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**Testimony of Daniel A. Smith, Ph.D.,
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Before the Florida House Select Committee on Constitutional Amendments**

Mr. Chairman, and Honorable Members of the Florida House, I thank you for the opportunity to testify before your committee. I am Daniel A. Smith, Associate Professor of Political Science at the University of Florida. I have written extensively on process and politics of direct democracy in the American states, authoring two books and over two dozen scholarly articles on the initiative process. I have testified as an expert witness in Colorado on direct democracy legislation, as well as in the Florida legislature in 2002 and 2003. I currently serve on the Board of Directors of the Ballot Initiative Strategy Center Foundation (BISCF), and I am a Senior Research Fellow at the Initiative and Referendum Institute, both nonpartisan organizations located in Washington, D.C. Today, I am speaking for myself.

I would like to begin by stating that while I think the initiative process in Florida serves some useful purposes, I by no means think it is a substitute for representative government. I also think there are some legitimate concerns about how the initiative process works, for better or worse, in Florida. I certainly think there is room to improve Florida's initiative process. That said, I would caution the committee from proposing reforms that would substantially curtail the plebiscitary powers granted to the citizens of the state.

In reforming the initiative process, I think it is of paramount importance that the select committee makes a good faith effort to recommend solutions to the process that match the alleged problems. As I see it, there appear to be four problems with the current process of amending the state constitution in Florida.

First, there is the very real concern that the use of constitutional amendments is harming "the integrity of the Florida Constitution." I wholeheartedly agree that bullet trains and gestation crates for pregnant pigs do not belong in the state's constitution. But proposing and voting on constitutional amendments is currently the only recourse for the citizens of this state who wish to use the initiative process.

Florida is one of 24 states with some form of the initiative. Sixteen of these two dozen states, including Florida, allow their citizens to directly propose and adopt amendments to their state

constitutions, bypassing the legislature altogether.¹ Of these 16 states allowing direct constitutional amendment initiatives, only Florida and Illinois do not allow their citizens to also propose statutory initiatives.

Of the 21 constitutional initiatives on which Floridians have voted since 1976, many would have been better suited as statutes. Petitioners in 21 of the 24 states allowing the citizen initiative may circulate statutory initiatives, but this is not an option in Florida (as well as in IL and MS).

In terms of solutions to this perceived problem, the committee could consider a couple options to remedy this perceived problem of cluttering the state constitution.

- The committee could recommend allowing citizens to propose and adopt statutory initiatives. Of course, there would need to be incentives for petitioners to go the statutory route rather than continuing to propose constitutional amendments, namely requiring a higher percentage of signatures to be collected for constitutional amendments than for statutes. Of the 15 states permitting both constitutional amendment and statutory initiatives, only 3 (Colorado, Massachusetts, and Nevada) require the same number of signatures to qualify both kinds of initiatives. When given the option, initiative petitioners in these states naturally tend to propose constitutional amendments rather than statutes, as amendments to the constitution, unlike statutes, cannot be overturned by the state legislature.
- The committee could recommend increasing the requirements for passage of constitutional amendment initiatives in exchange for allowing statutory initiatives. While statutory initiatives could pass with a simple majority, constitutional amendments might have to be adopted with a three-fifths supermajority vote on election day, which mirrors the three-fifths threshold for referendums voted out of the state legislature. However, except for some narrowly tailored exceptions, including Florida's requirement that any new statewide tax have a two-thirds supermajority vote,² a supermajority voting requirement on initiatives would be unprecedented in the American states.

Second, there is the concern that the number of initiatives on the ballot is reaching "epidemic" levels. While this may appear to be the case, with the 50 or so measures currently being circulated, I think the claim is overblown. There is little doubt that only a fraction of the circulating ballot measures will qualify for the 2004 ballot. Since 1976, only 21 initiatives have qualified for the statewide ballot, an average of 1.5 per general election. While five measures did qualify for the ballot in 2002, there does not appear to be an upward trend in the use of ballot initiatives in Florida. Indeed, across the country, the number of statewide initiatives on the ballot has been dropping since the high water mark of 93 measures in 1996 (Florida had four initiatives that year).

In terms of solutions to this perceived problem, there are a couple possibilities that the committee could recommend if they desire to curtail the number of measures being circulated.

- The committee could recommend cutting down on the amount of time (currently four years) that petitioners have to collect signatures in order to qualify a ballot measure.

¹ Two other states, Massachusetts and Mississippi, allow *indirect* initiatives amending their Constitutions.

² For example, there are four states that require a two-thirds popular vote to approve bond issues. In Florida, as a result of the 1996 initiative Amendment 1, any new or increase in taxes and fees requires a two-thirds supermajority vote. In Utah, following the passage of a legislative referendum amending the constitution, any ballot initiative protecting wildlife must obtain a two-thirds supermajority to pass. A similar wildlife supermajority measure was defeated by the voters in 2000 in Alaska.

Other states have substantially tighter windows to collect valid signatures, though three states (AR, OH, and UT) have no time limit. California's limit is 150 days; Oklahoma's is 90 days.

- The committee could require a nominal registration fee administered by the Florida Division of Elections to circulate measures that might have the effect of discouraging unserious petitioners intent on circulating frivolous constitutional amendments.
- The committee could recommend that petition circulators be Florida residents; the US Supreme Court in 1999, however, struck down the requirement in some states that petition circulators be registered voters.
- The committee could recommend that paid petition circulators be required to be compensated by the hour rather than by a per/signature basis.
- The committee could recommend changing the geographic distribution requirement for signature gathering, although Florida already has one of the toughest standards: 8% of the ballots cast in the last presidential election in at least half of the state's 25 congressional districts.
- The committee could recommend increasing the signature threshold to 10% or higher of a previous statewide vote.

Third, there is the concern that voters are incompetent, or at least sometimes confused, when voting on ballot measures. While there is no scholarly evidence that voters are unable to make rational choices on ballot questions in Florida or in other states, the committee could consider a few reforms that would make it even more likely that voters even make informed voting decisions on ballot questions.

- The committee could recommend that rather than the proponents, a drafting board (perhaps comprised of a nonpartisan legislative staffing agency, the Attorney General, and the Secretary of State) write the title and summary of the proposed initiative, thereby clarifying the language of the proposed measure.
- The committee could recommend that public hearings be required prior to the circulation of ballot measures. Five states currently require hearings on all proposed initiatives prior to their circulation.
- The committee could recommend mailing to all registered voters "voter guides" that provide the ballot number, official title, ballot language, full text, neutral fiscal statements, neutral summaries of the pro and con arguments, as well as rebuttals by the proponents and opponents of the initiatives. Fifteen states currently provide registered voters with these voter pamphlets. While the costs vary (from less than \$300,000/election in Colorado to more than \$4 million in California), these voter guides are regularly cited by voters as the primary source of information that they use to inform their decisions.

Fourth, there is the legitimate concern that special or "narrow" interests are using the initiative process to bypass the state legislature. While this may be true, it is not a new phenomenon. Since the initiative process was adopted during the Progressive Era, special interests have been using the process while veiling their vested interests with populist sounding rhetoric in states permitting the process. As the US Supreme Court has ruled that states may not limit the amount of money spent in the process, campaign finance disclosure is the best remedy for this alleged problem. Florida has a fairly good system of campaign finance disclosure when it comes to the initiative process. However, the committee could consider the following reform that would improve campaign finance disclosure of ballot campaigns.

- The committee could recommend that The Division of Elections improves its online searchable database to allow for the sorting of political committees by type, as well as allow for the listing of political committees that are involved (pro and con) in ballot campaigns. Currently, it is impossible to determine the name of the committees that are opposing ballot measures or those making “third party” expenditures on behalf or against a particular measure.

In conclusion, I commend the efforts of the Select Committee on Constitutional Amendments to improve the initiative process in Florida. While the process may never be perfect, the process could be modified, though I do not foresee citizens of Florida adopting any wholesale reforms that would curtail their right to use the citizen initiative.

Thank you for the opportunity to testify today. At this time, I would be happy to address any questions that you may have.