

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA  
CIRCUIT CIVIL DIVISION

FLORIDA STATE CONFERENCE OF  
NAACP BRANCHES, et al.,

Plaintiffs,

v.

Case No. 2010-CA-1803

DEPARTMENT OF STATE, an agency of the  
State of Florida, and DAWN K. ROBERTS, in  
her official capacity as the Secretary of State,

Defendants,

and

FLORIDA HOUSE OF REPRESENTATIVES and  
FLORIDA SENATE,

Intervening Defendants.

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GOVERNOR CHARLIE CRIST'S UNOPPOSED MOTION FOR LEAVE TO APPEAR AS  
AMICUS CURIAE IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Governor Charlie Crist, by and through undersigned counsel, respectfully asks for leave to appear as amicus curiae and file the attached Memorandum of Law as Amicus Curiae in Support of Plaintiffs' Motion for Summary Judgment. The Governor has requested and obtained the consent of all parties.

1. The subject of this litigation involves three redistricting measures, proposed constitutional amendments 5, 6, and 7, set to appear on the November 2 ballot. The purpose of the attached memorandum of law is to assist the court in this matter of great importance.

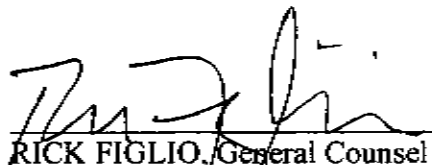
2. The particular issue to be addressed is whether the placement of Amendment 7 on the November election ballot violates article XI, section 5 of the Florida Constitution and section 101.161(1), Florida Statutes, which requires that a proposed constitutional amendment be accompanied by a statement of its "substance," printed in "clear and unambiguous language."

3. The Governor seeks to appear in this case in furtherance of his obligation to "take care that the laws be faithfully executed." Article IV, § 1(a), Fla. Const. The Department of State's ability to faithfully execute the laws at issue has been compromised by virtue of being named one of the Defendants in this case.

4. The Governor seeks to appear as amicus curiae on behalf of the Plaintiffs in light of the paramount importance of the laws at issue to the integrity of our constitutional democracy. When the people of Florida are presented with an opportunity to amend the Florida Constitution, the most fundamental document of our state government, it is essential that they are given all the information necessary to make an informed choice.

WHEREFORE, the Governor respectfully requests the Court grant this unopposed Motion for Leave to Appear as Amicus Curiae.

RESPECTFULLY SUBMITTED this 22nd day of June, 2010.



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**CERTIFICATE OF SERVICE**

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GOVERNOR CHARLIE CRIST'S MEMORANDUM OF LAW AS AMICUS CURIAE IN  
SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Governor Charlie Crist, by and through undersigned counsel, hereby submits the following memorandum of law in support of Plaintiffs' motion for summary judgment. For the reasons stated in the Plaintiffs' motion for summary judgment and memorandum of law, and for the reasons stated herein, Governor Crist respectfully urges that this Court declare that the amendment proposed by House Joint Resolution ("HJR") 7231, hereinafter "Amendment 7," violates article XI, section 5 of the Florida Constitution and section 101.161(1), Florida Statutes, and order Defendants Dawn K. Roberts and the Department of State to remove Amendment 7 from the November 2, 2010, general election ballot.

### **Interest of Amicus Curiae**

Governor Crist appears as amicus curiae in this matter in furtherance of his constitutional obligation to “take care that all laws be faithfully executed.” Art. IV, § 1(a), Fla. Const. In this case, the Governor seeks to ensure faithful execution of section 101.161(1), Florida Statutes, which requires that a proposed constitutional amendment be accompanied by a statement of its “substance,” printed in “clear and unambiguous language.” Because the Department of State and the Secretary of State have been named as defendants due to their ministerial role in the ballot preparation process, their capacity for faithful execution has been compromised.

Section 101.161(1) arises from the mandate in article XI of the Florida Constitution that all amendments be submitted to the people for a vote. Art. XI §§ 1, 3, 5, Fla. Const. Both the statute and the provisions of article XI are intuitively central to the integrity of our constitutional democracy. When the people of Florida are presented with a chance to amend the Florida Constitution, the most fundamental document of our state government, it is absolutely essential that they are presented with the information they need, in terms they can understand. Anything short of that deprives them of the opportunity to make an informed choice. Without fair notice of the effect of their vote, the people’s participation in self-government would be a nullity.

### **Background**

Article XI, section 3 of the Florida Constitution gives the people the power to revise or amend the Constitution through the initiative process. Two citizen initiatives proposing changes to how legislative and congressional districts are drawn have been placed on the November 2 election ballot. The Department of State has designated the citizen initiative relating to legislative districts as Amendment 5, and the other, relating to congressional districts, as

Amendment 6. Amendment 7, passed by joint resolution of the legislature pursuant to article XI, section 1 of the Florida Constitution, relates to both legislative and congressional districts.

There are currently no provisions in the Florida Constitution regarding the boundaries of congressional districts but the Constitution does provide for legislative districts.<sup>1</sup> Article III, section 16(a) requires the legislature to “apportion the state in accordance with the constitution of the state and of the United States into” senatorial and representative districts “of either contiguous, overlapping or identical territory.” The current process allows the legislature to fashion those districts with the intent to favor an incumbent or a certain political party. No directive in the Florida Constitution constrains the legislature from shaping districts to ensure political success, or from favoring one candidate, party, or demographic group over another in the drawing of legislative and congressional boundaries. In fact, these practices have become the norm in Florida and elsewhere.

Amendments 5 and 6 are intended to reduce and eliminate partisanship and political favoritism in drawing legislative and congressional districts. The Amendments would add additional standards by requiring districts to be drawn in such a way as to not favor or disfavor any incumbent or political party or deny any racial or language minority the ability to participate in the political process or in the election of their representatives. The ballot title and summary for Amendment 5 is as follows:

**STANDARDS FOR LEGISLATURE TO FOLLOW IN LEGISLATIVE REDISTRICTING** – Legislative 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

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<sup>1</sup> The United States Supreme Court has held that the responsibility of “apportionment of ... federal congressional and state legislative districts” falls upon the States. *Grove v. Emison*, 507 U.S. 25, 34 (1993).

population as feasible, and where feasible must make use of existing city, county and geographical boundaries.

The ballot title and summary for Amendment 6 is almost identical to Amendment 5 except the word “Legislative” in the title and summary is replaced with “Congressional.”

The ballot title and summary for Amendment 7 is as follows:

**STANDARDS FOR LEGISLATURE TO FOLLOW IN LEGISLATIVE AND CONGRESSIONAL REDISTRICTING** – In establishing congressional and legislative district boundaries or plans, the state shall apply federal requirements and balance and implement the standards in the State Constitution. The state shall take into consideration the ability of racial and language minorities to participate in the political process and elect candidates of their choice, and communities of common interest other than political parties may be respected and promoted, both without subordination to any other provision of Article III of the State Constitution. Districts and plans are valid if the balancing and implementation of standards is rationally related to the standards contained in the State Constitution and is consistent with federal law.

The text of Amendment 7 itself is materially identical to the ballot summary.

#### **Argument**

When a “constitutional amendment . . . is submitted to the vote of the people,” article XI, section 5 of the Florida Constitution and section 101.161, Florida Statutes, require that the ballot contain a summary conveying “the substance of a proposed amendment . . . in clear and unambiguous language ” explaining “the chief purpose of the measure.” § 101.161, Fla. Stat. (providing also for a ballot title “by which the measure is commonly referred to or spoken of”). This “truth in packaging” law serves an indispensable purpose in the democratic process: ensuring that the people of Florida have notice of what they must decide when they are asked whether or not to amend their constitution. *Armstrong v. Harris*, 773 So. 2d 7, 13 (Fla. 2000) (requiring that “the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot”) (quoting *Askew v. Firestone*, 421 So. 2d 151, 154–55 (1982)).

These requirements are of critical importance in Florida, because Florida is a “constitutional democracy in which sovereignty resides in the people.” *Gray v. Golden*, 89 So. 2d 785, 790 (Fla. 1956). “It is their Constitution that [is being construed].” *Id.* Ballot clarity and integrity are essential to ensure that “each voter casts a ballot based on the *full* truth,” not a partial one. *Armstrong*, 773 So. 2d at 7 (emphasis in original). When the language used in the title and summary is misleading, the law requires that the proposed amendment be removed from the ballot. *Florida Dep’t of State v. Slough*, 992 So. 2d 142, 149 (Fla. 2008). While the court must generally act with caution before removing an amendment from the vote of the people, *Askew*, 421 So. 2d at 156, a court should order the removal of a proposed amendment from the ballot if it is not “accurately represented,” because voter approval for such a measure is “a nullity.” *Slough*, 992 So. 2d at 146 (Fla. 2008) (quoting *Armstrong*, 773 So. 2d at 12).

To satisfy the statutory and constitutional requirements, a ballot title and summary of a proposed amendment must (1) “in clear and unambiguous language, fairly inform the voter of the chief purpose of the amendment,” and (2) employ language that does not “mislead[] the public.” *Slough*, 992 So. 2d at 147. Amendment 7’s ballot title and summary fails these requirements for a series of reasons. First, the title and summary misleadingly represent that the amendment’s purpose is to provide standards for the legislature to follow in redistricting. In reality, Amendment 7 does the opposite, eliminating binding standards by relegating them to mere aspirational guidelines that the legislature *may* consider in redistricting. By failing to convey the “true effect of the amendment,” the title and summary “hide the ball” and “fly under false colors,” contravening the letter and spirit of article XI, section 5, and section 101.161, Florida Statutes. *See Slough*, 992 So. 2d at 147.

Amendment 7 would transform the mandatory requirements currently existing in article III, section 16(a), relating to contiguity<sup>2</sup> into aspirational guidelines. Yet the ballot title and summary are conspicuously devoid of any mention of its effect. Similarly, and without saying it does so, Amendment 7 changes the standards set forth in Amendments 5 and 6 from mandatory to aspirational.

Amendment 7, rather than obligating the legislature to follow existing standards, would make them optional, notwithstanding the fact that the title and summary ironically represent the amendment as *establishing* “standards.” The reality is quite different. Amendment 7 provides that the legislature “may” respect and promote “communities of common interest” and must only “consider[]” minority participation in the political process. The legislature would be permitted to “balance[]” criteria that, but for Amendment 7, would constitute binding standards. Given that Amendment 7’s purpose is the dilution of any directive recognizable as a *standard*, a title that purports to *provide standards* for redistricting is patently misleading.

The summary states that a redistricting plan is valid if the “balancing and implementation of the standards is rationally related to the standards contained in this constitution and is consistent with federal law.” The only “standards” that are to be balanced and implemented are the “standards” in the state constitution; thus Amendment 7 requires little more than that the standards are rationally related to themselves. This tautological turn of phrase underscores how the title and summary obfuscate Amendment 7’s one purpose: to render no particular requirement, guideline, or standard binding on the legislature in redistricting. The Florida Supreme Court has decried this type of “wordsmithing” that masks the true effect of a proposed

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<sup>2</sup> See, e.g., *In re Constitutionality of House Joint Resolution 25E*, 863 So. 2d 1176, 1179 (Fla. 2003) (applying the constitution’s mandatory contiguity requirement).

amendment, recognizing that deceptive wording can be used to “to enhance the chance of passage.” *Slough*, 992 So. 2d at 149.

To avoid removal from the ballot, the sponsor of the amendment should instead put forth a ballot title and summary that is “straightforward, direct, accurate and does not fail to disclose significant effects of the amendment merely because they may not be perceived by some voters as advantageous.” *Id.* That is what article VI, section 5, and section 101.161, for obvious purposes, require.

The failure to define the phrase “community of common interests” in the ballot summary is another fatal flaw of Amendment 7. A ballot title and summary is “misleading” and “must be stricken from the ballot” where its undefined terms place its meaning “within the subjective understanding of each voter to interpret.” *Advisory Op. to the Att’y Gen. re People’s Prop. Rights Amendments Providing Comp. for Restricting Real Prop. Use may Cover Multiple Subjects*, 699 So. 2d 1304, 1308–1309 (Fla. 1997) (concluding that the definitions of terms “owner,” “in fairness,” “loss in fair market value,” and “common law nuisance” in ballot summary were necessary for clarity), *overruled on other grounds in Advisory Op. to the Att’y Gen. re 1.35% Prop. Tax Cap, Unless Voter Approved*, 2 So. 3d 968 (Fla. 2009). There is no plain meaning of the phrase “community of common interests,” a term that is not frequently used by the common voter.

Voters cannot be adequately informed of the legal ramifications for voting for Amendment 7 when “community of common interests” is not defined. *See Advisory Op. to the Att’y Gen. to Bar Gov’t from Treating People Differently Based on Race in Public Educ.*, 778 So. 2d 888, 898–99 (Fla. 2000) (holding that lack of definitions for an “otherwise unlawful classification” or “bona fide qualification based on sex” did not fairly inform voters of full effect

of proposed amendment). The people will be unable to know the full effect of Amendment 7 when they are left to ascribe any meaning to the phrase.

Intervenors rely on an unfounded interpretation of the ballot clarity requirement: that a title and summary must state the amendment's chief purpose *unless that purpose is to weaken or subvert the effect of other amendments on the ballot*—in this case, Amendments 5 and 6. Neither the constitution, nor the statute, nor case law carves out such an exception to the unqualified requirement that, *whatever* the proposed amendment's chief purpose may be, *that purpose must be clearly stated*. Accepting Intervenors' argument would give future legislatures carte blanche to sabotage any proposed amendment by nullifying its effect with another amendment, all the while obfuscating this purpose with impunity.

The *raison d'être* of the title and summary requirement is to ensure that the people of Florida have clear knowledge of what they are being asked to choose. That interest in informed democratic participation is subverted no matter what kind of ball an unclear or misleading title or summary hides. Whether it hides a proposed amendment's effect on existing constitutional provisions, or whether it hides a proposed amendment's effect on other amendments on the ballot, such a title or summary "hide[s] the ball." *Slough*, 992 So. 2d at 147. In so doing, it fails to "assure that the electorate is advised of the true meaning, and ramifications, of an amendment," thus violating article XI, section 5, and section 101.161. *Askew*, 421 So.2d at 156.

This argument also simply ignores the reality that Amendment 7 would undermine the standards *currently required* by article III, section 16. Plaintiffs are entitled to relief for that reason alone. But even if that were not the case, the Court should reject out of hand any contention that the ballot and summary cannot be invalid for concealing a conflict with the provisions of Amendments 5 and 6 because those proposed amendments do not presently *exist* in

the constitution, i.e., that the deception in the title and summary is not a legally cognizable deception. Furthermore, if all three of the amendments<sup>3</sup> are approved by voters, then Amendment 7 would indeed affect “existing” constitutional provisions—those that would come into existence when Amendments 5 and 6 are added simultaneously to the addition of Amendment 7. *See Advisory Op. to Att’y Gen. re Florida Growth Mgmt. Initiative Giving Citizens Right to Decide Local Growth Mgmt. Plan Changes*, 2 So. 3d 118, 123 (Fla. 2008). It is by no means clear that the Florida Supreme Court intended a stilted use of the words “existing provision” that would treat as inconsequential intentional deception aimed at changing the legal effect of other proposed amendments appearing on the same ballot.

Proposed amendments that directly contradict each other might, by virtue of their language and simultaneous existence on the ballot, fairly apprise voters of the choice being presented. *See, e.g., Citizens for Term Limits & Accountability, Inc. v. Lyons*, 995 So. 2d 1051, 1055 (Fla. 1st DCA 2008) (approving the presentation of “alternatives to the electorate on the same ballot” where the “statement explaining [one] proposal inform[ed] voters in no uncertain terms” of its effect on another item on the ballot).<sup>4</sup> On the other hand, as here, a misleading title and summary can obscure the fact that a vote for one proposed amendment would vitiate the effect of another on the same ballot. *Cf. Kobrin v. Leahy*, 528 So. 2d 392, 393 (Fla. 3d DCA 1988) (finding language of proposition “fatally defective” and misleading where its failure to

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<sup>3</sup> All three have been approved by the Secretary of State for placement on the ballot.

<sup>4</sup> *See also Advisory Opinion re Florida Growth Management Initiative Giving Citizens the Right to Decide Local Growth Management Plan Changes*, 2 So. 3d 118 (Fla. 2009), in which the Florida Supreme Court approved a title and summary of an amendment requiring “[v]oter approval of growth management plan changes . . . if 10% of the voters in the city or county sign a petition calling for such a referendum” where a “competing proposed amendment would” make voter approval of growth management plan changes mandatory. *Id.* at 118–21.

alert voters of a conflict with another item on the ballot subjected voters to “bewildering and conflicting decision-making”).

Intervenors have argued that, because the summary repeats the text of the actual amendment almost verbatim, the summary is *ipso facto* clear and valid. To the contrary, section 101.161 and the Florida Constitution require more than the literal accuracy achieved by parroting the amendment’s text; they require that the “chief purpose” of the amendment be expressed in “plain and unequivocal language” and that the language is not “misleading” to the public. If the exact text of the amendment does not express its purpose plainly and unequivocally—as is the case with Amendment 7, which contains hazy, circuitous, and misleading language in parts and terms of art in others—then the summary must employ adequate language to ensure that voters have been clearly apprised of the chief purpose of the amendment. If voters are misled by the exact language of the amendment, then a title and summary employing only that language is defective. *See Askew*, 421 So. 2d at 155 (“Fair notice . . . must be actual notice consisting of a clear and unambiguous explanation of the measure’s chief purpose.”).

The chief purpose of Amendment 7 is to eliminate binding standards by making all criteria discretionary, allowing the legislature to pick and choose from among the various enumerated factors. The title’s implication that Amendment 7 sets “standards” is misleading, especially when juxtaposed with two almost identically titled amendments that actually do impose standards. Combined with a summary abjectly lacking in clarity, voters are likely to be misled into believing that their legislators will be bound by mandatory, meaningful standards.

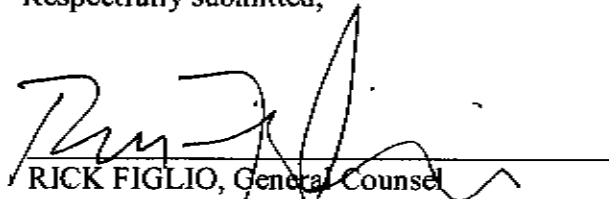
The people of Florida “deserve nothing less than clarity when faced with the decision of whether to amend [the] state constitution, for it is the foundational document that embodies the fundamental principles through which organized government functions.” *Slough*, 992 So. 2d at

149. For that reason, the Governor respectfully urges that this court enter summary judgment in favor of the Plaintiffs and order removal of Amendment 7 so that voters are permitted to “cast an intelligent and informed ballot.” *Advisory Op. re People’s Prop. Rights Amendments*, 699 So. 2d at 1307.

**Conclusion**

For the foregoing reasons, Governor Crist respectfully requests this Court grant Plaintiffs’ Motion for Summary Judgment.

Respectfully submitted,



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