

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 PARTIES

AMERICAN CANCER SOCIETY, FLORIDA DIVISION, INC.

**AMERICAN HEART ASSOCIATION, INC. FLORIDA/PUERTO
RICO AFFILIATE**

AMERICAN LUNG ASSOCIATION OF FLORIDA, INC.

AARP

IN SUPPORT OF THE PROPOSED AMENDMENT

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF THE ARGUMENT	8
ARGUMENT	9
I. THE STANDARD OF REVIEW IS DEFERENTIAL	9
II. THE BALLOT TITLE AND SUMMARY ACCURATELY INFORM THE VOTER OF THE CHIEF PURPOSE OF THE AMENDMENT	10
III. THE PETITION SATISFIES THE SINGLE-SUBJECT REQUIRE- MENT OF ARTICLE XI, SECTION 3, FLORIDA CONSTITUTION	11
CONCLUSION	12
CERTIFICATE OF SERVICE	16
CERTIFICATE OF FONT	17

TABLE OF AUTHORITIES

CASES	PAGE
<u>Advisory Op. to Atty. Gen. re Fla. Locally Approved Gaming</u> , 656 So. 2d 1259 (Fla. 1994)	11
<u>Advisory Op. to Atty. Gen.—Limited Political Terms in Certain Elective Offices</u> , 592 So. 2d 225 (Fla. 1991)	11
<u>Advisory Opinion to the Attorney General re: Prohibiting Public Funding of Political Candidates’ Campaigns</u> , 693 So. 2d 972 (Fla. 1997)	10
<u>Adv. Op. to Atty. Gen.—Restricts Laws Related to Discrimination</u> , 632 So. 2d 1018 (Fla. 1994)	12
<u>Advisory Op. to Atty. Gen.—Save Our Everglades</u> , 636 So. 2d 1336 (Fla. 1994)	12
<u>Askew v. Firestone</u> , 421 So. 2d 151 (Fla. 1982)	9
<u>Carroll v. Firestone</u> , 497 So. 2d 1204 (Fla. 1986)	10
<u>City of Coral Gables v. Gray</u> , 154 Fla. 881, 19 So. 2d 318 (1944)	11
<u>Grose v. Firestone</u> , 422 So. 2d 303 (Fla. 1982)	10
 CONSTITUTIONAL PROVISIONS	
Article XI, Section 3, Florida Constitution	11
 STATUTES AND RULES	
Section 101.161(1), Florida Statutes (2001)	10

STATEMENT OF THE CASE AND FACTS

The Court has for 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. The Attorney General concluded in his request for an advisory opinion 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 Court has jurisdiction pursuant to article V, section 3(b)(10), Florida Constitution.

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 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.

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 AMERICAN CANCER SOCIETY, FLORIDA DIVISION, INC.

In Supporting The Workplace Smoking Amendment

AMERICAN CANCER SOCIETY, FLORIDA DIVISION, INC. is a Florida non-profit corporation whose mission is to eliminate cancer as a major health problem by preventing cancer, saving lives and diminishing suffering from cancer through research, education, advocacy and service.

AMERICAN CANCER SOCIETY is dedicated to reducing the number of people dying from and being diagnosed with cancer and significantly improving the quality of life for all people **suffering from or touched by** cancer.

AMERICAN CANCER SOCIETY can be serious about preventing cancer only if it is serious about limiting exposure to tobacco carcinogens in environmental tobacco smoke (also known as **ETS or** second-hand tobacco smoke).

AMERICAN CANCER SOCIETY supports the workplace smoking amendment because it would reduce incidence of deadly lung and bronchial cancer, as well as other cancers associated with ETS. **There is broad consensus among members of the international medical and scientific communities that ETS is a human carcinogen that contributes to death and disease in humans, including healthy non-smokers.**

AMERICAN CANCER SOCIETY urges the Court to approve the workplace smoking amendment for submission to the voters because it satisfies the requirements of Florida law.

Interest of AMERICAN HEART ASSOCIATION, INC. FLORIDA/PUERTO RICO AFFILIATE

In Supporting The Workplace Smoking Amendment

The AMERICAN HEART ASSOCIATION, INC. is a not-for-profit corporation incorporated under the Not-For Profit Corporation Law of the State of New York. The AMERICAN HEART ASSOCIATION, INC. FLORIDA/PUERTO RICO AFFILIATE is authorized to do business in the state of Florida and in Puerto Rico and to support the mission to reduce disability and death from cardiovascular diseases and stroke. Public education programs to inform people how to reduce their risk of heart disease and stroke are another Association priority.

AMERICAN HEART ASSOCIATION, INC. FLORIDA/PUERTO RICO AFFILIATE supports the workplace smoking amendment because preventing heart disease and stroke is now—and always has been—the Association’s first priority. Our support of this amendment to protect people from the health hazards of second-hand tobacco smoke will expedite reaching our goal to reduce disability and death from cardiovascular diseases and stroke.

Although AMERICAN HEART ASSOCIATION, INC. FLORIDA/PUERTO RICO AFFILIATE recognizes that the merits of the proposal are not before the Court in this proceeding, AMERICAN HEART ASSOCIATION, INC. FLORIDA/PUERTO RICO AFFILIATE urges the Court to approve the workplace smoking amendment for submission to the voters because it satisfies the requirements of Florida law.

Interest of AMERICAN LUNG ASSOCIATION OF FLORIDA, INC.

In Supporting The Workplace Smoking Amendment

AMERICAN LUNG ASSOCIATION OF FLORIDA, INC. is a Florida non-profit corporation whose mission, as a voluntary health organization, is to prevent lung disease and to promote lung health through education, advocacy and research..

AMERICAN LUNG ASSOCIATION OF FLORIDA, INC. supports the workplace smoking amendment because second-hand smoke in the workplace is especially harmful to the lungs of both healthy people and lung patients. Many people who suffer from allergies, asthma, emphysema, bronchitis, lung cancer and other breathing disorders are at risk when breathing secondhand smoke in restaurants, the workplace and other enclosed areas. Tobacco smoke (which contains over 4,000 chemicals) is a major source of pollution in most indoor air environments, particularly work sites, and has been classified as a Group A carcinogen by the U. S. Environmental Protection Agency.

AMERICAN LUNG ASSOCIATION OF FLORIDA, INC. urges the Court to approve the workplace smoking amendment for submission to the voters because it satisfies the requirements of Florida law.

Interest of AARP In Supporting The Workplace Smoking Amendment

AARP is a nonprofit, nonpartisan membership organization for people 50 and over, with over 35 million members nationally and over 2.4 million members in the State of Florida. AARP provides information and resources, advocacy on legislation, consumer and legal issues; assists members to serve their communities; and provides services and benefits to members.

AARP seeks to foster the highest possible level of health and well-being of individuals as they age, and supports preventive health measures such as limits on smoking in non-residential public buildings, on public transportation, and in restaurants.

SUMMARY OF THE ARGUMENT

The Court's standard of review of constitutional amendments by citizen initiative has consistently been deferential. A proposal may be stricken from the ballot only if it is clearly and conclusively defective. The only two issues rightfully before the Court are whether the ballot title and summary fairly and accurately make known the chief purpose of the amendment, and whether the amendment itself complies with Florida's single-subject rule for citizen initiatives. The workplace smoking amendment should be approved because it satisfies both requirements.

The purpose of the ballot summary is to make sure that voters know what proposal they are considering in the voting booth. The ballot summary of the smoke-free workplace amendment clearly states that the purpose of the amendment is to prohibit tobacco smoking in enclosed indoor workplaces. The summary also lets the voter know the exceptions to the prohibition, and that the amendment includes definitions and requires legislative implementation. The ballot summary clearly sets forth the purpose of the amendment.

The purpose of a title is 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.

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 entire amendment is directed to the objective that tobacco smoking be prohibited in enclosed indoor workplaces, and it includes directly connected matters such as exceptions, definitions, and enforcement provisions.

ARGUMENT

I. THE STANDARD OF REVIEW IS DEFERENTIAL.

This Court has always been extremely reluctant to remove a proposed constitutional amendment from the ballot because it is important to protect the people's constitutional right to modify the law of Florida. As noted in Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982), the court "must act with extreme care, caution, and restraint before it removes a constitutional amendment from the vote of the people."

The governing standard of review is very deferential, but by any standards the workplace smoking amendment is clear, precise, detailed, and full and fair in its disclosure. The Court should approve it for submission to the voters.

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

Section 101.161(1), Florida Statutes (2001) provides that whenever a constitutional amendment is submitted to the vote of the people, a summary of the amendment shall appear on the ballot. The statute further states as follows:

The substance of the amendment or other public measure 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.

While a ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, they 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 ballot summary meets the word limit of the statute, explains the chief 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 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 word limit of the statute, and is the common reference for the proposed amendment.

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

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. All the provisions in the amendment relate to the implementation of this objective.

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 aggregate votes or 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).

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

CONCLUSION

The standard for reviewing initiative petitions is highly deferential. But by any standard, 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 Center for Florida’s Children and the National Center for Tobacco-Free Kids, Michelle Anchors, Anchors, Foster, McInnis & Keefe, P.A., 909 Mar Walt Drive, Suite 1014, Ft. Walton Beach, FL 32547-6757, this _____ day of November, 2001.

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

Attorney