

IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC01-1950

ADVISORY OPINION TO THE ATTORNEY GENERAL
RE: RIGHT TO TREATMENT AND REHABILITATION FOR
NONVIOLENT DRUG OFFENSES

BRIEF OF AMICUS CURIAE
THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT

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INTRODUCTION AND SUMMARY OF ARGUMENT

By Interlocutory Order dated September 19, 2001, this Court granted interested parties leave to appear and file briefs in this matter. The Florida Department of Law Enforcement (FDLE) is an agency granted state police powers "for the protection of the welfare, health, peace, safety, and morals of the people". §943.03(7), Fla. Stat. FDLE derives an interest in this matter from its specific charge to enforce all laws relating to controlled substances, §893.09, Fla. Stat. FDLE's responsibilities and experience within the criminal justice system provide a unique and necessary perspective on the issues presented by this matter. Therefore, FDLE respectfully submits this amicus curiae brief.

The Attorney General's Petition efficiently highlights numerous infirmities within the ballot title, summary, and text of the proposed amendment, which violate both the single subject and clear and unambiguous language limitations. This brief will address constitutional and statutory violations highlighted by FDLE's perspective.

ARGUMENT

The ballot title and summary are best judged by what they fail to disclose than by their actual content. It is firmly established that this Court's analysis of the proposed amendment is limited to two legal issues:

(1) whether the proposed amendment's title and summary are "printed in clear and unambiguous language," . . . ; and (2) whether the proposed amendment addresses a single subject. . .

Advisory Opinion to the Attorney General Re: Casino Authorization, Taxation and Regulation, 656 So.2d 466, 468 (Fla. 1995), quoting §101.161, Fla. Stat. Therefore, "ballot summaries which...use inconsistent terminology, fail to mention constitutional provisions that are affected, and do not accurately describe the general operation of the proposed amendment must be invalidated." Advisory Opinion to the Attorney General Re: Amendment to Bar Government From Treating People Differently Based On Race, 778 So.2d 888, 899-900 (Fla. 2000)(hereafter Treating People Differently).

I. THE BALLOT TITLE AND SUMMARY ARE MISLEADING AND AMBIGUOUS

This Court has determined that the statute "requires that the ballot summary state in clear and unambiguous language the chief purpose of the measure." Askew v. Firestone, 421 So.2d 151, 154-55 (Fla. 1982). See also Advisory Opinion to the Attorney General Re: Limited Political Terms in Certain Elective Offices, 592 So.2d 225 (Fla. 1991) (hereafter Limited Political Terms). The title and summary must be accurate and informative to ensure that the electorate is advised of the "true meaning, and ramifications, of an amendment." Limited Political Terms, 592 So.2d at 892. The ballot summary for the initiative before the Court appears to state as the chief purpose of the amendment a right for first time or second time drug offenders to avoid sentencing or incarceration by participating in treatment for eighteen months or until successful completion. However, the summary misrepresents the actual language and the ramifications of the amendment, and misleads the voters in several ways.

First, the summary sets out the alternative to sentencing and incarceration as "successful completion or eighteen months in treatment", while the text of the amendment refers to "eighteen months after the date the individual elected to receive appropriate treatment." This divergent terminology leads to a different result than that

represented by the ballot summary. See Advisory Opinion to the Attorney General Re: Right of Citizens to Choose Health Care Providers, 705 So.2d 563, 566 (Fla. 1998). In fact, the amendment does not require that *any of the eighteen months* be spent in treatment, but only that eighteen months elapse "after the date the individual elected to receive appropriate treatment." This language is overly vague and a reader of the summary is misled to believe that in lieu of prosecution or sentencing a drug offender is required to submit to "successful completion or eighteen months in treatment."

Second, voters are misled to believe that this right would only be available to first or second offenders, with multiple offenders continuing to be prosecuted and sentenced. However, the text of the proposed amendment provides that multiple qualifying drug offenses arising out of a single criminal episode "shall be considered a single offense." The *true meaning* is that drug offenders charged with a fourth, fifth or more "qualifying" offenses would be eligible for the treatment option. That outcome is misrepresented in the summary and voters would not be accurately informed unless they read the actual text of the amendment. This omission in the ballot summary seeks to exploit voter sympathy for a first time offender who may deserve a second chance, when in fact this right would also be available to offenders on their fifth, sixth, and beyond chargeable drug offenses.

Third, the ballot summary sets out the right of individuals "charged or convicted" to receive treatment "instead of sentencing or incarceration", while an individual unamenable to treatment may be "prosecuted or sentenced", and upon successful completion or eighteen months in treatment "no prosecution or sentencing." The terms charged, prosecution, convicted, sentencing and incarceration are distinct concepts with consequences and existing rights particular to each, yet the summary makes no distinction in the context of the right to elect treatment. In fact, while the summary seems to suggest that the right to treatment attaches when a person is charged with a qualifying offense, it appears to permit a prosecution to go forward, and the treatment option to remain available throughout conviction and incarceration. At the very least, the

summary's use of these terms is ambiguous, confusing and misleading, particularly to lay persons. Just as significantly it is likely to result in duplication of efforts and a waste of resources within the criminal justice system. These ramifications and effects are not disclosed in the ballot title or summary.

Finally, the ballot title and summary fail to acknowledge that treatment of drug offenders is already a significant part of Florida's criminal justice system. Florida created the first treatment-based drug court in the nation in 1989. As of August 2001, under the authority of the Court, Florida has thirty-three operational adult drug courts, seventeen operational juvenile drug courts, and eight operational dependency drug courts. *Division of Court Services, Florida Supreme Court @ www.flcts.org/osca*. On April 26, 2000, Chief Justice Harding issued Administrative Order No.AOSC00-12, IN RE: Treatment-Based Drug Court Steering Committee, which sets out the responsibilities of the steering committee in this nationally recognized aspect of our criminal justice system. The ballot summary not only belies the existence of the drug court program and the role of the judiciary, but fails to disclose the effects of a constitutional amendment which undermines judicial authority and discretion in implementing drug treatment and rehabilitation efforts. These are precisely the ramifications that must be disclosed to allow the electorate to make a fully informed decision. The ballot summary also ignores existing laws which grant trial judges discretion to require the participation of drug offenders in substance abuse services programs, §893.15, Fla. Stat., and authority to require drug offenders to participate in drug treatment and rehabilitation programs, §§921.187(1)(a)11. and 15., Fla. Stat. Florida law further provides for participation of drug offenders in pretrial intervention programs, including appropriate counseling and treatment, which like the proposed amendment address eligibility, duration, and waiver of the right to a speedy trial. §948.08, Fla. Stat.

Failure to disclose these available measures, and the role of the courts in the

treatment and rehabilitation of drug offenders, misleads voters to assume that unless this initiative is adopted there is no treatment available to drug offenders in Florida's criminal justice system. This omission of material information is misleading and "precludes voters from being able to cast their ballots intelligently." Treating People Differently, 778 So.2d at 897, quoting Advisory Opinion to the Attorney General Re: Restrict Laws Related to Discrimination, 632 So.2d 1018, 1021 (Fla. 1994).

II. THE PROPOSED AMENDMENT VIOLATES THE SINGLE-SUBJECT LIMITATION

Initiative petitions must identify those constitutional provisions that are substantially affected by the proposed amendments. Treating People Differently, 778 So.2d at 893.

Article V §§ 20(c)(3) and (c)(4), Fla. Const., provide that circuit and county courts shall have exclusive original jurisdiction over felonies and misdemeanors. By constitutional directive those courts occupy the fields of sentencing and/or alternative treatment programs in matters within their jurisdictional parameters, including illegal possession of controlled substances and drug paraphernalia. This Court determined in Mann v. Chief Justice of the Thirteenth Judicial Circuit, 696 So.2d 1184 (Fla. 1997), that a drug division within a circuit court is a "...specialized section or subdivision of the criminal division of the circuit court". *Id.* at 1185.

The proposed amendment provides in part: "Any individual charged with or convicted of illegally possessing or purchasing a controlled substance or drug paraphernalia may elect to receive appropriate treatment... instead of being sentenced or incarcerated, which shall be a matter of right for the first and second offense... and at the discretion of the court for subsequent offenses" (emphasis supplied). This effectively

removes sentencing and treatment decisions from courts with constitutionally mandated jurisdiction, and places them in the hands of convicted drug offenders. Consequently, “...the proposed [amendment itself] place[s] limitations on what general law may provide”. Advisory Opinion to the Attorney General Re: Pub. Education, 778 So 2d 888, 895 (Fla. 2000). Thus, the proposed amendment has a substantial effect on article V, section 20, and an initiative which fails to acknowledge and advise the electorate of the proposed amendment’s effect on article V, section 20, violates the single-subject requirement. Treating People Differently, 778 So.2d at 894.

CONCLUSION

For the foregoing reasons, FDLE respectfully requests that the Court invalidate the proposed amendment as clearly and conclusively defective on both the clear and unambiguous language and single-subject requirements.

Respectfully Submitted

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail to the Honorable Robert A. Butterworth, Attorney General of the State of Florida, Office of the Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399-1050 this 9th day of October, 2001.

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CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the 12-point font, "Courier New" as permitted by Fla. R. App. P. 9.210, has been utilized in this brief.

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