

IN THE SUPREME COURT OF FLORIDA

Case No. SC01-2422

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

**INITIAL BRIEF OF INTERESTED PARTY
CENTER FOR FLORIDA’S CHILDREN
NATIONAL CENTER FOR TOBACCO-FREE KIDS, INC.
IN SUPPORT OF THE PROPOSED AMENDMENT**

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STATEMENT OF THE CASE AND FACTS

The Court has for review an amendment to the Florida Constitution proposed through the citizens' initiative petition process of article XI, section 3, Florida Constitution. The Court has jurisdiction pursuant to article V, section 3(b)(10), Florida Constitution. The amendment would prohibit tobacco smoking in enclosed indoor workplaces. The Attorney General has concluded in his request for an advisory opinion that the amendment addresses a single subject, and that the ballot title and summary appear to inform the voter of that main purpose. [Letter from the Attorney General to the Florida Supreme Court, November 7, 2001, p.5.]

The text of the amendment, ballot title and summary are presented in this Court's Interlocutory Order dated November 8, 2001. For the sake of conciseness, the text of the amendment, the title and the summary are omitted here.

**Interest of CENTER FOR FLORIDA'S CHILDREN
In Supporting The Smoke-Free Workplace Amendment**

The Center for Florida's Children is an alliance of diverse Floridians, including individuals, children's services agencies, business leaders and philanthropic foundations. As a private, not-for-profit organization, the Center for Florida's Children serves as Florida's statewide child advocacy hub. The Center for Florida's Children focuses attention on public policies that affect large numbers of children throughout the State of Florida. To those who advocate for children and their good health, the proposed workplace smoking amendment is critical. The Center for Florida's Children considers the workplace smoking amendment to be one of the most significant child health issues in the state and one which satisfies the legal criteria for presentation on the ballot.

**Interest of NATIONAL CENTER FOR TOBACCO-FREE KIDS, INC.
In Supporting The Smoke-Free Workplace Amendment**

The NATIONAL CENTER FOR TOBACCO-FREE KIDS is a freestanding, privately funded, not-for-profit organization that focuses on reducing tobacco use, particularly among youth. The National Center emphasizes increasing public awareness and assisting efforts to develop, adopt and implement programs and public policies that will prevent and reduce tobacco use and exposure to secondhand smoke, and that will minimize the harm caused by tobacco. The National Center has over 125 member organizations, including health, civic, corporate, youth, and religious groups dedicated to reducing children's use of tobacco products.

**Joint Statement of Interest of
CENTER FOR FLORIDA'S CHILDREN and
NATIONAL CENTER FOR TOBACCO-FREE KIDS, INC.**

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The Center for Florida's Children and the National Center for Tobacco-Free Kids (the "Interested Parties") submit this brief as interested parties to support the approval for the citizens' initiative process for the proposed amendment to the Florida Constitution to prohibit workplace smoking in the state.

Based on available research data and findings, the Interested Parties believe that there is no acceptable or benign level of exposure to secondhand smoke and that workplace smoking restrictions provide enormous public health benefits for adults and children by:

- Protecting the public, including children, from exposure to secondhand smoke that can cause or increase the risk of respiratory disease, lung cancer, heart disease, and other ailments.
- Protecting consumers and employees from harmful exposure to secondhand smoke.

Based on available research data and findings, the Interested Parties also believe that smoke-free workplaces do not cause any economic harm to those workplaces. While the Interested Parties recognize that the merits of the proposed amendment are not before this Court in this proceeding, the Interested Parties' belief in the importance of the proposal for the public health of Florida's residents leads them to urge the Court to approve the proposed amendment for submission to the voters because it satisfies the requirements of Florida law.

SUMMARY OF THE ARGUMENT

The people have a sovereign right to amend their constitution in any manner they see fit, according to principles consistently adhered to by this Court. Therefore, the Court's standard of review is deferential.

The only two issues legitimately before the Court are whether the ballot title and summary fairly and accurately disclose the chief purpose of the amendment, and whether the amendment itself complies with Florida's single-subject rule for citizen initiatives. This amendment satisfies both requirements and should be approved.

The title is required simply to provide a caption "by which the measure is commonly referred to or spoken of." § 101.161, Fla. Stat. (2001). The title of the workplace smoking amendment satisfies that requirement. The ballot summary is required to make sure that voters know what is being considered in the voting booth. The ballot summary of the workplace smoking amendment clearly states that the purpose of the amendment is to prohibit tobacco smoking in enclosed indoor workplaces with certain exceptions. The summary also informs the voter that the amendment includes definitions and requires prompt legislative implementation. Thus, voters could not be misled concerning the purpose of the amendment.

A proposed constitutional amendment complies with the single-subject requirement if it 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 single purpose of the workplace

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smoking amendment is to prohibit tobacco smoking in enclosed indoor workplaces, and the entire amendment is directed to that objective. The amendment clearly embraces "but one subject and matter directly connected therewith" and thus satisfies the single-subject requirement of article XI, section 3 of the Florida Constitution.

ARGUMENT

I. THE STANDARD OF REVIEW IS DEFERENTIAL.

The Florida Supreme court has noted that each proposed constitutional amendment is to be reviewed with "extreme care, caution and restraint." Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982). Our "duty is to uphold the proposal unless it can be shown to be 'clearly and conclusively defective.'" Advisory Opinion to the Attorney General Re Tax Limitation, 673 So. 2d 864 (Fla. 1996) quoting Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337, 339 (Fla. 1978)(quoting Weber v. Smathers, 338 So. 2d 819, 821 (Fla. 1976)). See also Weber v. Smathers, 338 So. 2d 819, 821-22 (Fla. 1976) ("we are dealing with a constitutional democracy in which sovereignty resides in the people. It is their Constitution that we are construing. They have a right to change, abrogate or modify it in any manner they see fit so long as they keep within the confines of the Federal Constitution. ... Neither the wisdom of the provision [initiative petition] nor the quality of its draftsmanship is a matter for our review."). Given the deferential standard governing the Court's review, the workplace smoking amendment is clear, precise, detailed, and full and fair in its disclosure. The Court should approve placement of this Amendment on the ballot.

II. THE BALLOT TITLE AND SUMMARY ACCURATELY INFORM THE VOTER OF THE MAIN PURPOSE OF THE AMENDMENT.

This Court has said that the ballot summary is not required to include all possible effects, Grose v. Firestone, 422 So. 2d 303, 305 (Fla. 1982), nor to "explain in detail what the proponents hope to accomplish." Advisory Opinion to the Attorney General English--The Official Language of Florida, 520 So. 2d 11, 13 (Fla. 1988). Rather, it is sufficient that the ballot summary clearly and accurately sets forth the general rule to be applied and informs the voters of the chief purpose of the proposal so that an informed decision is possible. Advisory Opinion to the Attorney General Re Tax Limitation, 673 So. 2d 864 (Fla. 1996).

The title of the proposed amendment is "Protect People From The Health Hazards Of Second-Hand Tobacco Smoke By Prohibiting Workplace Smoking." This title meets the 15-word limit of section 101.161(1), Florida Statutes. The ballot summary also meets the 75-word limit of section 101.161(1), Florida Statutes, and explains and accurately reflects the text.

III. THE AMENDMENT SATISFIES THE SINGLE-SUBJECT

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REQUIREMENT OF ARTICLE XI, SECTION 3, FLORIDA CONSTITUTION.

Article XI, Section 3, Florida Constitution, specifies that any amendment, except for those limiting the power of government to raise revenue, “shall embrace but one subject and matter directly connected therewith.” The purpose of the single-subject provision is to prevent “logrolling,” a practice in which separate issues are rolled into a single initiative in order to secure approval of an otherwise unpopular issue. Advisory Op. to Atty. Gen.—Save Our Everglades, 636 So. 2d 1336 (Fla. 1994). The Court may also consider whether the amendment performs multiple functions of government or substantially affects multiple provisions of the Florida Constitution without disclosing them. Adv. Op. to Atty. Gen.—Restricts Laws Related to Discrimination, 632 So. 2d 1018, 1020 (Fla. 1994).

A proposed amendment meets the single-subject test “when it ‘may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme. Unity of object and plan is the universal test.’ City of Coral Gables v. Gray, 154 Fla. 881, 883-884, 19 So. 2d 318, 320 (1944).” Advisory Op. to Atty. Gen. re Fla. Locally Approved Gaming, 656 So. 2d 1259, 1263 (Fla. 1994); see also Advisory Op. to Atty. Gen.—Limited Political Terms in Certain Elective Offices, 592 So. 2d 225 (Fla. 1991). There can be no doubt that the single dominant plan or scheme of the workplace smoking amendment is to prohibit tobacco smoking in enclosed indoor workplaces. No portion of this amendment is directed toward any other purpose. The amendment meets the single-subject requirement of article XI, section 3, Florida Constitution, and should be approved by the Court for placement on the ballot.

CONCLUSION

Under the applicable deferential standard for reviewing initiative petitions, the workplace smoking initiative “embraces but one subject and matter directly connected therewith” and the title and ballot summary accurately explain its chief purpose. The Court should approve the amendment for submission to the voters.

Respectfully submitted this _____ 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, to counsel for the American College of Physicians – American Society of Internal Medicine, Florida Chapter, Inc. and the Florida Public Health Association, Inc., Christopher L. Nuland, 1000 Riverside Avenue, Suite 200, Jacksonville, FL 32204-4103, to counsel for the American Lung Association of Florida, Inc., Marshall Collins Deason, Jr., 3750 Gunn Highway, Suite 2-C, Tampa, FL 33624-4905, to counsel for American Heart Association, Inc. Florida/Puerto Rico Affiliate, Teresa D. Shelton, 4830 Windmill Palm Terrace NE, St. Petersburg, FL 33703-6307, to counsel for the American Cancer Society, Florida Division, Inc. and AARP, T. Elaine Holmes, 3709 West Jetton Avenue,

Tampa, FL 33629-5146 this _____ day of November, 2001.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief was prepared using Times New Roman 14 point type, a font that is proportionately spaced, and complies with the requirements set forth in Florida Rules of Appellate Procedure 9.210(a)(2).

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