
IN THE SUPREME COURT OF FLORIDA

Case No. 81,394

Upon A Request From The
Attorney General For An
Advisory Opinion As To The
Validity Of An Initiative Petition

IN RE:

**ADVISORY OPINION
TO THE ATTORNEY GENERAL-
LIMITED MARINE NET FISHING**

**INITIAL BRIEF OF SAVE OUR SEALIFE COMMITTEE
IN SUPPORT OF LIMITED MARINE NET FISHING INITIATIVE**

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STATEMENT OF THE CASE AND FACTS

This matter is before the Court upon a request from the Attorney General [A 1-5], submitted in accordance with article IV, section 10 of the Florida Constitution¹ and section 16.061(1), Florida Statutes (1991),² for an advisory opinion as to the validity of an initiative petition circulated pursuant to article XI, section 3 of the Florida Constitution.³ The initiative petition [A 6] proposes to amend article X of the Florida Constitution by adding a new provision, section 16, which would

¹ "SECTION 10. Attorney General.--The attorney general shall, as directed by general law, request the opinion of the justices of the supreme court as to the validity of any initiative petition circulated pursuant to Section 3 of Article XI. The justices shall, subject to their rules of procedure, permit interested persons to be heard on the questions presented and shall render their written opinion expeditiously."

² "16.061 Initiative petitions.--
(1) The Attorney General shall, within 30 days after receipt of a proposed revision or amendment to the State Constitution by initiative petition from the Secretary of State, petition the Supreme Court, requesting an advisory opinion regarding the compliance of the text of the proposed amendment or revision with s. 3, Art. XI of the State Constitution and the compliance of the proposed ballot title and substance with s. 101.161. The petition may enumerate any specific factual issues which the Attorney General believes would require a judicial determination."

³ "SECTION 3. Initiative.--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. It may be invoked by filing with the secretary of state a petition containing a copy of the proposed revision or amendment, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen."

limit the use of nets for catching saltwater finfish, shellfish, or other marine animals in Florida waters. As provided in section 16.061(1), the Attorney General seeks a determination as to whether the text of the proposed amendment complies with the "single subject" restriction of article XI, section 3, and whether the proposed ballot title and summary comply with the requirements of section 101.161(1), Florida Statutes (1991).⁴

In his letter to the Court dated March 9, 1993, the Attorney General advised that the initiative petition had been submitted to him on February 19⁵ by the Secretary of State pursuant to section 15.21, Florida Statutes (1991) [A 1], which constituted a certification that all preliminary procedural requirements prescribed by law for submission of an initiative petition to the Attorney General had been satisfied.⁶ The

⁴ Section 101.161(1) provides in pertinent part:

The substance of the amendment or other public measure 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.

⁵ The Attorney General's petition to this Court for an advisory opinion was filed within 30 days after his receipt of the initiative petition from the Secretary of State, thus complying with the time limitation mandated by section 16.061(1).

⁶ Section 15.21 directs that the Secretary of State "shall immediately submit an initiative petition to the Attorney General" if the sponsor has satisfied what may be characterized as the mechanical requirements of (1) registering as a political committee; (2) submitting the ballot title, substance, and text of the proposed amendment for approval by the Secretary of State; and (3) obtaining confirmation from the Division of Elections that at least 10% of the requisite number of petition forms has been signed by eligible voters in at least one-fourth of the necessary

Attorney General acknowledged that, under this Court's decision in Advisory Opinion to the Attorney General -- Limited Political Terms in Certain Elective Offices, 592 So.2d 225, 227 (Fla. 1991), the scope of review in this proceeding is limited "to addressing whether the proposed amendment and ballot title and summary comply with article XI, section 3, Florida Constitution and section 101.161, Florida Statutes." On those issues, the Attorney General expressed a belief that the text of the proposed amendment appears to comply with the single subject limitation, and that the ballot title and summary indicate the chief purpose of the proposed amendment [A 4-5].

On March 17, 1993, this Court issued an Interlocutory Order [A 7-11] in which it acknowledged the Attorney General's request, and invited interested parties to be heard on those issues through briefing and oral argument. Pursuant to that order, this initial brief is submitted on behalf of Save Our Sealife Committee, the duly registered political committee that sponsored the initiative and that appears here in support of its validity.

SUMMARY OF THE ARGUMENT

The only issues properly before this Court are whether the text of the initiative proposal complies with the single subject limitation and whether the ballot summary satisfies the requirements of section 101.161(1). On those issues, the scope of review is narrow -- the Court will not interfere with the submission of a proposed amendment to the voters unless the opposing party sustains its burden of showing that the proposal is

congressional districts.

"clearly and conclusively defective"; and in applying that test, the Court is not concerned with the wisdom or merit of the amendment.

This amendment clearly complies with the single subject limitation, which requires only that the proposal, when viewed broadly, have a "logical and natural oneness of purpose." Both on its face and in its functional effect, the proposed amendment produces a singular change to one section of the Constitution by limiting the use of certain fishing nets in Florida waters. Because the proposal would not confront the voter with competing policy choices, it does not constitute impermissible "logrolling"; nor does the proposal conflict with other provisions of the Constitution or affect any government functions. The penalty provisions and the effective date and severability clauses provide details of implementation that are logically connected to the subject of the amendment, and thus are not cause for objection.

The ballot summary likewise satisfies the requirements of section 101.161(1), because it gives fair notice as to the chief purpose and effect of the amendment so that the voter can make an intelligent judgment. The summary does not mislead voters by omission of any material facts, but accurately tracks the provisions of the proposed amendment with more than sufficient detail to meet established standards.

ARGUMENT

In accordance with the procedure mandated by article IV, section 10 of the Florida Constitution, and section 16.061(1), Florida Statutes (1991), the Attorney General has requested an

advisory opinion from this Court as to the validity of the initiative petition entitled "Limiting Marine Net Fishing." The only issues presented for resolution are the two identified in the Court's Interlocutory Order -- first, whether the text of the proposed amendment complies with the single subject limitation prescribed by article XI, section 3 of the Florida Constitution; and second, whether the proposed ballot title and substance comply with the explanatory summary requirements of section 101.161(1), Florida Statutes (1991). With respect to these issues, article IV, section 10 directs the justices to hear interested parties and render a written opinion expeditiously.⁷

In assessing the validity of a proposed constitutional amendment, this Court has recognized that it "must act with extreme care, caution, and restraint before it removes a constitutional amendment from the vote of the people," and has repeatedly reaffirmed that it will not interfere with the right of the people to vote on such amendments absent a showing that the proposal is "clearly and conclusively defective." Askew v. Firestone, 421 So.2d 151, 154-56 (Fla. 1982). See also, e.g., Floridians Against Casino Takeover v. Let's Help Florida, 363 So.2d 337, 339 (Fla. 1978); Weber v. Smathers, 338 So.2d 819, 821 (Fla. 1976); Goldner v. Adams, 167 So.2d 575, 575 (Fla. 1964). The burden of showing that the initiative proposal is clearly and conclusively defective

⁷ This procedure was established in response to repeated pleas, led by Justice Overton, to "devise a process whereby misleading language can be challenged and corrected in sufficient time to allow a vote on the proposal." Askew v. Firestone, 421 So.2d 151, 157 (Fla. 1982) (Overton, J., concurring); see also Evans v. Firestone, 457 So.2d 1351, 1356-57 (Fla. 1984) (Overton, J., concurring).

rests upon the party opposing the amendment. Floridians Against Casino Takeover, 363 So.2d at 340.

Consistent with the limited scope of its inquiry, this Court has emphasized that "[n]either the wisdom of the provision nor the quality of its draftsmanship is a matter for [judicial] review." Weber v. Smathers, 338 So.2d at 822. See also Gray v. Childs, 115 Fla. 816, 156 So. 274, 279 (1934). Rather, the merit of the proposed amendment is a matter to be debated and decided "in the public forum." Carroll v. Firestone, 497 So.2d 1204, 1206 (Fla. 1986); see also Fine v. Firestone, 448 So.2d 984, 992 (Fla. 1984). For purposes of this proceeding, then, the question of whether as a matter of policy the use of marine fishing nets in Florida waters ought to be limited is immaterial and should not be given any weight in determining the right of the people to vote on the proposed amendment.

(a) The Proposed Amendment Complies With The Single Subject Requirement.

The first issue to be resolved is whether the text of the proposed amendment complies with article XI, section 3 of the Florida Constitution, which provides in pertinent part:

SECTION 3. Initiative.--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.

(Emphasis added.) The requirement that a proposed amendment must be limited to "but one subject and matter directly connected therewith" was adopted in response to this Court's decision in Adams v. Gunter, 238 So.2d 824 (Fla. 1970), and has been in effect

since 1972. See Floridians Against Casino Takeover, 363 So.2d at 339-40. Analysis reveals that under the standards previously enunciated by this Court, which require that initiative proposals be viewed broadly and be sustained as valid if there is a facial and functional unity of purpose, the amendment presented here clearly satisfies the single subject requirement, because it simply adds a new section to the Florida Constitution for the sole purpose of limiting the use of certain fishing nets in Florida waters.

Although the "one subject" limitation on constitutional initiatives "obviously means different things to different, reasonable people," Weber v. Smathers, 338 So.2d at 822 (England, J., concurring), this Court has held that the restriction "should be viewed broadly rather than narrowly." Floridians Against Casino Takeover, 363 So.2d at 340. Whether a proposed amendment satisfies the single subject requirement is determined by examining its "functional effect." Evans v. Firestone, 457 So.2d 1351, 1354 (Fla. 1984). Thus, the fact that a proposed amendment "could have broad ramifications" is not objectionable if "on its face it deals with only one subject." In re Advisory Opinion to the Attorney General English -- The Official Language of Florida, 520 So.2d 11, 13 (Fla. 1988).

Characterizing the single subject limitation as a "rule of restraint," this Court has recognized that the purpose of the requirement "is to allow the 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 which they support." Fine v. Firestone,

448 So.2d at 993. See also, e.g., In re Advisory Opinion to the Attorney General English -- The Official Language of Florida, 520 So.2d at 12. Simply stated, to comply with the single subject requirement of article XI, section 3, the proposed amendment must have "a logical and natural oneness of purpose." Fine v. Firestone, 448 So.2d at 990; see also, e.g., In re Advisory Opinion to the Attorney General -- Homestead Valuation Limitation, 581 So.2d 586, 587 (Fla. 1991). A proposed amendment satisfies the single subject test if it "may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme." Advisory Opinion to the Attorney General -- Limited Political Terms in Certain Elective Offices, 592 So.2d at 227 (quoting from Fine v. Firestone, 448 So.2d at 990).

As this Court has often observed, the "primary and fundamental concern" of the single subject restriction is "the prevention of logrolling." Evans v. Firestone, 457 So.2d at 1354. See also Floridians Against Casino Takeover, 363 So.2d at 339. "Logrolling" is the practice of tying a desirable measure together with an undesirable proposal so as to attract support for both provisions from voters who might otherwise disfavor one or the other. See, e.g., Fine v. Firestone, 448 So.2d at 995-96 (Ehrlich, J., concurring in result only); see also Floridians Against Casino Takeover, 363 So.2d at 339; Smathers v. Smith, 338 So.2d 825, 830 n.21 (Fla. 1976). Even prior to the "one subject" limitation, this Court enjoined the submission of proposed amendments containing two or more provisions so unrelated that "the elector would be put in the position where, in order to aid in carrying a proposition which

he considered good or wise, he would be obliged to vote for another which he would otherwise reject as bad or foolish." City of Coral Gables v. Gray, 19 So.2d 318, 322 (Fla. 1944).

Application of the foregoing principles to the present proposal leaves no doubt that the amendment clearly complies with the single subject limitation. The text of the proposed amendment provides:

Section 16. Limiting Marine Net Fishing

(a) The marine resources of the State of Florida belong to all of the people of the state and should be conserved and managed for the benefit of the state, its people, and future generations. To this end the people hereby enact limitations on marine net fishing in Florida waters to protect saltwater finfish, shellfish, and other marine animals from unnecessary killing, overfishing and waste.

(b) For the purpose of catching or taking any saltwater finfish, shellfish or other marine animals in Florida waters:

(1) No gill nets or other entangling nets shall be used in any Florida waters; and

(2) In addition to the prohibition set forth in (1), no other type of net containing more than 500 square feet of mesh area shall be used in nearshore and inshore Florida waters. Additionally, no more than two such nets, which shall not be connected, shall be used from any vessel, and no person not on a vessel shall use more than one such net in nearshore and inshore Florida waters.

(c) For purposes of this section:

(1) "gill net" means one or more walls of netting which captures saltwater finfish by ensnaring or entangling them in the meshes of the net by the gills, and "entangling net" means a drift net, trammell net, stab net, or any other net which captures saltwater finfish, shellfish, or other marine animals by causing all or part of heads, fins, legs, or

other body parts to become entangled or ensnared in the meshes of the net, but a hand thrown cast net is not a gill net or an entangling net;

(2) "mesh area" of a net means the total area of netting with the meshes open to comprise the maximum square footage. The square footage shall be calculated using standard mathematical formulas for geometric shapes. Seines and other rectangular nets shall be calculated using the maximum length and maximum width of the netting. Trawls and other bag type nets shall be calculated as a cone using the maximum circumference of the net mouth to derive the radius, and the maximum length from the net mouth to the tail end of the net to derive the slant height. Calculations for any other nets or combination type nets shall be based on the shapes of the individual components;

(3) "coastline" means the territorial sea base line for the State of Florida established pursuant to the laws of the United States of America;

(4) "Florida waters" means the waters of the Atlantic Ocean, the Gulf of Mexico, the Straits of Florida, and any other bodies of water under the jurisdiction of the State of Florida, whether coastal, intracoastal or inland, and any part thereof; and

(5) "nearshore and inshore Florida waters" means all Florida waters inside a line three miles seaward of the coastline along the Gulf of Mexico and inside a line one mile seaward of the coastline along the Atlantic Ocean.

(d) This section shall not apply to the use of nets for scientific research or governmental purposes.

(e) Persons violating this section shall be prosecuted and punished pursuant to the penalties provided in section 370.021(2)(a), (b), (c)6. and 7., and (e), Florida Statutes (1991), unless and until the legislature enacts more stringent penalties for violations hereof. On and after the effective date of this section, law enforcement officers in the state are authorized to enforce the provisions of this section in the same manner and

authority as if a violation of this section constituted a violation of Chapter 370, Florida Statutes (1991).

(f) It is the intent of this section that implementing legislation is not required for enforcing any violations hereof, but nothing in this section prohibits the establishment by law or pursuant to law of more restrictions on the use of nets for the purpose of catching or taking any saltwater finfish, shellfish, or other marine animals.

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

(h) This section shall take effect on the July 1 next occurring after approval hereof by vote of the electors.

An examination of the proposed amendment discloses that it deals solely with one specified subject -- limiting the use of marine fishing nets in Florida waters. Paragraph (a) recites the purpose of the amendment -- to preserve and manage the marine resources of Florida for the benefit of present and future generations, by limiting marine net fishing in a manner that will protect against unnecessary killing, overfishing, and waste. The operative provisions of paragraph (b) delineate the limitations on the use of marine fishing nets, specifying that certain kinds of nets (gill nets or other entangling nets) are prohibited in all Florida waters, while other types are restricted with respect to size, number, and permissible areas of use in proximity to the shore. Paragraph (c) sets forth the precise definitions of the terms essential to enforcement of the limitations, and paragraph (d) provides an exemption for scientific research or governmental

purposes. Paragraph (e) prescribes by statutory incorporation the criminal and administrative penalties to which violators are subject, but further declares, together with paragraph (f), that the legislature may enact laws imposing more stringent penalties. Finally, paragraph (g) contains a severability clause and paragraph (h) provides an effective date. It appears that the amendment if adopted would be complete within itself and would not conflict with any other provision of the Florida Constitution. Indeed, this proposal is clearly consistent with article II, section 7, which declares it to be "the policy of the state to conserve and protect its natural resources." Both on its face and in its practical effect, the proposed amendment would produce a singular change in the Constitution that would not affect any function of the government.

Nor can this proposal be characterized as an attempt at "logrolling"--i.e., "the aggregation of dissimilar provisions in one law in order to attract the support of diverse groups to assure its passage." Fine v. Firestone, 448 So.2d at 988-90. The provisions of the amendment have "a logical and natural oneness of purpose," which is to conserve Florida's marine animal resources by limiting the use of marine fishing nets. There are no discernible aspects of the proposal that would pose a policy dilemma for voters or compel diverse interest groups to accept an unpalatable provision in order to obtain a desired change.

The fact that the amendment includes provisions imposing penalties for violation of the restrictions and authorizing the legislature to establish further restrictions and penalties

(paragraphs (e) and (f)) does not contravene the single subject requirement. Similar provisions were contained in the "Ethics in Government" initiative that was approved by this Court in Weber v. Smathers, supra. As a practical matter, the imposition of penalties is not a separate subject, but is an inherent and essential part of any provision by which certain conduct is proscribed or restricted; unless penalties are provided or authorized, the limitations on the use of marine fishing nets would be unenforceable and, in effect, a nullity.

Likewise, the fact that the proposal includes a severability clause (paragraph (g)) and an effective date clause (paragraph (h)) does not cause the amendment to run afoul of the single subject restriction.

If a proposed amendment has but one main purpose and all else included is incidental and reasonably necessary to effectuate the main object and purpose contemplated, it is not susceptible to the charge that it contains more than one amendment.

Floridians Against Casino Takeover, 363 So.2d at 339. Those additional provisions that set forth the "details of the scope and implementation" of the substantive amendment, including the time of taking effect and the severability of portions found to be invalid, have been regarded by this Court as "logically connected to the subject of the amendment." In re Advisory Opinion to the Attorney General -- Homestead Valuation Limitation, 581 So.2d at 588; see also In re Advisory Opinion to the Attorney General, Limitation of Non-Economic Damages in Civil Actions, 520 So.2d 284, 287 (Fla. 1988). In its most recent initiative review decision, this Court upheld a proposal that contained both a severability clause and an

affective date clause. Advisory Opinion to the Attorney General -- Limited Political Terms in Certain Elective Offices, supra.

From the foregoing analysis, there appears to be no basis for a finding that the text of the proposed amendment violates the single subject requirement. Keeping in mind that the restriction "should be viewed broadly rather than narrowly," and that the possibility of "broad ramifications" is no cause for objection so long as "on its face it deals with one subject," this Court should confirm the Attorney General's conclusion that the initiative petition complies with article XI, section 3.

(b) The Ballot Title And Substance Comply With Section 101.161(1).

The second question submitted for determination is whether the proposed ballot summary satisfies the requirements of section 101.161(1), Florida Statutes (1991), which provides in pertinent part:

The substance of the amendment or other public measure 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.

(Emphasis added.) Because there is no question that the ballot summary and title do not exceed the permissible number of words, the issue of compliance here turns solely on the substance of the summary.

In evaluating the propriety of a proposed ballot summary, this Court has consistently adhered to the standards enunciated in Hill v. Milander, 72 So.2d 796 (Fla. 1954):

[T]he only requirements in a[n] election of this kind are that the voter should not be misled and that he have an opportunity to know and be on notice as to the proposition on which he is to cast his vote. ... All that the Constitution requires or that the law compels or ought to compel is that the voter have notice of that which he must decide.... What the law requires is that the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot.

72 So.2d at 798 (emphasis added). See also, e.g., Advisory Opinion to the Attorney General -- Limited Political Terms in Certain Elective Offices, 592 So.2d at 228; In re Advisory Opinion to the Attorney General English -- The Official Language of Florida, 520 So.2d at 13; Grose v. Firestone, 422 So.2d 303, 305 (Fla. 1982); Miami Dolphins, Ltd. v. Metropolitan Dade County, 394 So.2d 981, 987 (Fla. 1981).

This Court has on numerous occasions reaffirmed that "[t]he purpose of section 101.161(1) is to assure that the electorate is advised of the meaning and ramifications of the proposed amendment." Wadhams v. Board of County Commissioners, 567 So.2d 414, 418 (Fla. 1990). See also Grose v. Firestone, 422 So.2d at 305; Askew v. Firestone, 421 So.2d at 156. The requirements of section 101.161(1) are satisfied if "[a]s a whole, the ballot summary fairly reflects the chief purpose of the proposed amendment," In re Advisory Opinion to the Attorney General English -- The Official Language of Florida, 520 So.2d at 13, or "accurately tracks and describes the proposed amendment." In re Advisory Opinion to the Attorney General, Limitation of Non-Economic Damages In Civil Actions, 520 So.2d at 287. In short, the ballot "must give the voter fair notice of the decision he must

make." Askew v. Firestone, 421 So.2d at 155; see also Miami Dolphins, Ltd. v. Metropolitan Dade County, 394 So.2d at 987.

Because "fair notice" is all that section 101.161(1) requires, this Court has rejected any notion that the ballot summary "must explain in detail what the proponents hope to accomplish by the passage of the amendment." In re Advisory Opinion to the Attorney General English -- The Official Language of Florida, 520 So.2d at 13. See also Miami Dolphins, Ltd. v. Metropolitan Dade County, 394 So.2d at 987. "It is not necessary to explain every ramification of a proposed amendment, only the chief purpose." Carroll v. Firestone, 497 So.2d at 1206. See also Advisory Opinion to the Attorney General -- Limited Political Terms in Certain Elective offices, 592 So.2d at 228 (ballot title and summary "need not explain every detail or ramification of the proposed amendment"); Grose v. Firestone, 422 So.2d at 305 ("Inclusion of all possible effects ... is not required in the ballot summary."). Thus, the fact that the ballot summary "could have been drafted more broadly" to provide some further explanation of the proposal is not fatal. In re Advisory Opinion to the Attorney General -- Homestead Valuation Limitation, 581 So.2d at 588.

Measured by those standards, the ballot title and summary in this case clearly pass muster under section 101.161(1). As set forth in the amendment petition form, the ballot title and summary are as follows:

LIMITING MARINE NET FISHING

Limits the use of nets for catching saltwater finfish, shellfish, or other marine animals by

prohibiting the use of gill and other entangling nets in all Florida waters, and prohibiting the use of other nets larger than 500 square feet in mesh area in nearshore and inshore Florida waters. Provides definitions, administrative and criminal penalties, and exceptions for scientific and governmental purposes.

[A 6.]

The ballot summary here goes beyond giving "fair notice" of the proposition on which the voter must decide. It informs the voter of what the amendment is generally intended to do (limit the use of marine fishing nets), and explains specifically how the intended limitation will be applied (prohibits gill and other entangling nets in all Florida waters, and limits the use of other marine nets to a certain size in certain areas). In addition, the summary gives notice that the new amendment provides definitions, penalties, and exceptions for scientific and governmental purposes.

This is not a case in which the ballot summary is misleading because it omits any explanation of material facts that are essential to an understanding of the changes effected by the proposed amendment. See Wadhams v. Board of County Commissioners, 567 So.2d at 416-17; Askew v. Firestone, 421 So.2d at 155-56; cf. Evans v. Firestone, 457 So.2d at 1355. The lack of reference to the severability clause does not render the summary defective. Advisory Opinion to the Attorney General -- Limited Political Terms in Certain Elective Offices, 592 So.2d at 228-29. In sum, it can fairly be said of the present proposal, as it was of that at issue in Grose v. Firestone, that

[t]here are no hidden meanings and no deceptive phrases. The summary says just what the amendment purports to do. It gives the public fair notice of the meaning and effect of the proposed amendment.

422 So.2d at 305. It follows that the ballot title and summary are in full compliance with section 101.161(1), and should therefore be declared valid by this Court.


CONCLUSION

The Court's role in this preliminary review process is solely to determine whether the proposed amendment complies with the single subject limitation and ballot summary requirements so as to qualify for submission to the voters. In performing that function, the Court has consistently reaffirmed that the right of the voters to pass upon a proposed constitutional amendment should not be denied absent a showing by those opposing the measure that the initiative is clearly and conclusively defective. Consistent with that philosophy, the validity of proposed amendments has been measured by broad standards, limited in application to the literal requirements of the Florida Constitution and statutes, and without regard to the wisdom or merit of the proposition submitted.

Based on those fundamental principles, it is clear that the amendment at issue here complies with the single subject limitation and the ballot summary requirements. Accordingly, this Court should issue an advisory opinion confirming the validity of the proposal and permitting its submission to the voters.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Initial Brief has been furnished by Hand Delivery to The Honorable Robert A. Butterworth, Attorney General, The Capitol, Tallahassee, Florida 32301, this 16th day of April, 1993.



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SID J. WHITE

MAR 9 1993

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By _____
Chief Deputy Clerk

STATE OF FLORIDA

OFFICE OF ATTORNEY GENERAL

ROBERT A. BUTTERWORTH

March 9, 1993

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

Dear Ms. Chief Justice Barkett and Justices:

In accordance with the provisions of Art. IV, s. 10, Fla. Const., and s. 16.061, Fla. Stat. (1991), it is my responsibility to petition this Court for a written opinion as to the validity of an initiative petition circulated pursuant to Art. XI, s. 3, Fla. Const.

On February 19, 1993, the Secretary of State, pursuant to s. 15.21, Fla. Stat. (1991), submitted to this office an initiative petition seeking to amend the State Constitution by adding s. 16 to Art. X, Fla. Const., to limit the use of nets for catching saltwater finfish, shellfish, or other marine animals. The petition provides:

Section 16. Limiting Marine Net Fishing

(a) The marine resources of the State of Florida belong to all of the people of the state and should be conserved and managed for the benefit of the state, its people, and future generations. To this end the people hereby enact limitations on marine net fishing in Florida waters to protect saltwater finfish, shellfish, and other marine animals from unnecessary killing, overfishing and waste.

(b) For purposes of catching or taking any saltwater finfish, shellfish or other marine animals in Florida waters:

(1) No gill nets or other entangling nets shall be used in any Florida waters; and

(2) In addition to the prohibition set forth in (1), no other type of net containing more than 500 square feet of mesh area shall be used in nearshore and inshore Florida waters. Additionally, no more than two such nets, which shall not be connected, shall be used from any vessel, and no person not on a vessel shall use more than one such net in nearshore and inshore Florida waters.

(c) For purposes of this section:

(1) "gill net" means one or more walls of netting which captures saltwater finfish by ensnaring or entangling them in the meshes of the net by the gills, and "entangling net" means a drift net, trammell net, stab net, or any other net which captures saltwater finfish, shellfish, or other marine animals by causing all or part of heads, fins, legs, or other body parts to become entangled or ensnared in the meshes of the net, but a hand thrown cast net is not a gill or an entangling net;

(2) "mesh area" of a net means the total area of netting with the meshes open to comprise the maximum square footage. The square footage shall be calculated using standard mathematical formulas for geometric shapes. Seines and other rectangular nets shall be calculated using the maximum length and maximum width of the netting. Trawls and other bag type nets shall be calculated as a cone using the maximum circumference of the net mouth to derive the radius, and the maximum length from the net mouth to the tail end of the net to derive the slant height. Calculations for any other nets of combination type nets shall be based on the shape of the individual components;

(3) "coastline" means the territorial sea base line for the State of Florida established pursuant to the laws of the United States of America;

(4) "Florida waters" means the waters of the Atlantic Ocean, the Gulf of Mexico, the Straits of Florida, and any other bodies of water under the jurisdiction of the State of Florida, whether coastal, intracoastal or inland, and any part thereof; and

(5) "nearshore and inshore Florida waters" means all Florida waters inside a line three miles seaward of the coastline along the Gulf of Mexico and inside a line one mile seaward of the coastline along the Atlantic Ocean.

(d) This section shall not apply to the use of nets for scientific research or governmental purposes.

(e) Persons violating this section shall be prosecuted and punished pursuant to the penalties in s. 370.021(2)(a), (b), (c) 6. and 7., and (e), Florida Statutes (1991), unless and until the legislature enacts more stringent penalties for violations hereof. On and after the effective date of this section, law enforcement officers in the state are authorized to enforce the provisions of this section in the same manner and authority as if a violation of this section constituted a violation of Chapter 370, Florida Statutes (1991).

(f) It is the intent of this section that implementing legislation is not required for enforcing any violations hereof, but nothing in this section prohibits the establishment by law or pursuant to law of more restrictions on the use of nets for the purpose of catching or taking any saltwater finfish, shellfish, or other marine animals.

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

(h) This section shall take effect on the July 1 next occurring after approval hereof by vote of the electors.

The ballot title and summary for the proposed amendment provides:

LIMITING MARINE NET FISHING

Limits the use of nets for catching saltwater finfish, shellfish, or other marine animals by prohibiting the use of gill and other entangling nets in all Florida waters, and prohibiting the use of other nets larger than 500 square feet in mesh area in nearshore and inshore Florida waters. Provides definitions,

administrative and criminal penalties, and exceptions for scientific and governmental purposes.

Section 16.061, Fla. Stat. (1991), requires the Attorney General, within 30 days after receipt of the proposed amendment or revision to the State Constitution by initiative petition, to petition this Honorable Court for an advisory opinion regarding compliance of the text of the proposed amendment with Art. XI, s. 3, Fla. Const., and compliance of the proposed ballot title and substance with s. 101.161, Fla. Stat. (1991). As this Court made clear in Advisory Opinion to the Attorney General--Limited Political Terms in Certain Elective Offices, 592 So.2d 225, 227 (Fla. 1991), the Attorney General and this Court are limited "to addressing whether the proposed amendment and ballot title and summary comply with article XI, section 3, Florida Constitution and section 101.161, Florida Statutes."

Article XI, s. 3, Fla. Const., reserves to the people the power to propose the revision or amendment of any portion of the Constitution by initiative. It requires, however, that any such revision or amendment "embrace but one subject and matter directly connected therewith." Evans v. Firestone, 457 So.2d 1351, 1354 (Fla. 1984). A proposed amendment meets this single-subject requirement if it has "a logical and natural oneness of purpose[.]" Advisory Opinion to the Attorney General--Limited Political Terms in Certain Elective Offices, 592 So.2d at 227, quoting, Fine v. Firestone, 448 So.2d 984, 990 (Fla. 1984).

The proposed initiative to be considered by this Court seeks to limit the use of nets for catching saltwater finfish, shellfish, or other marine animals by prohibiting the use of certain nets in Florida waters. In addition, the proposed amendment imposes criminal penalties for violation of its terms by incorporating by reference the penalties prescribed in s. 370.021(2)(a), (b), (c) 6. and 7. of the Florida Statutes. Thus, the proposed amendment would appear to embrace one subject and matter connected therewith.

Section 101.161, Fla. Stat. (1991), sets forth the requirements for the ballot title and substance of a proposed constitutional amendment. This Court has stated that the statute requires "that the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot" and does not omit material facts necessary to make the summary misleading. Askew v. Firestone, 421 So.2d 151, 155 (Fla. 1982). The ballot title and summary indicates the chief purpose of amendment, i.e., to limit marine net fishing. There is no existing constitutional provision imposing a different limitation on marine fishing.

The Honorable Rosemary Barkett
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The proposed amendment contains a severability clause which is not referenced in the summary. However, as this Court concluded in Advisory Opinion to the Attorney General--Limited Political Terms in Certain Elective Offices, 592 So.2d at 228-229, the lack of reference to such a provision is not necessarily misleading. The proposed amendment also provides that implementing legislation is not necessary although the Legislature may impose additional restrictions on the use of nets for the purpose of catching or taking saltwater finfish, shellfish or other marine animals. The summary does not contain a reference to this provision. However, this Court has recognized that a ballot summary need not explain every detail or ramification of the proposed amendment. Advisory Opinion to the Attorney General--Limited Political Terms in Certain Elective Offices, 592 So.2d at 228; Carroll v. Firestone, 497 So.2d 1204, 1206 (Fla. 1986).

Therefore, I respectfully request this Court's opinion as to whether the text of the proposed amendment to the State Constitution limiting the use of net fishing in Florida waters complies with Art. XI, s. 3, Fla. Const., and whether the proposed title and substance comply with s. 101.161, Fla. Stat. (1991).

Respectfully submitted,



Robert A. Butterworth
Attorney General

RAB/tjw

CONSTITUTIONAL AMENDMENT PETITION FORM

It is unlawful for any person to knowingly sign a petition or petitions for a particular issue or candidate more than one time. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

TITLE: LIMITING MARINE NET FISHING

SUMMARY: Limits the use of nets for catching saltwater finfish, shellfish, or other marine animals by prohibiting the use of gill and other entangling nets in all Florida waters, and prohibiting the use of other nets larger than 500 square feet in mesh area in nearshore and inshore Florida waters. Provides definitions, administrative and criminal penalties, and exceptions for scientific and governmental purposes.

I am a registered voter of Florida and hereby petition the Secretary of State to place the following amendment to the Florida Constitution on the ballot in the general election.

(Please print information as it appears on voter records.)

Name _____

Address _____

City _____ Zip _____

County _____

Precinct _____ Congressional District _____



Sign as registered

Date _____

Date Signed

FULL TEXT OF PROPOSED AMENDMENT: BE IT ENACTED BY THE PEOPLE OF FLORIDA THAT:

Article X, Florida Constitution, is hereby amended to add the following: Section 16. Limiting Marine Net Fishing.

(a) The marine resources of the State of Florida belong to all of the people of the state and should be conserved and managed for the benefit of the state, its people, and future generations. To this end the people hereby enact limitations on marine net fishing in Florida waters to protect saltwater finfish, shellfish, and other marine animals from unnecessary killing, overfishing and waste.

(b) For the purpose of catching or taking any saltwater finfish, shellfish or other marine animals in Florida waters:

- (1) No gill nets or other entangling nets shall be used in any Florida waters; and
- (2) In addition to the prohibition set forth in (1), no other type of net containing more than 500 square feet of mesh area shall be used in nearshore and inshore Florida waters. Additionally, no more than two such nets, which shall not be connected, shall be used from any vessel, and no person not on a vessel shall use more than one such net in nearshore and inshore Florida waters.

(c) For purposes of this section:

- (1) "gill net" means one or more walls of netting which captures saltwater finfish by ensnaring or entangling them in the meshes of the net by the gills, and "entangling net" means a drift net, trammel net, stab net, or any other net which captures saltwater finfish, shellfish, or other marine animals by causing all or part of heads, fins, legs, or other body parts to become entangled or ensnared in the meshes of the net, but a hand thrown cast net is not a gill net or an entangling net;
- (2) "mesh area" of a net means the total area of netting with the meshes open to comprise the maximum square footage. The square footage shall be calculated using standard mathematical formulas for geometric shapes. Seines and other rectangular nets shall be calculated using the maximum length and maximum width of the netting. Trawls and other bag type nets shall be calculated as a cone using the maximum circumference of the net mouth to derive the radius, and the maximum length from the net mouth to the tail end of the net to derive the slant height. Calculations for any other nets or combination type nets shall be based on the shapes of the individual components;
- (3) "coastline" means the territorial sea base line for the State of Florida established pursuant to the laws of the United States of America;
- (4) "Florida waters" means the waters of the Atlantic Ocean, the Gulf of Mexico, the Straits of Florida, and any other bodies of water under the jurisdiction of the State of Florida, whether coastal, intracoastal or inland, and any part thereof; and
- (5) "nearshore and inshore Florida waters" means all Florida waters inside a line three miles seaward of the coastline along the Gulf of Mexico and inside a line one mile seaward of the coastline along the Atlantic Ocean.

(d) This section shall not apply to the use of nets for scientific research or governmental purposes.

(e) Persons violating this section shall be prosecuted and punished pursuant to the penalties provided in section 370.021(2)(a),(b),(c)6. and 7., and (e), Florida Statutes (1991), unless and until the legislature enacts more stringent penalties for violations hereof. On and after the effective date of this section, law enforcement officers in the state are authorized to enforce the provisions of this section in the same manner and authority as if a violation of this section constituted a violation of Chapter 370, Florida Statutes (1991).

(f) It is the intent of this section that implementing legislation is not required for enforcing any violations hereof, but nothing in this section prohibits the establishment by or pursuant to law of more restrictions on the use of nets for the purpose of catching or taking any saltwater finfish, shellfish, or other marine animals.

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

(h) This section shall take effect on the July 1 next occurring after approval hereof by vote of the electors.

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RETURN TO: Save Our Sealife Committee
P.O. Box 4991
Orlando, FL 32802

500,000 Signatures Needed For Ballot Placement
Contributions Gratefully Accepted
Photocopy this form or call 1-800-272-6387 for more petitions!

Paid Political Advertisement
by the Save Our Sealife Committee

Supreme Court of Florida

WEDNESDAY, MARCH 17, 1993

IN RE:

ADVISORY OPINION TO THE
ATTORNEY GENERAL - LIMITED
MARINE NET FISHING

CASE NO. 81,394

INTERLOCUTORY ORDER

Attorney General, Robert A. Butterworth, pursuant to the provisions of Art. IV, s. 10, Fla. Const., and s. 16.061, Fla. Stat. (1991), has requested this Court's opinion as to whether the validity of an initiative petition circulated pursuant to Art. XI, s. 3, Fla. Const., seeking to amend the State Constitution by adding s. 16 to Art. X, Fla. Const., to limit the use of nets for catching saltwater finfish, shellfish, or other marine animals, complies with Art. XI, s. 3, Fla. Const., and whether the proposed ballot title and substance comply with s. 101.161, Fla. Stat. (1991). The petition provides:

Section 16. Limiting Marine Net Fishing

(a) The marine resources of the State of Florida belong to all of the people of the state and should be conserved and managed for the benefit of the state, its people, and future generations. To this end the people hereby enact limitations on marine net fishing in Florida waters to protect saltwater finfish, shellfish, and other marine animals from unnecessary killing, overfishing and waste.

(b) For purposes of catching or taking any saltwater finfish, shellfish or other marine animals in Florida waters:

(1) No gill nets or other entangling nets shall be used in any Florida waters; and

(2) In addition to the prohibition set forth in (1), no other type of net containing more than 500 square feet of mesh area shall be used in nearshore and inshore Florida waters. Additionally, no more than two such nets, which shall not be connected, shall be used from any vessel, and no person not on a vessel shall use more than one such net in nearshore and inshore Florida waters.

(c) For purposes of this section:

(1) "gill net" means one or more walls of netting which captures saltwater finfish by ensnaring or entangling them in the meshes of the net by the gills, and "entangling net" means a drift net, trammel net, stab net, or any other net which captures saltwater finfish, shellfish, or other marine animals by causing all or part of heads, fins, legs, or other body parts to become entangled or ensnared in the meshes of the net, but a hand thrown cast net is not a gill or an entangling net;

(2) "mesh area" of a net means the total area of netting with the meshes open to comprise the maximum square footage. The square footage shall be calculated using standard mathematical formulas for geometric shapes. Seines and other rectangular nets shall be calculated using the maximum length and maximum width of the netting. Trawls and other bag type nets shall be calculated as a cone using the maximum circumference of the net mouth to derive the radius, and the maximum length from the net mouth to the tail end of the net to derive the slant height. Calculations for any other nets of combination type nets shall be based on the shape of the individual componets;

(3) "coastline" means the territorial sea base line for the State of Florida established pursuant to the laws of the United States of America;

(4) "Florida waters" means the waters of the Atlantic Ocean, the Gulf of Mexico, the Straits of Florida, and any other bodies of water under

the jurisdiction of the State of Florida, whether coastal, intracoastal or inland, and any part thereof; and

(5) "nearshore and inshore Florida waters" means all Florida waters inside a line three miles seaward of the coastline along the Gulf of Mexico and inside a line one mile seaward of the coastline along the Atlantic Ocean.

(d) This section shall not apply to the use of nets for scientific research or governmental purposes.

(e) Persons violating this section shall be prosecuted and punished pursuant to the penalties in s. 370.021(2)(a), (b), (c)6. and 7., and (e), Florida Statutes (1991), unless and until the legislature enacts more stringent penalties for violations hereof. On and after the effective date of this section, law enforcement officers in the state are authorized to enforce the provisions of this section in the same manner and authority as if a violation of this section constituted a violation of Chapter 370, Florida Statutes (1991).

(f) It is the intent of this section that implementing legislation is not required for enforcing any violations hereof, but nothing in this section prohibits the establishment by law or pursuant to law of more restrictions on the use of nets for the purpose of catching or taking any saltwater finfish, shellfish, or other marine animals.

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

(h) This section shall take effect on the July 1 next occurring after approval hereof by vote of the electors.

The ballot title and summary for the proposed amendment provides:

LIMITING MARINE NET FISHING

Limits the use of nets for catching saltwater finfish, shellfish, or other marine animals by prohibiting the use of gill and other entangling nets in all Florida waters, and prohibiting the use of other nets larger than 500 square feet in mesh area in nearshore and inshore Florida waters. Provides definitions, administrative and criminal penalties, and exceptions for scientific and governmental purposes.

Section 16.061, Fla. Stat. (1991), requires the Attorney General, within 30 days after receipt of the proposed amendment or revision to the State Constitution by initiative petition, to petition this Honorable Court for an advisory opinion regarding compliance of the text of the proposed amendment with Art. XI, s. 3, Fla. Const., and compliance of the proposed ballot title and substance with s. 101.161, Fla. Stat. (1991). As this Court made clear in Advisory Opinion to the Attorney General--Limited Political Terms in Certain Elective Offices, 592 So. 2d 225, 227 (Fla. 1991), the Attorney General and this Court are limited "to addressing whether the proposed amendment and ballot title and summary comply with article XI, section 3, Florida Constitution and section 101.161, Florida Statutes."

The full text of the Attorney General's letter is attached hereto as an exhibit and made a part thereof.

IT IS, THEREFORE, the order of the Court that interested parties shall file their briefs on or before April 16, 1993, and serve a copy thereof on the Attorney General. Reply briefs shall be filed on or before May 6, 1993. Oral argument is scheduled for 9 a.m. TUESDAY, JUNE 1, 1993. All parties who have filed a brief and have asked to be heard shall have the opportunity of

INTERLOCUTORY ORDER
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presenting oral argument. The amount of time allocated to each party will be determined after the filing of the briefs.

IT IS SO ORDERED.

A True Copy

TEST:

Sid J. White
Clerk Supreme Court.

cc: The Honorable Robert A. .
Butterworth
Honorable Jim Smith
Mr. Karl Y. Wickstrom