
IN THE SUPREME COURT OF FLORIDA

Case No. SC04-310

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: THE MEDICAL LIABILITY
CLAIMANT'S COMPENSATION AMENDMENT**

**INITIAL BRIEF AND APPENDIX
OF THE SPONSOR,
CITIZENS FOR A FAIR SHARE, INC.**

HOLLAND & KNIGHT LLP
Stephen H. Grimes
Susan L. Kelsey
P.O. Drawer 810
Tallahassee, FL 32302

Counsel for the Sponsor

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF THE ARGUMENT	3
ARGUMENT	4
STANDARD OF REVIEW	4
I. THE AMENDMENT SATISFIES THE SINGLE- SUBJECT REQUIREMENT	4
II. THE BALLOT TITLE AND SUMMARY FAIRLY DISCLOSE THE CHIEF PURPOSE OF THE AMENDMENT.	6
CONCLUSION	8
CERTIFICATE OF SERVICE	9
CERTIFICATE OF FONT	9
INDEX TO APPENDIX APPENDIX (attached)	

TABLE OF AUTHORITIES

CASES

PAGE(s)

Advisory Op. to Att'y Gen. re Florida Locally Approved Gaming,
656 So. 2d 1259 (Fla. 1995) 6

Advisory Op. to Att'y Gen. re Florida's Amend. to Reduce Class Size,
816 So. 2d 580 (Fla. 2002) 3, 4

*Advisory Op. to Att'y Gen. re Florida Transp. Initiative for Statewide High
Speed Monorail,*
769 So. 2d 367 (Fla. 2000) 5

Advisory Op. to Att'y Gen. re Tax Limitation,
873 So. 2d 864 (Fla. 1996) 4

Advisory Op. to Att'y Gen. re Term Limits Pledge,
718 So. 2d 798 (Fla. 1998) 6

Advisory Op. to Att'y Gen. re Voluntary Universal Pre-Kindergarten Educ.,
824 So. 2d 161 (Fla. 2002) 3, 4

Advisory Op. to Att'y Gen.—Save Our Everglades,
636 So. 2d 1336 (Fla. 1994) 5

Askew v. Firestone,
421 So. 2d 151 (Fla. 1982) 4

City of Coral Gables v. Gray,
154 Fla. 881, 19 So. 2d 318 (1944) 6

Fine v. Firestone,
448 So. 2d 984 (Fla. 1984) 5

Grose v. Firestone,
422 So. 2d 303 (Fla. 1982) 7

Hill v. Milander,
72 So. 2d 796 (Fla. 1954) 7

Weber v. Smathers,
338 So. 2d 819 (Fla. 1976) 4

CONSTITUTIONS

Art. 1, § 26, Florida Constitution 2

Art. IV, § 10, Florida Constitution 1

Art. V, § 3(b)(10), Florida Constitution 1

Art. XI , § 3, Florida Constitution 1

STATUTES AND RULES

§ 16.061, Florida Statutes (2003) 1

§ 101.161(1), Florida Statutes (2003) 6, 7

STATEMENT OF THE CASE AND FACTS

The Florida Attorney General has requested the Court's opinion¹ on the validity of a constitutional amendment proposed through the initiative petition process of article XI, section 3, Florida Constitution. [A 1 (request for advisory opinion).] The title of the amendment is "The Medical Liability Claimant's Compensation Amendment." This brief is submitted by the sponsor of the Initiative, a political committee called Citizens for a Fair Share, Inc. ("Citizens"). The Court has jurisdiction. Art. V, § 3(b)(10), Fla. Const.²

In his request for an advisory opinion, the Attorney General did not express an opinion with respect to the validity of the amendment [A 1.] Citizens submits that the title, ballot summary, and text of the amendment comply with all applicable requirements of law, and that the Court should approve it for placement on the ballot.

¹ Article IV, section 10, Florida Constitution, 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." Section 16.061, Florida Statutes (2003), implements this provision by requiring the Attorney General to petition this Court within 30 days after receiving the Secretary of State's certification of entitlement to an advisory opinion [A 2], "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."

² Article V, section 3(b)(10), Florida Constitution, 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."

Title, Ballot Summary, and Text
Of the Proposed Amendment

As already noted, the ballot title for the proposed amendment is "THE MEDICAL LIABILITY CLAIMANT'S COMPENSATION AMENDMENT."

The ballot summary for the proposed amendment states as follows:

Proposes to amend the State Constitution to provide that an injured claimant who enters into a contingency fee agreement with an attorney in a claim for medical liability is entitled to no less than 70% of the first \$250,000.00 in all damages received by the claimant, and 90% of damages in excess of \$250,000.00, exclusive of reasonable and customary costs and regardless of the number of defendants. This amendment is intended to be self-executing.

The text of the proposed amendment provides as follows:

Section 1.

Article 1, Section 26 is created to read "Claimant's right to fair compensation."

In any medical liability claim involving a contingency fee, the claimant is entitled to receive no less than 70% of the first \$250,000.00 in all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgment, settlement, or otherwise, and regardless of the number of defendants. The claimant is entitled to 90% of all damages in excess of \$250,000.00, exclusive of reasonable and customary costs and regardless of the number of defendants. This provision is self-executing and does not require implementing legislation.

Section 2.

This Amendment shall take effect on the day following approval by the voters.

SUMMARY OF THE ARGUMENT

The only issues before this Court are (1) whether the amendment contains a single subject and matter directly connected therewith; and (2) whether the ballot summary clearly and unambiguously sets forth the chief purpose of the amendment. *Advisory Op. to Att’y Gen. Re Voluntary Universal Pre-Kindergarten Educ.*, 824 So. 2d 161 (Fla. 2002). Other constitutional issues are not justiciable in this type of proceeding. *Advisory Op. to Att’y Gen. Re Florida’s Amend. to Reduce Class Size*, 816 So. 2d 580 (Fla. 2002).

The Medical Liability Claimant’s Compensation Amendment contains a single subject. The amendment provides that medical liability claimants involving a contingency fee contract shall receive no less than 70% of the first \$250,000.00 recovered in damages and 90% of all damages in excess of \$250,000.00, exclusive of reasonable costs and regardless of the number of defendants. The amendment is straight forward and does not address collateral issues.

The ballot summary clearly describes the chief purpose of the amendment. It explains that the amendment will guarantee that a medical liability claimant with a contingent fee agreement will receive at least 70% of the first \$250,000.00 in damages and 90% of all damages in excess of \$250,000.00. The summary further points out that these percentages are exclusive of reasonable costs and regardless of the number of defendants.

Citizens submit that the amendment satisfies all applicable legal requirements and that the Court should approve it for placement on the ballot.

ARGUMENT

Standard of Review. The standard of review is de novo, but with deference to the sovereign right of the people to amend their own organic law. *See 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 Court must approve an initiative unless it is “clearly and conclusively defective.” *Advisory Op. to Att’y Gen. Re Florida’s Amend. to Reduce Class Size*, 816 So. 2d 580, 582 (Fla. 2002) (quoting *Advisory Op. to Att’y Gen. Re Tax Limitation*, 873 So. 2d 864, 867 (Fla. 1996)). The Court lacks authority to pass on the merits, wisdom, draftsmanship, or constitutionality of a proposed amendment in these proceedings. *See Advisory Op. to Att’y Gen. Re Voluntary Universal Pre-Kindergarten Educ.*, 824 So. 2d 161, 164 (Fla. 2002); *Weber v. Smathers*, 338 So. 2d 819, 821-22 (Fla. 1976).

I. THE AMENDMENT 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. *Advisory Op. to Att’y Gen. re Florida Transp. Initiative for Statewide High Speed Monorail*, 769 So. 2d 367, 369 (Fla. 2000); *Advisory Op. to Att’y Gen.—Save Our*

Everglades, 636 So. 2d 1336, 1339 (Fla. 1994). A second reason for the single-subject rule is to prevent an initiative from “substantially altering or performing the functions of multiple aspects of government.” *High-Speed Rail*, 769 So. 2d at 369.

The Medical Liability Claimant’s Compensation Amendment complies with the single-subject rule. It manifests a “logical and natural oneness of purpose.” *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984). Its single subject is to ensure that those claimants for medical liability involving a contingency fee shall receive no less than the specified percentages of the recovery. As the amendment explains, the claimant is guaranteed no less than 70% of the first \$250,000.00 in damages and 90% of the damages in excess of \$250,000.00, exclusive of costs and regardless of the number of defendants. The effect of the amendment is to prevent the dilution of the claimant’s recovery by excessive charges for attorney’s fees. All of the details of the amendment are succinctly stated and relate to only one subject.

Clearly, the amendment can “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 Att’y Gen. re Fla. Locally Approved Gaming*, 656 So. 2d 1259, 1263 (Fla. 1995) (quoting *City of Coral Gables v. Gray*, 154 Fla. 881, 883-84, 19 So. 2d 318, 320 (1944)). The initiative does not substantially alter or perform multiple government functions. Thus, the Medical Liability Claimant’s Compensation Amendment satisfies the single-subject requirement, and the Court should approve it for submission to the voters.

II. THE BALLOT TITLE AND SUMMARY FAIRLY DISCLOSE THE CHIEF PURPOSE OF THE AMENDMENT.

Section 101.161(1), Florida Statutes (2003), provides that whenever a constitutional amendment is submitted to the vote of the people, a summary of the amendment must 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.

§ 101.161(1), Fla. Stat. (2003).

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 Att’y 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.”). 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 title of the amendment is “The Medical Liability Claimant’s Compensation Amendment.” This title does not exceed 15 words and is a descriptive title for the

proposed amendment. Thus, it satisfies the governing legal requirements. § 101.161(1), Fla. Stat. (2003).

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

Proposes to amend the State Constitution to provide that an injured claimant who enters into a contingency fee agreement with an attorney in a claim for medical liability is entitled to no less than 70% of the first \$250,000.00 in all damages received by the claimant, and 90% of damages in excess of \$250,000.00, exclusive of reasonable and customary costs and regardless of the number of defendants. This amendment is intended to be self-executing.

The summary explains how the amendment guarantees that a claimant for medical liability with a contingency fee agreement will receive no less than 70% of the first \$250,000.00 in damages and 90% of damages in excess of \$250,000.00, exclusive of reasonable and customary costs and regardless of the number of defendants. The summary also explains that the amendment is self-executing. Clearly, the summary describes the chief and only purpose of the amendment.

The ballot title and summary of The Medical Liability Claimant's Compensation Amendment more than satisfy the requirements of law, and the Court should approve it so that the voters may express their views on the amendment at the polls.

CONCLUSION

The Medical Liability Claimant's Compensation Amendment satisfies the governing legal requirements for the title, ballot summary, and text of a citizens' initiative. The Court should approve the amendment for placement on the ballot.

Respectfully submitted this 31st day of March, 2004.

HOLLAND & KNIGHT LLP

Stephen H. Grimes (FBN 0032005)
Susan L. Kelsey (FBN 772097)
P.O. Drawer 810
Tallahassee, FL 32302
Ph. (850) 224-7000
Fax (850) 224-8832

Counsel for the Sponsor

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 counsel for the Attorney General, Chris Kise, Solicitor General, The Capitol, Suite PL-01, Tallahassee, FL 32399-1050, this 31st day of March, 2004.

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

1781284_v1

INDEX TO APPENDIX

- A 1 Attorney General's request for advisory opinion
- A 2 Secretary of State's certification of entitlement to advisory opinion