

Right to Select Health Care Providers Initiative

Number: PETITION

Date: March 25, 1997

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 February 27, 1997, the Secretary of State submitted to this office an initiative petition seeking to amend the Florida Constitution to provide for the right of citizens to choose health care providers. The full text of the proposed amendment states:

"Article I of the Constitution of the State of Florida is hereby amended to add the following:

- 1) "SECTION 24. Right to Select Health Care Providers.--
 - (a) The right of every natural person to the free, full, and absolute choice in the selection of health care providers, licensed in accordance with state law, shall not be denied or limited by law or contract.
 - (b) This section shall not be construed to limit the authority of the state to regulate health care providers to ensure the preservation of the health, safety and welfare of the public.
- 2) This amendment shall take effect on the date it is approved by the electorate, however, this section shall not be applied to impair the obligations of contracts existing and in force at the time this section takes effect."

The ballot title for the proposed amendment is "Right of Citizens to Choose Health Care Providers." The summary for the proposed amendment provides:

"Establishes the right of citizens to choose health care providers. This provision prevents insurance companies, managed care personnel, employers, and other such third parties from controlling a citizen's selection of health care providers; requiring provision for choice of health care providers in future contracts providing care under programs such as those organized under Chapter 440, Chapter 627, Chapter 636 and Chapter 641, Florida Statutes."

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. It is questionable whether the ballot title and summary provide fair notice of the true meaning of the proposed revision to the Florida Constitution.

In addition, the ballot summary does not track the language of the amendment; rather it suggests applications not contained in the text of the proposed amendment. The Court, therefore, may wish to consider whether the ballot title and summary adequately reflect the language of the proposed amendment such that the voter is given fair notice of the decision he must make.

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."

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."

As this Court stated in *Advisory Opinion to the Attorney General--Save Our Everglades Trust Fund*, 636 So. 2d 1336 (Fla. 1994), the single subject limitation guards against "log-rolling," in which several separate issues are rolled into a single initiative in order to secure approval of an otherwise unpopular issue. "Logrolling" does not give the voters an opportunity to express their approval or disapproval on each of the several issues but rather has "the purpose of aggregating for the measure the favorable votes from electors of many persuasions who, wanting strongly enough any one or more of the propositions offered, might grasp at that which they want, tacitly accepting the remainder." *Advisory Opinion to the Attorney General--Save Our Everglades Trust Fund*, *supra*, quoting *Adams v. Gunter*, 238 So. 2d 824, 831 (Fla. 1970).

The proposed initiative states that every natural person has the right to "free, full, and absolute choice" in selecting a health care provider. The initiative, however, does not elaborate on the effect or breadth of "free, full, and absolute choice." No other articles of the Constitution are identified as being substantially affected. The Court may wish to consider whether the proposed amendment may be so broad as to violate the single subject requirement of Article XI, section 3, Florida Constitution.

Therefore, the Attorney General's Office respectfully requests 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 proposed title and summary comply with section 101.161, Florida Statutes.

Respectfully submitted,

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PA/tgk

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