

**IN THE SUPREME COURT OF FLORIDA**

Case No. SC01-2422

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**ADVISORY OPINION  
TO THE ATTORNEY GENERAL  
RE: PROTECT PEOPLE FROM THE HEALTH  
HAZARDS OF SECOND-HAND TOBACCO SMOKE  
BY PROHIBITING WORKPLACE SMOKING**

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**INITIAL BRIEF OF INTERESTED PARTY  
AMERICAN COLLEGE OF PHYSICIANS – AMERICAN SOCIETY OF  
INTERNAL MEDICINE, FLORIDA CHAPTER, INC. AND  
THE FLORIDA PUBLIC HEALTH ASSOCIATION, INC.  
IN SUPPORT OF THE PROPOSED AMENDMENT**

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## **STATEMENT OF THE CASE AND FACTS**

The Court has been asked to review an amendment to the Florida Constitution proposed through the initiative petition process of Article XI, section 3, Florida Constitution. The amendment would prohibit tobacco smoking in enclosed indoor workplaces, with specified exceptions. The Court has jurisdiction pursuant to article V, section 3(b)(10), Florida Constitution. The Attorney General has concluded that the workplace smoking amendment encompasses a single subject, and that the ballot title and summary appear to inform the voter of that chief purpose. [AG letter p. 5.]

The ballot title for the proposed amendment is "PROTECT PEOPLE FROM THE HEALTH HAZARDS OF SECOND-HAND TOBACCO SMOKE BY PROHIBITING WORKPLACE SMOKING."

The ballot summary for the proposed amendment states as follows:

To protect people from the health hazards of second-hand tobacco smoke, this amendment prohibits tobacco smoking in enclosed indoor workplaces. Allows exceptions for private residences except when they are being used to provide commercial childcare, adult care or health care. Also allows exceptions for retail tobacco shops, designated smoking guest rooms at hotels and other public lodging establishments, and stand-alone bars. Provides definitions, and requires the legislature to promptly implement this amendment.

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

WHEREAS, second-hand tobacco smoke is a known human carcinogen (contains cancer-causing agents) for which there is no safe level of exposure, and causes death and disease;

WHEREAS, exposure to second-hand tobacco smoke frequently occurs in the workplace; and

WHEREAS, ventilation and filtration systems do not remove the cancer-causing substances from second-hand smoke;

NOW, THEREFORE, to protect people from the health hazards of second-hand tobacco smoke, the citizens of Florida hereby amend Article X of the Florida Constitution to add the following as section 20:

**SECTION 20. Workplaces Without Tobacco Smoke.**

(a) Prohibition. As a Florida health initiative to protect people from the health hazards of second-hand tobacco smoke, tobacco smoking is prohibited in enclosed indoor workplaces.

(b) Exceptions. As further explained in the definitions below, tobacco smoking may be permitted in private residences whenever they are not being used commercially to provide child care, adult care, or health care, or any combination thereof; and further may be permitted in retail tobacco shops, designated smoking guest rooms at hotels and other public lodging establishments; and stand-alone bars. However, nothing in this section or in its implementing legislation or regulations shall prohibit the owner, lessee, or other person in control of the use of an enclosed indoor workplace from further prohibiting or limiting smoking therein.

(c) Definitions. For purposes of this section, the following words and terms shall have the stated meanings:

"Smoking" means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product.

"Second-hand smoke," also known as environmental tobacco

smoke (ETS), means smoke emitted from lighted, smoldering, or burning tobacco when the smoker is not inhaling; smoke emitted at the mouthpiece during puff drawing; and smoke exhaled by the smoker.

"Work" means any person's providing any employment or employment-type service for or at the request of another individual or individuals or any public or private entity, whether for compensation or not, whether full or part-time, whether legally or not. "Work" includes, without limitation, any such service performed by an employee, independent contractor, agent, partner, proprietor, manager, officer, director, apprentice, trainee, associate, servant, volunteer, and the like.

"Enclosed indoor workplace" means any place where one or more persons engages in work, and which place is predominantly or totally bounded on all sides and above by physical barriers, regardless of whether such barriers consist of or include uncovered openings, screened or otherwise partially covered openings; or open or closed windows, jalousies, doors, or the like. This section applies to all such enclosed indoor work-places without regard to whether work is occurring at any given time.

"Commercial" use of a private residence means any time during which the owner, lessee, or other person occupying or controlling the use of the private residence is furnishing in the private residence, or causing or allowing to be furnished in the private residence, child care, adult care, or health care, or any combination thereof, and receiving or expecting to receive compensation therefor.

"Retail tobacco shop" means any enclosed in-door workplace dedicated to or predominantly for the retail sale of tobacco, tobacco products, and accessories for such products, in which the sale of other products or services is merely incidental.

"Designated smoking guest rooms at public lodging establishments" means the sleeping rooms and directly associated private areas, such as bathrooms, living rooms, and kitchen areas, if any, rented



to guests for their exclusive transient occupancy in public lodging establishments including hotels, motels, resort condominiums, transient apartments, transient lodging establishments, rooming houses, boarding houses, resort dwellings, bed and breakfast inns, and the like; and designated by the person or persons having management authority over such public lodging establishment as rooms in which smoking may be permitted.

"Stand-alone bar" means any place of business devoted during any time of operation predominantly or totally to serving alcoholic beverages, intoxicating beverages, or intoxicating liquors, or any combination thereof, for consumption on the licensed premises; in which the serving of food, if any, is merely incidental to the consumption of any such beverage; and that is not located within, and does not share any common entryway or common indoor area with, any other enclosed indoor workplace including any business for which the sale of food or any other product or service is more than an incidental source of gross revenue.

(d) Legislation. In the next regular legislative session occurring after voter approval of this amendment, the Florida Legislature shall adopt legislation to implement this amendment in a manner consistent with its broad purpose and stated terms, and having an effective date no later than July 1 of the year following voter approval. Such legislation shall include, without limitation, civil penalties for violations of this section; provisions for administrative enforcement; and the requirement and authorization of agency rules for implementation and enforcement. Nothing herein shall preclude the Legislature from enacting any law constituting or allowing a more restrictive regulation of tobacco smoking than is provided in this section.

***Interest of the AMERICAN COLLEGE OF PHYSICIANS – AMERICAN SOCIETY OF INTERNAL MEDICINE, FLORIDA CHAPTER, INC. AND THE FLORIDA PUBLIC HEALTH ASSOCIATION, INC..***  
***In Supporting The Workplace Smoking Amendment***

The American College of Physicians – American Society of Internal Medicine, Florida Chapter, Inc. (the "Chapter") is a Florida Not for profit corporation comprised of approximately 5400 Florida licensed physicians specializing in internal medicine. As primary care physicians, members of the Chapter routinely diagnose and treat the diseases associated with second-hand smoke. The Florida Public Health Association, Inc. ("FPHA") is a Florida not for profit corporation comprised of approximately 900 members whose goal is to promote support public health in the State of Florida. The Chapter and FPHA support the workplace smoking amendment because it is likely to reduce the morbidity and mortality associated with second-hand smoke. The Chapter and FPHA urge the Court to approve this amendment for ballot placement because it satisfies the requirements of Florida law.

### **SUMMARY OF THE ARGUMENT**

In its advisory opinion the Florida Supreme Court is limited to determining only two legal issues: (1) whether the proposed amendment addresses a single subject as required by article XI, section 3 of the Florida Constitution; and (2) whether the proposed amendment meets the ballot title and summary requirements of section 101.161, Florida Statutes (2001).

This Court has always held that as long as the title and ballot summary, when read together, fully inform voters of the chief purpose of the amendment then voters could not be misled concerning the purpose of the amendment. The title of the workplace smoking amendment satisfies the requirement that the title provide a 15-word caption "by which the measure is commonly referred to or spoken of." § 101.161, Fla. Stat. (2001). The ballot summary is intended to make sure that voters know what proposal is being considered when voting. The purpose of the amendment to prohibit tobacco smoking in enclosed indoor workplaces is clearly stated in the ballot summary. The summary also tells the exceptions to the prohibition, and states that the amendment includes definitions and requires legislative implementation.

The single-subject requirement is met if the amendment has a logical and natural oneness of purpose or 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. The entire amendment focuses on the objective to prohibit tobacco smoking in enclosed indoor workplaces. It contains directly related exceptions, definitions, and enforcement provisions. The amendment clearly embraces "but one subject and matter directly connected therewith", satisfying the single-subject requirement of Article XI, section 3.

## **ARGUMENT**

## **I. DEFERENTIAL STANDARD OF REVIEW.**

The Florida Supreme Court has always recognized that it “must act with extreme care, caution, and restraint before it removes a constitutional amendment from the vote of the people.” Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982). The Court’s “duty is to uphold an initiative petition unless it can be shown to be ‘clearly and conclusively defective.’” Floridians Against Casino Takeover v. Let’s Help Florida, 363 So. 2d 337, 339 (Fla. 1978).

## **II. THE BALLOT TITLE AND SUMMARY ACCURATELY INFORM THE VOTER OF THE CHIEF PURPOSE OF THE AMENDMENT.**

The proposed amendment must comply with the requirements of section 101.161, Florida Statutes (a summary of the amendment shall appear on the ballot whenever a constitutional amendment is submitted to the vote of the people). The Florida Supreme Court has interpreted that provision to mean “the ballot title and summary . . . must state in clear and unambiguous language the chief purpose of the measure.” In re Advisory Opinion to the Attorney General--Save Our Everglades, 636 So. 2d 1336, 1341 (Fla. 1994) (quoting Askew v. Firestone, 421 So. 2d 151, 154-55 (Fla. 1982)). This is so the voter will have fair notice of the content of the proposed amendment, will not be misled as to its purpose, and can

cast an intelligent and informed ballot. Advisory Opinion to the Attorney General Re: Stop Early Release of Prisoners, 661 So. 2d 1204 (Fla. 1995); Save Our Everglades, 636 So. 2d 1336, 1341.

The ballot title and summary need not explain every detail, ramification, or effect of the proposed amendment, Grose v. Firestone, 422 So. 2d 303, 305 (Fla. 1982), nor specify existing statutory laws that will be changed or invalidated. Advisory Opinion to the Attorney General re: Prohibiting Public Funding of Political Candidates' Campaigns, 693 So. 2d 972, 975-76 (Fla. 1997); Carroll v. Firestone, 497 So. 2d 1204 (Fla. 1986).

The title of the proposed amendment, "Protect People From The Health Hazards Of Second-Hand Tobacco Smoke By Prohibiting Workplace Smoking", meets the 15-word limit of the statute, and is the common reference for the proposed amendment.

The ballot summary also meets the 75-word limit of the statute, explains the main purpose of the amendment, and accurately reflects the text:

To protect people from the health hazards of second-hand tobacco smoke, this amendment prohibits tobacco smoking in enclosed indoor workplaces. Allows exceptions for private residences except when they are being used to provide commercial child care, adult care or health care. Also allows exceptions for retail tobacco shops, designated smoking guest rooms at hotels and other public lodging establishments, and stand-alone bars. Provides definitions, and requires the legislature to promptly implement this amendment.

The Attorney General's question about interpreting the private residence exception in the amendment is easily resolved by the clear and unambiguous language of the amendment itself. The general prohibition in the amendment against smoking in any enclosed indoor workplace is followed immediately by the "exceptions," which provide that "tobacco smoking may be permitted in private residences when not being used to provide commercial child care, adult care, or health care, or any combination thereof." The definitions make it clear that smoking may take place in a private residence during the times when it is not being used for the narrow and limited commercial purposes.

### **III. THE PETITION SATISFIES THE SINGLE-SUBJECT REQUIREMENT OF ARTICLE XI, SECTION 3, FLORIDA CONSTITUTION.**

Article XI, section 3, Florida Constitution, provides in pertinent part:

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, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith.

As this Court has fully explained previously, the single subject rule serves as a "rule of restraint." Fine v. Firestone, 448 So. 2d 984, 988 (Fla. 1984). "It was placed in the constitution by the people to allow the citizens, by initiative petition, to propose and vote on singular changes in the functions of our governmental

structure." Id. The test for evaluating whether a proposed amendment violates the single subject rule requires us to determine whether the amendment deals with "a logical and natural oneness of purpose." Id. at 990. See also Advisory Opinion to the Attorney General Re Prohibiting Public Funding of Political Candidates' Campaigns, 693 So. 2d 972 (Fla. 1997).

The single dominant plan of the workplace smoking amendment is to prohibit tobacco smoking in enclosed indoor workplaces. All the provisions in the amendment, including exceptions and implementation, relate to this single objective. The amendment meets the single-subject requirement of Article XI, Section 3, Florida Constitution.

The Court should approve the measure for placement on the ballot.

### **CONCLUSION**

The workplace smoking initiative "embraces but one subject and matter directly connected therewith", and the title and ballot summary precisely explain its chief purpose. The Court should approve the amendment for ballot placement.

Respectfully submitted this 27th day of November, 2001.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by United States mail to the Office of the Attorney General, Louis F. Hubener, III, 400 S. Monroe St., Tallahassee, FL 32399-6536; to counsel for the Florida Restaurant Association, Warren H. Husband, Metz, Husband, & Hauser, P.O. Box 10909, Tallahassee, FL 32302; to counsel for the Sponsor, Stephen H. Grimes and Susan L. Kelsey, Holland & Knight LLP, P.O. Drawer 810, Tallahassee, FL 32302, this 27th day of November, 2001

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Attorney

**CERTIFICATE OF FONT**

I HEREBY CERTIFY that this brief was prepared using Times New Roman 14 point type, a font that is proportionately spaced

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Attorney