IN THE SUPREME COURT OF FLORIDA

Case No. SC04-944

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: REPEAL OF HIGH SPEED RAIL AMENDMENT

INITIAL BRIEF OF THE SPONSOR, DERAIL THE BULLET TRAIN

Arthur J. England, Jr., Esquire
GREENBERG TRAURIG, P.A.
1221 Brickell Avenue
Miami, Florida 33131-3224
(305) 579-0605

and

Wilbur E. Brewton, Esquire
Tana D. Storey, Esquire
ROETZEL & ANDRESS, L.P.A.
225 South Adams Street, Suite 250
Tallahassee, FL 32312
(850) 222-7718
Counsel for the Sponsor

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SUMMARY OF THE CASE AND FACTS

On June 7, 2004, the Attorney General requested that this Court render an opinion as to the validity of a constitutional amendment proposed by initiative petition pursuant to Article XI, Section 3, Florida Constitution, to repeal Article X, Section 19, Florida Constitution (the "Proposed Amendment"). Specifically, the Attorney General requested that this Court determine whether the "constitutional amendment, proposed by initiative petition, complies with Article XI, section 3, Florida Constitution, and whether the amendment's ballot title and summary comply with section 101.161, Florida Statutes." [Appendix, Tab 1, Attorney General's Request for an Advisory Opinion] In the Attorney General's request for an advisory opinion, he does not suggest that the Proposed Amendment is invalid.

The title, ballot summary, and text of the Proposed Amendment is outlined below. The title is, "Repeal of High Speed Rail Amendment." The ballot summary is as follows:

> This amendment repeals an amendment in the Florida Constitution that requires the Legislature, the Cabinet and the Governor to proceed with the development and operation of a high speed ground transportation system by the state and/or by a private entity.

The text of the Proposed Amendment is, "Article X, Section 19, Florida Constitution, is hereby repealed in its entirety." [Appendix, Tab 3, Constitutional Amendment

Petition Form]

This Brief is submitted by the Sponsor of the Proposed Amendment, Derail the Bullet Trail ("DEBT"), pursuant to this Court's Order dated, June 10, 2004, that the Initial and Answer Briefs be simultaneously submitted on Friday, June 18, 2004.

SUMMARY OF THE ARGUMENT

When reviewing proposed amendments to the Florida Constitution pursuant to an initiative petition, this Court's review is limited to whether the Proposed Amendment violates the single-subject requirement in Article XI, Section 3 and whether the requirements in Section 101.161(1), Florida Statutes, are met. The instant case involves the review to determine the validity of a proposed amendment to repeal Article X, Section 19, of the Florida Constitution. Article X, Section 19, Florida Constitution, mandates that the Legislature, the Cabinet, and the Governor, proceed with the development and operation of a high speed ground transportation system (the "Mandate"). The Proposed Amendment simply seeks to repeal this Mandate. As such, the single subject and matter addressed in the Proposed Amendment is the repeal of the Mandate relating to the high speed ground transportation system. Further, the Proposed Amendment does not substantially alter or perform any governmental function. Thus, the Proposed Amendment complies with the single-subject requirement.

In addition, the title and summary of the Proposed Amendment comply with Section 101.161(1), Florida Statutes. The title is less than fifteen (15) words and refers to the measure as to how it is commonly known. The summary is less than seventy-five (75) words; clearly and unambiguously explains that the chief purpose of the Proposed Amendment is to repeal the Mandate existing in the Florida Constitution which mandates that the State proceed with the development and operation of a high speed ground transportation system, providing fair notice as to the effect of the amendment; and correctly advises the voter so as to allow the voter to intelligently cast his or her vote.

Therefore, the Proposed Amendment complies with the requirements of an initiative petition in that it does not violate the single-subject requirement and complies with the requirements in Section 101.161(1), Florida Statutes, and should be approved for placement on the ballot.

ARGUMENT

This Court's review of the validity of proposed amendments to the Florida Constitution initiated through citizen initiative under Article XI, Section 3, Florida Constitution, is limited to (1) review whether a proposed amendment complies with the single-subject limitation in Article XI, Section 3 of the Florida Constitution, and (2) whether the ballot title and summary comply with the requirements of Section

101.161(1), Florida Statutes, in that the title and summary are clear and unambiguous. Advisory Op. to Att'y Gen. re: Transp. Init., 769 So. 2d 367, 368 (Fla. 2000); §16.061, Fla. Stat. If these requirements are met, then the Court must approve the initiative. "'The Court must act with extreme care, caution, and restraint before it removes a constitutional amendment from the vote of the people,' and thus must approve an initiative unless it is clearly and conclusively defective." Advisory Op. to the Att'y Gen. re: Authorizes Miami-Dade and Broward County Voters to Approve Slot Machines in Parimutuel Facilities, 2004 WL 1064930, *2 (Fla. 2004)(citing Askew v. Firestone, 421 So. 2d 151, 154, 156 (Fla. 1982)). This Court is constrained from reviewing the "merits or the wisdom of the Proposed Amendment." Id.; Advisory Op. to Att'y Gen. re: Transp. Init., 769 So. 2d 367, 368 (Fla. 2000); Advisory Op. to the Att'y Gen. re: Right of Citizens to Choose Health Care Providers, 705 So. 2d 563, 565 (Fla. 1998).

In the instant case, all requirements are met by the Proposed Amendment and thus, the Proposed Amendment should be approved for placement on the ballot. Smith v. Coalition to Reduce Class Size, 827 So. 2d 959, 963 (Fla. 2002)("If these requirements [Article XI, Section 3] are met then, the sponsor of an initiative has the right to place the initiative on the ballot.").

POINT I:

THE PROPOSED AMENDMENT FOR REPEAL OF ARTICLE X, SECTION 19, FLORIDA CONSTITUTION, DOES NOT VIOLATE 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. . . . [Emphasis supplied.]

The purpose of this requirement is explained as follows:

> In our view, the single-subject restraint on constitutional change by initiative proposals is intended to direct the electorate's attention to one change which may affect only one subject and matters directly connected therewith, and that includes an understanding by the electorate of the specific changes in the existing constitution proposed by any initiative proposal.

Fine v. Firestone, 448 So. 2d 984, 989 (Fla. 1984)

In determining whether a proposed amendment complies with the single subject requirement of Article XI, Section 3, Florida Constitution, this Court looks at whether the Proposed Amendment has a "logical and natural oneness of purpose." Advisory Op. to Att'y Gen. re: Transp. Init., 769 So. 2d 367, 369 (Fla. 2000). In this analysis,

the Court determines if a proposed amendment "logrolls" several unrelated subjects into one amendment; and whether the amendment "alters or performs the functions of multiple aspects of government." Advisory Op. to Att'y Gen. re: Transp. Init., 769 So. 2d 367, 369 (Fla. 2000); see also Advisory Op. to the Att'y Gen. re: Limited Casinos, 644 So. 2d 71, 73 (Fla. 1994); Fine v. Firestone, 448 So. 2d 984, 990 (Fla. 1984).

A. The Proposed Amendment Does Not Impermissibly Contain Separate and Unrelated Purposes into a Single Amendment.

The Proposed Amendment complies with the single-subject requirement because it has one purpose which is to repeal Article X, Section 19, Florida Constitution, relating to the Mandate for the development and operation of a high speed ground transportation system. This Court defines "logrolling" as a "practice whereby an amendment is proposed which contains unrelated provisions, some of which electors might wish to support, in order to get an otherwise disfavored provision passed." Advisory Op. to Att'y Gen. re: Transp. Init., 769 So. 2d 367, 369 (Fla. 2000)(citing Advisory Op. to the Att'y Gen. re: Limited Casinos, 644 So. 2d 71, 73 (Fla. 1994)). The Proposed Amendment at issue here states that, "Article X, Section 19, Florida Constitution, is hereby repealed in its entirety." On its face and under the plain language of the Proposed Amendment, the Proposed Amendment

embodies only one subject which is the repeal of Article X, Section 19, Florida Constitution, relating to the development and operation of a high speed ground transportation system. Nothing in the Proposed Amendment would support a finding that it addresses more than one subject. In fact, this Court approved the original amendment for a high speed rail system [Article X, Section 19, Florida Constitution] for placement on the ballot in 2000. In doing so, this Court specifically found that:

> The only subject embraced in the proposed amendment is whether the people of this State want to include a provision in their Constitution mandating that the government build a high speed ground transportation system. Thus, there is no impermissible logrolling.

Advisory Op. to Att'y Gen. re: Transp. Init., 769 So. 2d 367, 369 (Fla. 2000).

Similarly, the instant Proposed Amendment embraces only one subject, which is whether the citizens of Florida want to remove from the Constitution a provision which mandates that the government develop and operate a high speed ground transportation system. Thus, with regards to the instant Proposed Amendment, there is no impermissible logrolling. See, e.g., Advisory Op. to Att'y Gen. re: Transp. Init., 769 So. 2d 367, 369 (Fla. 2000).

B. The Proposed Amendment Does Not Alter or Perform the Functions of Multiple Aspects of Government.

The second inquiry in determining whether a proposed amendment violates the

single subject requirement in Article XI, Section 3, Florida Constitution, is whether a proposed amendment would substantially alter or perform multiple government functions. See Advisory Op. to Att'y Gen. re: Transp. Init., 769 So. 2d 367, 369 (Fla. 2000); Advisory Op. to the Att'y Gen.- Save Our Everglades, 636 So. 2d 1336, 1339 (Fla. 1994); Fine v. Firestone, 448 So. 2d 984, 990 (Fla. 1984). As part of such inquiry, the Court also determines whether a proposed amendment affects other provisions of the Constitution. Advisory Op. to the Att'y Gen. re: Limited Casinos, 644 So. 2d 71, 74 (Fla. 1994); Fine v. Firestone, 448 So. 2d 984, 990 (Fla. 1984).

Here, the Proposed Amendment would operate to repeal only one provision of the Constitution, which is not dependent on, and does not affect, any other provision of the Constitution. Further, the Proposed Amendment does not confer any powers on any branch of the government. The provision of the Constitution which would be repealed by the Proposed Amendment is Article X, Section 19, which provides:

> **High speed ground transportation system.–** 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 consisting of a monorail, fixed guideway or magnetic levitation system, capable of speeds in excess of 120 miles per hour, be developed and operated in the State of Florida to provide high speed ground transportation by innovative, efficient and effective technologies consisting of dedicated rails or guideways separated from motor vehicular traffic that will link the five largest urban areas of the State as determined

> by the Legislature and provide for access to existing air and ground transportation facilities and services. The Legislature, the Cabinet and the Governor are hereby directed to proceed with the development of such a system by the State and/or by a private entity pursuant to state approval and authorization, including the acquisition of right-of-way, the financing of design and construction of the system, and the operation of the system, as provided by specific appropriation and by law, with construction to begin on or before November 1, 2003.

Thus, the only effect of repealing the above-referenced provision is that the State will no longer be constitutionally mandated to implement a high speed rail system. Further, repeal of the "High Speed Rail Amendment" does not remove the power and authority of the Legislature, Governor or Cabinet to, at some time in the future, implement a high speed rail system. The Florida Constitution is not a grant of power to the Legislature, but rather provides limitations on the Legislature's powers. Chiles v. Phelps, et al., 714 So. 2d 453 (Fla. 1998); State of Florida ex rel. Collier Land Investment Corp., 188 So. 2d 781 (Fla. 1966). Thus, repeal of Article X, Section 19, Florida Constitution, in no way limits the Legislature's power and authority to implement a high speed rail system in the future. The Proposed Amendment simply removes the Mandate to do so from the Florida Constitution.

Further, this Court, in approving the initial amendment to the Constitution enacting Article X, Section 19, found that the original amendment did not

"substantially alter or perform multiple functions of government." See, e.g., Advisory Op. to Att'y Gen. re: Transp. Init., 769 So. 2d 367, 370 (Fla. 2000). Thus, it logically follows that the Proposed Amendment, with the only purpose being repeal of Article X, Section 19, Florida Constitution, does not substantially alter or perform multiple government functions so as to violate the single-subject requirement.

The Proposed Amendment does not impermissibly combine several subjects into one amendment, nor does the Proposed Amendment alter or perform multiple government functions and, thus, does not contain more than one subject or matter. Therefore, the Proposed Amendment is in compliance with Article XI, Section 3, Florida Constitution, and should be approved for placement on the ballot.

POINT II:

THE TITLE AND BALLOT SUMMARY OF THE PROPOSED AMENDMENT ARE IN COMPLIANCE WITH THE REQUIREMENTS OF SECTION 101.161(1), FLORIDA STATUTES.

Section 101.161(1), Florida Statutes (2003), provides, in pertinent part:

> Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot . . . . the wording of the substance of the amendment . . . 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 purpose of the requirements in Section 101.161(1), Florida Statutes, is to "assure that the electorate is advised of the true meaning, and ramifications, of an amendment." Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982); In re: Advisory Op. to the Att'y Gen. - Restricts Laws Related to Discrimination, 632 So. 2d 1018, 1020 (Fla. 1994). This Court explained the significance of ballot language in Askew v. Firestone, 421 So. 2d at 155(citing Hill v. Milander, 72 So. 2d 796, 798 (Fla. 1954)), as follows:

> The requirement for proposed constitutional amendment ballots is the same as for all ballots, i.e.,
>
> > that the voter should not be misled and that he have an opportunity to know and be on notice as to the proposition on which he is to cast his vote. . . 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.* [Emphasis in original.]

Thus, when this Court reviews the title and summary, the Court is reviewing the language to ensure that the language is clear, unambiguous and not misleading. Advisory Op. to Att'y Gen. re: Term Limits Pledge, 718 So. 2d 798, 803 (Fla. 1998); Advisory Op. to Att'y Gen. re: Right of Citizens to Choose Health Care Providers,

705 So. 2d 563, 566 (Fla. 1998); Advisory Op. to Att'y Gen. re: Prohibiting Pub. Funding of Political Candidates' Campaigns, 693 So. 2d 972, 975-76 (Fla. 1997); Askew v. Firestone, 421 So. 2d at 154-55. However, the summary is simply required to address the chief purpose of a proposed amendment, not provide every detail. §101.161(1), Fla. Stat.; Carroll v. Firestone, 497 So. 2d 1204, 1206 (Fla. 1986).

The title and summary for the Proposed Amendment at issue in the instant case provide:

> BALLOT TITLE
> Repeal of High Speed Rail Amendment.
>
> BALLOT SUMMARY
> This amendment repeals an amendment in the Florida Constitution that requires the Legislature, the Cabinet and the Governor to proceed with the development and operation of a high speed ground transportation system by the state and/or by a private entity.

With respect to the title of the Proposed Amendment, it must be fifteen (15) words or less, be clear and unambiguous, and utilize the name by which the measure is commonly referenced. §101.161(1), Fla. Stat. Here, the title unambiguously and succinctly specifies that the Proposed Amendment is for "Repeal of High Speed Rail Amendment," by which Article X, Section 19, Florida Constitution, is commonly known. The title of the Proposed Amendment is less than fifteen (15) words. Thus, the title of the Proposed Amendment is in compliance with Section 101.161(1), Florida

Statutes.

With regards to the summary of the Proposed Amendment, Section 101.161(1), Florida Statutes, has two (2) requirements; first, that the summary must be less than seventy-five (75) words, and second, that the summary be an explanatory statement utilizing unambiguous language of the chief purpose of the measure. The summary of the instant Proposed Amendment is forty-one (41) words which meets the first requirement.

As to the explanatory statement, this Court examines the language to determine whether "fair notice of the meaning and effect of the proposed amendment" is provided. In re: Advisory Op. to the Att'y. Gen.- Restricts Laws Related to Discrimination, 632 So. 2d 1018, 1021 (Fla. 1994); Askew v. Firestone, 421 So. 2d at 155. Here, the Proposed Amendment provides the voters with fair notice that the amendment would repeal a current provision to the Florida Constitution mandating the Legislature, the Governor and the Cabinet to proceed with the development and operation of a high speed ground transportation system. The summary is required only to provide the chief purpose of the amendment, which the summary of the Proposed Amendment unambiguously explains is to "repeal [an] amendment in the Florida Constitution that requires the Legislature, the Cabinet and the Governor to proceed with the development and operation of a high speed ground transportation

system by the state and/or by a private entity." The summary of the Proposed Amendment meets all requirements of Section 101.161(1), Florida Statutes. Thus, this Court should approve the title and summary of the Proposed Amendment as meeting the requirements in Section 101.161(1), Florida Statutes.

CONCLUSION

The Proposed Amendment to repeal Article X, Section 19, of the Florida Constitution, relating to the Mandate for development and operation of a high speed ground transportation system complies with the single-subject requirement in Article XI, Section 3, Florida Constitution, for an initiative petition because the Proposed Amendment simply involves the repeal of one provision of the Constitution which has no effect on any other provisions and does not perform multiple government functions. Also, the title and summary of the Proposed Amendment are in compliance with the requirements of Section 101.161(1), Florida Statutes. Thus, Derail the Bullet Train, the sponsor of the Proposed Amendment, respectfully requests that the Proposed Amendment be approved for placement on the ballot.

Respectfully submitted this 18th day of June, 2004.

Arthur J. England, Jr., Esquire
Florida Bar No. 022730
GREENBERG TRAURIG, P.A.
1221 Brickell Avenue
Miami, FL 33131-3224
Telephone: 305-579-0605
Facsimile: 305-579-0723

and

Wilbur E. Brewton, Esquire
Florida Bar No. 110408
Tana D. Storey, Esquire
Florida Bar No. 0514772
ROETZEL & ANDRESS, L.P.A.
225 South Adams Street - Suite 250
Tallahassee, FL 32301
Telephone: 850-222-7718
Facsimile: 850-222-8222

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided to the following party via hand delivery on this 18th day of June, 2004.

Honorable Charlie Crist, Jr.
Attorney General
State of Florida
PL 01, The Capitol
Tallahassee, FL 32399-1050

__
Wilbur E. Brewton, Esquire

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that this INITIAL BRIEF has been typed using the 14 point Times New Roman font as required by the Florida Rules of Appellate Procedure.

_____
Wilbur E. Brewton, Esquire