

Medical Liability Claimant's Compensation Amendment

Number: PETITION

Date: March 09, 2004

The Honorable Harry Lee Anstead
Chief Justice, and Justices of
The Supreme Court of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

Dear Chief Justice Anstead 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 February 9, 2004, this office received from the Secretary of State an initiative petition seeking to amend the Florida Constitution to limit the amount of attorney's fees that may be collected under a contingency fee agreement in a claim for medical liability. The full text of the proposed amendment states:

"Section 1.

Article I, Section 26 is created to read 'Claimant's right to fair compensation.'

In any medical liability claim involving a contingency fee, the claimant is entitled to receive no less than 70% of the first \$250,000.00 in all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgment, settlement, or otherwise, and regardless of the number of defendants. The claimant is entitled to 90% of all damages in excess of \$250,000.00, exclusive of reasonable and customary costs and regardless of the number of defendants. This provision is self-executing and does not require implementing legislation.

Section 2.

This Amendment shall take effect on the day following approval by the voters."

The ballot title for the proposed amendment is "The Medical Liability Claimant's Compensation Amendment." The summary for the proposed amendment states:

"Proposes to amend the State Constitution to provide that an injured claimant who enters into a contingency fee agreement with an attorney in a claim for medical liability is entitled to no less than 70% of the first \$250,000.00 in all damages received by the claimant, and 90% of damages in excess of \$250,000.00, exclusive of reasonable and customary costs and regardless of the number of defendants. This amendment is intended to be self-executing."

Section 16.061, Florida Statutes, requires the Attorney General to petition this Honorable Court for an advisory opinion as to whether the text of the proposed amendment complies with Article XI, section 3, Florida Constitution, and whether the proposed ballot title and summary comply with section 101.161, Florida Statutes.

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/tgk

cc: Ms. Glenda Hood
Secretary of State

The Honorable Jeb Bush
Governor, State of Florida

The Honorable James E. "Jim" King
President, Florida Senate

The Honorable Johnnie Byrd
Speaker, Florida House of Representatives

Ms. Sandra B. Mortham
Citizens for a Fair Share, Inc.