IN THE SUPREME COURT OF FLORIDA

Case No. SC01-2422

Upon Request From the Attorney General
For An Advisory Opinion As To The
Validity Of An Initiative Petition

ADVISORY OPINION TO THE ATTORNEY GENERAL

RE: PROTECT PEOPLE FROM THE HEALTH HAZARDS OF SECOND-HAND TOBACCO SMOKE BY PROHIBITING WORKPLACE SMOKING

INITIAL BRIEF AND APPENDIX OF THE SPONSOR, SMOKE-FREE FOR HEALTH, INC.

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE AND FACTS 1

SUMMARY OF THE ARGUMENT 10

ARGUMENT 12

STANDARD OF REVIEW 12

I. THE BALLOT TITLE AND SUMMARY FAIRLY AND UNAMBIGUOUSLY DISCLOSE THE CHIEF PURPOSE OF THE AMENDMENT. 13

II. THE AMENDMENT SATISFIES THE SINGLE-SUBJECT REQUIREMENT. 20

CONCLUSION 24

CERTIFICATE OF SERVICE 25

CERTIFICATE OF FONT 27

INDEX TO APPENDIX
APPENDIX (attached)

TABLE OF AUTHORITIES

CASES **PAGE**

Advisory Op. to Atty. Gen. -- Limited Political Terms In Certain Elective Offices, 592 So. 2d 225 (Fla. 1991) 23

Advisory Op. to Atty. Gen.—Ltd. Marine Net Fishing, 620 So. 2d 997 (Fla. 1993) 23

Advisory Op. to Atty. Gen. re Fish and Wildlife Conservation Comm'n, 705 So. 2d 1351 (Fla. 1998) 23

Advisory Op. to Atty. Gen. re Fla. Locally Approved Gaming, 656 So. 2d 1259 (Fla. 1994) 21

Advisory Op. to Atty. Gen. re Florida Transp. Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation System, 769 So. 2d 367 (Fla. 2000) 19, 20, 21, 22

Advisory Op. to Atty. Gen. re: Prohibiting Pub. Funding of Political Candidates' Campaigns, 693 So. 2d 972 (Fla. 1997) 20

Advisory Op. to Atty. Gen. Re Tax Limitation, 644 So. 2d 486 (Fla. 1994) 13

Advisory Op. to Atty. Gen. re Term Limits Pledge, 718 So. 2d 798 (Fla. 1998) 19

Advisory Op. to Atty. Gen.—Save Our Everglades, 636 So. 2d 1336 (Fla. 1994) 20, 21

Askew v. Firestone, 421 So. 2d 151 (Fla. 1982) 13, 20

Butterworth v. "X" Hosp. 763 So. 2d 467 (Fla. 4th DCA), rev. dism., 773 So. 2d 54 (Fla. 2000) 17

Fine v. Firestone,
448 So. 2d 984 (Fla. 1984) 21

Gray v. Bryant,
125 So. 2d 846 (Fla. 1960) 17

Grose v. Firestone,
422 So. 2d 303 (Fla. 1982) 20

Hill v. Milander,
72 So. 2d 796 (Fla. 1954) 19

Mann v. Goodyear Tire & Rubber Co.,
300 So. 2d 666 (Fla. 1974) 17

McKendry v. State,
641 So. 2d 45 (Fla. 1994) 17

Pope v. Gray,
104 So. 2d 841 (Fla. 1958) 13

State v. Division of Bond Finance,
278 So. 2d 614 (Fla. 1973) 17

State v. Keller,
140 Fla. 346, 191 So. 542 (1939) 17

Weber v. Smathers,
338 So. 2d 819 (Fla. 1976) 13

CONSTITUTIONS

Art. V, § 3(b)(10), Fla. Const. 1

Article X, Fla. Const. 2

Art. XI, § 3, Fla. Const. 1, 20

STATUTES AND RULES

§ 16.061, Fla. Stat. 1

§ 101.161(1), Fla. Stat. 13, 14, 19

Fla. Admin. Code R. 1S-2009(5) 22

STATEMENT OF THE CASE AND FACTS

Smoke-Free For Health, Inc. is a Florida political committee created principally to promote an amendment to the Florida Constitution through the initiative petition process. See Art. XI, § 3, Fla. Const. The amendment would prohibit tobacco smoking in enclosed indoor workplaces. The Attorney General concluded in his request for an advisory opinion[1] that the smoke-free workplace amendment encompasses a single subject, and that the ballot title and summary appear to inform the voter of that chief purpose. [A 3 at 5.] The Court has jurisdiction. Art. V, § 3(b)(10), Fla. Const.[2]

Title, Ballot Summary, and Text Of the Amendment

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:

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[1] Section 16.061, Florida Statutes (2001), requires the Attorney General to petition this Court within 30 days after receiving an initiative from the Secretary of State, "requesting an advisory opinion regarding the compliance of the text of the proposed amendment or revision with s. 3, Art. XI of the State Constitution and the compliance of the proposed ballot title and substance with s. 101.161." This section implements Florida Constitution article IV, section 10, which requires the Attorney General to "request the opinion of the justices of the supreme court as to the validity of any initiative petition circulated pursuant to Section 3 of Article XI."

[2] Article V, section 3(b)(10) provides that "The supreme court … [s]hall, when requested by the attorney general pursuant to the provisions of Section 10 of Article IV, render an advisory opinion of the justices, addressing issues as provided by general law."

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 preamble and operative text of the smoke-free workplace amendment provide as follows:

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 workplaces 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 indoor 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.

Intent of the Sponsor

Smoke-Free For Health, Inc. intends to effect a change in the law of Florida that will fundamentally and permanently improve and protect the health of people in Florida. Although in the distant past tobacco smoking was considered more socially acceptable, and was routinely modeled in public with little or no internal or external constraint or consideration for nonsmokers, that status has changed dramatically. Significant advances in scientific and medical knowledge have established that tobacco smoking and exposure to second-hand tobacco smoke create a widespread threat to the public health. The preamble to the smoke-free workplace amendment sets forth but a few of the scientifically-substantiated facts that motivated Smoke-Free For Health's amendment drive.[3] This public health problem can be solved only by finding ways to protect nonsmokers from the health hazards of second-hand tobacco smoke, and to prevent our younger generations from falling prey to the deadly heritage of tobacco smoking.

The smoke-free workplace amendment will prohibit tobacco smoking in enclosed indoor workplaces in Florida. As a result, exposure to second-hand tobacco smoke will decline sharply. Nonsmokers will be protected, to a much greater degree

[3] See A 1 (selected bibliography of scientific and medical articles documenting Smoke-Free for Health's claims). See also http://www.smokefreeforhealth.org (same).

than they are now, from the health hazards of second-hand smoke. More children will grow up with fewer health problems related to smoke exposure, and without seeing smoking so frequently modeled in public as acceptable behavior. Our children and grandchildren thus will have the opportunity to be healthier and less likely to smoke as adults. Senior citizens and others with health problems making them more susceptible to illness and discomfort from second-hand smoke will be protected. Individuals, employers, and governments will save vast amounts of money that smoking-related illness would otherwise cost. More smokers, finding it more difficult to smoke, will be more likely to be able to quit. Along with these health benefits, the experience of other jurisdictions that have banned smoking indicates that tourism and public dining revenues will increase. These intended and anticipated health benefits are reflected accurately in the title, summary, and text of the smoke-free workplace amendment, which embody the concepts of protection from health hazards.

The smoke-free workplace amendment establishes a broad-based prohibition against tobacco smoking in any enclosed indoor workplace in Florida. To protect the greatest possible number of people and eliminate as many loopholes as possible, the smoke-free workplace amendment defines "enclosed indoor workplace" broadly to encompass any enclosed physical space where work occurs at any time. Non-enclosed areas associated with workplaces, however, such as decks, porches, patios, open courtyards, and so forth, would not be covered by the amendment's prohibition

against smoking because they do not meet the "enclosed" aspect of the definition of enclosed indoor workplace. For example, if the main dining area of a restaurant meets the definition of an enclosed indoor workplace, but the restaurant also maintains an outdoor area for dining al fresco, the restaurant manager may elect to allow smoking in that outdoor area (but not inside).

Although the smoke-free workplace amendment allows certain exceptions, which are fully disclosed to the voter in the ballot summary and explicated in the text, it does not require them. In other words, none of the listed exceptions is constitutionalized as a place where smoking must be permitted. Rather, the amendment allows smoking to occur in very limited locations only if they first qualify for the exceptions set forth in detail in the amendment, and then only if the owner or other person in control of that place decides to allow smoking there. This is clear from the summary and text of the amendment.

Chief among the exceptions are private residences. The smoke-free workplace amendment is written so that one's home remains one's castle where smoking is concerned. The only exceptions to the exception occur when a private residence is used to provide commercial child care, adult care, or health care. The amendment makes it clear that this refers to the situation where the homeowner or other person in control of the private residence is operating such a commercial business within the home and being paid for it (or expecting to be paid for it), in contrast to the situation

where the homeowner hires outside help to come into the home and provide a service to or for the benefit of the homeowner. For example, if a homeowner hires a nanny to come into her home and care for her children, that does not constitute commercial use of the home for purposes of this amendment, and the homeowner remains free to allow smoking in the home at any time despite the presence of children and a nanny there. On the other hand, if the homeowner operates a day care in her home from 7 a.m. to 6 p.m. every weekday, and charges or receives compensation for providing that service, then the smoke-free workplace amendment will prohibit smoking in that private residence from 7 a.m. to 6 p.m. every weekday that the day care is open. When the day care is closed, the homeowner may still permit smoking in the home.

The amendment also allows (but does not require) exceptions for retail tobacco shops, designated smoking rooms at public lodging establishments, and stand-alone bars. These exceptions are likewise disclosed in the summary and set forth in detail in the amendment itself. Retail tobacco shops are those that sell tobacco, tobacco products, and accessories at retail, and in which sales of anything else are merely incidental. The public lodging establishment exception in the amendment encompasses all manner of public lodging establishments, allowing management of such establishments to designate smoking rooms among the facilities' sleeping rooms and directly associated private areas. This means that smoking may not be permitted in the common areas of a public lodging establishment, such as a lobby or restaurant,

but in the discretion of management may be permitted in designated smoking rooms "rented to guests for their exclusive transient occupancy."

The final exception allowed in the smoke-free workplace amendment is the stand-alone bar exception. The amendment defines a "stand-alone bar" in such a way as to make it very clear that smoking may not be permitted at a bar within a restaurant, nor at a bar within any other enclosed indoor workplace, nor at any bar that also serves food other than that incidental to the consumption of an alcoholic beverage. This exception places all food-service establishments on an equal footing: if anyone wants to go out to eat in Florida, they will enjoy a smoke-free dining experience.

In sum, the smoke-free workplace amendment is designed to protect as many people in Florida as possible from exposure to second-hand tobacco smoke. The amendment is not self-executing, but rather expressly requires prompt implementing legislation, and discloses this requirement in the ballot summary. This amendment represents one of the most laudable uses of the initiative process for the benefit of all people in all parts of Florida, and is being offered to the voting public only after decades of attempting and failing to secure the Florida Legislature's adoption of a tougher stance on smoking. The enormous investment of time, thought, research, and resources into the crafting of the amendment is clear from the thoroughness, clarity, and legal sufficiency of the title, summary, and text of the amendment. Smoke-Free for Health urges the Court to approve the proposal for submission to the voters.

SUMMARY OF THE ARGUMENT

The Court must pass on only two legal issues in this proceeding: whether the ballot title and summary inform the voter of the chief purpose of the amendment, and whether the amendment complies with the single-subject requirement. The Attorney General in his request for an advisory opinion has stated that the smoke-free workplace amendment satisfies both of these requirements. The Court's standard of review is de novo, and has always been tempered by the principle that the sovereign right of the people to amend their constitution should be preserved unless a proposed amendment is "clearly and conclusively defective." Thus, review is deferential.

The title and ballot summary of the smoke-free workplace amendment comply with the governing legal requirements. They inform the voter of the chief purpose of the amendment, in language that is clear and crisp and unambiguous. The summary accurately tracks key features of the text of the amendment, and fairly and accurately discloses significant details such as the exceptions allowed, the fact that the text sets forth definitions, and the requirement of legislative implementation. The Attorney General concluded correctly that the title and ballot summary pass muster.

The Attorney General's question about the interpretation of the amendment is easily answered, and poses no threat whatsoever to the validity of the amendment. As already explained, the prohibition on smoking when a private residence is being used to provide commercial child care, adult care, or health care applies only during the

times when such commercial use is occurring. At all other times, a homeowner or other person in control of a private residence may allow smoking therein. This interpretation flows readily from the clear language of the amendment and from the principle of construction that more specific provisions control over more general provisions of a constitution or statute.

The smoke-free workplace amendment satisfies the single-subject rule because it has a logical and natural oneness of purpose and may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme. The amendment has only one chief purpose, which the Attorney General recognizes, and that is to prohibit tobacco smoking in enclosed indoor workplaces. The kind of directly connected matter that the constitution expressly allows is also included in this amendment. The amendment does not substantially alter or perform the functions of multiple branches or levels of government, nor does it substantially affect other provisions of the constitution without disclosing them. The amendment thus satisfies the single-subject requirement.

The Attorney General raises another question about the amendment's use of preamble clauses, but concludes that these preamble clauses do not create a single-subject problem within the meaning of past precedent. The Attorney General does not assert that his question reflects a single-subject issue, and does not conclude that the amendment falls short of the single-subject rule. The Court has approved past

initiatives that utilized similar prefatory language to explain the context or motivations or factual basis for an amendment. The preamble clauses are permissible, and completely supported by the pertinent evidence. Smoke-Free For Health, Inc. urges the Court to approve the smoke-free workplace amendment for submission to the voters.

ARGUMENT

STANDARD OF REVIEW.

The sponsorship of an initiative petition is the exercise of a unique right guaranteed by the Florida Constitution. The initiative petition process is the only method of constitutional amendment or revision that empowers the people at all stages of the process. The Court's review is de novo, but the Court applies its review deferentially in order to protect the sovereign right of the people to amend their own organic law in whatever manner they choose. See Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982) (applying standard of "extreme care, caution, and restraint"); Pope v. Gray, 104 So. 2d 841, 842 (Fla. 1958) (reviewing initiatives represents the "most sanctified" aspect of the Court's jurisdiction).

An initiative petition must be upheld unless it is "`clearly and conclusively defective.´" Weber v. Smathers, 338 So. 2d 819, 822 (Fla. 1976) (quoting Goldner v. Adams, 167 So. 2d 575, 575 (Fla. 1964)). The Court lacks authority to pass on the merits, wisdom, draftsmanship, or constitutionality of a proposed amendment in these

proceedings. See Advisory Op. to Atty. Gen. Re Tax Limitation, 644 So. 2d 486, 489 (Fla. 1994); Weber v. Smathers, 338 So. 2d at 821-22. The smoke-free workplace amendment easily satisfies the governing standard of review, and the Court should approve it for submission to the voters.

I. THE BALLOT TITLE AND SUMMARY FAIRLY AND UNAMBIGUOUSLY DISCLOSE 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.

The title of the smoke-free workplace amendment is "Protect People From The Health Hazards Of Second-Hand Tobacco Smoke By Prohibiting Workplace Smoking." This title does not exceed 15 words, and is the common reference for the proposed amendment. It thus satisfies the governing legal requirements. § 101.161(1), Fla. Stat. (2001).

The ballot summary also 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 Attorney General acknowledges that the ballot title and summary do "appear to inform the voter of the chief purpose of the amendment, which is to prohibit tobacco smoking in enclosed indoor workplaces." [A 3 at 5.] The Court should approve the ballot title and summary.

The Attorney General raises an interpretive question about "whether smoking would be allowed in a private residence providing child, adult, or health care during those hours in which the private residence is **not** providing such care, or whether the rendering of care at any time of the day would result in a blanket prohibition against smoking on those premises." [A 3 at 5-6 (emphasis original).] Assuming for the sake of argument that an interpretive question is before the Court, the Attorney General's question is answered quite plainly in the text of the amendment itself. Although the general prohibition against smoking in enclosed indoor workplaces extends to all times, regardless of whether or not "work" is actually occurring at any given time (amendment (a), "prohibition," and (c), "enclosed indoor workplace"), the "exceptions" clause and the definition of "commercial" use of a private residence make it clear that a different rule applies to private residences. The "exceptions" clause, paragraph (b) of the amendment, states that "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." The definition of such "commercial" use of a private residence further specifies that it extends only to "any time during which the owner, lessee, or other person occupying or controlling the use of the private residence" is furnishing the commercial service, or causing or allowing the commercial service to be furnished, in the residence. The amendment, therefore, makes it perfectly clear that the prohibition extends only to the time during which the commercial use is occurring in the private residence, not at other times. In application, this will mean that if a homeowner operates a day care facility for children or an Alzheimer's care service, for instance, in her home every week day from 7 a.m. to 7 p.m. and Saturdays from 9 a.m. to 5 p.m., then smoking is prohibited in the home only during those hours. Outside of those hours, or if for example the care service is closed for the homeowner's vacation, then smoking may be permitted in the home. This is obvious to anyone who reads fairly the text of the amendment, with its list of "exceptions" and its specific rules for the private residence exception.

The ballot summary does not mislead the voter. The voter is advised in the ballot summary that an exception applies to private residences "when" they are being used for the designated commercial purposes. The text further emphasizes that in the case of a private residence, the prohibition is restricted to the "time during which" the

commercial use is occurring. There is no ambiguity or uncertainty to make the summary misleading to the voter, and the summary accurately reflects the pertinent operative provision of the text. Accordingly, the Attorney General's question presents no obstacle to approval of the amendment for submission to the voters.

Even though the correct interpretation of the amendment is clear from the language of the amendment itself, the same interpretation would result from application of basic rules of construction. In construing provisions of either the constitution or a statute on the same subject matter, the specific controls over the general. McKendry v. State, 641 So. 2d 45, 46 (Fla. 1994); Butterworth v. "X Hosp.", 763 So. 2d 467, 470 (Fla. 4th DCA), rev. dism., 773 So. 2d 54 (Fla. 2000). Applying this rule of construction, the specific provisions of the smoke-free workplace amendment applicable to private residences used for the designated commercial purposes must prevail over the general provisions applicable to enclosed indoor workplaces generally. Commercially-used private residences are a specified exception to the general rule, and must be treated as the amendment requires to implement the specific terms of the exception.

Another fundamental rule of construction compels the same result. A court is required to construe provisions of a constitution or statute dealing with the same subject matter so as to give effect to each provision, rather than nullifying one portion or aspect of the provision. Mann v. Goodyear Tire & Rubber Co., 300 So. 2d 666, 668

& n.8 (Fla. 1974); Gray v. Bryant, 125 So. 2d 846, 858 (Fla. 1960); State v. Keller, 140 Fla. 346, 191 So. 542, 545 (1939); see generally State v. Division of Bond Finance, 278 So. 2d 614, 617 (Fla. 1973). In this case, if the private residence exception were construed to prohibit smoking at all times regardless of when the commercial use ceases, then the exception would be no different from the general rule for other enclosed indoor workplaces. The language of the amendment itself, including the "exception" provision and the definition of "commercial" use of a private residence, sets up a different rule for private residences. The amendment should be construed to give effect to that different rule, rather than nullifying it by applying the general rule instead. Thus, applying basic rules of construction, the Attorney General's question about the private residence exception is easily resolved in a manner consistent with the terms of the amendment and the disclosure of the exception in the ballot summary. The voter is given the information necessary to make an informed decision. The ballot summary is not misleading.

The Attorney General's question about interpreting the private residence exception in the amendment, and his suggestion that "several provisions in the text of the proposed amendment may be subject to differing interpretations and, therefore, affect whether the summary adequately informs the voter of the substance of the proposed amendment," fall far short of exposing any "clear and conclusive" defect in the amendment. In the first place, despite suggesting that "several provisions" could

be interpreted differently by different voters, the Attorney General specified only one, easily resolved in favor of the validity of the amendment. If the Attorney General believed any other provisions created clear and conclusive defects, presumably he would have specified them so that they could be addressed and resolved. His failure to do so indicates that he (correctly) does not see any real problem with the amendment.

Second, the Attorney General's focus on how the amendment is to be interpreted skates very close to exceeding, if it does not outright exceed, the scope of the Court's jurisdiction in initiative proceedings. It is questionable whether the Court may delve into questions that may arise in the future about how to apply the amendment, particularly where the amendment is not self-executing and it remains to be seen how the Florida Legislature implements it. See Advisory Op. to Atty. Gen. re Florida Transp. Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation System, 769 So. 2d 367, 368-69 (Fla. 2000) (Court's review is "strictly limited to these legal issues [compliance with single-subject rule and whether ballot title and summary are clear and unambiguous]").

The legal requirements for the title and ballot summary are narrow, demanding only that the ballot summary disclose the "chief purpose of the measure." § 101.161(1), Fla. Stat. (2000). The Court has ruled that the purpose of this statute is "to provide fair notice of the content of the proposed amendment so that the voter will

not be misled as to its purpose, and can cast an intelligent and informed ballot." Advisory Op. to Atty. Gen. re Term Limits Pledge, 718 So. 2d 798, 803 (Fla. 1998); Hill v. Milander, 72 So. 2d 796, 798 (Fla. 1954) ("All that the Constitution requires or that the law compels or ought to compel is that the voter have notice of that which he must decide . . . . What the law requires is that the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot."). The Court has applied the requirement to mean that the language disclosing the chief purpose must be clear, unambiguous, and not misleading. Advisory Op. to Atty. Gen. re: Prohibiting Pub. Funding of Political Candidates' Campaigns, 693 So. 2d 972, 976 (Fla. 1997); Askew v. Firestone, 421 So. 2d at 154-55. 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). The ballot summary of the smoke-free workplace amendment more than satisfies these requirements, and the Court should approve it so that the voters may express their views on the amendment at the polls.

II. THE PETITION SATISFIES THE SINGLE-SUBJECT REQUIREMENT.

With one exception not applicable here, Article XI, Section 3, Florida Constitution, restricts citizens' initiatives to "one subject and matter directly connected therewith." The single-subject rule is intended to prevent "logrolling," which is the combining of different issues into one initiative so that people have to vote for

something they might not want, in order to gain something different that they do want. High-Speed Rail, 769 So. 2d at 369; Advisory Op. to Atty. Gen.—Save Our Everglades, 636 So. 2d 1336 (Fla. 1994). A second reason for the single-subject rule is to prevent one initiative from "substantially altering or performing the functions of multiple aspects of government." High-Speed Rail, 769 So. 2d at 369.

The smoke-free workplace amendment complies with the single-subject rule because it manifests a "logical and natural oneness of purpose." Fine v. Firestone, 448 So. 2d 984, 990 (Fla. 1984). Its single subject is to prohibit tobacco smoking in enclosed indoor workplaces. All of its provisions relate directly to that single subject. Viewed as a whole, it "'may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme.'" Advisory Op. to Atty. Gen. re Fla. Locally Approved Gaming, 656 So. 2d 1259, 1263 (Fla. 1994) (quoting City of Coral Gables v. Gray, 154 Fla. 881, 883-884, 19 So. 2d 318, 320 (1944)). The smoke-free workplace amendment, therefore, satisfies the single-subject requirement, and the Court should approve it for submission to the voters.

The Attorney General concludes that the smoke-free workplace initiative satisfies the single-subject requirement, but nevertheless he raises an additional question about the initiative's use of prefatory or preamble clauses prior to the operative text of the amendment. Despite raising the question, however, the Attorney General immediately

concludes that the initiative's use of preamble clauses is unlike the inflammatory rhetoric that the Court struck down in Save Our Everglades, 636 So. 2d at 1340. [A 3 at 7.] As the Attorney General points out, the prefatory statements of the factual basis for the amendment are not part of the proposed amendment itself, would not appear in the constitution, and have no operative effect. Thus, they cannot and do not perform any governmental function, and do not violate the single-subject rule.

Further, the rules governing preparation of initiative petitions expressly authorize the inclusion of additional materials supporting the amendment:

> (5) Additional materials supporting the proposed amendment or providing a method by which the petition form may be returned by mail may be printed on the form. The Division shall not review the accuracy or content of such material, but will review the petition to determine that other information does not interfere with required material.

Fla. Admin. Code R. 1S-2009(5) (emphasis added). The preamble clauses provide additional material supporting the smoke-free workplace amendment. The petition form containing the preamble clauses was submitted to and approved by the Secretary of State. The preamble clauses obviously do not interfere with the required material (i.e., the title, summary, text, and voter information), nor do they constitute any part of the initiative form that this Court has jurisdiction to review in this proceeding.

Finally, four previous initiatives have used similar prefatory language, with no effect on the validity of the respective amendments. See High-Speed Rail, 769 So. 2d at 368 ("To reduce traffic congestion and provide alternatives to the traveling public,

it is hereby declared to be in the public interest that a high speed ground transportation system . . . be developed and operated in the State of Florida . . . ."); Advisory Op. to Atty. Gen. re Fish and Wildlife Conservation Comm'n, 705 So. 2d 1351, 1352 (Fla. 1998) ("The marine, freshwater and wildlife resources of the State of Florida belong to all of the people of the state and should be conserved and managed for the benefit of the state, its people and future generations."); Advisory Op. to Atty. Gen.—Ltd. Marine Net Fishing, 620 So. 2d 997, 997-98 (Fla. 1993) ("The marine resources of the State of Florida belong to all of the people of the state and should be conserved and managed for the benefit of the state, its people, and future generations. To this end the people hereby enact limitations on marine net fishing in Florida waters to protect saltwater finfish, shellfish, and other marine animals from unnecessary killing, overfishing, and waste."); Advisory Op. to Atty. Gen. -- Limited Political Terms In Certain Elective Offices, 592 So. 2d 225, 226 (Fla. 1991) ("The people of Florida believe that politicians who remain in office too long may become preoccupied with re-election and become beholden to special interests and bureaucrats, and that present limitations on the President of the United States and Governor of Florida show that term limitations can increase voter participation, citizen involvement in government, and the number of persons who will run for elective office."). Except for Limited Political Terms, all of these initiatives placed the factual findings language within the operative text of the constitution. In contrast, the smoke-free workplace amendment

places its preambles as introductory language before the text of the constitution. The preamble clauses are harmless statements of the sponsor's intent and motivations, and do not constitute a violation of the single-subject rule or any other legal rule that is before the Court in this proceeding. Therefore, the smoke-free workplace amendment satisfies the single-subject rule, and should be approved for submission to the voters.

CONCLUSION

The smoke-free workplace amendment satisfies the governing legal requirements for the title, ballot summary, and text of a citizens' initiative. The Court should approve it for placement on the ballot.

Respectfully submitted this 28th day of November, 2001.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing with its appendix has been furnished by United States mail to following this 28th day of November, 2001.

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INDEX TO APPENDIX

A 1 Title, Ballot Summary, and Text of the Workplace Smoking Initiative, and Bibliographic information

A 2 Secretary of State's certification of entitlement to advisory opinion

A 3 Attorney General's request for advisory opinion

i