

IN THE SUPREME COURT OF FLORIDA

Case No. SC02-449

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

**ADVISORY OPINION
TO THE ATTORNEY GENERAL
RE: LOCAL TRUSTEES AND STATEWIDE GOVERNING
BOARD TO MANAGE FLORIDA'S UNIVERSITY SYSTEM**

**INITIAL BRIEF OF FLORIDIANS FOR
EDUCATION REFORM,
AN INTERESTED
POLITICAL ACTION COMMITTEE
OPPOSING AMENDMENT**

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STATEMENT OF THE CASE AND FACTS

The Court has for review an amendment to the Florida Constitution proposed through the citizens' initiative petition process of Article XI, Section 3, Florida Constitution. The Court has jurisdiction pursuant to Article V, Section 3(b)(10), Florida Constitution. This brief opposing the proposed amendment is submitted by Floridians for Education Reform, a political action committee established under Chapter 106, Florida Statutes.

The proposed amendment adds section 7 to Article IX of the Florida Constitution. The text of the proposed amendment states:

State University System.—

(a) Purposes. In order to achieve excellence through teaching students, advancing research and providing public service for the benefit of Florida's citizens, their communities and economies, the people hereby establish a system of governance for the state university system of Florida.

(b) State University System. There shall be a single state university system comprised of all public universities. A board of trustees shall administer each public university and a board of governors shall govern the state university system.

(c) Local Boards of Trustees. Each local constituent university shall be administered by a board of trustees consisting of thirteen members dedicated to the purpose of the state university system. The board of governors shall establish the powers and duties of the boards of trustees. Each board of trustees shall consist of six citizen members appointed by the governor and five citizen members appointed by the board of governors. The appointed members shall be confirmed by the senate and serve staggered terms of five years as provided by law. The

chair of the faculty senate, or the equivalent, and the president of the student body of the university shall also be members.

(d) Statewide Board of Governors. The board of governors shall be a body corporate consisting of seventeen members. The board shall operate, regulate, control, and be fully responsible for the management of the whole university system. These responsibilities shall include, but not be limited to, defining the distinctive mission of each constituent university and its articulation with free public schools and community colleges, ensuring the well-planned coordination and operation of the system, and avoiding wasteful duplication of facilities or programs. The board's management shall be subject to the powers of the legislature to appropriate for the expenditure of funds, and the board shall account for such expenditures as provided by law. The governor shall appoint to the board fourteen citizens dedicated to the purposes of the state university system. The appointed members shall be confirmed by the senate and serve staggered terms of seven years as provided by law. The commissioner of education, the chair of the advisory council of faculty senates, or the equivalent, and the president of the Florida student association, or the equivalent, shall also be members of the board.

The proposed ballot title and summary state:

Local Trustees and Statewide Governing Board to Manage Florida's University System.

A local board of trustees shall administer each state university. Each board shall have thirteen members dedicated to excellence in teaching, research, and service to community. A statewide governing board of seventeen members shall be responsible for the coordinated and accountable operation of the whole university system. Wasteful duplication of facilities or programs is to be avoided. Provides procedures for selection and confirmation of board members, including one student and one faculty representative per board.

The Attorney General in its March 4, 2002 petition to the Court, noted that the ballot title, summary and the proposed amendment contain several terms that are subject to an interpretation not intended by the amendment and that the

amendment itself appears to violate the single-subject rule set forth in Article XI, section 3, Florida Constitution.

SUMMARY OF THE ARGUMENT

The ballot title and summary do not meet the requirements of section 101.61(1), Florida Statutes (2001). Specifically, the title and summary fail to mention constitutional and statutory provisions that are affected by the proposed amendment, omit material facts, use misleading language, and contain undefined terms. These infirmities in the summary language that will appear on the ballot preclude the voter from making an informed decision about the proposed amendment. The ballot title and summary therefore should not be submitted to the voters.

The proposed amendment, likewise, is defective because it violates the single-subject rule set forth in Article XI, section 3 of the Florida Constitution. Specifically, the proposed amendment performs multiple government functions, effects a number of undisclosed constitutional provisions, and amounts to improper logrolling. The proposed amendment should not be submitted to the voters for any one of these reasons.

ARGUMENT

I. THE BALLOT SUMMARY IS AMBIGUOUS AND MISLEADING.

Pursuant to section 101.61 (1), Florida Statutes, a proposed amendment's ballot title and summary must state in clear and unambiguous language the initiative's primary purpose. *Advisory Opinion to the Attorney General Re People's Property Rights*, 699 So. 2d 1304, 1307 (Fla. 1997). This requirement insures that the voters will not be misled and allows them to cast an intelligent and informed vote. *Advisory Opinion to the Attorney General Re Term Limits Pledge*, 718 So. 2d 798 (Fla. 1998). Although the ballot summary need not be exhaustive, this Court has repeatedly held "that summaries which do not adequately define terms, use inconsistent terminology, fail to mention constitutional provisions that are affected, and do not adequately describe the general operation of the proposed amendment must be invalidated." *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, 899-900 (Fla. 2000). The proposed amendment's ballot title and summary here contain a number of these and other deficiencies, and consequently, will mislead the voters and preclude them from making an informed decision regarding the proposed constitutional amendment.

A. The Summary Fails To Identify Constitutional And Statutory Provisions That The Proposed Amendment Will Affect.

This Court has invalidated petitions that substantially modify another constitutional provision without mentioning this consequence in the ballot summary. *See Race in Public Education*, 778 So. 2d at 898 and cases cited therein. The Court also has invalidated petitions that have a summary which implies that no constitutional provision addressing the subject of the proposed amendment already exists. *Id.*

The Florida Constitution already requires that the Legislature provide for “the establishment, maintenance, and operation of institutions of higher learning” (Article IX, section 1); and for appointive boards dealing with education (Article IX, section 3); and makes the governor responsible for planning and budgeting for states, including state universities (Article IV, section 1). The proposed amendment ignores these constitutional provisions and, contrary to Article II, section 3 dividing state government into three branches, creates what amounts to an independent fourth branch of government to administer state universities. Moreover, the proposed amendment nullifies the effect of the recently approved constitutional amendment to Article IX, section 2, of the Florida Constitution. Yet no mention is made of this provision in the ballot summary, and no explanation is offered anywhere of this consequence. See discussion in Part IIB of this Brief.

This Court has also invalidated initiative petitions that omit any mention of the laws, rules, and regulations that may be affected by a proposed amendment. *See In Re Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination*, 632 So. 2d 1018 (Fla. 1994). The Legislature recently passed the Florida Education Governance Reorganization Act, which created eleven university boards of trustees, similar to those provided for in the proposed amendment, to oversee each of the universities in the state university system. The Act also eliminated the Board of Regents and conferred the management and/or oversight authority for the university system in the Florida Board of Education, the body assigned to coordinate all education programs in public schools, community colleges, and universities. See Florida Statutes, sections 229.001-229.0082 (2001); Laws of Florida, Chapter 2001-170.

The ballot summary and title, as well as the proposed amendment, fail to indicate that the amendment will alter the newly structured system of university management, which has not yet even taken full effect. They also fail to indicate that the proposed amendment will divest the legislature of authority to pass such legislation in the future. As in *Advisory Opinion to the Attorney General Re Fish and Wildlife Conservation Commission*, 705 So. 2d 1351, 1355 (Fla. 1998), the summary fails to inform the public of the transfer of power from the legislature to a

constitutionally created body. *See also Restricts Laws Related to Discrimination*, 632 So. 2d at 1021.

In addition, there is a misleading negative implication that the proposed amendment is necessary to establish boards of trustees for each state university or a statewide board to govern state universities when, in fact, such bodies already exist under current law in the form of the university boards of trustees and Florida Board of Education. *See Race in Public Education*, 778 So. 2d at 898.

Accordingly, the Court must invalidate the petition for the proposed amendment in this case for failure to comply with section 101.61(1) because the summary fails to identify the constitutional and statutory provisions affected by the proposed amendment and implies their absence.

B. The Title And Summary Fail To Indicate That The Board Of Governors Has Authority Over The Local Board Of Trustees.

A ballot summary may be defective if it omits material facts necessary to make the summary not misleading. *Advisory Opinion to the Attorney General-Limited Political Terms in Certain Elective Offices*, 592 So. 2d 225 (Fla. 1991). Here, the title and summary of the proposed amendment fail to indicate that the statewide board of governors has any authority over the local boards of trustees. The title, “Local Trustees and Statewide Governing Board to Manage Florida’s University System” implies that both boards will manage the university system

equally. The summary does not indicate otherwise. The summary merely indicates that the statewide governing board will “be responsible for the coordinated and accountable operation of the whole university system.” There is no indication that the statewide board is responsible for establishing the powers and duties of the local board of trustees as set forth in the proposed amendment. Voters can readily infer from the ballot summary that the local boards alone, or in conjunction with the statewide board, would establish the mission for each university. Consequently, the summary creates a false perception that local boards are in control or that the different boards are on equal footing with one another, and therefore fails to comply with section 101.61(1).

C. The Summary Falsely Implies That The Boards Are Selected By The Same Process.

The summary indicates that the proposed amendment provides procedures for selection and confirmation of board members. However, the summary implies, by grouping the board members from the separate boards together, that the same procedures will be employed to select the members of both boards. The process, however, is not the same. The governor appoints and the senate must confirm fourteen citizens to serve on the statewide board. The remaining three members are the commissioner of education, the chair of the advisory council faculty senates, or the equivalent, and the president of the Florida student association, or the

equivalent. The governor appoints and the senate confirms only six citizen members of the thirteen-member board, and the five additional members are selected by the board of governors. The chair of the faculty senate and the president of the student body at the university make up the final members of the local boards. Because the summary misleads the voter to believe that both the statewide board of governors and the local boards are chosen in the same way, it fails to comply with section 101.61(1).

D. The Summary Implies That The Statewide Board Of Governors Is Responsible For Overseeing Community Colleges.

The summary states that local boards of trustees shall administer “each university” and that a statewide board of governors will be responsible for the operation of “the whole university system.” The average voter would likely understand “university” and “whole university system” in this context to mean that the boards will govern all higher learning in Florida, including community colleges.¹ The average voter would not likely perceive the distinction between universities and colleges or community colleges, and may vote to approve the initiative assuming there will be local boards of trustees for community colleges, or a statewide board

¹ The educational structure under current law provides for a chancellor of colleges and universities and a chancellor of community colleges under the Florida Board of Education. See § 229.003(2), Fla. Stat. It also provides for a division of colleges and universities and a division of community colleges within the Department of Education. See § 229.0073(4), Fla. Stat.

to manage all postsecondary public education. However, the boards created by the proposed amendment will only be concerned with

universities and how they interrelate with the community colleges. Contrary to what the summary implies, community colleges will not be governed by any of the boards. Local boards will not be appointed for community colleges, and the statewide board will not supervise all state higher education institutions. For this reason as well, the summary fails to comply with section 101.61(1).

E. The Summary Contains Undefined Terms.

1. “Local”

As the Attorney General noted in his petition to the Court at page 3, the term “local” in the summary, title, and proposed amendment implies that the members of the board will be residents of, or affiliated with, a particular region of the state. However, the proposed amendment does not place any residence requirement on board members. It only indicates that they will be citizens appointed by the governor or in the case of some of the board of trustees, by the other members of the board. Hence, the summary is misleading to the voters and is defective.

2. “Accountable Operation”

The summary provides that the statewide board shall be responsible for the “coordinated and **accountable** operation of the whole university system.” Based on this language, an average voter would likely conclude that the statewide board must answer to someone if the system is mismanaged. However, the title and the

summary apparently use “accountable” in the fiscal sense of accounting for expenditure of appropriated funds. This is consistent with the text of the proposed amendment which provides that the “board’s management shall be subject to the powers of the legislature to appropriate for the expenditure of funds, and the board shall account for such expenditures as provided by law.” Subsection (d). This Court has found inadequate a summary like this one which requires the voters to infer a meaning for a term that is not evident from the face of the summary. *See Race in Public Education*, 778 So. 2d at 888-89 and cases cited therein. Because the term “accountable” is subject to differing interpretations not defined by the summary, the summary is ambiguous and therefore is defective.

3. “Selection”

The summary indicates that the boards will be “selected”, but does not indicate how selection will be made or by whom. The proposed amendment, however, specifically provides for “appointment” by the governor and senate confirmation, and designates certain members ex officio. Based on the summary, however, a voter might conclude that someone other than the governor would select the board members. For example, the voter might conclude that the selection will take place in an election, or that the Florida Board of Education or the various universities might make the selection. Moreover, a voter would not understand that

some board members are not “selected” at all, but rather entitled to serve ex officio.

The use of the term “selection” in the summary, as opposed to “appointment”, creates an ambiguity and is misleading. In the past, the Florida Supreme Court has rejected summaries that create ambiguity by using terminology that differs from the text of the proposed amendment. *See e.g., Race in Public Education*, 778 So. 2d at 896-97 (setting forth decisions in which the Court found divergent terminology in the summary and proposed amendment created ambiguity). Specifically, *In Re Advisory Opinion to the Attorney General Re Casino Authorization, Taxation and Regulation*, 656 So. 2d 466, 468-69 (Fla. 1995), invalidated a petition where the summary used the term “hotel” but the proposed amendment used the term “transient lodging establishment.” There, the Court concluded:

while the summary leads voters to believe that casinos will be operated only in “hotels,” the proposed amendment actually permits voters to authorize casinos in any number of facilities, including a bed and breakfast inn. We believe that the public perceives the term “hotel” to have a much narrower meaning than the term “transient lodging establishment.”

Id. at 468-69. Similar to *Casino Authorization*, the voters might construe the term “selection” to encompass a different or broader process than the term “appointment.” Hence, the summary uses divergent terminology that may mislead voters and is defective.

II. THE PROPOSED AMENDMENT VIOLATES THE SINGLE-SUBJECT RULE.

This Court requires strict compliance with the single-subject rule in the initiative process for constitutional change. *Fine v. Firestone*, 448 So. 2d 984 (Fla. 1984); *Race in Public Education*, 778 So. 2d at 891. Strict compliance is required because the Constitution is the basic document that controls governmental functions, and because the initiative process does not allow opportunity for public hearing and debate inherent in other methods of changing the Constitution. *See Race in Public Education*, 778 So. 2d at 891; *Fish & Wildlife Conservation Commission*, 705 So. 2d at 1353.

A. The Initiative Alters Or Performs Multiple Functions Of Government.

When a proposal substantially alters or performs the functions of multiple branches of government, it violates the single-subject rule. *Race in Public Education*, 778 So. 2d at 892. The test is functional, not locational “and where a proposed amendment changes more than one government function it is clearly multi-subject.” *Id.* at 895 (quoting *Evans v. Firestone*, 457 So. 2d 1351 (Fla. 1984)). Pursuant to the single-subject test, a proposal that affects statutory enactments, as well as executive enforcement and decision-making, is invalid. *Id.* at 895 (citing *Advisory Opinion to the Attorney General Re People’s Property Rights Amendments Providing Compensation for Redistricting Real Property Use*, 699

So. 2d 1304, 1308 (Fla. 1997)). Likewise, a proposal that affects both state and local functions is invalid. *Id.* at 895-96.

The Attorney General in his March 4, 2002 petition at page 6 observed that:

The proposed amendment appears to substantially affect both the executive and the legislative branches of government. It creates a system of government for the State University System located within the executive branch of government. In addition, it elevates the university board of trustees to a constitutional office and appears to remove a significant portion of the Legislature's authority to enact legislation regulating the duties and responsibilities of the local boards of trustees as well as the statewide governing board.

The Attorney General further explains that under the proposed amendment, the statewide board of governors would establish the duties and powers of the local boards of trustees, and that the Legislature's powers over management of the statewide board of governors is limited to the appropriation of funds. *Id.* at p. 6. The proposed amendment further provides that the statewide board of governors "shall govern the State University System," and "shall operate, regulate, control and be fully responsible for the management of the whole university system"; and that these responsibilities shall include "defining the distinctive mission of each constituent university." Subsections (b) and (d). The proposed amendment thus appears to create a fourth branch or system of government over state universities, with independent executive and legislative authority. *See In Re Advisory Opinion of the Attorney General - Save Our Everglades*, 636 So. 2d 1336, 1340 (Fla. 1994)

(finding proposed amendment that created virtual fourth branch of government in the Save Our Everglades Trust violative of single-subject rule).²

The various legislative functions regarding operation, regulation, control and management of the state universities are currently set forth in Chapter 229, Florida Statutes (2001). The policy and guiding principles for the public education system are provided in sections 229.002, Florida Statutes, and the officers who will accomplish them are identified in section 229.005(3), Florida Statutes. Detailed guidelines for implementation, structure, function and organization for Florida's educational system are provided in section 229.0061, Florida Statutes. Section 229.0061 further provides that the Legislature will establish "education policy" and "enact education laws." Section 229.0061(2)(a), Fla. Stat.

Section 229.0061 also recognizes the Florida Board of Education, a legislatively created entity, as the single voice for a seamless education system in Florida. The Florida Board of Education coordinates the education budget and allocates resources in accordance with law, and implements the K-20 education vision. § 229.0061(2)(b)2, Fla. Stat. The Florida Board of Education also

²

We disagree with the Attorney General's notion that the system of government created by the proposed amendment would be "located in the executive branch of government." The proposed amendment actually creates a university governance system as a separate part of government. Appointment of board members by the governor does not confer executive branch status, any more than appointment of judges.

establishes performance measures and standards for individual postsecondary institutions, and recommends to the Legislature the missions of the public colleges and universities, and systemwide performance standards. *Id.*; § 229.007(1)(c), Fla. Stat. The university boards of trustees for each state university are responsible for implementing and maintaining programs within the laws and rules of the Florida Board of Education, and to govern and set policy for their universities. Subsections 229.008(7) and 229.0081(1), Fla. Stat.

Clearly, it is the Legislature's function to make decisions regarding the state universities and the state university system; to create policies, guidelines, and rules to be followed by universities; and to coordinate state universities with other public education; or to provide for delegation of these functions. These legislative functions are usurped in whole or large part by the proposed statewide board of governors and local boards of trustees. Under the proposed amendment, these boards set controlling policy and principles. They are fully responsible for governance of the universities, and may set rules without regard for legislative action. The Legislature could not change their make-up or alter their duties. As in *Race in Public Education*, 778 So. 2d at 895, the proposed amendment would effectively eliminate the Legislature's authority to adopt programs, create legislative bodies, or even provide for scholarships in the university system.

At the same time, the proposed statewide board of governors and local boards of trustees would manage and administer the state universities, displacing the education duties of the Florida Board of Education, the governor, and various executive officials such as the Chancellor of Colleges and Universities. See section 229.003(2)(a), Fla. Stat. Hence the proposed amendment would substantially alter or perform multiple governmental functions in violation of the single-subject requirement. *See Advisory Opinion to the Attorney General of Right of Citizens to Choose Health Care Providers*, 705 So. 2d 563, 566 n. 1 (Fla. 1998) (holding that a proposed amendment limiting restrictions on choice of healthcare providers by law or contract would significantly affect both legislative and executive branches of government).

The proposed amendment requires the statewide board of governors and local boards of trustees to regulate and control the state university system, and thereby confers powers traditionally reserved for the legislative and executive branches of government. Given their constitutional status, the statewide board of governors and local board of trustees are answerable (accountable) to no one, except with respect to expenditures and appropriations. The proposed amendment creates a discreet governmental system for state universities, essentially a fourth branch of government, and must be stricken from the ballot. *See Save our Everglades*, 636 So. 2d at 1340-41.

B. The Proposed Amendment Fails To Identify Constitutional Provisions That Are Substantially Affected.

The single-subject rule requires an initiative to identify the provisions of the constitution substantially affected by the proposed amendment in order for the public to fully comprehend the contemplated changes and to ensure that the initiative's effect on unnamed constitutional provisions is not left unresolved and open to various interpretations. *Race in Public Education*, 778 So. 2d at 892; *see also Advisory Opinion Re Tax Limitation*, 644 So. 2d 486, 494 (Fla. 1994) (“proposed initiative violates the principle . . . that the electorate must be advised of the effect a proposal has on the *existing sections* of the Constitution.”) In *Race in Public Education*, 778 So. 2d at 894-95, this Court recognized that proposed amendments which would serve to nullify an existing constitutional provision to some extent, or to change its meaning or application, or to create new distinctions, impose new limitations or reduce existing powers, would substantially affect an unidentified constitutional provision and violate the single-subject rule.

The proposed amendment here substantially affects several existing constitutional provisions without identification as follows:

1. Article IX, section 1 of the Florida Constitution requires that: “Adequate provision *shall be made by law* . . . for the establishment, maintenance and operation of institutions of higher learning and other public

education programs as the needs of the people may require.” (emphasis added). Because the proposed amendment would confer constitutional autonomy upon the statewide board of governors to control the state university system, Article IX, section 1, is substantially affected. The legislative authority and duties conferred by this provision are abrogated, displaced or shared in significant degree by the new statewide board of governors. Yet as the Attorney General’s petition points out at page 6, no mention is made of this by the proposed amendment, and the effect on this constitutional provision is left unresolved.

2. **Article IX, section 2 of the Florida Constitution** as recently amended, requires that a state board of education be appointed by the governor to supervise the system of free public education. Previously, this provision required the governor and the cabinet, as the state board of education, to supervise the system of education. If the change to Article IX, section 2, approved by the electorate in 2000, means that the governor must appoint a state board of education to supervise public education, then the initiative here fails to inform the voters that the proposed amendment essentially duplicates that provision and alters the makeup of the board. If the change to Article IX, section 2 was intended that to make the appointed state board of education constitutionally responsible to supervise only K-12, and not post-secondary education, the initiative here still fails to inform the voters that the proposed amendment will alter that requirement by providing for a

constitutional statewide board to supervise state universities.³ In either case, the proposed amendment affects Article IX, section 2, which just amended by the voters, without identifying that provision or explaining the impact on it.

3. **Article IX, section 3 of the Florida Constitution** provides that members of appointive boards dealing with education may serve terms in excess of four years as provided by law. The proposed amendment provides for a five-year term for the local boards of trustees, and a seven-year term for the statewide board of governors. As noted in the Attorney General's petition at page 6, the proposed amendment does not inform voters that the Legislature's specific constitutional authority to decide longer terms for appointive education boards has been overridden. In addition, because the Legislature is empowered to establish terms longer than four years for appointive boards dealing with education, Article IX, section 3, impliedly authorizes the Legislature to create any appointive board dealing with education. The proposed amendment usurps that authority by creating constitutional boards dealing with universities, and thus affects Article IX, section 3, without informing the voters.

³The legislature, of course, may assign such duties to the state board even if not constitutionally required. See section 229.004, Florida Statutes.

4. **Article IV, section 1 of the Florida Constitution** vests “the supreme executive power” in the governor, making the governor “ the chief administrative officer of the state responsible for the planning and budgeting for the state.” The proposed amendment affects this unidentified provision because it appears to confer planning and budgeting responsibility on the statewide board of governors, as part of its constitutional charge to ensure “well-planned coordination and operation of the system, and to “be fully responsible for management of the whole university system.” Presumably, the statewide board of governors would submit its own operating budget and improvement plan for the state universities directly to the Legislature, bypassing the governor’s constitutional responsibility for this part of the state’s education system. Again, the effect on this unnamed constitutional provision is left unresolved.

5. **Article II, section 3 of the Florida Constitution** provides that “The powers of state government shall be divided into legislative, executive and judicial branches.” As explained above, the proposed amendment creates an autonomous governance system for state universities that does not report to the executive branch and is subject to legislative oversight only for appropriations and expenditure accountability (as are the executive and judicial branches). The proposed amendment does not inform voters that the new university governance system contravenes the constitutional principle, embodied in Article II, section 3,

which divides the state government into only three branches. For this reason as well, the initiative should be invalidated.

C. The Proposed Amendment Asks Multiple Questions.

Voters should not be forced to accept part of an initiative which they oppose in order to obtain a change which they support. *Fine*, 448 So. 2d at 988; *Race in Public Education*, 778 So. 2d at 891. Inclusion of different topics, subjects or classifications requiring voters to answer “yes” or “no” to an initiative that actually asks different questions amounts to “logrolling” and violates the single-subject requirement. *Race in Public Education*, 778 So. 2d at 893.

The proposed amendment in this case presents two different questions. While the initiative proposes to establish a “system of governance for the State University System,” one section provides for “local boards of trustees to administer each public university,” and another section provides for a statewide board of governors to control “the whole university system.” A voter who wants local trustees to govern universities must vote “yes” for the proposal even though the voter does not favor statewide board control. Likewise, a voter who wants only a statewide board must vote “yes” to the local boards.

The initiative presents multiple choices in the same way that multiple choices were presented in *Restricts Laws Related to Discrimination*, 632 So. 2d at 1019-20. There the proposed amendment prevented the state from giving any preference

or privilege to multiple classes of persons. The Court rejected the proposed amendment because it presented a different question for each of the ten classes of persons. *Id.* at 1020.

Restricts Laws Related to Discrimination, also recognized that “enfolding disparate subjects within the cloak of a broad generality does not satisfy the single-subject requirement.” *Id.* (quoting *Evans*, 457 So. 2d at 1353). The proposal here similarly presents the disparate questions of local and statewide control.

Combining these two disparate concepts violates the single-subject requirement.

See Right of Citizens to Choose Health Care Providers, 705 So. 2d at 565 (Fla. 1998)(proposal banning limitations on health care provider choices by law and by private contract combines two distinct subjects); *Tax Limitation*, 644 So. 2d at 491 (proposal for two-thirds vote on taxes and user fees combines two distinct subjects although both taxes and user fees are forms of payment to the government).

Accordingly, the proposed initiative should also be invalidated for presenting multiple subjects as questions to be answered by the voters.

CONCLUSION

For the foregoing reasons the state university system amendment fails to meet the governing requirements and should be stricken from the ballot.

Respectfully submitted this _____ day of March, 2002.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. MAIL to The Honorable Jeb Bush, Governor of the State of Florida, Office of the Governor, The Capitol, Tallahassee, FL 32399-0001; The Honorable Katherine Harris, Secretary of State, Department of State, The Capitol, Tallahassee, FL 32399-0350; The Honorable Bob Butterworth, Attorney General, Department of Legal Affairs, The Capitol, Tallahassee, FL 32399-1050; The Honorable Tom Feeney, Speaker of the House, The Capitol Room 420, 402 S. Monroe Street, Tallahassee, FL 32399-1300; The Honorable John McKay, Senate President, The Capitol, Room 409, 402 S. Monroe Street, Tallahassee, FL 32399-1100; Mr. Robin Gibson, 212 E. Stuart Avenue, Lake Wales, FL 33853, this _____ day of March, 2002.

ATTORNEY

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I HEREBY CERTIFY that this brief was prepared using Times New Roman 14 point type, a font that is proportionately spaced.

ATTORNEY

