

IN THE
SUPREME COURT
OF FLORIDA

CASE NO. 89,667

In re: ADVISORY OPINION
TO THE ATTORNEY GENERAL -
PROHIBITING PUBLIC FUNDING
OF POLITICAL CANDIDATES' CAMPAIGNS

**INITIAL BRIEF OF
CITIZENS FOR CAMPAIGN &
GOVERNMENT SPENDING REFORM
IN SUPPORT OF INITIATIVE**

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STATEMENT OF THE CASE

Pursuant to Article VI, section 10 of the Florida Constitution, and Section 16.061, Florida Statutes (1995), the Attorney General has petitioned this Court for an advisory opinion on the validity of the ballot initiative petition prohibiting public funding of political candidates' campaigns for Governor, Lieutenant Governor, Cabinet Offices, Florida Senate and Florida House of Representatives. The Court issued an Interlocutory Order on January 22, 1997, providing for interested persons to file briefs, and scheduling oral argument for April 7, 1997.

The ballot title for the proposed amendment is "Prohibiting Public Funding of Political Candidates' Campaigns. " The ballot summary for the initiative reads:

Prohibits the payment of State funds to political candidates' campaigns for Governor, Lieutenant Governor, Cabinet offices, Florida Senate or Florida House of Representatives. The amendment will be effective upon passage. Upon passage, any funds remaining in public campaign financing accounts will be used to satisfy existing obligations, then treated as general revenue for the State.

The initiative petition seeks to amend Article VI of the Florida Constitution, by adding a new section 7. The petition provides:

BE IT ENACTED BY THE PEOPLE OF FLORIDA THAT:

1) Amendment of Article VI, Florida Constitution:

Article VI, Florida Constitution, is hereby amended by adding at the end thereof the following new section:

"Section 7. No Public Funding of Election Campaigns:

"(a) Public funds shall not be used for the financing of campaigns for elective State office.

"(b) For purposes of this section:

"(1) The phrase 'public funds' means funds from the State, including appropriated funds, trust funds, the Budget Stabilization Fund, or similar fiscal mechanisms of the State.

“(2) The term ‘financing means the payment of funds to campaigns, and does not include the use of funds for the administration or conduct of elections generally, or the reimbursement of funds or property erroneously paid to or taken by the State.

“(3) The term ‘campaigns’ means the activity of an individual as a candidate for election or of a candidate’s campaign committee or organization.

“(4) The phrase ‘elective State office’ means the Governor, Lieutenant Governor, Cabinet offices, Florida Senate and Florida House of Representatives. ”

2) Effective Date and Transition:

This amendment shall be effective on the date it is approved by the electorate. Funds remaining in trust funds or otherwise dedicated to uses abrogated under this amendment on such date shall be used first to satisfy any existing obligations under public campaign financing laws, and then deposited into the general revenue fund.

3) Severability:

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

This initial brief is submitted on behalf of Citizens for Campaign & Government Spending Reform and in support of the Attorney General’s Opinion that the Constitutional Amendment complies with Article XI, section 3 of the Florida Constitution and with Section 101.161, Florida Statutes (1995). Citizens for Campaign & Government Spending Reform is the sponsor of the initiative in question.

SUMMARY OF THE ARGUMENT

An examination of the ballot initiative in question in light of the operative principles set out by this Court supports the Attorney General's conclusion that the initiative complies with both Article XI, section 3 of the Florida Constitution and Section 101.161, Florida Statutes (1995).

I.

The ballot initiative satisfies the single-subject requirement as applied by this Court. First, the initiative does not violate the prohibition against "logrolling," because the initiative offers the electorate the clear choice of voting up or down the public financing of campaigns for State offices in Florida and in no way aggregates dissimilar provisions in order to attract the support of diverse groups to assure its passage. Second, the initiative does not substantially affect multiple sections of Florida's Constitution. There having been no constitutional amendment required to impose public financing by statute, there should be no claim that its prohibition substantially impacts other constitutional provisions. Third, the initiative does not substantially alter or perform the functions of multiple branches of government. The proposed amendment addresses only the process of election campaigns for certain executive and legislative offices, but does not alter the "functions" of either branch. Finally, because the amendment carefully confines itself to the limited issue of the prohibition of public financing for specified State elective offices, it manifests a natural oneness of purpose, a unity of object and plan, and a single dominant plan or scheme. Accordingly, the initiative embraces but one subject and matter directly connected therewith and meets the requirements of Article XI, section 3, of the Florida Constitution.

11.

The ballot title and summary of the proposed amendment provide accurate and neutral notice of the chief purpose and effect of the initiative and identify the subject matter of the amendment in clear and matter-of-fact terms. There is no confusion as to what is being prohibited, which funds shall not be used or which offices are affected. The ballot title and summary fully adhere to this Court's admonition that such titles and summaries provide fair notice of the content of proposed amendments to permit voters to cast intelligent and informed ballots. Accordingly, the ballot summary and title comply with the requirements of Section 101.161, as interpreted by this Court.

ARGUMENT

I.

THE INITIATIVE PROHIBITING PUBLIC FUNDING OF POLITICAL CANDIDATES' CAMPAIGNS COMPLIES WITH BOTH THE SPIRIT AND THE LETTER OF THE CONSTITUTIONAL INITIATIVE REQUIREMENT THAT A PROPOSED AMENDMENT EMBRACE BUT ONE SUBJECT

A. Introduction

Article XI, section 3 of the Florida Constitution, reserves to the people the power to revise or amend any portion or portions of the Constitution by initiative, "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." Section 101.161, Florida Statutes (1995), requires that "the ballot title and summary for a proposed Constitutional amendment state in clear and unambiguous language the chief purpose of the measure." Askew v. Firestone, 421 So. 2d 15 1, 154-55 (Fla. 1982).

In light of these provisions, this Court has limited its analysis of proposed ballot initiatives to determining two issues: (1) whether the proposed amendment violates the single-subject requirement of Article XI, section 3, and, (2) whether the ballot title and summary are misleading and thus violate section 101.161(1), Florida Statutes (1995).

In petitioning this Court for a written opinion as to the validity of the initiative amendment in question, the Attorney General concluded that the initiative complies with both of the above requirements. An examination of the ballot initiative in light of the operative principles set out by this Court clearly supports the Attorney General's conclusion.

B. The Ballot Initiative Prohibiting Public Funding of Campaigns Satisfies the Single Subject Requirement as Interpreted by this Court.

1. The Initiative Does Not Violate the Prohibition Against "Logrolling."

As noted above, Article XI, section 3, of the Florida Constitution states that amendments proposed by initiative "shall embrace but one subject and matter directly connected therewith." This Court has explained that this restriction was designed to prohibit what is known as "logrolling," a practice "wherein several separate issues are rolled into a single initiative in order to aggregate votes or secure approval of an otherwise unpopular issue. " Advisory Opinion to the Attorney General - Fee on Everglades Sugar Production, 681 So. 2d 1124, 1127 (Fla. 1996); Fine v. Firestone, 448 So. 2d 984, 988 (Fla. 1984).

As the Court put it in Fine, the purpose of the single subject rule is "to prohibit the aggregation of dissimilar provisions in one law in order to attract the support of diverse groups to assure its passage." 448 So. 2d at 988, It would be difficult to envision a ballot initiative which would be less offensive to this rule than the initiative in question. The initiative offers the voters the clear and unadorned choice of voting for or against the prohibition of public financing for specified elective offices. The subject of public financing may be widely debated, but the debate as framed in this initiative embraces one subject and one subject only - whether election campaigns for specified State offices should be publicly financed. No artful contrivance or argument of its opponents can transform this straightforward ballot initiative into one which offends the spirit or letter of the one-subject rule by requiring the voters to "accept part of a proposal which they oppose in order to obtain a change which they support." Fine, 448 So. 2d at 993. The initiative petition has simply not been drafted to permit this conclusion. To the contrary, it embraces the limited subject of the prohibition of public financing and such matters

which are directly connected therewith. There are no “dissimilar provisions” in the petition designed to attract “diverse groups to assure its passage.” Fine, 488 So. 2d at 988. As noted above, the ballot initiative offers the electorate the clear choice of voting up or down the public financing of campaigns for State offices in Florida, and there is no part of the petition which is designed to lure proponents of public funding to support the initiative.

The initiative also withstands scrutiny under various other factors this Court has applied to the single-subject analysis.

2. The Initiative Does Not Substantially Impact Other Constitutional Provisions.

Unlike the proposed tax limitation initiative invalidated by this Court in Advisory Opinion to the Attorney General re Tax Limitation, 644 So. 2d 486 (Fla. 1994), the ballot initiative in this case does not affect multiple sections of Florida’s Constitution. Public financing of specified election campaigns is a creature of statute which made its appearance only recently in Florida’s historic electoral process. See, Florida Election Campaign Financing Act, Sections 106.30-106.36, Florida Statutes (1995). The Election Campaign Financing Act became law on January 1, 1987.¹ There having been no constitutional revision required to impose public financing by statute, there should be no claim that its prohibition would substantially impact other constitutional provisions. In any event, “the possibility that an amendment might interact with

¹Because Florida’s Legislature allowed the trust fund to terminate by not passing legislation to recreate the Election Campaign Financing Trust Fund during the 1996 Legislative Session, the Secretary of State has recently filed an action under Chapter 86, Florida Statutes (1995), seeking a declaratory judgment concerning her responsibilities in light of the opinion from the Division of Elections that no trust money should continue to be collected, that the Division of Elections should not certify candidate eligibility and that the Comptroller should not continue to offer payments to candidates. Mortham v. Milligan, Case No. 96-6660-CV (Second Judicial Circuit, Leon County, Florida).

other parts of the Florida Constitution is not sufficient reason to invalidate the proposed amendment. " Advisory Opinion to the Attorney General re Limited Casinos, 644 So. 2d 71, 74 (Fla. 1994).

3. The Initiative Does Not Substantially Alter or Perform the Functions of Multiple Branches of Government.

In applying the single subject rule, this Court has also considered whether the initiative “substantially alter[s] or perform[s] the functions of multiple branches.” See, In re Advisory Opinion to the Attorney General - Save Our Everglades, 636 So. 2d 1336, 1340 (Fla. 1994); In re Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination, 632 So. 2d 1018, 1020 (Fla. 1994). An amendment may touch or affect multiple branches of government so long as this does not work to “substantially alter or perform the functions” of those branches. Limited Casinos, 644 So. 2d at 73 (emphasis added), citing Save Our Everglades, 636 So. 2d at 1340. The proposed amendment in this case addresses only the process of election campaigns for certain executive and legislative offices. It does not alter, substantially or otherwise, the “functions” of either branch,

As the Attorney General noted, the proposed amendment’s prohibition of public financing for both executive and legislative office holders does not invalidate the initiative. This Court addressed much the same issue in passing on a ballot initiative which imposed term limits on both executive and legislative office holders, Advisory Opinion to Attorney General - Limited Political Terms in Certain Political Offices, 592 So. 2d 225 (Fla. 1991). In upholding the initiative petition in that case, this Court stated:

Although the proposed amendment affects office holders 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.

Limited Political Terms, 592 So. 2d at 227.

Even if the initiative could be shown to incidentally affect more than one function of government, this alone would not invalidate the provision. As this Court has noted, "it is difficult to conceive of a constitutional amendment that would not affect other aspects of government to some extent." See, Everglades Sugar Production, 681 So. 2d at 1128, quoting Limited Casinos, 644 So. 2d at 74. Only those amendments which "substantially alter or perform the functions" of multiple branches of government are invalid on this ground. Id at 1128, Etting Savours Everglades, 636 So. 2d at 1346. a m e n d m e n t i n t h i s case neither alters nor performs functions of more than one branch of government, it does not violate the single-subject rule on this ground.

4. The Initiative Embraces a Unity of Object and Plan.

In reviewing ballot initiatives, this Court has repeatedly emphasized that the defining principle under the single-subject analysis is whether the initiative "manifest[s] a natural oneness of purpose." Fee on Everglades Sugar Production, 681 So. 2d at 1127, quoting Fine v. Firestone, 448 So. 2d at 990.

In drafting the amendment, the petition sponsors were careful to confine the ballot initiative to the simple and unembellished issue of the prohibition of public financing for specified State elective offices. It is difficult to conceive of any proposal on this subject which could have more faithfully adhered to this Court's admonition that ballot initiatives should "have a natural relation and connection as component parts of a single dominant plan or scheme." Advisory Opinion to the Attorney General re Florida Locally Approved Gaming, 656 So. 2d

1259, 1263 (Fla. 1995), quoting City of Coral Gables v. Gray, 19 So. 2d 318, 320 (Fla. 1944). Because the text of the initiative in question is restricted to the limited issue of the prohibition of public financing, it embraces the “unity of object and plan” which this Court has described as the “universal test” in assessing ballot initiative amendments. Id at 1263. The proposed amendment contains no “unrelated provisions . . . which electors might wish to support in order to get an otherwise disfavored provision passed,” See Limited Casinos, 644 So. 2d at 73, quoting Advisory Opinion to the Attorney General - Limited Marine Net Fishing, 620 So. 2d 997 (Fla. 1993).

Because the limited subject of the proposed amendment is to prohibit publicly financed campaigns for specified State elective offices, the initiative “embrace[s] but one subject and matter directly connected therewith,” and therefore meets the requirements of Article XI, section 3 of the Florida Constitution.

II.

THE BALLOT TITLE AND SUMMARY OF THE PROPOSED AMENDMENT PROHIBITING PUBLIC FUNDING OF POLITICAL CANDIDATES’ CAMPAIGNS FULLY COMPLIES WITH THE PROVISIONS OF SECTION 101.161, FLORIDA STATUTES

Section 101.161, Florida Statutes, provides in pertinent 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.

Section 101.161, Florida Statutes (1995).

This Court has observed that the purpose of this measure is “to provide fair notice of the content of the proposed amendment so that the voter will not be misled as to its purpose, and can cast an intelligent and informed ballot.” Advisory Opinion to the Attorney General - Fee on Everglades Sugar Production, 681 So. 2d 1124, 1127 (Fla. 1996), citing Advisory Opinion to the Attorney General re Stop Early Release of Prisoners, 661 So. 2d 1204, 1206 (Fla. 1995). In keeping with this purpose, this Court has reviewed proposed amendments to determine if they are “accurate and informative” and whether they advise the electorate of the “true meaning and ramifications of an amendment.” Smith v. American Airlines, 606 So. 2d 618, 621 (Fla. 1992); Tax Limitation, 644 So. 2d at 490; Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982).

Under the above principles, the title and summary of the proposed amendment clearly meet the requirements of Section 101.161. The title and summary of the ballot initiative identify the subject matter of the amendment in clear and matter-of-fact terms. There is no inconsistency between the ballot title and summary and the proposed amendment. The title and summary are void of any “emotional language” which might mislead voters as to the purpose and intent of the amendment. See Save our Everglades Trust Fund, 636 So. 2d at 1341. There is no confusion as to what is being prohibited, which funds shall not be used or which offices are affected. All of the information necessary to succinctly advise the voter of the substance of the amendment is set out in the title and summary. Like the ballot title and summary approved by this Court in Fee on Everglades Sugar Production, the title and summary in this case “clearly and unambiguously inform[] the voter relative to the purpose and substance of the amendment.” 681 So. 2d at 1129. Because the summary and title accurately and neutrally inform the voters

of the chief purpose and effect of the initiative, the amendment complies with the statutory requirements of Section 101.161, Florida Statutes.

CONCLUSION

As this Court noted in Fine v. Firestone, the Court will not address the wisdom or merit of a proposed initiative amendment in the advisory opinion process. Fine, 448 So. 2d at 992. As the Court observed in Tax Limitation, "[i]nfringing on the people's right to vote on an amendment is a power this Court should use only where the record shows the constitutional single-subject requirement has been violated or the record establishes that the ballot language would clearly mislead the public" concerning the substance and effect of the proposed amendment. 644 So. 2d at 489.

The initiative prohibiting public funding of political candidates' campaigns complies with the single-subject requirement of Article XI, section 3 and presents a clear and unitary issue to the voters: whether to prohibit the payment of State funds to specified political candidates' campaigns.

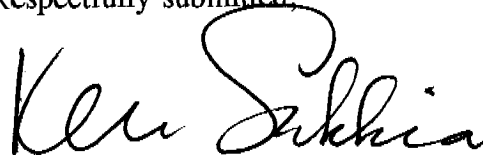
The ballot title and summary to the initiative comply with the requirements of Section 101.161, Florida Statutes, in providing a concise, accurate and unbiased statement of the purpose and effect of the proposed amendment.

Accordingly, the sponsors of the initiative prohibiting public funding of political candidates' campaigns request that the Court approve the initiative for consideration by the voters of this State.

REOUEST FOR ORAL ARGUMENT

Citizens for Campaign & Government Spending Reform, as an interested party, request oral argument in this proceeding.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U. S. Mail, this 1 lth day of February, 1997, to the following:

Honorable Robert A. Butterworth
Attorney General
State of Florida
The Capitol
Tallahassee, Florida 32399-1050.

Honorable Sandra B. Mortham
Secretary of State
State of Florida
The Capitol
Tallahassee, Florida 32399-0250



Kenneth W. Sukhia

Appendix

CONSTITUTIONAL AMENDMENT PETITION FORM

104.185 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 provisions of this section shall, upon conviction, be guilty of a misdemeanor of the first degree, punishable as provided in 5775.082 or 5775.083.

TITLE: PROHIBITING PUBLIC FUNDING OF POLITICAL CANDIDATES' CAMPAIGNS

SUMMARY: Prohibits the payment of State funds to political candidates' campaigns for Governor, Lieutenant Governor, Cabinet offices, Florida Senate or Florida House of Representatives. The amendment will be effective upon passage. Upon passage, any funds remaining in public campaign financing accounts will be used to satisfy existing obligations, then treated as general revenue for the State.

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 _____

_____ Date _____

Sign as registered

Date Signed

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

1) Amendment of Article VI, Florida Constitution:

Article VI, Florida Constitution, is hereby amended by adding at the end thereof the following new section:

"SECTION 7. No Public Funding of Election Campaigns:

"(a) Public funds shall not be used for the financing of campaigns for elective State office.

"(b) For purposes of this section:

"(1) The phrase 'public funds' means funds from the State, including appropriated funds, trust funds, the Budget Stabilization Fund, or similar fiscal mechanisms of the State.

"(2) The term 'financing' means the payment of funds to campaigns, and does not include the use of funds for the administration or conduct of elections generally, or the reimbursement of funds or property erroneously paid to or taken by the State.

"(3) The term 'campaigns' means the activity of an individual as a candidate for election or of a candidate's campaign committee or organization.

"(4) The phrase 'elective State office' means the Governor, Lieutenant Governor, Cabinet offices, Florida Senate and Florida House of Representatives."

2) Effective Date and Transition:

This amendment shall be effective on the date it is approved by the electorate. Funds remaining in trust funds or otherwise dedicated to uses abrogated under this amendment on such date shall be used first to satisfy any existing obligations under public campaign financing laws, and then deposited into the general revenue fund.

3) Severability:

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

RETURN TO: CITIZENS FOR CAMPAIGN &
GOVERNMENT SPENDING REFORM
P.O. Box 513
Orlando, FL 32802-0513

600,000 Signatures Needed for Ballot Placement

IV

Paid Political Advertisement by CITIZENS FOR CAMPAIGN & GOVERNMENT SPENDING REFORM

APPENDIX A