

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

American Civil Liberties Union)
of Florida, Inc.; Jeanne Baker;)
Dr. Walter Bradley; Shoshana Baker-)
Bradley, Natasha Baker-Bradley;)
Planned Parenthood of North Central)
Florida, Inc.; Planned Parenthood of)
Southwest and Central Florida, Inc.,)

Plaintiffs)

Case No. _____)

v.)

Glenda E. Hood, in her official capacity)
as Florida Secretary of State,)
Dawn K. Roberts in her official)
capacity as the Director of the Division of)
Elections,)

Defendants.)

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION
FOR A TEMPORARY INJUNCTION**

INTRODUCTION

Plaintiffs ask this Court to issue a temporary injunction prohibiting the placement of the ballot proposal contained in House Joint Resolution 1 (H.J.R. 1) on the November 2, 2004 Florida general election ballot. Plaintiffs seek this injunction because H.J.R. 1 fails to give voters fair notice of its true legal effect, it is misleading, and it buries the proposed constitutional amendment in an unrelated article of the State Constitution. The Florida Supreme Court has held that such deficiencies are constitutionally fatal and render a ballot proposal invalid. *See, e.g., Armstrong v. Harris*, 773 So. 2d 7 (Fla. 2000).

H.J.R. 1 proposes an amendment to the State Constitution that, if adopted, would sharply curtail minors' state constitutional right of privacy by authorizing the Legislature to pass a law requiring notification to a parent before a minor can obtain an abortion. The amendment would thereby overrule prior Florida Supreme Court decisions holding that such a law, while permissible under the Federal Constitution, violates the explicit right of privacy contained in the State Constitution. *See N. Fla. Women's Health & Counseling Servs. v. Florida*, 866 So. 2d 612, 632-34 (Fla. 2003); *In re T.W.*, 551 So. 2d 1186, 1192-93 (Fla. 1989). Yet the language that will appear on the ballot fails to advise voters "of the radical change in state constitutional law that the [proposed amendment will] actually foment[]." *Armstrong*, 773 So. 2d at 21. Indeed, the ballot language misleadingly suggests that by requiring compliance with federal law the proposed amendment will affirmatively protect minors' privacy rights, when in fact minors' privacy rights would be limited.

The Florida Supreme Court has held that a ballot proposal, like H.J.R. 1, that fails to accurately advise voters of the proposed amendment's true legal effect violates both constitutional and statutory requirements for legislatively proposed amendments to the Florida Constitution. *Id.* Additionally, the proposed amendment is invalid because it is buried in an article to which it has no relation, thereby violating the constitutional requirement of germaneness. For these reasons, the Court must strike H.J.R. 1 from the November 2004 general election ballot.

I. THE CHALLENGED BALLOT PROPOSAL

On June 17, 2004, the Legislature filed with the Secretary of State, for placement on the November 2, 2004 ballot, House Joint Resolution 1. H.J.R. 1 proposes an amendment to the State Constitution by adding a new section to Article X (entitled Miscellaneous). This

legislatively proposed amendment will become effective if approved by a vote of the electors at the November 2, 2004 election. *See* Art. XI, § 5(d), Fla. Const. Only the ballot title and summary, also drafted by the Legislature as part of H.J.R. 1, are to appear on the ballot; the actual language of the proposed amendment will not. *See* H.J.R. 1; *see also* §101.161, Fla. Stat.

The ballot title and summary of the proposed amendment read as follows:

CONSTITUTIONAL AMENDMENT
ARTICLE X, SECTION 22
PARENTAL NOTIFICATION OF A MINOR’S TERMINATION OF
PREGNANCY.--Proposing an amendment to the State Constitution to authorize
the Legislature to require by general law for notification to a parent or guardian of
a minor before the termination of the minor’s pregnancy. The amendment
provides that the Legislature shall not limit or deny the privacy rights guaranteed
to minors under the United States Constitution as interpreted by the United States
Supreme Court. The Legislature shall provide exceptions to such requirement for
notification and shall create a process for judicial waiver of the requirement for
notification.

H.J.R. 1, 106th Leg., Reg. Sess. (Fla. 2004) (attached to Complaint as Ex. A).

The full text of the proposed constitutional amendment, which will not appear on the ballot, provides:

ARTICLE X
MISCELLANEOUS
SECTION 22. Parental notice of termination of a minor’s pregnancy.--The
legislature shall not limit or deny the privacy right guaranteed to a minor under
the United States Constitution as interpreted by the United States Supreme Court.
Notwithstanding a minor's right of privacy provided in Section 23 of Article I, the
Legislature is authorized to require by general law for notification to a parent or
guardian of a minor before the termination of the minor’s pregnancy. The
Legislature shall provide exceptions to such requirement for notification and shall
create a process for judicial waiver of the notification.

Id. (emphasis added).

II. BACKGROUND

The Legislature passed H.J.R. 1, and the proposed amendment contained therein, in

direct response to decisions of the Florida Supreme Court holding that (1) the explicit right of privacy in the State Constitution provides minors broader protection than does the Federal Constitution, and (2) the State's more expansive protections prohibit the Legislature from enacting a law requiring notice to a parent before a minor obtains an abortion.

In 1988, the Legislature passed a statute that prohibited minors from having an abortion unless they first obtained parental consent or obtained a judicial waiver of the parental consent requirement. *See* Act of Oct. 1, 1988, 1988 Fla. Sess. Law Serv. Ch. 88-97 (West) (codified at § 390.001(4)(a), Fla. Stat.). Although the United States Supreme Court has upheld such laws under the Federal Constitution, *see, e.g., Planned Parenthood v. Casey*, 505 U.S. 833, 899 (1992), the Florida Supreme Court held that the statute violated Florida's explicit "Right of Privacy" Clause, Art. I, § 23, Fla. Const. *See In re T.W.*, 551 So. 2d at 1194-95. The Florida Supreme Court held that the Privacy Clause, which has no parallel in the United States Constitution, "embraces more privacy interests, and extends more protection to the individual . . . than does the federal Constitution." *Id.* at 1192, 1194-95. In 2003 the Florida Supreme Court reached the same conclusion with respect to a law requiring parental notice of a minor's abortion decision. *See N. Fla. Women's Health & Counseling Servs.*, 866 So. 2d at 634-35. The *North Florida* Court acknowledged that the United States Supreme Court had upheld similar parental notice laws, *id.* at 634, 634 n.45 (citing cases), but held that such a law violated the express right of privacy contained in the State Constitution. *Id.* at 639-40. In striking down the 1999 Parental Notice of Abortion Act,¹ the Supreme Court again emphasized that "any comparison between the federal and Florida rights of privacy is inapposite in light of the fact that *there is no express federal right of privacy clause.*" 866 So.2d at 634 (emphasis in original). Indeed, "[i]n adopting

¹ *See* 1999 Fla. Sess. Law Serv. Ch. 99-322 (West) (codified at § 390.01115, Fla. Stat.).

the privacy amendment, Floridians deliberately opted for substantially more protection than the federal charter provides.” *Id.* at 636; *see also Winfield v. Div. of Pari-Mutuel Wagering*, 477 So. 2d 544, 548 (Fla. 1985) (“Article I, section 23, was intentionally phrased in strong terms.”). Thus, the Legislature lacks authority to enact parental notification legislation absent a constitutional amendment limiting Article I, section 23. Therefore, the chief purpose of H.J.R. 1 is to overturn *North Florida*, and its main legal effect will be to substantially limit a minor’s right of privacy under the State Constitution.

III. ARGUMENT

Plaintiffs are entitled to a temporary injunction upon establishing 1) a “substantial likelihood of success on the merits,” 2) the “likelihood of irreparable harm,” 3) “the unavailability of an adequate remedy at law,” and 4) that the “consideration of the public interest” favors granting an injunction. *Thompson v. Planning Comm’n*, 464 So. 2d 1231, 1236 (Fla. 1st DCA 1985); *see also City of Jacksonville v. Naegele Outdoor Advertising Co.*, 634 So. 2d 750, 752 (Fla. 1st DCA 1994) (applying *Thompson* standard); *Coalition to Reduce Class Size v. Harris*, No. 02-CA-1490, 2002 WL 1809005, at *2 (Fla. Cir. Ct. July 17, 2002) (granting temporary injunction so that “the right of the people to amend their constitution within the prescribed constitutional process is preserved”), *aff’d sub nom. Smith v. Coalition to Reduce Class Size*, 827 So. 2d 959 (Fla. 2002). For the reasons discussed below, Plaintiffs readily meet each of these requirements.

A. **Plaintiffs are Substantially Likely to Succeed on the Merits Because H.J.R. 1 Plainly Violates Article XI, Section 5 of the State Constitution and Florida Statute Section 101.161.**

Any proposed amendment to the State Constitution must adhere to a simple and fundamental constitutional principle; it must be “*accurately* represented on the ballot; otherwise,

voter approval would be a nullity.” *Armstrong* 773 So. 2d at 12 (emphasis in original); *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982) (applying rule that Constitution requires ““that the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot””) (quoting *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954)) (emphasis supplied in *Askew*); see Art. XI, § 5, Fla. Const. The constitutional accuracy requirement prohibits a ballot proposal that fails to clearly inform or that affirmatively misleads voters as to the amendment’s true effect – in other words, a ballot proposal may not “hide the ball” or “fly under false colors.” *Armstrong*, 773 So. 2d at 16; *Askew*, 421 So. 2d at 156; see also *Fla. Ass’n of Realtors, Inc. v. Smith*, 825 So. 2d 532, 536 (Fla. 1st DCA 2002); *Sancho v. Smith*, 830 So. 2d 856, 861 (Fla. 1st DCA 2002).

In addition, this constitutional ““truth in packaging’ law for the ballot,” is statutorily mandated. *Armstrong*, 773 So. 2d at 13. Florida Statutes requires that when a proposed constitutional amendment, including those proposed by the legislature, is “submitted to the vote of the people, the substance of such amendment . . . shall be printed in clear and unambiguous language on the ballot.” § 101.161(1), Fla. Stat.; see also *Armstrong*, 773 So. 2d at 12-13 (noting Chapter 101 is codification of the constitutional accuracy requirement and applies to legislatively proposed amendments); *Fla. Ass’n of Realtors*, 825 So. 2d at 536 (same).

Because H.J.R. 1 violates both of these constitutional and statutory requirements – by failing to provide notice that the amendment will radically alter existing state constitutional rights and misleadingly suggesting that the amendment will protect a minor’s constitutional right of privacy – Plaintiffs are substantially likely to succeed on the merits. Thus, the ballot proposal must be stricken from the general election ballot.

1. The ballot proposal fails to give voters fair notice of the substance of the proposed amendment.

The primary purpose and effect of the proposed amendment, if enacted, would be to reduce the express right of privacy afforded minors under Article I, section 23 of the Florida Constitution as interpreted by the Florida Supreme Court. The Supreme Court has repeatedly held unconstitutional past attempts by the State to impose mandatory parental involvement laws on minors seeking to terminate their pregnancies. As held in *In re T.W.*, and again in *North Florida*, while such laws are permissible under the Federal Constitution, they cannot be sustained under the State Constitution's explicit right of privacy. *See N. Fla.*, 866 So. 2d at 632-35; *see also supra* Part II. The proposed amendment seeks to abrogate this constitutional precedent and explicitly restrict the right of privacy guaranteed to minors by the State Constitution.²

Despite the clear purpose and effect of the amendment, the ballot title and summary make absolutely no reference to the Right of Privacy Clause contained in Article I, section 23, let alone explain how the amendment would substantially limit that Clause. Thus, the ballot proposal wholly fails to notify voters that the proposed amendment directly impairs a fundamental right guaranteed by the Florida Declaration of Rights. This it cannot do. The Florida Supreme Court has unequivocally held that a ballot summary, like H.J.R. 1, that fails to inform the public of a proposed amendment's substantial impact on existing constitutional rights is fatally flawed. *See Armstrong*, 773 So. 2d at 22.

² Indeed, the text of the amendment (which appears nowhere on the ballot), explicitly recognizes this fact, stating: "*Notwithstanding a minor's right of privacy provided in Section 23 of Article I*, the Legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy." H.J.R. 1 (emphasis added).

Indeed, the ballot deficiencies challenged in this case are in important respects virtually identical to those challenged in the *Armstrong* case, where the Supreme Court struck a legislatively proposed constitutional amendment that similarly sought to restrict state constitutional rights. In *Armstrong*, the Legislature proposed to amend Article I, section 17, prohibiting excessive punishments. *Id.* at 16. The proposed amendment changed, *inter alia*, the text of the clause prohibiting “cruel *or* unusual punishment” to also include the language of the federal counterpart that prohibits “cruel *and* unusual punishment.” *Id.* Further, it required that the clause “be construed in conformity with decisions of the United States Supreme Court which interpret the prohibition against cruel and unusual punishment provided in the Eighth Amendment to the United States Constitution.” *Id.* As the Supreme Court explained, the impact of these changes would have been to “effectively strike[] the state Clause from the constitutional scheme. Under such a scenario, the organic law governing either cruel or unusual punishments in Florida would consist of a floor (i.e., the federal constitution) and nothing more.” *Id.* at 17. Yet, as the Court emphasized, the ballot summary only advised voters that the “prohibition against cruel and/or unusual punishment” must conform to federal law; it did not tell voters that the amendment would substantively change the language of the State Constitution and how this would reduce state constitutional rights. *Id.* at 17-18. Thus, as the Supreme Court held, “[t]he main effect of the amendment [was] *not* stated anywhere on the ballot” summary. *Id.* at 18. This, the Supreme Court held, was impermissible.

Likewise, here, the effect of the proposed amendment would be to nullify the heightened right of privacy that the State Constitution guarantees minors seeking abortion and restrict their rights to those under the Federal Constitution. The Florida Supreme Court has made crystal clear that under these circumstances, “*where a proposed constitutional revision results in the*

loss or restriction of an independent fundamental state right, the loss must be made known to each participating voter at the time of the general election.” *Id.* (quoting *Traylor v. State*, 596 So. 2d 957, 963 n.5 (Fla. 1992)) (emphasis added in *Armstrong*). As in *Armstrong*, H.J.R. 1’s ballot title and summary plainly fail to meet this basic requirement. No reference is made to the proposed amendment’s language expressly limiting the Right of Privacy Clause, and the main effect of the amendment, reducing minors’ state constitutional right of privacy, is not explained anywhere on the ballot.³

Similarly, in *Askew v. Firestone*, the Supreme Court held that the ballot summary for a proposed constitutional amendment failed to give fair notice, not because of what the summary said, but, rather, because of what it did not say. 421 So. 2d at 156. The proposed amendment sought to remove the Constitution’s two-year absolute ban on lobbying by former legislators and elected officers, and to replace it with a provision permitting lobbying if the affected person made public disclosures of his or her financial interests. While the ballot summary accurately informed voters how the proposed financial disclosure requirement would work, it “neglect[ed] to advise the public that there [was] presently a complete two-year ban on lobbying.” *Id.* at 155. Thus, the summary did not clearly and unambiguously advise the voters that the amendment would materially alter, indeed create an exception to, the existing constitutional restrictions on

³ Notably, after *Armstrong* was decided, the Legislature again proposed the exact same amendment to the State Constitution. In its second attempt, however, the accompanying ballot proposal explicitly detailed how the proposed amendment would prevent the state excessive punishment provision from offering any greater protection than did its federal counterpart and effectively nullify rights currently allowed under the State Constitution. Because of this detailed and comprehensive summary, the second ballot proposal was held valid by the First District Court of Appeal. *See Sancho v. Smith*, 830 So. 2d 856, 860-861, 865 (Fla. 1st DCA 2002). In light of *Armstrong* and its subsequent history, the Legislature’s failure to provide a similarly forthcoming summary in H.J.R. 1 demonstrates a purposeful disregard of the constitutional and statutory requirements to which it is bound.

lobbying. *Id.* at 156. Because the summary did not advise the public of the “true meaning, and ramifications” of the proposed amendment, the Supreme Court held it invalid and ordered it stricken from the ballot. *Id.*

Indeed, in a variety of cases, the Supreme Court has not hesitated to strike ballot summaries that failed to give voters fair notice as to the true effect of a proposed amendment, especially when the amendment would alter or reduce existing rights or protections. *See Advisory Opinion to the Attorney General Re: Term Limits Pledge*, 718 So. 2d 798, 803-04 (Fla. 1998) (striking ballot summary for failure to inform voters that amendment would “substantially impact” Secretary of State’s existing constitutional powers and duties); *Advisory Opinion to the Attorney General Re: Right of Citizens to Choose Health Care Providers*, 705 So. 2d 563, 566 (Fla. 1998) (striking ballot summary that was overly vague and failed to warn voters that proposed amendment would in reality “severely limit an individual’s ability to enter into a health care contract”); *Evans v. Firestone*, 457 So. 2d 1352, 1355 (Fla. 1984) (holding ballot summary violated “fundamental right of the voter to be given fair notice” because it mischaracterized amendment as one ““establish[ing] citizen’s rights in civil actions” when it in fact limited existing rights); *see also Fla. Ass’n of Realtors*, 825 So. 2d at 537-38 (striking ballot summary that failed to “satisfy the constitutional and statutory requirement” to advise voters in “clear and unambiguous language” that the special committee created by proposed amendment would obtain lawmaking authority constitutionally reserved to the Legislature). And, just this term, the Florida Supreme Court barred two citizen-initiated ballot initiatives from placement on the upcoming November 2, 2004 election ballot because each failed to give fair notice of the proposed amendment’s true effect. *See Advisory Opinion to the Attorney General Re: Additional Homestead Tax Exemption*, __ So. 2d __, No. SC04-942, 2004 WL 1574226 (Fla. July 15, 2004);

Advisory Opinion to the Attorney General Re: Fairness Initiative Requiring Legislative Determination that Sales Tax Exemptions and Exclusions Serve a Public Purpose, __ So. 2d __, No. SC04-947, 2004 WL 1574248 (Fla. July 15, 2004). This Court should similarly strike the ballot proposal at issue, as it too wholly fails to give voters fair notice of the true effect of the proposed amendment and thus “clearly and conclusively violates the accuracy requirement in article XI, section 5, Florida Constitution.” *Armstrong*, 773 So. 2d at 22.

2. The ballot summary is misleading.

Not only does the ballot summary fail to give voters notice that the amendment would void existing constitutional rights, it affirmatively misleads voters by suggesting that the amendment will help protect constitutional rights. The summary states that “the amendment provides that the Legislature shall not limit or deny the privacy rights guaranteed to minors under the United States Constitution as interpreted by the United States Supreme Court.” H.J.R. 1. Although this statement is not technically inaccurate, its inclusion in the ballot summary – in the absence of any mention of the amendment’s reduction of the state right of privacy – is patently misleading. With respect to this deficiency, *Armstrong*, once again, is directly on point.

The ballot summary in *Armstrong* similarly referenced the protection that would be afforded under the Federal Constitution, thereby implying the amendment would “promote the basic rights of Florida citizens,” while failing to advise voters that more expansive state constitutional protections would be lost. 773 So. 2d at 21. The Supreme Court found the ballot title and summary misleading because they “impl[ied] that the amendment will promote the rights of Florida citizens through the rulings of the United States Supreme Court.” *Id.* at 17. As a result, the Court emphasized, “a citizen could well have voted in favor of the proposed amendment thinking that he or she was protecting state constitutional rights when in fact the

citizen was doing the *exact opposite* – i.e., he or she was voting to nullify those rights.” *Id* at 18. This, the Supreme Court held, rendered the “validity of the electoral process . . . fundamentally compromised” and the amendment constitutionally invalid. *Id.* at 22.

The ballot summary contained in H.J.R. 1 is similarly flawed. It implies that the proposed amendment will protect the right of privacy through the rulings of the United States Supreme Court when it will in fact erode the greater privacy protections afforded by the State Constitution. Thus, the ballot proposal suffers from the same type of defect found fatal in *Armstrong*. Indeed, even when *fundamental* constitutional rights are not at stake, as they are here and were in *Armstrong*, the Florida Supreme Court has held that a misleading proposal cannot be placed on the ballot. *See, e.g., Askew*, 421 So.2d at 153; *Advisory Opinion to the Attorney General Re: Additional Homestead Tax Exemption*, __ So. 2d __, 2004 WL 1574226.

Moreover, the proposed amendment is misleading in an additional respect not present in *Armstrong* or *Askew*. In those cases, while the summaries failed to adequately explain *how* existing constitutional standards would be substantially changed, they at least indicated *which* constitutional provisions were directly affected and incorporated the proposed amendment directly within the relevant constitutional provision. *See Armstrong*, 773 So. 2d at 16 (altering scope of prohibition on “cruel or unusual punishment” contained in Article I, section 17 by directly amending language of same); *Askew*, 421 So. 2d at 153 (altering constitutional limits on lobbying as provided in Article II, section 8 by directly amending language of same). In contrast, the proposed amendment in H.J.R. 1 restricts rights guaranteed under Article I, section 23 (the right of privacy) but is offered as a completely new section to be added to Article X, which contains various miscellaneous amendments, none of which relate to the right of privacy. Further, unlike the text (which will not appear on the ballot), neither the ballot title nor the ballot

summary refer to Article I, section 23. Thus, even an enterprising voter who both reads the ballot proposal and turns to Article X of the Florida Constitution, in hopes of discerning how the proposed amendment might impact existing constitutional rights, would find nothing remotely relevant and would easily be lulled into believing that the amendment would provide wholly new constitutional protections.

In short, there is absolutely no way voters will understand, from either the ballot title, the ballot summary, or the placement of the proposed amendment, that the constitutional provision to be directly altered is the Right of Privacy Clause. Thus, the ballot proposal not only “hides the ball” by failing to notify voters that the proposed amendment will negate the right of privacy long guaranteed minors under Article I, section 23, it “flies under false colors” by suggesting the amendment will help protect a minor’s right of privacy and failing even to reference the constitutional provision that will be altered. These deficiencies plainly violate Article XI, section 5 of the Constitution and Florida Statute § 101.161(1). Hence, Plaintiffs are substantially likely to succeed on the merits.

B. Plaintiffs are Substantially Likely to Succeed on the Merits on the Ground that H.J.R. 1 Violates the Germaneness Requirement of Article XI, section 1.

While all ballot initiatives proposing to amend the Constitution must give fair notice and cannot be misleading, ones that are *legislatively* proposed are subject to another distinct constitutional requirement – germaneness. *See Smathers v. Smith*, 338 So. 2d 825, 830 (Fla. 1976); *see also Armstrong*, 773 So. 2d at 14 n.19, 15 (citing *Smathers* as instance when Court reviewed legislatively proposed amendment under “germaneness doctrine”). The germaneness principle requires that a proposed amendment be rationally related to the section it purports to change. *See Smathers*, 338 So. 2d at 830. Proposed Article X, section 22 violates this

constitutional requirement because it is improperly placed.

As the Supreme Court set forth in *Smathers v. Smith*, Article XI, section 1 of the Constitution makes “immediately apparent that two of the three amendatory alternatives given the Legislature – that of amending a ‘section’ and revising an ‘article’ – are tied to locational specificity.” 338 So. 2d at 828. Accordingly, when the Legislature proposes to amend the Constitution, it has a duty to avoid careless or misleading placement. The Legislature must ensure that “the functional unity of sections and articles be preserved to the fullest extent possible, so that, first, ambiguities and contradictions be avoided and, second, cumulative confusion be prevented.” *Id.* at 829; *accord Adams v. Gunter*, 238 So. 2d 824, 832 (Fla. 1970) (holding that Constitution could not be amended in a manner inconsistent with the constitutional procedures set forth for future amendments). Thus, locational specificity, or germaneness, constitutes another “minimal requirement[.]” to which legislatively proposed amendments to the Constitution must adhere. *Smathers*, 338 So. 2d at 829.

As discussed *supra*, the constitutional provision to which the proposed amendment is substantively and locationally tied is the Right of Privacy Clause contained in Article I, section 23. The Legislature’s effort to require parental notice before a minor obtains an abortion can only be accomplished by altering the guarantees of Article I, section 23 so that it no longer affords minors the right of privacy to the extent interpreted by the Florida Supreme Court. *See supra* Parts II to III.A.1. Accordingly, the rule of germaneness requires that the proposed amendment be placed within Article I, which it would expressly restrict, not buried among wholly unrelated provisions contained in the Constitution’s “Miscellaneous” Article X.⁴

⁴ The amendments contained in Article X range from the subject of lotteries, to suits against the State, to high speed ground transportation, and the confinement of pregnant pigs. *See, e.g.*, Art. X, §§ 7, 13, 15, 19, 21, Fla. Const.

The Legislature’s failure to abide this constitutional demand of locational specificity is not simply a cosmetic shortcoming; it compromises the integrity of amendatory process and the Constitution as a whole. As the Supreme Court has so strongly cautioned:

These are serious concerns. We have always required the Legislature to meet the precise limitations which circumscribe legislative amendment powers. “The people of the state have a right to amend their Constitution, and they also have a right to require proposed amendments to be agreed to and submitted for adoption in the manner prescribed by the existing Constitution, which is the fundamental law. . . .The proposal of amendments to the Constitution is a highly important function of government that should be performed with the greatest certainty, efficiency, care, and deliberation.”

Smathers, 338 So. 2d at 831 (quoting *Crawford v. Gilchrist*, 59 So. 963, 967-68 (Fla. 1912)).

Thus, in failing to adhere to the germaneness requirement, the Legislature has not only misled the voters, *see supra* Part III.A.2, but it has also violated fundamental law circumscribing the form in which it may submit proposed amendments to the voters. In creating such structural inconsistency, the Legislature has exceeded “the outer limit of legislative authority,” *id.* at 829,⁵ rendering the proposed amendment constitutionally invalid. Plaintiffs, therefore, are also substantially likely to succeed on the merits of this claim.

C. Plaintiffs Meet the Other Requirements for Obtaining Temporary Injunctive Relief.

Plaintiffs will suffer irreparable harm if this Court does not issue an injunction prohibiting the ballot title and summary contained in H.J.R. 1 from being placed on the

⁵ In *Smathers*, the Supreme Court was deeply concerned that the proposed amendment, which related to the balance of powers between administrative agencies and the Legislature, would more significantly affect constitutional provisions other than the one in which it was incorporated. The Supreme Court, however, accepted the placement as just “reaching” the “borderline of ‘germanity,’” because the section amended also dealt with limits on administrative powers. *Id.* at 829. Thus, it concluded, there was at least some “reasonable basis to view the new sentence as germane to the provision it amends.” *Id.* at 831. In contrast, here the proposed amendment has *no* relation to any section contained in Article X, where it is placed, and plainly has the effect of amending only Article I.

November 2, 2004 general election ballot. If an injunction does not issue, voters will be forced to vote on an amendment to the Florida Constitution on the basis of an inaccurate and misleading ballot proposal. As a result, their constitutional and statutory right to vote upon the basis of an accurate and fair representation of the substance of the proposed amendment will be irretrievably lost and their votes will become a “nullity.” *See Armstrong*, 773 So.2d at 12.

Plaintiffs have no other adequate remedy at law. Money damages cannot remedy the loss of these constitutional and statutory rights and there is no administrative process by which to obtain the necessary relief. Thus, in the ballot challenge context, the Supreme Court has held, “remedial action must be taken” by ordering the ballot title and summary to be stricken from the general election ballot. *Askew*, 421 So. 2d at 156 (reversing trial court’s denial of injunctive relief and ordering inaccurate and misleading ballot proposal stricken from upcoming election ballot); *see also Fla. Ass’n of Realtors*, 825 So. 2d 532 (same).

The issuance of a temporary injunction in this case will serve the public interest. Only by granting immediate injunctive relief *before* the election will “the right of the people to amend their constitution within the prescribed constitutional process [be] preserved.” *Coalition to Reduce Class Size*, 2002 WL 1809005, at *1-2 (enjoining placement of fiscal impact statement on approved initiative ballot proposal because such placement would violate “constitutional process for judicial review of citizen initiatives to amend the constitution”), *aff’d sub nom. Smith v. Coalition to Reduce Class Size* (Fla. 2002). Indeed, the State has no interest in placing a deficient title and summary statement on the ballot because to do so would “fundamentally” compromise “the validity of the electoral process.” *Armstrong*, 773 So. 2d at 22. Accordingly, consideration of the public interest weighs strongly in favor of immediately enjoining the ballot proposal from placement on the November 2, 2004 general election ballot pending a resolution

of this case on the merits.

CONCLUSION

For all the foregoing reasons, Plaintiffs are entitled to a temporary injunction prohibiting Defendants from placing the ballot title and summary contained in H.J.R. 1 on the November 2, 2004 general election ballot.

Respectfully submitted,

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* Application for Admission *Pro Hac Vice* Pending