying purpose.” *Id.*

Each of the slot machines or casino amendments approved by this Court all included within its single unified purpose an amendment that itself prescribed the locations, both geographic and specific, where the gambling could occur. Thus, in *Slot Machines in Parimutuel Facilities*, voters were asked to approve a package deal of slot machines in existing pari-mutuel facilities only in Miami-Dade or Broward Counties, upon referendum. 880 So. 2d at 522. The Court had previously approved initiatives which offered casino riverboats in all counties with more than 200,000 inhabitants and hotel casinos in counties with more than 500,000 inhabitants. *Advisory Opinion to the Atty. Gen'l re Florida Locally Approved Gaming*, 656 So. 2d 1259, 1261 (Fla. 1995). An earlier approved initiative would have allowed casinos in Broward, Dade, Duval, Escambia, Hillsborough, Lee, Orange, Palm Beach and Pinellas Counties in pari-mutuel facilities and riverboats. *Advisory Opinion to the Atty. Gen'l re Limited Casinos*, 644 So. 2d 71, 72-73 (Fla. 1994). In both cases, opponents challenged as logrolling the geographic choices, as well as the type of locations permitted to offer gaming. The Court held:

We disagree. The sole subject of the proposed amendment is to authorize privately-owned casinos in Florida. The proposal does not combine subjects which are dissimilar so as to require voters to accept one proposition they might not support in order to vote for one they favor. Although the petition contains details pertaining to the number, size, location, and type of

facilities, we find that such details only serve to provide the scope and implementation of the initiative proposal. These features properly constitute matters directly and logically connected to the subject of the amendment.

Limited Casinos, 644 So. 2d at 73.

The point is that each of these initiatives contained criteria that were coherent and directly related to the policy proposal, as is the case with the instant proposal. This Court found that all of these proposals had the requisite “oneness of purpose” necessary to comply with the single subject requirement.¹ *Advisory Opinion to the Atty. Gen’l re Local Trustees & Statewide Governing Board to Manage Florida’s University System*, 819 So.2d 725, 729 (Fla. 2002) (quoting *Fine*, 448 So. 2d at 990). Like these other successful amendments, the proposed Congressional Redistricting Amendment has “a natural relation and connection as component parts of a single dominant plan or scheme. Unity of object and plan is the universal test ...” *Floridians Against Casino Takeover v. Let’s Help Florida*, 363 So.

¹ As this Court has often noted, canons of statutory construction require a reviewing court to reject an interpretation of a constitutional or statutory provision that would render it meaningless or lead to an absurd result. *See, e.g., Warner v. City of Boca Raton*, 887 So. 2d 1023, 1033 n.9 (Fla. 2004) (citing *Palm Beach County Canvassing Bd. v. Harris*, 772 So. 2d 1273, 1286 (Fla. 2000)); *Unruh v. State* 669 So. 2d 242, 245 (Fla. 1996). An interpretation such as that offered by Opponents, which would construe Article XI, Section 3 to prohibit an initiative from containing more than one standard or criterion in a single initiative, would lead to just such an absurd result, and frustrate the intention that the initiative function allows the people to propose limited, but real amendments to their Constitution.

2d 337, 339 (Fla. 1978) (quoting *City of Coral Gables v. Gray*, 19 So. 2d 318, 320 (Fla. 1944)).

The Congressional Redistricting Amendment evidences a similar oneness of purpose, presenting standards for redistricting which are fashioned to work together. Thus, the standards in the first paragraph of the proposal take priority over those in the second paragraph although the third paragraph instructs that the order of standards within a paragraph are not to be considered as signifying higher or lower priority. This internal organization and combination is important to the because standards of compactness or utilization of existing geographic or political boundaries, while important, may conflict with even more fundamental adherence to voting rights principles.

In short, the standards of the proposed Congressional Redistricting Amendment are intended to work together as a package, with all parts directly related to its purpose of providing explicit standards for redistricting. This Court should recognize this oneness of purpose and approve the initiative for the ballot.

C. Earlier failed initiatives cited by the Legislature which would have prohibited discrimination or affirmative action were much broader in scope and application than the instant limited proposal.

In opposition, the Legislature relies heavily on two cases in arguing that the proposed Congressional Redistricting Amendment violates the single subject requirement of Article XI, Section 3. In *In re Advisory Opinion to the Attorney General – Restricts Laws Related to Discrimination*, 632 So. 2d 1018 (Fla. 1994), this Court invalidated an initiative that would have listed classifications to be protected from discrimination. That amendment would have applied to all levels and all branches of government. *Id.* at 1020. This broad application is at the heart of this Court’s concern that the voters were being asked multiple questions about which classes should enjoy extra protections from all levels and branches of state government. With the instant proposal, however, only congressional redistricting is affected. Voters are posed the single question as to what standards should be followed when the Legislature draws congressional districts.

Later, in *Advisory Opinion to the Attorney General, re Amendment to Bar Government from Treating People Differently Based on Race in Public Education*, 778 So. 2d 888 (Fla. 2000), this Court considered a package of four initiatives which would have barred differential treatment based on race in the areas of public education, employment, contracting. The Court found

that the fourth proposal, which applied equally to education, employment and contracting, constituted logrolling. 778 So. 2d at 893. All of the proposals, however, applied broadly to multiple levels and branches of state government, and had significant effects on multiple parts of the Constitution. *Id.* at 894-96. The proposed Congressional Redistricting Amendment, by contrast, operates only on the pre-existing legislative duty of drawing congressional districts. It is a limited, single proposal. It does not create a new function, but merely provides standards for one established function of the Legislature.

II. THAT FLORIDA COURTS MAY BE CALLED UPON TO INTERPRET THE CONSTITUTIONAL AMENDMENT ON CONGRESSIONAL DISTRICTING IS NOT A SUBSTANTIAL IMPACT ON THE JUDICIARY.

The proposed Congressional Redistricting Amendment makes no changes to the judicial functions or structure of this State. Nor does the amendment undertake to perform a judicial function. Likewise, the proposal does not modify any portions of the Constitution that apply specifically to the court system.

The Legislature complains that the proposal affects judicial functions because it might be interpreted and applied by the courts. This argument is unsupported by the precedents of this Court, and if accepted would have the

radical effect of preventing any amendment by initiative other than those which target the judiciary. The fact is that every part of the Constitution, and indeed every law, is subject to judicial interpretation and enforcement. This proposal is no different.

The proposed Congressional Redistricting amendment affects a single pre-existing legislative function in one limited area: it provides criteria for the Legislature to apply when redistricting congressional seats. This Court has noted that “[a] proposal that **affects** several branches of government will not fail; rather, it is when a proposal substantially alters or performs the functions of multiple branches that it violates the single-subject test.” *Fish & Wildlife Conservation Conservation Comm’n*, 705 So. 2d at 1353-54 (emphasis added); *see also High Speed Monorail*, 769 So.2d at 369-70 (“[W]e 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.”). This proposal does not create any new duties or jurisdiction for any court. Whatever incidental effects there may be on the judiciary (if called upon to interpret or apply the Constitution), the proposed amendment does not “substantially alter or perform” the functions of Florida’s courts.

III. THE BALLOT TITLE AND SUMMARY FOR THE PROPOSED AMENDMENT ACCURATELY AND COMPLETELY STATE THE CHIEF PURPOSE OF THE AMENDMENT, AND DO NOT MISLEAD VOTERS.

In opposition, the Legislature makes numerous claims as to the insufficiency of the ballot title and summary. Here again, Opponents misinterpret and misapply the standards with regard to the ballot title and summary. Describing all possibilities and likelihoods is not a requirement in the ballot title and summary statutes. The statute requires only the description of the “chief purpose” of the initiative. § 101.161, Fla. Stat. This Court, mindful of the statutory word limits, does not require the ballot summary and title to detail every possible aspect of the proposed initiative. *See Protect People From the Hazards of Second-Hand Smoke*, 814 So. 2d at 419; *Grose v. Firestone*, 422 So. 2d 303, 305 (Fla. 1982). Rather, the ballot title and summary must describe only the major purpose of the initiative. “[I]t is not necessary to explain every ramification of a proposed amendment, only the chief purpose.” *Advisory Opinion to the Atty. Gen’l re Right to Treatment & Rehabilitation for Non-Violent Drug Offenses*, 818 So. 2d 491, 497 (Fla. 2002) (quoting *Save Our Everglades*, 636 So. 2d at 1341); *Limited Casinos*, 644 So. 2d at 74.

A. The ballot title and summary clearly show the intent to establish clear standards and eliminate overt political favoritism in the redistricting process.

Redistricting congressional seats is a function performed by the Legislature. *See* 2 U.S.C. § 2c; ch. 8, Fla. Stat. Furthermore, unlike the system established for legislative reapportionment under Article III, Section 16, Florida Constitution, there is no automatic process under which this Court reviews every plan and is required to impose a redistricting plan under certain circumstances. Rather, congressional redistricting plans will come to courts only when they are challenged. Although the Legislature decries the failure of the summary to make clear its effects on judicial functions (Br. at 31), the Sponsors deny that there are any substantial effects on judicial functions. *See* Part II, *supra*. The mere possibility that a court may be called upon to apply or interpret the Constitution is not a substantial effect. This Court does not invalidate an amendment because there is some “possibility that an amendment might interact with other parts of the Florida Constitution.” *Advisory Opinion to the Atty. Gen’l re Term Limits Pledge*, 718 So. 2d 798, 802 (Fla. 1998). Rather, the test is whether there are multiple parts of the Constitution which are substantially affected by the proposed initiative amendment, in order both to inform the public of the proposed changes and to avoid ambiguity as to the effects. *See Advisory*

Opinion to the Atty. Gen'l re Tax Limitation, 644 So. 2d 486, 490 (Fla. 1994); *Fine v. Firestone*, 448 So. 2d at 989. As is shown, *supra*, no such effect exists, and there is no need to make such a statement in a ballot summary.

Nor is the ballot summary invalid because the amendment attempts to minimize intentional and overt political favoritism in the redistricting process. The Legislature argues that the ballot summary is defective because, rather than repeating the full prohibition of drawing districts “*with intent* to favor or disfavor a political party or incumbent,” the summary simply and concisely states that “districts may not be drawn to favor or disfavor an incumbent or political party.” *See* Br. at 29. In other words, opponents argue that the summary is defective because it does not explain in detail that legislators are prohibited from acting *with intent* to favor or disfavor a party or an incumbent and it substitutes the word “to” for the phrase “with intent to”. The Legislature might have a valid objection if the summary said something like “districts cannot favor and incumbent or a political party.” However, the word “to” encompasses intent and purpose, and the language of the summary is broad enough to include intent. Here the word “to” modifies the verb “drawn” and the natural meaning of “to” in this context is consistent with the phrase “with intent to”. In any event, there

will be no discernable difference to the voters as they make their decisions on how to vote. There will be no confusion for voters having “a certain amount of common understanding and knowledge.” *Local Trustees & Statewide Governing Bd. to Manage Florida’s Univ. Sys.*, 819 So. 2d at 732 (citing *Protect People from the Hazards of Second-Hand Smoke*, 814 So. 2d at 419).

B. The ballot title and summary clearly and accurately convey the chief purpose of the amendment, and do not omit necessary information.

A ballot summary is defective “if it omits material facts necessary to make the summary not misleading.” *Term Limits Pledge*, 718 So. 2d at 803 (quoting *Advisory Opinion to the Atty. Gen’l - Limited Political Terms in Certain Elected Offices*, 592 So. 2d 225, 228 (Fla. 1991)). This Court has held, “We are most concerned with relationships and impact on other areas of law when we consider whether the ballot summary and title mislead the voter with regard to effects and impact on other constitutional provisions.” *Protect People from the Hazards of Second-Hand Smoke*, 814 So. 2d at 419 (citing *Treating People Differently Based on Race*, 778 So. 2d at 899-900).

There are no significant impacts on other areas of the law from the proposed Congressional Redistricting amendment. If adopted, the effect of the proposal will be to supplement current law in a particular, limited area.

This limited legal effect is disclosed to voters. This ballot title and summary accurately reflect the purpose and major effect of the proposed amendment. The amendment is neither more nor less than it appears to be from the ballot title and summary.

The Legislature claims that the ballot title and summary do not make clear that the standards provided by the Congressional Redistricting Amendment would also apply to a court which found itself reviewing a redistricting plan or implementing one in the event of a challenge. Accepting this argument would amount to imposing a new requirement for all initiatives to include a statement in their ballot summary to the effect that the courts may have to interpret it. Considering the 75 word limit, this would be absurd. Here again, The Legislature misinterprets and misapplies the statutory requirement which is to state the “chief purpose” of the initiative. § 101.161(1), Fla. Stat.

The Legislature also claims that the summary is misleading because the text of the amendment uses the term “political boundaries” and the summary explains that districts, where feasible, “must make use of existing city, county ... boundaries.” *See Br.* at 31. This claim is specious. The fact that the term “political boundaries” is broader than cities and counties makes no legal difference here, where the challenge is to tell the voter the gist of

the amendment – not every detail or possible contingency. As this Court has noted:

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.

Right to Treatment & Rehabilitation for Non-Violent Drug Offenses, 818 So.2d at 498 (quoting *Metropolitan Dade County v. Shiver*, 365 So. 2d 210, 213 (Fla. 3d DCA 1978)). The statute does not require that the operative text appear in the ballot title and summary; it requires only that “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.**” § 101.161(1), Fla Stat. (emphasis added). Here the mention of city and county boundaries will help the voter to understand the requirements of the amendment. Use of the term “political boundaries” in the summary would likely be confusing to voters, and at any rate is not required.

Nor is there validity in the Legislature’s argument that the summary gives a misleading impression that no law currently exists regarding voting rights law. *See* Br. at 34. This is incorrect – the summary gives no such

impression. The case cited by the Legislature, *Treating People Differently Based Upon Race*, 778 So. 2d at 898, did give this impression, and indeed the very title of the failed initiative suggested strongly that differential treatment and discrimination were not addressed by current law. In contrast, the instant summary is silent on this matter – implying neither one thing nor the other. This Court has stated that voters can be expected to understand the current state of the law. There is no place within the scope of a 75-word summary for a substantive review of voting rights law. The summary needs only to state what this amendment does.

The Legislature also complains that the ballot title mentions that the standards are for the Legislature to use in redistricting but the amendment itself does not specify which body is to use the standards. *See Br.* at 28-29. Immediately thereafter the Legislature argues that the ballot summary does not fairly notify voters as to what body is to follow the standards. *See Br.* at 31. These arguments are inconsistent and make no sense. Federal law requires the legislature to draw the district lines. *See 2 U.S.C. § 2c.* This is beyond dispute. The ballot title informs the voter about what body will be bound to follow the standards. The ballot title and summary must be considered together to determine whether they clearly state the chief purpose of the proposed amendment. *See Voluntary Universal Pre-Kindergarten*

Educ., 824 So.2d at 166. There is no need to include this in the amendment because it is already the law.²

C. Minor differences in wording between the summary and text are not misleading.

Significant divergent terminology between the text of a proposed amendment and its ballot summary has been a ground for invalidation of a ballot summary. Thus, in *Treating People Differently Based on Race*, the Court invalidated a summary which used the term “people,” while the text of the amendment referred to “persons,” terms which the Court found legally distinct. 778 So. 2d at 896-97. Similarly, this Court, in *Advisory Opinion to the Attorney General re Right of Citizens to Choose Health Care Providers*, found invalid a summary which used the term “citizens” in the summary, when the amendment used the legally significant term “natural persons.” 705 So. 2d 563, 566 (Fla. 1998) (uncertain as to whether the terms and coverage were intended to be synonymous). There can be no such uncertainty about the minor differences between the amendment text and the ballot title and summary here.

² As to the Legislature’s argument that the summary does not reference portions of the Constitution affected (Br. at 36), the proposed Congressional Redistricting Amendment makes no substantial changes to other parts of the Florida Constitution, and thus there is no need for any such reference.

One difference between the text of the proposed amendment and the ballot summary identified by the Legislature (Br. at 35-36) is that the summary states, “Districts shall not be drawn to deny racial or language minorities the equal opportunity to participate in the political process **and** elect representatives of their choice.” The text of the proposed amendment reads, “districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process **or** to diminish their ability to elect representatives of their choice.” Citing *Armstrong v. Harris*, 773 So. 2d 7, 17-18 (Fla. 2000), the Legislature claims to find a major and significant discrepancy between the use of “and” in the summary and the use of “or” in the text. *See* Br. at 36.

However, the minor discrepancy between “and” and “or” in the context of this initiative petition is a distinction without a difference. “Or” is not used in a disjunctive sense in the text of the amendment. The phrase presented by the summary and the amendment has the same essential meaning, and the application of the terms would lead to identical results, i.e. to allow political participation of minorities and allow them to elect their chosen representatives. The summary does not use the term “diminish” as the text does, but focuses instead on the desired result, namely allow them

“to elect” their chosen representatives. Thus, any “and/or” distinction is not one that will mislead voters as to the result because there is no difference as to ultimate effect. The language of the summary fairly and accurately conveys the chief purpose in a way that voters will understand. In the case relied on by the Legislature, *Armstrong v. Harris*, the “and/or” distinction was at the heart of an amendment that proposed as its chief purpose to conform the wording of the Florida Constitution to the similar provision in the U.S. Constitution. 778 So. 2d at 17-18. Here, by contrast, the *de minimis* use of slightly different language will not mislead, but rather aid the average citizen in understanding the amendment.

The summary and title for the Congressional Redistricting Amendment most resembles the one approved by this Court in *Local Trustees & Statewide Governing Board to Manage Florida’s University System*, where this Court found that even inconsistent use of such terms as “local,” “accountable operation,” and “procedures for selection,” were found to be commonly understood and not likely to mislead voters. 819 So. 2d at 732. See also *Advisory Opinion to the Atty. Gen’l re Florida Marriage Protection Amendment*, 926 So. 2d 1229, 1236-37 (Fla. 2006) (upholding an initiative with minor inconsistencies in terms between the text and summary where these would not confuse or mislead voters).

Because the purpose and effect of this proposed amendment are clear and straightforward, and there are no such hidden meanings, any minor wording differences between ballot title and summary and the text of the proposed amendment are not misleading. In short, the ballot title and summary meet the requirements of Section 101.161, Florida Statutes, that they accurately and carefully convey to voters the chief purpose and “legal effect” of the proposed Congressional Redistricting amendment. *Advisory Opinion to the Atty. Gen’l re Additional Homestead Tax Limitation*, 880 So. 2d 646 (Fla. 2004). Voters have “fair notice of the decision [they] must make.” *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982).

CONCLUSION

In opposing the initiative, the Legislature has not established clearly and conclusively that the proposed amendment violates the single subject requirement of Article XI, Section 3. The presentation of criteria for the Legislature to follow when drawing congressional seats is a single and unified purpose, working a limited change in the Constitution and substantially affecting only one branch of government. The ballot title and summary carefully, neutrally, and accurately explain this purpose. Accordingly, the sponsor of the amendment, FairDistrictsFlorida.org,

respectfully urges this Court to approve the proposed Congressional Redistricting Amendment for placement on the ballot.

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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, _____ day of August, 2008 to The Honorable BILL McCOLLUM, Esquire, Office of the Attorney General, PL 01, The Capitol, Tallahassee, Florida, 32399-1050; JASON VAIL, Esquire, General Counsel, Florida Senate, R. 402, Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100; and JEREMIAH M. HAWKES, Esquire, General Counsel, Florida House of Representatives, R. 422 The Capitol, Tallahassee, Florida 32399-1300.

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CERTIFICATE OF TYPEFACE 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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