

IN THE SUPREME COURT OF FLORIDA

Case Nos. SC19-1165 & SC19-1503
(Consolidated)

ADVISORY OPINION TO THE ATTORNEY GENERAL RE:
CITIZENSHIP REQUIREMENT TO VOTE IN FLORIDA ELECTIONS

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**INITIAL BRIEF OF THE SPONSOR
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STATEMENT OF THE CASE AND FACTS

Florida Citizen Voters is the sponsor of a ballot initiative petition proposed pursuant to article XI, section 3 of Florida's Constitution, to amend the Florida Constitution to require United States citizenship for all voters in state elections. The ballot initiative is entitled "Citizenship Requirement to Vote in Florida Elections." This case is before the Court on two petitions by the Attorney General for advisory opinions on the ballot initiative. The first petition requests an advisory opinion on whether the initiative complies with the single-subject requirement of article XI, section 3, of the Florida Constitution and whether the initiative complies with the ballot title and summary requirements of section 101.161(1), Florida Statutes. As required by section 100.371, Florida Statutes, the Financial Impact Estimating Conference prepared a statement of the financial impact of the proposed constitutional amendment. The Attorney General's second petition seeks an advisory opinion on whether the financial impact statement complies with section 100.371.

The ballot initiative would amend article VI, section 2, of the Florida Constitution, which currently provides:

Every citizen of the United States who is at least eighteen years of age and who is a permanent resident of the state, if registered as provided by law, shall be an elector of the county where registered.

Art. VI, § 2, Fla. Const.

The proposed amendment would make only a minor change to the constitutional language. As amended, section 2 would read:

Only a citizen of the United States, who is at least eighteen years of age and who is a permanent resident of the state, if registered as provided by law, shall be an elector of the county where registered.

The ballot title for the proposed amendment is “Citizenship Requirement to Vote in Florida Elections.” The complete ballot summary for the proposed amendment states:

This amendment provides that only United States Citizens who are at least eighteen years of age, a permanent resident of Florida, and registered to vote, as provided by law, shall be qualified to vote in a Florida Election.

The Secretary of State informed the Attorney General on June 13, 2019, that the ballot initiative petition had met the registration, submission, and signature criteria of section 15.21, Florida Statutes. Thereafter, on July 15, 2019, The Attorney General filed the first petition in this case, seeking an advisory opinion as to whether the initiative complies with the single-subject requirement of article XI, section 3, of the Florida Constitution and whether the initiative complies with the ballot title and summary requirements of section 101.161(1), Florida Statutes.

The Financial Impact Estimating Conference of the Florida Legislature considered the ballot initiative and proposed a financial impact statement to accompany the proposed amendment on the ballot. By letter to the Attorney General

dated August 23, 2019, the conference proposed the following financial impact statement:

Because the proposed amendment is not expected to result in any changes to the voter registration process in Florida, it will have no impact on state or local government costs or revenues. Further it will have no effect on the state's economy.

On September 4, 2019, the Attorney General filed the second petition at issue in this case, seeking an advisory opinion as to whether the above financial impact statement complies with section 100.371. This Court consolidated these two petitions for all purposes and ordered interested parties to file initial briefs by October 1, 2019.

SUMMARY OF ARGUMENT

In reviewing a ballot initiative, this Court applies a deferential standard to avoid unnecessarily interfering with the right of the people to propose and vote on a constitutional amendment. The Court will not strike a ballot initiative unless it is clearly and conclusively defective. The Court's review is limited to three matters. First, the Court considers whether the proposed constitutional amendment complies with the single-subject rule of article XI, Section 3, of the Florida Constitution. Second, the Court considers whether the ballot title and summary comply with section 101.161, Florida Statutes. Third, the Court considers whether the financial impact statement prepared for the ballot initiative complies with section 100.371(13), Florida Statutes.

The proposed amendment at issue in this case embraces only a single subject, as required by article XI, Section 3, of the Florida Constitution. The only object of the proposed amendment is to require United States citizenship to vote in state elections, and the proposed amendment seeks to accomplish that object by directly requiring United States citizenship. As such, the proposed amendment has a unity of object and plan, this Court's universal test for compliance with the single-subject rule. Confirming this conclusion, the proposed amendment commits neither of the two principal evils against which the single-subject rule is aimed. It does not engage in logrolling because it presents only a single issue—whether United States

citizenship shall be required—and it does not alter or perform the functions of multiple branches of government. Instead, it leaves the primary function of each branch intact.

The ballot title and summary also comply with the requirements of section 101.161, Florida Statutes. The ballot title is within the 15-word limit set by the statute, and the ballot summary is within the 75-word limit. The ballot summary is written in clear and unambiguous language and informs the voters of the chief purpose of the proposed amendment. The ballot summary is in no way misleading. Though it may not describe every nuance of current law or the proposed change, such descriptions are not required.

Finally, the financial impact statement complies with section 100.371(13), Florida Statutes. As the statute requires, the financial impact statement is fewer than 150 words. It is clear and unambiguous and it is limited to addressing the financial impact of the proposed amendment.

ARGUMENT

I. In reviewing a ballot initiative, this Court employs a deferential standard under which the initiative will be invalidated only if it is “clearly and conclusively defective.”

In reviewing a proposed constitutional amendment arising by ballot initiative, this Court exercises “extreme care, caution and restraint.” Advisory Opinion to the Attorney General re Tax Limitation, 673 So. 2d 864, 867 (Fla. 1996). This Court has explained its duty is “to uphold the proposal unless it can be shown to be clearly and conclusively defective.” Id. (internal quotation marks omitted). A deferential standard is necessary to properly respect the right of the people to propose and vote on a constitutional amendment. See Advisory Opinion to the Attorney General re Right to Treatment and Rehabilitation for Non-Violent Drug Offenses, 818 So. 2d 491, 494 (Fla. 2002) (noting the Court’s reluctance to interfere with citizens’ right to formulate their own organic law); Askew v. Firestone, 421 So. 2d 151, 154 (Fla. 1982) (“In order for a court to interfere with the right of the people to vote on a proposed constitutional amendment, the record must show that the proposal is clearly and conclusively defective.”).

The Court’s review in this case is limited to three issues. As to the ballot initiative itself, the Court examines two issues: “(1) whether the amendment itself satisfies the single-subject requirement of article XI, section 3, Florida Constitution; and (2) whether the ballot title and summary satisfy the clarity requirements of

section 101.161, Florida Statutes.” Advisory Opinion to the Attorney General re Water and Land Conservation, 123 So. 3d 47, 50 (Fla. 2013). The third issue under review concerns the financial impact statement prepared by the Financial Impact Estimating Conference. The Court reviews the financial impact statement to determine whether it complies with section 100.371, Florida Statutes.

II. The ballot initiative complies with the single-subject requirement of article XI, section 3, of the Florida Constitution.

Article XI, section 3, of the Florida Constitution details the single-subject requirement for ballot initiative petitions: “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.” The single-subject rule is intended to prevent an amendment from logrolling and from substantially altering or performing the functions of multiple branches of state government. Advisory Opinion to the Attorney General re Water and Land Conservation, 123 So. 3d 47, 50–51 (Fla. 2013). A proposed amendment complies with the rule when it pursues a single dominant plan or scheme. Id. at 51. “Unity of object and plan is the universal test.” Id.

The proposed amendment at issue here involves a single dominant plan or scheme, and there is a strong unity of object and plan. There is only one object, one

policy, of the amendment: that United States citizenship be required for all voters in state elections. The plan of the amendment is very tightly united to its object because the amendment would directly require United States citizenship for voters. The amendment pursues but one policy and employs means directly connected to that policy. As such, it passes the “universal test” for compliance with the single-subject rule.

Confirming this straightforward conclusion from the application of the Court’s “universal test,” the proposed amendment does not touch on either of the two evils against which the single-subject rule is aimed. The proposed amendment neither engages in logrolling nor substantially alters or performs the functions of multiple branches of government.

Logrolling is “a practice that combines separate issues into a single proposal to secure passage of an unpopular issue.” Advisory Opinion to the Attorney General re Amendment to Bar Government from Treating People Differently Based on Race in Public Education, 778 So. 2d 888, 891 (Fla. 2000). By preventing logrolling, the single-subject rule ensures voters are not presented with a single proposed constitutional amendment that contains both matters they support and matters they oppose. Id. For example, this Court found logrolling in Advisory Opinion to the Attorney General—Restricts Laws Related to Discrimination, where a proposed constitutional amendment would have restricted discrimination based on ten

separate categories. 632 So. 2d 1018, 1020 (Fla. 1994). The Court noted some voters may have supported protection from discrimination based on certain categories, but not based on other categories. Id. Thus, the Court explained, the voter “is essentially being asked to give one ‘yes’ or ‘no’ answer to a proposal that actually asks ten questions.” Id.

The proposed amendment at issue in this case presents no such dilemma. It asks only one question: shall the Florida Constitution require United States citizenship to vote in state elections? This question is not coherently divisible into separate parts. Accordingly, the proposed amendment does not engage in logrolling.

Nor does the proposed amendment substantially alter or perform the functions of multiple branches of government. This element of the analysis is aimed at preventing “multiple precipitous and cataclysmic changes in state government.” Advisory Opinion to the Attorney General re Right to Treatment and Rehabilitation for Non-Violent Drug Offenses, 818 So. 2d 491, 494–95 (Fla. 2002). The proposed amendment works no precipitous and cataclysmic change in state government. It merely constitutionalizes the existing statutory requirement¹ that voters be United States citizens. While multiple branches of government would be bound to comply with the amendment, this does not mean the proposed amendment violates the

¹Section 97.041, Florida Statutes, provides that a person may register to vote only if that person is a United States citizen.

single-subject rule. Advisory Opinion to the Attorney General re Standards for Establishing Legislative District Boundaries, 2 So. 3d 175, 181 (Fla. 2009).

In Advisory Opinion re Right to Treatment and Rehabilitation, the Court noted a proposed amendment would affect several branches of government. 818 So. 2d at 496. The Court analyzed the effect of the proposed amendment on the judicial, legislative, and executive branches of government and found the proposed amendment left the prime function of each branch intact. Id. at 496–97. As such, the Court found, the proposed amendment did not substantially alter or perform the functions of those branches. Id. at 496. The analysis in this case is the same. The proposed amendment currently before the Court may affect multiple branches to some extent, but it certainly leaves the prime function of each branch of government intact. As such, the proposed amendment does not substantially alter or perform the functions of multiple branches.

III. The ballot title and summary comply with section 101.161, Florida Statutes.

Section 101.161, Florida Statutes, establishes requirements for a ballot title and summary, and states:

The ballot summary 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.

§ 101.161, Fla. Stat. The statute also requires that the ballot summary “shall be printed in clear and unambiguous language.” Id.

The ballot title and summary at issue meet these requirements. The ballot title, “Citizenship Requirement to Vote in Florida Elections,” is seven words and is the title by which this proposed amendment is commonly referred to or spoken of. The ballot summary is 38 words and is printed below:

This amendment provides that only United States Citizens who are at least eighteen years of age, a permanent resident of Florida, and registered to vote, as provided by law, shall be qualified to vote in a Florida Election.

This is clear, unambiguous language, and it informs the voters that the chief purpose of the proposed amendment is to require United States citizenship for voters.

Nor is the ballot summary in any way misleading. While it may not fully describe every nuance of current law and the proposed change, that does not render a ballot summary defective. As this Court explained in Advisory Opinion to the Attorney General re Right to Treatment and Rehabilitation for Non-Violent Drug Offenses, a ballot summary need not explain every detail of the proposed amendment and its ramifications. 818 So. 2d 491, 498 (Fla. 2002).

There is no requirement that the referendum question set forth the text verbatim nor explain its complete terms at great and undue length. Such requirements would hamper instead of aiding the intelligent exercise of the privilege of voting. Under our system of free elections, the voter must acquaint himself with the details of a proposed ordinance on a referendum together with the pros and cons thereon

before he enters the voting booth. If he does not, it is no function of the ballot question to provide him with that needed education. What the law very simply requires is that the ballot give the voter fair notice of the question he must decide so that he may intelligently cast his vote.

Id. (internal alterations omitted) (quoting Metro. Dade County v. Shiver, 365 So. 2d 210, aff'd sub nom. Miami Dolphins v. Metro Dade County, 394 So. 2d 981 (Fla. 1981)); accord Advisory Opinion to the Attorney General re Standards for Establishing Legislative District Boundaries, 2 So. 3d 175, 185 (Fla. 2009).

In Right to Treatment and Rehabilitation for Non-Violent Drug Offenses, the proposed constitutional amendment would have allowed certain drug offenders to choose treatment instead of incarceration. 818 So. 2d at 492. Opponents of the proposed amendment argued the ballot summary was misleading because it failed to inform voters that Florida already had certain programs for treatment of drug offenders. Id. at 498. This Court rejected that argument. Id. There is no requirement that the ballot summary describe current law; it need only apprise the voter of the chief purpose of the amendment. Id. The ballot summary at issue in this case does just that.

IV. The financial impact statement complies with section 100.371(13), Florida Statutes.

Section 100.371(13), Florida Statutes, requires the Financial Impact Estimating Conference to analyze the financial impact of a proposed amendment and to prepare a financial impact statement to be included on the ballot. The statement

must be clear and unambiguous and may be no more than 150 words long. § 100.371(13)(c)(2). This Court reviews a financial impact statement only to determine whether it complies with the length requirement, whether it is clear and unambiguous, and whether it is limited to addressing the financial impact of the proposed amendment. Advisory Opinion to the Attorney General re Water and Land Conservation, 123 So. 3d 47, 52 (Fla. 2013).

The conference has proposed the following financial impact statement to accompany the proposed amendment at issue in this case:

Because the proposed amendment is not expected to result in any changes to the voter registration process in Florida, it will have no impact on state or local government costs or revenues. Further it will have no effect on the state's economy.

This statement is 42 words, is clear and unambiguous, and is limited to addressing the expected financial impact of the proposed amendment. Accordingly, it complies with section 100.371(13).

CONCLUSION

The proposed amendment is limited to a single subject in compliance with article XI, Section 3, of the Florida Constitution. The ballot title and summary for the proposed amendment comply with the requirements of section 101.161, Florida Statutes. As such, this Court should allow the proposed amendment to appear on the ballot.

Additionally, the financial impact statement complies with the requirements of section 100.371(13), Florida Statutes. Accordingly, the Sponsor respectfully requests this Court approve the financial impact statement as drafted and allow it to appear with the proposed amendment on the ballot.

Respectfully submitted this 1st day of October 2019,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing brief was furnished to the following counsel on October 1, 2019, via the Florida Courts E-Filing Portal, as authorized by Florida Rule of Judicial Administration 2.516:

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I HEREBY CERTIFY that the type size and style used in this brief is double-spaced 14-point Times New Roman, and that this brief fully complies with the requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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