

Repeated Medical Malpractice

Number: PETITION

Date: May 19, 2004

The Honorable Harry Lee Anstead
Chief Justice, and Justices of
The Supreme Court of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

Dear Chief Justice Anstead and Justices:

In accordance with the provisions of Article IV, section 10, Florida Constitution, and section 16.061, Florida Statutes, it is the responsibility of the Attorney General to petition this Honorable Court for a written opinion as to the validity of an initiative petition circulated pursuant to Article XI, section 3, Florida Constitution.

On April 24, 2004, this office received from the Secretary of State an initiative petition seeking to amend the Florida Constitution to provide public protection from doctors who have committed repeated medical malpractice. The full text of the proposed amendment states:

"a) Statement and Purpose:

Under current law, a medical doctor who has repeatedly committed medical malpractice in Florida or while practicing in other states or countries may obtain or continue to hold a professional license to practice medicine in Florida. The purpose of this amendment is to prohibit such a doctor from obtaining or holding a license to practice medicine in Florida.

b) Amendment of Florida Constitution:

Art. X, Fla. Const., is amended by inserting the following new section at the end thereof, to read:
'Section 20. Prohibition of Medical License After Repeated Medical Malpractice.

'a) No person who has been found to have committed three or more incidents of medical malpractice shall be licensed or continue to be licensed by the State of Florida to provide health care services as a medical doctor.

'b) For purposes of this section, the following terms have the following meanings:

'i) The phrase "medical malpractice" means both the failure to practice medicine in Florida with that level of care, skill, and treatment recognized in general law related to health care providers' licensure, and any similar wrongful act, neglect, or default in other states or countries which, if committed in Florida, would have been considered medical malpractice.

'ii) The phrase "found to have committed" means that the malpractice has been found in a final judgment of a court of law, final administrative agency decision, or decision of binding arbitration.'

c) Effective Date and Severability:

This amendment shall be effective on the date it is approved by the electorate. If any portion of this measure is held invalid for any reason, the remaining portion of this measure, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application."

The ballot title for the proposed amendment is "Public Protection from Repeated Medical Malpractice." The summary for the proposed amendment states:

Current law allows medical doctors who have committed repeated malpractice to be licensed to practice medicine in Florida. This amendment prohibits medical doctors who have been found to have committed three or more incidents of medical malpractice from being licensed to practice medicine in Florida.

Article XI, section 3, Florida Constitution, provides in relevant 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."

The single-subject provision "is a rule of restraint designed to insulate Florida's organic law from precipitous and cataclysmic change." *Advisory Opinion to the Attorney General--Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994); *Advisory Opinion to the Attorney General--Tax Limitation*, 644 So. 2d 486, 490 (Fla. 1994).

To comply with the single-subject requirement, an initiative must manifest a "logical and natural oneness of purpose." *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984). This Court stated in *Advisory Opinion to the Attorney General--Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1020 (Fla. 1994), that "[t]o ascertain whether the necessary 'oneness of purpose' exists, we must consider whether the proposal affects separate functions of government and how the proposal affects other provisions of the constitution."

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

"Whenever a constitutional amendment . . . is submitted to the vote of the people, the substance of such amendment . . . 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."

This Court has stated "that the ballot [must] be fair and advise the voter sufficiently to enable him intelligently to cast his ballot." *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982), *quoting*, *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954). While the ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, they need not explain every detail or ramification of the proposed amendment. *Carroll v. Firestone*, 497 So. 2d 1204, 1206 (Fla. 1986). The ballot, however, must give the voter fair notice of the decision he must make. *Askew v. Firestone*, *supra* at 155. This Court has stated that the purpose of section 101.161, Florida Statutes, is to ensure that voters are advised of the amendment's true meaning.

Therefore, I respectfully request this Honorable Court's opinion as to 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.

Sincerely,

Charlie Crist
Attorney General

CC/tgk

cc: Ms. Glenda Hood
Secretary of State

The Honorable Jeb Bush
Governor, State of Florida

The Honorable James E. "Jim" King
President, Florida Senate

The Honorable Johnnie Byrd
Speaker, Florida House of Representatives

Mr. Scott Carruthers, Chair
Floridians for Patient Protection