
IN THE SUPREME COURT OF FLORIDA

Case No. SC05-1897

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, ESPECIALLY YOUTH, FROM ADDICTION,
DISEASE, AND OTHER HEALTH HAZARDS OF USING TOBACCO**

**AMENDED BRIEF OF INTERESTED PARTIES
AMERICAN CANCER SOCIETY, FLORIDA DIVISION, INC.;
AMERICAN LUNG ASSOCIATION OF FLORIDA, INC.; AMERICAN
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STATEMENT OF INTERESTS

According to the U.S. Centers for Disease Control and Prevention, if current trends continue more than 925,000 children alive in Florida today will become addicted adult smokers and more than 295,000 will ultimately die prematurely from smoking-caused disease. Smoking currently kills more than 28,000 people in Florida each year and smoking-caused health care costs in the state exceed \$5.8 billion each year. Productivity losses in the state from smoking total another \$6.1 billion each year. In Florida's high schools, there are currently more than 113,000 smokers, with tens of thousands more youth smokers in middle schools and even elementary schools. Every year 65,000 Florida children try their first cigarette and another 24,000 Florida youth become regular daily smokers.

The Interested Parties include the three largest voluntary public health organizations in Florida. Because of the devastating health effects of tobacco use and addiction, supporting proven programs and strategies that work effectively to prevent and reduce tobacco use, especially among youth, is integral to their missions.

Interested Party AMERICAN CANCER SOCIETY, FLORIDA DIVISION, INC. is a Florida not-for-profit organization 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.

Tobacco use is a proven cause of cancer. Cancer is a proven cause of death, and smoking is the leading cause of preventable death in the U.S. The majority of smokers say they started before age 18. Education is a demonstrated effective way to achieve the AMERICAN CANCER SOCIETY'S goal of reducing the number of people who use tobacco and become ill and die as a result of such use. AMERICAN CANCER SOCIETY can only be serious about reducing cancer if it is serious about educating and protecting people, especially our youth, from addiction, disease and other health hazards associated with tobacco use. AMERICAN CANCER SOCIETY supports the amendment because it would reduce the incidence of deadly cancer.

Interested Party AMERICAN HEART ASSOCIATION, INC., FLORIDA-PUERTO RICO AFFILIATE is dedicated to reducing death and disability from cardiovascular disease and stroke. The FLORIDA/PUERTO RICO AFFILIATE is a division of the AMERICAN HEART ASSOCIATION, INC., a New York not-for-profit corporation authorized to do business in the state of Florida and in Puerto Rico. Public education programs to inform people how to reduce their risk of heart disease and stroke are a priority of the AMERICAN HEART ASSOCIATION.

The AMERICAN HEART ASSOCIATION supports the amendment to provide funding for a comprehensive statewide tobacco education and prevention program because preventing smoking is a leading controllable risk factor for heart

disease and stroke. Our support of this amendment to protect people, especially youth, from addiction, disease, and other health hazards of using tobacco will help us to accelerate progress towards our goal of reducing death and disability from cardiovascular disease and stroke.

Interested Party 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 promote lung health through education, advocacy and research.

AMERICAN LUNG ASSOCIATION OF FLORIDA supports the tobacco education and prevention amendment because tobacco use is harmful to the lungs of healthy people and lung patients. Chronic lung disease accounts for 73 percent of smoking-related conditions and smoking is directly responsible for 90 percent of lung cancer deaths and approximately 80-90 percent of COPD (emphysema and chronic bronchitis) deaths.

Interested Party CAMPAIGN FOR TOBACCO-FREE KIDS is a privately funded, nonprofit organization, incorporated in Washington, DC, dedicated to reducing tobacco use, particularly among youth. CAMPAIGN FOR TOBACCO-FREE KIDS emphasizes increasing public awareness and assisting efforts to develop, adopt and implement programs, public policies and social environment changes that will prevent and reduce tobacco use and exposure to secondhand

smoke, minimizing the harms and costs caused by tobacco. CAMPAIGN FOR TOBACCO-FREE KIDS has over 125 member organizations, including health, civic, corporate, youth, and religious groups dedicated to reducing children's use of tobacco products.

The Interested Parties have continuously advocated for adequate levels of tobacco prevention funding in Florida, especially to prevent and reduce youth tobacco use. After Florida first entered its lawsuit settlement agreement with the major cigarette companies in 1997, approximately fifteen percent of the cigarette companies' subsequent settlement payments to the state were spent on tobacco prevention efforts modeled on successful programs in California and Massachusetts but specifically focused on reducing youth tobacco use. During the period the original funding level was maintained, the results were remarkable.

In just the first three years of the Florida tobacco prevention program, from 1998 to 2001, smoking rates declined by 47 percent (from 18.5% to 9.8%) among middle school students and by 30 percent (from 27.4% to 19%) among high school students, resulting in almost 75,000 fewer youth smokers. Similarly, the proportion of Florida middle school and high school students who had *ever* smoked a cigarette declined significantly, while the proportion of middle- and high-school students committed to *never* smoking rose sharply. Florida Department of Health, *2002 Florida Youth Tobacco Survey* 5(1) May, 2003.

If sustained, these immediate and substantial youth smoking reductions from using state tobacco settlement payments to fund tobacco prevention would save tens of thousands of Florida youth from becoming addicted adult smokers and dying early because of it. Nevertheless, the Florida legislature cut the state's tobacco prevention funding in each year after its inception, with particularly deep cuts in fiscal year 2002. Then, in 2003, the state's tobacco prevention program funding was virtually eliminated and has never been restored. Although Florida received more than \$400 million in tobacco settlement payments in 2005, the state allocated only \$1 million to its tobacco prevention program – less than 1.3 percent of the *minimum* amount the U.S. Centers for Disease Control and Prevention recommends that Florida invest in preventing and reducing tobacco use (\$78.4 million each year).¹

The sharp reductions to the state's tobacco prevention program have stopped its early progress, especially among younger children who are entering the most vulnerable years for starting to smoke. Because Florida's youth are now receiving

¹ The U.S. Centers for Disease Control and Prevention's recommended minimum tobacco prevention funding level for Florida is from CDC, *Best Practices for Comprehensive Tobacco Control*, August 1999, www.cdc.gov/tobacco/bestprac.htm. For more detail on Florida tobacco prevention spending trends, in relation to the state's tobacco settlement revenues and tobacco tax revenues, see Campaign for Tobacco-Free Kids, et al., *A Broken Promise To Our Children: The 1998 State Tobacco Settlement Seven Years Later*, November 30, 2005, which is available at <http://tobaccofreekids.org/reports/settlements/2006/fullreport.pdf>.

a weak, watered-down version of the state program's original efforts to protect them from becoming addicted smokers, youth smoking declines have stagnated, fewer youth are becoming "committed *never* smokers," and fewer Florida youth are being saved from a lifetime of tobacco addiction, smoking-caused disease and disability, and premature death. Florida Department of Health, *Florida Youth Tobacco Survey*, 2003 to 2005.

Fighting youth smoking is a top priority for each of the Interested Parties, and all four organizations are committed to restoring Florida's commitment to protecting youth from the hazards of tobacco use. After unsuccessfully urging the Legislature to restore funding to Florida's nationally acclaimed tobacco prevention program for several years, each of the Interested Parties has dedicated substantial resources to support Floridians for Youth Tobacco Education, Inc. and the proposed constitutional amendment.

STATEMENT OF THE CASE

The Interested Parties adopt the statement of the case in the Initial Brief of the amendment's sponsor, Floridians for Youth Tobacco Education, Inc.

SUMMARY OF THE ARGUMENT

The Court has before it only two issues in this proceeding: whether the amendment complies with the single-subject requirement and whether the ballot title and summary fairly and accurately inform the voter of the chief purpose of the

amendment. Although the Court’s review is *de novo*, it is deferential and an amendment will be rejected only if it has clearly and conclusively violated the laws governing the citizens’ initiative process.

The Interested Parties adopt the arguments of the amendment’s sponsor, Floridians for Youth Tobacco Education, Inc., as to both issues and address in this brief only the ballot title and summary requirements. The ballot title and summary succinctly state the chief purpose of the amendment and offer extensive details of its funding and operation. The language used is neither political rhetoric nor an emotional appeal. By explaining that the amendment’s purpose is to “protect people, especially youth, from addiction, disease, and other health hazards of using tobacco,” the title and summary are neither misleading nor inflammatory, but rather are factual statements that explain to the voter the ultimate goal of the measure.

Because the text, ballot title and summary comply with all aspects of governing law, the Interested Parties urge the Court to approve the amendment for placement on the ballot.

STANDARD OF REVIEW

When rendering an advisory opinion concerning a citizens’ initiative, the Court’s inquiry is limited to two issues: whether the amendment complies with the single-subject requirement of Article XI, Section 3, Florida Constitution and

whether the ballot title and summary comply with the requirements of Section 101.161(1) of the Florida Statutes. *Advisory Op. to Att’y Gen. Re: Referenda Required for Adoption and Amendment of Local Gov’t Comprehensive Land Use Plans*, 902 So. 2d 763, 765 (Fla. 2005) (hereinafter “*Land Use Plans*”). This limited review is deferential, and “the Court must act with extreme care, caution and restraint before it removes a constitutional amendment from the vote of the people.” *Id.* (quoting *Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982)). The Court should not strike an amendment from the ballot unless “the laws governing the process have been ‘clearly and conclusively’ violated.” *Advisory Op. to Att’y Gen. Re: Right to Treatment and Rehabilitation for Non-Violent Drug Offenses*, 818 So. 2d 491, 498-99 (Fla. 2002).

ARGUMENT

THE BALLOT TITLE AND SUMMARY FAIRLY AND ACCURATELY STATE THE CHIEF PURPOSE OF THE AMENDMENT

Section 101.161(1), Florida Statutes (2005), requires that “the ballot title and summary state in clear and unambiguous language the chief purpose of the measure.” *Land Use Plans*, 902 So. 2d at 770. The Court has interpreted the statute to require an “accurate, objective and neutral” summary of the amendment. *Advisory Op. to Att’y Gen. Re: Additional Homestead Tax Exemption*, 880 So. 2d 646, 653-54 (Fla. 2004). This requirement ensures that the voter has fair notice of the content of the proposed amendment, “will not be misled as to its purpose, and

can cast an intelligent and informed ballot.” *Id.* at 652. The summary must be an accurate and informative summary of the amendment’s legal effect, avoiding emotional language and political rhetoric. *In re: Advisory Op. to Att’y Gen. – Save Our Everglades Trust Fund*, 636 So. 2d 1336, 1341-42 (Fla. 1994). The title and summary of the Youth Tobacco amendment meet and exceed the requirements of the statute.

The title of the Youth Tobacco amendment is "Protect People, Especially Youth, From Addiction, Disease, And Other Health Hazards Of Using Tobacco."

The ballot summary states as follows:

To protect people, especially youth, from addiction, disease, and other health hazards of using tobacco, the Legislature shall use some Tobacco Settlement money annually for a comprehensive statewide tobacco education and prevention program using Centers for Disease Control best practices. Specifies some program components, emphasizing youth, requiring one-third of total annual funding for advertising. Annual funding is 15% of 2005 Tobacco Settlement payments to Florida, adjusted annually for inflation. Provides definitions. Effective immediately.

In plain, clear language, the summary informs voters that the chief purpose of the amendment is to use funds from the tobacco settlement for a statewide tobacco prevention program in order to protect people, especially youth, from the health hazards of tobacco use. The detailed description of the source and amount of the funding and of the program itself, even explaining that it will be based on

Centers for Disease Control best practices, is more than adequate to give the voter fair notice of the content of the amendment.

By explaining that funding a comprehensive tobacco prevention program will “protect people, especially youth, from addiction, disease and other health hazards of using tobacco,” the title and summary ensure that voters understand the ultimate goal of the measure on which they are being asked to vote. This phrase is neither misleading nor inflammatory. *See Advisory Op. to Atty. Gen. Re: Protect People from the Health Hazards of Second-Hand Smoke by Prohibiting Workplace Smoking*, 814 So. 2d 415, 420-21 (Fla. 2002) (the terms “protect” and “hazards” do not constitute impermissible political rhetoric). The language, rather than being an emotional appeal of the sort this Court has rejected, is an objective statement based on known results of similar programs, including the past success of the tobacco prevention program in Florida when it was adequately funded, as described above. Other states that have invested significant amounts of funding in state tobacco prevention programs have also enjoyed substantial reductions in smoking rates and, therefore, in related harms and costs. For example:

- In 1988, California voters approved a ballot initiative that increased state cigarette taxes by 25 cents per pack and annually allocated \$100 million to state tobacco prevention efforts. Over the next ten years, adult smoking in California declined at twice the rate it declined in the previous decade; between 1987 and

2002 California cigarette consumption in California declined by 62 percent (compared to just 36 percent for the country as a whole). From 1996 to 2004 smoking declined by more than 60 percent among eighth grade students and by more than half among tenth grade students, with smoking prevalence decreasing by more than 31 percent among twelfth grade students from 2000 to 2004 alone.² Overall, the California tobacco prevention program produced much larger smoking reductions in the early years, when it was funded at its highest levels, than during subsequent years, when its funding was reduced. For example, when California cut the program's funding in the mid 1990s, its progress in reducing adult and youth smoking rates stalled, but the declines resumed when the program funding was partially restored.³

- In 1992, Massachusetts voters approved a referendum that increased the state cigarette tax by 25 cents per pack, with part of the new tax revenues funding the Massachusetts Tobacco Control Program. From 1992 to 2000 cigarette consumption in Massachusetts declined by 36 percent (twice the decline in the

² See, e.g., the following reports from the Tobacco Control Section of the California Department of Health Services: *California's Tobacco Control Program: Preventing Tobacco Related Disease and Death*, April 3, 1998; *Current Tobacco Use and Statistics*, March 2003, <http://www.dhs.cahwnet.gov/ps/cdic/ccb/TCS/documents/Consumption.pdf>; *California Tobacco Control Update*, 2004. <http://www.dhs.ca.gov/tobacco/documents/2004TCSupdate.pdf>.

³ Pierce, J.P., et al., "Has the California Tobacco Control Program Reduced Smoking?," *JAMA* 280(10): 893-899, September 9, 1998.

rest of the country other than California); between 1993 and 2000 adult smoking prevalence dropped from 22.6 percent to 17.9 percent, resulting in 228,000 fewer smokers; and from 1995 to 2001 current smoking among Massachusetts high school students dropped by 27 percent (while the nationwide rate dropped by 18 percent).⁴ Over the past several years, however, these smoking declines have been threatened by sharp decreases to the state's tobacco prevention program funding, which has been cut by more than 95 percent. In fact, a Massachusetts Association of Health Boards study has found that the state's tobacco program funding cuts have been followed by an alarming increase in illegal sales of tobacco products to children.⁵

- In 1999, Mississippi launched a youth-driven comprehensive tobacco prevention program funded from the cigarette companies' tobacco settlement payments to the state. Over the next five years alone, smoking among public middle school students declined by 48 percent and smoking among public high

⁴ See, e.g., Abt Associates Inc, *Independent Evaluation of the Massachusetts Tobacco Control Program, Seventh Annual Report - January 1994 to June 2000*.

⁵ Sbarra, Cheryl, Massachusetts Association of Health Boards, Abstract, March 2004.

<http://www.mahb.org/tobacco/sales%20to%20minors%20study%20abstract.pdf>

school students declined by 32 percent, while nationwide declines in youth smoking rates were far more modest.⁶

Other states have had similar results.⁷ Numerous research studies, which control for the influence of other factors on state smoking levels, have found that significant investments in comprehensive state tobacco control programs directly and effectively prevent and reduce tobacco use among both adults and youth.⁸

Therefore, informing the voter in the title and summary that the amendment is intended to “protect people, especially youth, from addiction, disease and other health hazards of using tobacco” is neither inappropriate political rhetoric nor an

⁶ *Mississippi 2004 Youth Tobacco Survey of Tobacco Control*, January, 2005. *Mississippi 2000 Youth Tobacco Survey*; Mississippi State Department of Health; Volume I, June 2000.

⁷ See, e.g., Campaign for Tobacco-Free Kids, *Comprehensive Statewide Tobacco Prevention Programs Effectively Reduce Tobacco Use*, November 10, 2005, and other Campaign factsheets available at <http://tobaccofreekids.org/research/factsheets/index.php?CategoryID=6>.

⁸ See, e.g., Farrelly, M.C., et al., “The Impact of Tobacco Control Program Expenditures on Aggregate Cigarette Sales: 1981-2000.” *Journal of Health Economics* (22) 843-859, 2003. Inst. of Medicine & National Research Council, *State Programs Can Reduce Tobacco Use*, National Academy of Sciences, 2000. Tauras, JA, et al., “State Tobacco Control Spending and Youth Smoking,” *American Journal of Public Health*, February, 2005 U.S. Department of Human Services, *Reducing Tobacco Use: A Report of the Surgeon General*, 2000. Wakefield, M & Chaloupka, F, Effectiveness of Comprehensive Tobacco Control Programs in Reducing Teenage Smoking in the USA," *Tobacco Control* 9:177-186, Summer, 2000.

emotional appeal. It is a factual statement that accurately describes the goals (and proven results) of the program to be funded by the amendment.

CONCLUSION

The Youth Tobacco amendment satisfies the governing legal requirements for the title, ballot summary, and text of a citizens' initiative. The Interested Parties urge the Court to approve it for placement on the ballot.

Respectfully submitted this 12th day of December, 2005.

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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 12th day of December, 2005.

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I HEREBY CERTIFY that this brief was prepared using Times New Roman
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