

Term Limits Pledge

Number: PETITION

Date: January 08, 1998

The Honorable Gerald Kogan
Chief Justice, and
Justices of The Supreme Court of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

Dear Chief Justice Kogan 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 Office 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 December 9, 1997, the Secretary of State submitted to this office an initiative petition seeking to amend the Florida Constitution to provide a term limit pledge for candidates for the United States Congress. The full text of the proposed amendment states:

"ARTICLE VI, FLORIDA CONSTITUTION, IS HEREBY AMENDED AS FOLLOWS:

Add this section to Article VI on the day after it is approved by the electors of Florida:

Section 7. Term Limits Pledge

(a) The Secretary of State shall permit but not require any candidate for the United States Congress to submit to the Secretary of State an executed copy of the Term Limits Pledge set forth in subsection (b) of this section up until 15 days prior to the Secretary of State's certification of the ballot in order for the ballot information set forth in subsections (c) and (d) of this section to be included on that ballot.

(b) The Term Limits Pledge will be as set forth herein and will incorporate the applicable language in [] for the office the candidate seeks:

I voluntarily pledge not to serve in the United States [House of Representatives more than 3 terms] [Senate more than 2 terms] after the effective date of this provision and authorize the Secretary of State to notify the voters of this action by placing the applicable ballot information 'Signed TERM LIMITS pledge to serve no more than [3 terms] [2 terms]' or 'Broke TERM LIMITS' pledge next to my name on every election ballot and in all state sponsored voter education material in which my name appears as a candidate for the office for which the pledge refers.

Signature Date

(c) The Secretary of State shall place on every election ballot and in all state sponsored voter

education material the applicable ballot information, 'Signed TERM LIMITS pledge to serve no more than [3 terms] [2 terms]' next to the name of any candidate for the office of United States Representative and United States Senator who has ever executed the Term Limits Pledge except when subsection (d) of this section applies.

(d) The Secretary of State shall place on every election ballot and in all state sponsored voter education material the ballot information, 'Broke TERM LIMITS pledge' next to the name of any candidate who at any time executes the Term Limits Pledge and thereafter qualifies as a candidate for a term that would exceed the number of terms set forth in the Term Limits Pledge.

(e) For the purpose of this section, service in office for more than one-half of a term shall be deemed service for a term.

(f) The Secretary of State shall implement this section by rule.

(g) If any portion of this section is held invalid for any reason, the remaining portion to the fullest extent possible shall be severed from the void portion and given the fullest force and application."

The ballot title for the proposed amendment is "TERM LIMITS PLEDGE." The summary for the proposed amendment provides:

"Directs Secretary of State to permit but not require candidates for the United States Congress to pledge to serve a maximum of 3 terms if elected to the House of Representatives and 2 terms if elected to the Senate and to indicate on all primary, special and general election ballots which candidates have taken the pledge and which have taken and broken the pledge. Affects powers of Secretary of State under Article IV."

BALLOT TITLE AND SUMMARY

Section 16.061, Florida Statutes, requires the Attorney General's Office to petition this Honorable Court for an advisory opinion as to whether the proposed ballot title and summary comply with section 101.161, Florida Statutes.

Section 101.161, Florida Statutes, provides in relevant part:

"Whenever a constitutional amendment . . . is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot 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 on several occasions "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); *Advisory Opinion to the Attorney General--Limited Political Terms in Certain Elective Offices*, 592 So. 2d 225, 228 (Fla. 1991). However, the ballot must give the voter fair notice of the decision he must make. *Askew v. Firestone*, 421 So. 2d 151, 155

(Fla. 1982). This Court has stated that the purpose of section 101.161, Florida Statutes, is to ensure that the voters are advised of the true meaning of an amendment. *Id.* at 156.

While the ballot summary refers to the powers of the Secretary of State under Article IV, it does not identify Article IV as an article of the Florida Constitution. More troubling, however, is that the text of the proposed amendment creates a new section under Article VI, not Article IV. There is no reference in the proposed amendment to Article IV. Article IV refers to the Secretary of State as a member of the Cabinet, responsible for keeping the records of the official acts of the legislative and executive departments. See, Article IV, section 4(b), Florida Constitution; *and see* , Article IV, section 7(a), Florida Constitution, providing for the Governor's suspension power which shall be exercised by executive order filed with the Secretary of State.

Article VI of the Florida Constitution, which relates to elections, contains no reference to the Secretary of State's duties or responsibilities relating to the conduct of elections; rather, the duties of the Secretary of State regarding the preparation of the ballot would appear to be statutory rather than constitutional. See Article VI, section 1, Florida Constitution, providing that elections may be regulated by law.

As this Court has previously held in *In re Advisory Opinion to the Attorney General--Property Rights*, 644 So. 2d 486, 494 (Fla. 1994), "the ballot title and summary must advise the electorate of the true meaning and ramifications of the amendment and, in particular, must be accurate and informative." The Attorney General's Office, therefore, respectfully requests this Honorable Court's opinion as to whether the ballot title and summary of the constitutional amendment, proposed by initiative petition, comply with section 101.161, Florida Statutes.

SINGLE SUBJECT LIMITATION

Section 16.061, Florida Statutes, requires the Attorney General's Office, within 30 days after receipt of the proposed amendment to the Florida Constitution by citizens' initiative, 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.

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."

A proposed amendment meets this single-subject requirement if it has "a logical and natural oneness of purpose" or "may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme." *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984). The purpose of the single-subject requirement, which imposes a "functional as opposed to a locational restraint on the range of authorized amendments," is to protect against multiple precipitous changes in the state's Constitution. *Id.*

In Advisory Opinion to Attorney General--Limited Political Terms in Certain Elected Offices, 592

So. 2d 225, 227 (Fla. 1991), this Court held that an initiative petition imposing term limits on certain elected offices was intended to amend article VI, section 4 of the state Constitution, which provides that "[n]o person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability." As this Court stated in upholding the initiative petition:

"Although the proposed amendment affects officeholders in three different branches of government, that fact alone is not sufficient to invalidate the proposed amendment. We have found proposed amendments to meet the single-subject requirement even though they affected multiple branches of government."

Id. This Court, however, recently struck down the initiative petition for funding public education in *Advisory Opinion to the Attorney General--Requirement for Adequate Public Education Funding*, Case No. 89,962 (Fla., filed November 20, 1997), as violative of the single subject requirement on the basis that by setting a minimum percentage of appropriations for education, the initiative substantially affected all other functions of government by relegating the remaining sixty percent budget share to such other functions.

The proposed amendment imposes constitutional duties upon the Secretary of State not presently possessed by that office and creates a mandatory ballot procedure that affects candidates for congressional office. While the two areas might be considered interrelated for the purpose of the initiative, it should be noted that the Florida Constitution does not currently prescribe any power of the Secretary of State regarding elections; rather, the state Constitution currently provides that elections shall be regulated by law. The proposed amendment thus grants constitutional recognition to the Secretary of State's duties regarding elections, which have heretofore been solely statutory, and therefore affects the Legislature's authority to regulate elections.

Accordingly, 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.

This Court, in reviewing the propriety of these initiative petitions, has stated that it does not rule on the merits or wisdom of the proposal but rather determines the legal issues presented by the State Constitution and relevant statutes. *Advisory Opinion to Attorney General--Tax Limitation I*, 644 So. 2d at 489. Thus, this Court has held that its jurisdiction is limited to two issues: whether the initiative petition violates the single-subject requirement of Article XI, section 3 of the Florida Constitution; and whether the ballot title and summary are misleading, in violation of section 101.161(1), Florida Statutes. *Advisory Opinion to the Attorney General--Stop Early Release of Prisoners; Advisory Opinion to Attorney General--Limited Political Terms in Certain Elected Offices, supra; Advisory Opinion to Attorney General--People's Property Rights, Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects, Voter Approval Required for New Taxes, Property Rights*, 699 So. 2d 1304 (Fla. 1997).

Accordingly, no issue is raised by this office regarding the state's authority to request candidates for federal office to take such a pledge.

Respectfully submitted,

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RAB/tgk

Enclosures

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