## Standards for Congressional Redistricting

**Number:** PETITION

**Date:** June 18, 2008

The Honorable R. Fred Lewis
Chief Justice, and Justices of
The Supreme Court of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

Dear Chief Justice Lewis and Justices:

In accordance with the provisions of Article IV, section 10, Florida Constitution, and section 16.061, Florida Statutes, it is the responsibility of the Attorney General to petition this Honorable Court for a written opinion as to the validity of an initiative petition circulated pursuant to Article XI, section 3, Florida Constitution.

On May 22, 2008, this office received a letter from the Secretary of State advising this office that the initiative petition seeking to amend the Florida Constitution to establish standards for the Legislature to follow in congressional redistricting had met the registration, submission, and signature criteria set forth in section 15.21, Florida Statutes. Pursuant to Rule 9.510(b), Florida Rules of Appellate Procedure, a petition by this office must contain, in addition to the language of the initiative, the following information:

1. The name of the sponsor and address: The sponsor of the initiative is FairDistrictsFlorida.org, whose address is 704 West Madison Street, Tallahassee, Florida 32304.

2. The name and address of the sponsor's attorney, if the sponsor is represented: Mr. Mark Herron is the sponsor's attorney; his address is 704 West Madison Street, Tallahassee, Florida 32304.

3. A statement as to whether the sponsor has obtained the requisite number of signatures to have the initiative placed on the ballot: As of May 19, 2008, the sponsor had not obtained the necessary number of signatures to place the initiative on the ballot.

4. The current status of the signature collection process: The Secretary of State in his May 19, 2008, letter states that as of that date the Supervisors of Elections have certified a total of 63,847 valid petition signatures to the Division of Elections in the Department of State.

5. The date of the election during which the sponsor is planning to submit the proposed amendment: The date is unknown; this office has been advised by the Department of State that the sponsor did not collect the requisite number of signatures by February 1, 2008, to place the initiative on the 2008 general election ballot. *See* Article XI, section 5(b), Florida Constitution.

6. The last possible date that the ballot for the target election can be printed in order to be ready

for the election: Since the date of the election in which the sponsor is planning to submit the proposed amendment is unknown, this date is also unknown.

7. A statement identifying the date by which the Financial Impact Statement will be filed, if the Financial Impact Statement is not filed concurrently with the request: The Secretary of State has advised this office that a letter was sent to the Financial Impact Estimating Conference on May 19, 2008.

8. The names and complete mailing addresses of all of the parties who are to be served: Section 16.061(2), Florida Statutes, requires that a copy of the petition be provided to the Secretary of State and to the principal officer of the sponsor:

Mr. Thom Rumberger Mr. Kurt S. Browning
Chair, FairDistrictsFlorida.org Florida Department of State
704 West Madison Street R. A. Gray Building, Room 316
Tallahassee, Florida 32304-4324 500 South Bronough Street
Tallahassee, Florida 32399-0250

As noted above, the name and address for the sponsor's attorney is:

Mr. Mark Herron
704 West Madison Street
Tallahassee, Florida 32304

While not required by law, this office provides copies of the petition to:

The Honorable Charlie Crist The Honorable Ken Pruitt
Governor, State of Florida President, Florida Senate
The Capitol Senate Office Building, Room 312
400 South Monroe Street 404 South Monroe Street
Tallahassee, Florida 32399-0001 Tallahassee, Florida 32399-1100

The Honorable Marco Rubio
Speaker, Florida House of Representatives
420 The Capitol
402 South Monroe Street
Tallahassee, Florida 32399-1300

No other parties are known at this time.

The full text of the proposed amendment states:

"Add a new section 20 to Article III

Section 20. STANDARDS FOR ESTABLISHING CONGRESSIONAL DISTRICT BOUNDARIES

In establishing Congressional district boundaries:

(1) No apportionment plan or district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and 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; and districts shall consist of contiguous territory.
(2) Unless compliance with the standards in this subsection conflicts with the standards in subsection (1) or with federal law, districts shall be as nearly equal in population as is practicable; districts shall be compact; and districts shall, where feasible, utilize existing political and geographical boundaries.
(3) The order in which the standards within sub-sections (1) and (2) of this section are set forth shall not be read to establish any priority of one standard over the other within that subsection."

The ballot title for the proposed amendment is "Standards For Legislature to Follow in Congressional Redistricting." The ballot summary for the proposed amendment states:

"Congressional districts or districting plans may not be drawn to favor or disfavor an incumbent or political party. 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. Districts must be contiguous. Unless otherwise required, districts must be compact, as equal in population as feasible, and where feasible must make use of existing city, county and geographical boundaries."

Single Subject

Article XI, section 3, Florida Constitution, requires that a constitutional amendment proposed by citizens' initiative "embrace but one subject and matter directly connected therewith." As this Court stated in *Fine v. Firestone*, 448 So. 2d 984, 993 (Fla. 1984), this limitation protects the State Constitution from "precipitous" and "spasmodic" changes by preventing logrolling. Logrolling is "a practice whereby an amendment is proposed which contains unrelated provisions, some of which electors might wish to support, in order to get an otherwise disfavored provision passed." *Advisory Opinion to the Attorney General--Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans,* 902 So. 2d 763, 766 (Fla. 2005), quoting *Advisory Opinion to the Attorney General--Florida Transportation Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation System,* 769 So. 2d 367, 369 (Fla. 2000).

In addition, the single-subject rule "prevent[s] a single constitutional amendment from substantially altering or performing the functions of multiple aspects of government." *Advisory Opinion to the Attorney General--Florida Transportation Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation System, supra*. Thus, the single-subject rule ensures that the impact of a constitutional amendment proposed by a citizen's initiative is limited and accurately disclosed.

To comply with the single-subject requirement, an initiative must manifest a "logical and natural oneness of purpose." *Fine v. Firestone, supra*. This Court stated in *Advisory Opinion to the Attorney General--Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1020 (Fla. 1994), that "[t]o ascertain whether the necessary 'oneness of purpose' exists, we must consider whether

the proposal affects separate functions of government and how the proposal affects other provisions of the constitution."

This Court in *Advisory Opinion to the Attorney General Re: Independent Nonpartisan Commission to Apportion Legislative and Congressional Districts Which Replaces Apportionment by Legislature*, 926 So. 2d 1218 (Fla. 2006), concluded that an initiative petition to amend the Constitution to create an apportionment and redistricting commission violated the single subject requirement by changing the standards applicable to creation of legislative districts and by creating a new commission to perform redistricting. The Court noted the language of the proposed amendment would have required the commission to divide the state into "single-member . . . districts of convenient contiguous territory." *Id.*, at 1226. The current Florida constitutional provision provides that legislative districts may be "of either contiguous, overlapping, or identical territory." Art. III, s. 16(a), Fla. Const. This "identical territory" provision allows the creation of multi-member districts. *See In re Apportionment Law Senate Joint Resolution No. 1305, 1972 Regular Session*, 263 So. 2d 797, 806-807 (Fla. 1972) which rejected challenges to multi-member districts in the legislative apportionment plan and citing the proceedings of the Florida Constitutional Revision Commission of 1966 which defeated a proposed amendment to change this language in Article III, Section 16, and require single-member districts.

The proposed amendment appears to deal only with the standards to be used by the Legislature in congressional redistricting. However, the language of the proposed amendment does require that "districts shall consist of contiguous territory." As discussed by this court in *Advisory Opinion to the Attorney General Re: Independent Nonpartisan Commission to Apportion Legislative and Congressional Districts Which Replaces Apportionment by Legislature*, 926 So. 2d 1218 (Fla. 2006), this language would effect a change in the current legislative reapportionment scheme under Article III, section 16(a), Florida Constitution, by allowing challenges to multi-member districts as such districts would not comply with the standards established by the proposed amendment that all districts "shall consist of contiguous territory." No mention of how this proposal affects Article III, section 16(a), Florida Constitution, is made in the proposed amendment.

Therefore, I respectfully request this Honorable Court's opinion as to whether the constitutional amendment, proposed by initiative petition, complies with Article XI, section 3, Florida Constitution.

Ballot Title and Summary

Section 101.161(1), Florida Statutes, sets forth substantive and technical requirements for the ballot title and summary, stating in pertinent part:

"Whenever a constitutional amendment . . . is submitted to the vote of the people, the substance of such amendment . . . shall be printed in clear and unambiguous language on the ballot . . . . The wording of the substance of the amendment . . . shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. . . . The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of."

This Court has stated that section 101.161(1), Florida Statutes, "requires that the ballot title and summary for a proposed constitutional amendment state in clear and unambiguous language the chief purpose of the measure. This is so that the voter will have notice of the issue contained in the amendment, will not be misled as to its purpose, and can cast an intelligent and informed ballot." *Advisory Opinion to the Attorney General re Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans,* 902 So. 2d at 770, quoting *In re Advisory Opinion to the Attorney General–Save Our Everglades*, 636 So. 2d 1336, 1341 (Fla. 1994). Thus, "the ballot [must] be fair and advise the voter sufficiently to enable him intelligently to cast his ballot." *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982), quoting, *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954). While the ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, they need not explain every detail or ramification of the proposed amendment. *Carroll v. Firestone*, 497 So. 2d 1204, 1206 (Fla. 1986). The ballot, however, must give the voter fair notice of the decision he must make. *Askew v. Firestone, supra* at 155.

The initiative petition now under consideration establishes standards for the Florida Legislature to follow in congressional redistricting. The summary consists of 74 words and the ballot title does not exceed 15 words. The ballot title appears to advise the voter of the purpose of the amendment in clear and unambiguous language. However, nothing in the ballot summary for this proposed constitutional amendment advises the voters of the effect of a change from the current constitutional redistricting language for "either contiguous, overlapping, or identical territory" as provided in Article III, section 16(a), Florida Constitution, and the standard of the proposed amendment that all districts "consist of contiguous territory." A constitutional amendment requiring single-member districts as the standard for congressional redistricting or apportionment would appear to be a significant change to the Constitution of which Florida voters should be advised pursuant to section 101.161(1), Florida Statutes, and the ballot summary for "Standards for Legislature to Follow in Congressional Redistricting" fails to do so.

Therefore, I respectfully request this Honorable Court's opinion as to whether the constitutional amendment's ballot title and summary comply with section 101.161, Florida Statutes.

Sincerely,

Bill McCollum
Attorney General

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