

O/A 2-22-88

IN THE SUPREME COURT OF FLORIDA

3-1-88

In Re: ADVISORY OPINION TO THE ATTORNEY
GENERAL -- LIMITATION ON
NON-ECONOMIC DAMAGES IN
CIVIL ACTIONS

Case No.: 71,701

INITIAL BRIEF OF THE FLORIDA COMMITTEE
FOR LIABILITY REFORM
SUPPORTING VALIDITY OF THE
PROPOSED AMENDMENT
AND BALLOT SUMMARY

FREDERICK B. KARL
KARL, McCONNAUGHAY, ROLAND,
and MAIDA
Suite 950
101 North Monroe Street
Post Office Drawer 229
Tallahassee, Florida 32302-0229

and

WILLIAM H. ADAMS, III
MAHONEY ADAMS MILAM SURFACE
& GRIMSLEY
Post Office Box 4099
Jacksonville, Florida 32201
(904) 354-1100

Attorneys for Florida
Committee for Liability
Reform

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STATEMENT OF THE CASE AND FACTS

The Florida Committee for Liability Reform ("Committee") is sponsor of the proposed amendment to Article I, Section 21 of the Florida Constitution that is the subject of this proceeding.

The proposed amendment reads:

Section 1. Article I, Section 21 of the Florida Constitution is amended by adding the following:

provided that a person entitled to recover damages for bodily injury in any action brought after the effective date of this Amendment may not recover an aggregate of more than \$100,000 for non-economic losses. Non-economic losses include pain and suffering, inconvenience, mental anguish, loss of capacity to enjoy life, loss of consortium and other non-pecuniary losses.

Section 2. Article I, Section 21 of the Florida Constitution is further amended by adding the following:

By general law the maximum amount recoverable may be adjusted to conform to changes that occur after the effective date of this Amendment in a consumer price index published by the United States Government.

Section 3. Schedule.

A) If this Amendment is held invalid for containing more than one subject, this Amendment shall be limited to Section 1.

B) This Amendment shall take effect thirty days after the date of the election at which it is approved.

The ballot title and summary the Committee submitted with the proposed amendment are worded as follows:

LIMITATION OF NON-ECONOMIC DAMAGES IN CIVIL ACTIONS

Amendment provides that a person entitled to recover damages for bodily injuries in any action may not recover more than \$100,000 for non-economic losses; defines non-economic losses to include pain and suffering, inconvenience, mental anguish, loss of capacity to enjoy life, loss of consortium and other non-pecuniary losses; provides by general law the maximum amount recoverable may be adjusted utilizing a consumer price index published by the United States Government; provides an effective date.

The Committee drafted the proposed amendment, solicited the requisite number of signed petitions to invoke the procedure provided for in Sections 100.371 and 101.161 of the Florida Statutes (1987), and submitted them to the county supervisors of elections. After verifying the signatures, the county supervisors certified the results to the Secretary of State. In accordance with Sections 100.371 and 101.161, the Committee tendered the amendment and the ballot title and summary to the Secretary of State for review by the Attorney General. As required by Section 16.061 of the Florida Statutes (1987), the Attorney General has petitioned this Court for an advisory opinion on whether the initiative amendment meets the requirements of Article XI, Section 3 of the Florida Constitution and whether the ballot title and summary meet the requirements of Section 101.161.

The Court has jurisdiction under Article V, Section 3(10) of the Florida Constitution to render an advisory opinion in response to the Attorney General's request.

SUMMARY OF ARGUMENT

To be valid, a proposed initiative amendment must comply with Article XI, Section 3 of the Florida Constitution and the ballot title and summary must comply with Section 101.161 of the Florida Statutes. The proposed amendment complies with the single-subject requirement of Article XI, Section 3, and the ballot title and summary give voters fair notice of the choice they must make in deciding how to vote on the proposed amendment.

Article XI, Section 3, provides that the people may propose a revision or amendment of the Constitution if the revision or amendment embraces only "one subject and matter directly connected therewith." Since the proposed amendment affects only one legislative function and only one section of the Constitution, it clearly meets this requirement.

The language of the ballot title and summary fully complies with the requirements of Section 101.161 of the Florida Statutes. It provides the requisite clear and unambiguous explanation of the measure's purpose and effect.

This Court should issue an advisory opinion concluding that the proposed amendment complies with Article XI, Section 3, and that the ballot title and summary submitted with it comply with Section 101.161.

ARGUMENT

I. Does the Proposed Amendment Comply With Article XI, Section 3 of the Florida Constitution?

A. The Constitutional Provision.

In relevant part, Article XI, Section 3, reads:

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 shall embrace but one subject and matter directly connected therewith.

B. The Standard of Review.

The Court has consistently held that the right of the people to vote on a proposed constitutional amendment will not be restricted unless the proposal is "clearly and conclusively defective." Floridians Against Casino Takeover v. Let's Help Florida, 363 So.2d. 337, 339 (Fla. 1978); Goldner v. Adams, 167 So.2d 575 (Fla. 1964).

C. The Proposed Amendment Has Only One Subject, and All of Its Provisions Are Incidental and Directly Connected With It.

In determining whether a proposed amendment contains "one subject and matter directly connected therewith," the Court has typically reviewed the relationship between the subsections of the proposed amendment. Carroll v. Firestone, 497 So.2d 1204, 1206 (Fla. 1986). If it finds that they are interconnected and all relate to a single subject, it has held that the amendment complies with this requirement. In Carroll, the proposed amendment read:

(a) Lotteries may be operated by the State.

(b) If any subsections of the Amendment of the Florida Constitution are held unconstitutional for containing more than one subject, this Amendment shall be limited to subsection (a) above.

(c) This Amendment shall be implemented as follows:

(1) On the effective date of this Amendment, the lotteries shall be known as the Florida Education Lotteries. Net proceeds derived from the lotteries shall be deposited to a state trust fund, to be designated The State Education Lotteries Trust Fund, to be appropriated by the Legislature. The schedule may be amended by general law.

Id. at 1205-1206.

After reviewing the relationship between the subsections, the Court found that they were logically connected and contained only one subject. Id. at 1206. Throughout its opinion, the Court drew an analogy between the language of the proposal and that of the proposal approved in Floridians Against Casino Takeover v. Let's Help Florida, 363 So.2d 337 (Fla. 1978).

In Floridians Against Casino Takeover, the proposed amendment contained the following language:

Art. X, § 15, Fla. Const. is created to read:

Casino Gambling: The operation of state regulated privately owned gambling casinos is hereby authorized only within the following limited area:

* * * *

Taxes upon the operation of gambling casinos shall be collected by the State and appropriated to the several counties, school districts and municipalities for the support and maintenance of the free public schools and local law enforcement.

Id. at 338.

Despite arguments that the amendment dealt with several subjects, the Court upheld its validity. It found that the proposal authorized state regulated, privately operated casino gambling in a specific geographical area and directed that resulting tax revenues be used for education and local law enforcement, "part and parcel of the single subject of legalized casino gambling." Id. at 340. The Court concluded that the amendment had but one main purpose, that its additional language was reasonably necessary to effectuate that purpose, and that it was not "clearly and conclusively defective" within the purview of Article XI, Section 3 of the Florida Constitution. Id. at 342.

D. The Proposed Amendment Affects Only One Clearly Defined Legislative Function.

In Fine v. Firestone, 448 So.2d 984 (Fla. 1984), the Court receded from the liberal construction it had used in deciding Floridians Against Casino Takeover and its progeny. In Floridians Against Casino Takeover, the Court had held that conflicts between an initiative proposal and other articles or sections of the Constitution have "no place in assessing the legitimacy of an initiative proposal...." 363 So.2d at 341. In Fine, the Court withdrew from this position and held that the effect of an initiative proposal on other articles or sections of the Constitution is an appropriate factor to be considered in determining whether more than one subject is included in an initiative proposal. Fine, at 989-90.

Fine involved a proposed amendment that would have limited the amount of revenues received by the state and by all taxing units of the state to the amount received during the preceding fiscal period. The Court found that the proposal addressed three subjects and involved, not only different functions of government structure, but multiple provisions of the Constitution. It found that none of the proposed changes had been identified to the electorate. Id. 990. It concluded that the proposed amendment could not constitutionally be placed before the voters because it embraced the following diverse subjects: (1) how government entities can tax; (2) how much government can provide in services; and (3) how governments can finance the construction of capital improvements. Id. at 991.

The Court observed that the purpose of the single-subject requirement is to allow citizens to vote on singular changes in our government that are identified in the proposal and "to avoid voters having to accept part of a proposal which they oppose in order to obtain a change they support." Id. at 993.

Approximately six months after the Court decided the Fine case, it was faced with another initiative amendment in Evans v. Firestone, 457 So.2d 1351 (Fla. 1984). The Evans amendment read:

CITIZEN'S RIGHTS IN CIVIL ACTIONS

In civil actions: a) no party can be found liable for payment of damages in excess of his/her percentage of liability; b) the Court shall grant a summary judgment on motion of any party, when the Court finds no genuine dispute exists concerning the material facts of the case; c) noneconomic damages such as pain and suffering,

mental anguish, loss of consortium, and loss of capacity for the enjoyment of life shall not be awarded in excess of \$100,000 against any party.

Id. at 1353.

The Court held that the amendment violated the prohibition against multiple subjects because it contained both substantive provisions limiting liability and procedural provisions relating to summary judgment. Id. at 1354. After finding that the substantive provisions were legislative in nature and the procedural provisions related to the judiciary, the Court stated, "where such an initiative performs the functions of different branches of government, it clearly fails the functional test for the single-subject limitation...." Id.

In Evans, the Court explained that Fine stands for the proposition that enfolding diverse subjects within the cloak of a broad generality does not satisfy the single-subject requirement. Evans, at 1353. It noted that the amendment in Fine had been found to include multiple subjects because it involved several legislative functions. Evans, at 1354. The Court ruled that the amendment in Evans was defective because it undertook to perform not only legislative, but also judicial functions. Id. To survive the single-subject test, a proposed amendment may perform only one governmental function.

Application of the reasoning used by the Court in Evans, leads to the conclusion that the limitation on liability in the amendment now before the Court is substantive in nature and that the amendment would perform only a legislative function.

The amendment does not purport to confer on anyone a right to recover non-economic damages. That is left to the legislature and courts. The amendment provides simply that if a person is entitled to recover such damages, which the amendment necessarily defines, the amount cannot exceed \$100,000.

The second section of the amendment also performs a legislative function, one that is directly connected with the function performed by the first section. It authorizes the legislature to enact general laws designed to adjust the amount of the limitation to conform to changes after the effective date of the amendment in a consumer price index published by the United States Government. The natural relationship between the two sections is obvious. The second section relates directly to the first and would be meaningless standing alone. See City of Coral Gables v. Gray, 19 So.2d 318, 320 (Fla. 1944). The two sections are thus "directly connected with" each other.

Finally, the schedule specifying the effective date and directing the Court to ignore section 2 if it should determine that its inclusion injects another subject is another directly connected provision. It is directly related to the adoption of the amendment and has no significance apart from the principal subject of the amendment. In Carroll v. Firestone, supra, this Court commended the drafters of that amendment for including a similar provision in their amendment. 497 So.2d at 1206. In Carroll, despite an opponent's suggestion that the subsection

impinged on the Court's constitutional authority to interpret the Constitution, the Court stated:

[W]hile we are charged with the ultimate responsibility for interpreting the Constitution, the intent of the drafters or adopters of a constitutional provision is a highly relevant factor. We see no constitutional infirmity, but much to commend, in a drafter attempting to make clear the intent of a constitutional provision.

Id. at 1206.

In summary, the proposed amendment meets the constitutional requirements contained in Article XI, Section 3, because it has but one clearly defined legislative purpose and all of its provisions are directly connected with that purpose.

II. The Ballot Title and Summary Comply With Section 101.161 and Give Voters Fair Notice of the Choice They Must Make.

Under Section 16.061 of the Florida Statutes, the Court is required to advise the Attorney General whether an initiative proposal meets the requirements of Section 101.161 of the Florida Statutes, which provides in relevant part:

(1) 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 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.

The Court typically has upheld the sufficiency of descriptions of the substance of amendments if they "give a voter fair notice of the decision which he must make." Miami Dolphins, Ltd. v. Metropolitan Dade County, 394 So.2d 981, 987 (Fla. 1981).

A summary meets the fair notice requirement if it is a clear and

unambiguous explanation of a measure's chief purpose. Askew v. Firestone, 421 So.2d 151, 155 (Fla. 1982).

In Grose v. Firestone, 422 So.2d 303 (Fla. 1982), the Court upheld a ballot summary that unambiguously and clearly stated the amendment's chief purpose. Id. at 305. There, the purpose of the amendment was to assure that Article I, Section 12 of the Florida Constitution would be read in conformity with the Fourth Amendment to the United States Constitution. Noting that a ballot summary need not cite all future effects of an amendment, the Court concluded that the ballot summary gave fair notice of the intent of the amendment. Id.

In Evans v. Firestone, supra, the Court struck not only the amendment because it violated the single-subject requirement, but the ballot title because it was found to contain editorial comment and misleading statements. 457 So.2d at 1355. The Court held that editorial comment had no place in the summary: "The ballot summary should tell the voter the legal effect of the amendment, and no more." Id. The Court found the summary misleading because it inaccurately stated that the amendment would "establish" citizens' rights when in fact it would have put a cap on the amount a plaintiff could recover for non-economic damages. Id.

In Carroll v. Firestone, supra, the Court found that a ballot summary complied with Section 101.161. The ballot summary read:

The Amendment authorizes the state to operate lotteries. It provides a severance clause to retain the above provision should any subsections be held unconstitutional because of more than one subject. The

schedule provides, unless changed by law, for the lotteries to be known as the Florida Education Lotteries and for the net proceeds derived to be deposited in a state trust fund, designated State Education Lotteries Trust Fund, for the appropriation by the Legislature.

497 So.2d at 1206.

The Court approved the title and summary because they clearly explained the amendment's purpose:

The summary makes clear that the amendment authorizes state lotteries and that the revenues from such lotteries, subject to legislative override, will go to the State Education Lotteries Trust Fund. That is the chief purpose of the amendment and is all that the statute requires.

Id.

In this case, as in Carroll, the proposed amendment is simple and the language of the title and summary track its contents. Consistent with the decisions of this Court, the title and summary give voters fair notice of the decision they must make when they vote on the proposed amendment and provide a clear and unambiguous explanation of the measure's chief purpose. Attorney General Robert A. Butterworth, in his January 8, 1988, letter to the Justices of the Supreme Court of Florida wrote: "The language of the summary of the initiative petition to limit noneconomic damages in civil actions tracks the language in the proposed amendment to the Constitution." (Letter at page 3).

The title and summary clearly meet the statutory requirements. The summary contains no editorial material. It is not

misleading. No information is omitted. They should be upheld by this Court.

CONCLUSION

This Court should advise the Attorney General that the proposed amendment complies with Article XI, Section 3 of the Florida Constitution and that the title and the summary meet the requirements of Section 101.161 of the Florida Statutes.

Respectfully submitted,

KARL, McCONNAUGHAY, ROLAND,
and MAIDA
Frederick B. Karl
Suite 950
101 North Monroe Street
Post Office Drawer 229
Tallahassee, Florida 32302-0229

and

MAHONEY ADAMS MILAM SURFACE
& GRIMSLEY, P.A.
Post Office Box 4099
Jacksonville, FL 32201
(904) 354-1100

By: William H. Adams, III
William H. Adams, III

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished this 5th day of February, 1988, via first class United States mail and Federal Express upon the following: Honorable Robert A. Butterworth, Attorney General, State of Florida Department of Legal Affairs, The Capitol, Tallahassee, Florida 32399-1050.

William H. Adams, III
Attorney