

Tobacco Education and Prevention Program

Number: PETITION

Date: November 29, 2005

The Honorable Barbara J. Pariente
Chief Justice, and Justices of
The Supreme Court of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

Dear Chief Justice Pariente and Justices:

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

On October 11, 2005, this office received from the Secretary of State (via transmittal letter dated 10/4/05) an initiative petition seeking to amend the Florida Constitution to protect people, especially youth, from addiction, disease, and other health hazards of using tobacco. The full text of the proposed amendment states:

"BE IT ENACTED BY THE PEOPLE OF FLORIDA THAT:

Article X, Florida Constitution, is amended to add the following:

Section 27. Comprehensive Statewide Tobacco Education and Prevention Program. In order to protect people, especially youth, from health hazards of using tobacco, including addictive disorders, cancer, cardiovascular diseases, and lung diseases; and to discourage use of tobacco, particularly among youth, a portion of the money that tobacco companies pay to the State of Florida under the Tobacco Settlement each year shall be used to fund a comprehensive statewide tobacco education and prevention program consistent with recommendations of the U.S. Centers for Disease Control and Prevention (CDC), as follows:

(a) Program. The money appropriated pursuant to this section shall be used to fund a comprehensive statewide tobacco education and prevention program consistent with the recommendations for effective program components in the 1999 *Best Practices for Comprehensive Tobacco Control Programs* of the CDC, as such *Best Practices* may be amended by the CDC. This program shall include, at a minimum, the following components, and may include additional components that are also contained within the CDC *Best Practices*, as periodically amended, and that are effective at accomplishing the purpose of this section, and that do not undermine the effectiveness of these required minimum components:

(1) an advertising campaign to discourage the use of tobacco and to educate people, especially youth, about the health hazards of tobacco, which shall be designed to be effective at achieving these goals and shall include, but need not be limited to, television, radio, and print advertising,

with no limitations on any individual advertising medium utilized; and which shall be funded at a level equivalent to one-third of each total annual appropriation required by this section;

(2) evidence-based curricula and programs to educate youth about tobacco and to discourage their use of it, including, but not limited to, programs that involve youth, educate youth about the health hazards of tobacco, help youth develop skills to refuse tobacco, and demonstrate to youth how to stop using tobacco;

(3) programs of local community-based partnerships that discourage the use of tobacco and work to educate people, especially youth, about the health hazards of tobacco, with an emphasis on programs that involve youth and emphasize the prevention and cessation of tobacco use;

(4) enforcement of laws, regulations, and policies against the sale or other provision of tobacco to minors, and the possession of tobacco by minors; and

(5) publicly-reported annual evaluations to ensure that moneys appropriated pursuant to this section are spent properly, which shall include evaluation of the program's effectiveness in reducing and preventing tobacco use, and annual recommendations for improvements to enhance the program's effectiveness, which are to include comparisons to similar programs proven to be effective in other states, as well as comparisons to CDC *Best Practices*, including amendments thereto.

(b) Funding. In every year beginning with the calendar year after voters approve this amendment, the Florida Legislature shall appropriate, for the purpose expressed herein, from the total gross funds that tobacco companies pay to the State of Florida under the Tobacco Settlement, an amount equal to fifteen percent of such funds paid to the State in 2005; and the appropriation required by this section shall be adjusted annually for inflation, using the Consumer Price Index as published by the United States Department of Labor.

(c) Definitions. 'Tobacco' includes, without limitation, tobacco itself and tobacco products that include tobacco and are intended or expected for human use or consumption, including, but limited to, cigarettes, cigars, pipe tobacco, and smokeless tobacco. The 'Tobacco Settlement' means that certain Settlement Agreement dated August 25, 1997, entered into in settlement of the case styled as State of Florida, et al. v. American Tobacco Company, et al., Case No. 95-1466 AH (Fla. 15th Cir. Ct.), as amended by Stipulation of Amendment dated September 11, 1998; and includes any subsequent amendments and successor agreements. 'Youth' includes minors and young adults.

(d) Effective Date. This amendment shall become effective immediately upon approval by the voters."

The ballot title for the proposed amendment is "PROTECT PEOPLE, ESPECIALLY YOUTH, FROM ADDICTION, DISEASE, AND OTHER HEALTH HAZARDS OF USING TOBACCO." The summary for the proposed amendment states:

"To protect people, especially youth, from addiction, disease, and other health hazards of using tobacco, the Legislature shall use some Tobacco Settlement money annually for a comprehensive statewide tobacco education and prevention program using Centers for Disease Control best practices. Specifies some program components, emphasizing youth, requiring one-third of total annual funding for advertising. Annual funding is 15% of 2005 Tobacco Settlement payments to Florida, adjusted annually for inflation. Provides definitions. Effective immediately."

Article XI, section 3, Florida Constitution, provides in relevant part:

"The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith."

The single-subject provision "is a rule of restraint designed to insulate Florida's organic law from precipitous and cataclysmic change." *Advisory Opinion to the Attorney General--Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994); *Advisory Opinion to the Attorney General--Tax Limitation*, 644 So. 2d 486, 490 (Fla. 1994).

To comply with the single-subject requirement, an initiative must manifest a "logical and natural oneness of purpose." *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984). This Court stated in *Advisory Opinion to the Attorney General--Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1020 (Fla. 1994), that "[t]o ascertain whether the necessary 'oneness of purpose' exists, we must consider whether the proposal affects separate functions of government and how the proposal affects other provisions of the constitution."

Section 101.161(1), Florida Statutes, provides in relevant part:

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

This Court has stated "that the ballot [must] be fair and advise the voter sufficiently to enable him intelligently to cast his ballot." *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982), quoting, *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954). While the ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, they need not explain every detail or ramification of the proposed amendment. *Carroll v. Firestone*, 497 So. 2d 1204, 1206 (Fla. 1986). The ballot, however, must give the voter fair notice of the decision he must make. *Askew v. Firestone*, *supra* at 155. This Court has stated that the purpose of section 101.161, Florida Statutes, is to ensure that voters are advised of the amendment's true meaning.

Therefore, I respectfully request this Honorable Court's opinion as to whether the constitutional amendment, proposed by initiative petition, complies with Article XI, section 3, Florida Constitution, and whether the amendment's ballot title and summary comply with section 101.161, Florida Statutes.

Sincerely,

Charlie Crist
Attorney General

CC/tfl

cc: Ms. Glenda Hood
Secretary of State

The Honorable Jeb Bush
Governor, State of Florida

The Honorable Tom Lee
President, Florida Senate

The Honorable Allan G. Bense
Speaker, Florida House of Representatives

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