

Supreme Court of Florida

No. SC01-1367

**ADVISORY OPINION TO THE ATTORNEY GENERAL
RE: LIMITING CRUEL AND INHUMANE CONFINEMENT OF PIGS
DURING PREGNANCY.**

[January 17, 2002]

PER CURIAM.

Pursuant to section 15.21, Florida Statutes (2001), the Secretary of State submitted to the Attorney General an initiative petition which sought to amend the Florida Constitution to limit the cruel and inhumane confinement of pigs during pregnancy. In turn, the Attorney General petitioned this Court for an advisory opinion relative to the validity of this initiative petition (hereinafter “proposed amendment”) according to article IV, section 10 of the Florida Constitution, and section 16.061, Florida Statutes (2001). We have jurisdiction. See art. IV, § 10;

art. V, § 3(b)(10), Fla. Const. In response, this Court issued an order permitting interested parties to file briefs on the proposed amendment.¹

The following are the ballot title and summary of the proposed amendment:

Ballot title: Animal Cruelty Amendment: Limiting Cruel and Inhumane Confinement of Pigs During Pregnancy.

Ballot summary: Inhumane treatment of animals is a concern of Florida citizens; to prevent cruelty to animals and as recommended by The Humane Society of the United States, no person shall confine a pig during pregnancy in a cage, crate or other enclosure, or tether a pregnant pig, on a farm so that the pig is prevented from turning around freely, except for veterinary purposes and during the prebirthing period; provides definitions, penalties, and an effective date.

The text of the proposed amendment, which would add section 20 to article X of the Florida Constitution, provided as follows:

Section 20. Limiting Cruel and Inhumane Confinement of Pigs During Pregnancy.

Inhumane treatment of animals is a concern of Florida citizens. To prevent cruelty to certain animals and as recommended by The Humane Society of the United States, the people of the State of Florida hereby limit the cruel and inhumane confinement of pigs during pregnancy as provided herein.

(a) It shall be unlawful for any person to confine a pig during pregnancy in an enclosure, or to tether a pig during pregnancy, on a farm in such a way that she is prevented from turning around freely.

1. No briefs were filed in opposition to the proposed amendment.

(b) This section shall not apply:

(1) when a pig is undergoing an examination, test, treatment or operation carried out for veterinary purposes, provided that the period during which the animal is confined or tethered is not longer than reasonably necessary.

(2) during the prebirthing period.

(c) For purposes of this section:

(1) “enclosure” means any cage, crate or other enclosure in which a pig is kept for all or the majority of any day, including what is commonly described as the “gestation crate.”

(2) “farm” means the land, buildings, support facilities, and other appurtenances used in the production of animals for food or fiber.

(3) “person” means any natural person, corporation and/or business entity.

(4) “pig” means any animal of the porcine species.

(5) “turning around freely” means turning around without having to touch any side of the pig’s enclosure.

(6) “prebirthing period” means the seven-day period prior to a pig’s expected date of giving birth.

(d) A person who violates this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082(4)(a), Florida Statutes (1999), as amended, or by a fine of not more than \$5000, or by both imprisonment and a fine, unless and until the legislature enacts more stringent penalties for violations hereof. On and after the effective date of this section, law enforcement officers in the state are authorized to enforce the provisions of this section in the

same manner and authority as if a violation of this section constituted a violation of Section 828.13, Florida Statutes (1999). The confinement or tethering of each pig shall constitute a separate offense. The knowledge or acts of agents and employees of a person in regard to a pig owned, farmed, or in the custody of a person, shall be held to be the knowledge or act of such person.

(e) It is the intent of this section that implementing legislation is not required for enforcing any violations hereof.

(f) If any portion of this section is held invalid for any reason, the remaining portion of this section, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application.

(g) The section shall take effect six years after approval by the electors.

The first issue we address is whether the proposed amendment meets the single-subject requirement. Article XI, section 3 of the Florida Constitution provides in pertinent part that proposed amendments based on citizen initiative petitions "shall embrace but one subject and matter directly connected therewith." The single-subject requirement applies to the citizen initiative method of amending the constitution because

section 3 [citizen initiative] does not afford the same opportunity for public hearing and debate that accompanies the proposal and drafting processes of sections 1, 2, and 4. Accordingly, section 3 protects against multiple "precipitous" and "cataclysmic" changes in the constitution by limiting to a single subject what may be included in any one amendment proposal.

Advisory Opinion to the Atty. Gen. re Fish & Wildlife Conservation Comm'n, 705 So. 2d 1351, 1353 (Fla. 1998).

A proposed amendment must manifest a “logical and natural oneness of purpose” in order to satisfy the single-subject requirement. Fine v. Firestone, 448 So. 2d 984, 990 (Fla. 1984). This determination requires this Court to consider whether the proposed amendment affects separate functions of government, as well as how it affects other provisions of the constitution. See In re Advisory Opinion to the Atty. Gen.--Restricts Laws Related to Discrimination, 632 So. 2d 1018, 1020 (Fla. 1994). However, “the possibility that an amendment might interact with other parts of the Florida Constitution is not sufficient reason to invalidate the proposed amendment.” Advisory Opinion to the Atty. Gen. -- Fee on the Everglades Sugar Prod., 681 So. 2d 1124, 1128 (Fla. 1996) (quoting Advisory Opinion to the Atty. Gen. re Limited Casinos, 644 So. 2d 71, 74 (Fla. 1994)). Likewise, “[a] proposal that affects several branches of government will not automatically fail.” Fish & Wildlife Conservation Comm'n, 705 So. 2d at 1353-54. Rather, “it is when a proposal substantially alters or performs the functions of multiple branches that it violates the single-subject test.” Id. at 1354. The only subject embraced in the proposed amendment is a prohibition against the inhumane confinement of pregnant pigs. Its provisions, which indicate the definitions, exemptions, penalties,

and an effective date, are logically related to the subject of the proposed amendment. See Advisory Opinion to the Atty. Gen. -- Limited Marine Net Fishing, 620 So. 2d 997 (Fla. 1993). Thus, we find that the proposed amendment is functionally and facially unified and therefore complies with the single-subject requirement.

Section 101.16(1), Florida Statutes (2001), governs the requirements for ballot titles and summaries and provides, in relevant part:

Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment . . . shall be printed in clear and unambiguous language on the ballot [T]he 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.

§ 101.161(1), Fla. Stat. (2001). Thus, the statute requires that the ballot title and summary “state in ‘clear and unambiguous language the chief purpose of the measure.’” Advisory Opinion to the Atty. Gen. -- Limited Political Terms in Certain Elective Offices, 592 So. 2d 225, 228 (Fla. 1991) (quoting Askew v. Firestone, 421 So. 2d 151, 155 (Fla. 1982)); accord Advisory Opinion to the Atty. Gen. re Right of Citizens to Choose Health Care Providers, 705 So. 2d 563, 566 (Fla. 1998). The title and summary must also be accurate and informative. See

Advisory Opinion to the Atty. Gen. re Term Limits Pledge, 718 So. 2d 798, 803 (Fla. 1998). These requirements make certain that the “electorate is advised of the true meaning, and ramifications, of an amendment.” Advisory Opinion to the Atty. Gen. re Tax Limitation, 644 So. 2d 486, 490 (Fla. 1994) (quoting Askew, 421 So. 2d at 156). This Court concluded that the purpose of the statute was "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." Term Limits Pledge, 718 So. 2d at 803. Nevertheless, “the title and summary need not explain every detail or ramification of the proposed amendment.” Advisory Opinion to the Atty. Gen. re Prohibiting Public Funding of Political Candidates' Campaigns, 693 So. 2d 972, 975 (Fla. 1997).

In this proposed amendment, the ballot title does not exceed fifteen words and the ballot summary does not exceed seventy-five words in length in accordance with section 101.161(1), Florida Statutes (2001). Because the substance of the proposed amendment complies with the abovementioned standards, we find that the ballot title and summary provide the citizens of Florida with sufficient information to make an informed decision at the ballot box.

Accordingly, we hold that the initiative petition and proposed ballot title and summary meet the legal requirements of article XI, section 3 of the Florida

Constitution, and section 101.161(1), Florida Statutes (2001). No other issue is encompassed in this opinion, and it should not be construed as favoring or opposing the passage of the proposed amendment.

It is so ordered.

WELLS, C.J., and SHAW, HARDING, ANSTEAD, LEWIS, and QUINCE, JJ., concur.

PARIENTE, J., concurs with an opinion, in which ANSTEAD and LEWIS, JJ., concur.

PARIENTE, J., concurring.

I concur in the majority opinion but write separately to emphasize that this Court's approval of the proposed constitutional amendment for placement on the ballot is limited to whether the amendment meets the single subject and ballot summary requirements. In other words, the merits or wisdom of the proposal is irrelevant to whether the proposed amendment may be placed on the ballot. Thus, our approval of the amendment should not be construed as an expression on the merits or wisdom of the proposed constitutional amendment or whether the subject matter of the proposed amendment is one more appropriately addressed by the Legislature for inclusion in the statutory law of this State. See *Advisory Opinion to the Attorney Gen. re Fla. Transp. Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation Sys.*, 769 So. 2d 367, 368-69 (Fla. 2000).

However, I cannot help but observe that the issue of whether pregnant pigs should be singled out for special protection is simply not a subject appropriate for inclusion in our State constitution; rather it is a subject more properly reserved for legislative enactment. I thus find that former Justice McDonald's observations made when this Court reviewed the net fishing amendment continue to ring true today:

The merit of the proposed amendment is to be decided by the voters of Florida and this Court's opinion regarding the wisdom of any proposed amendment is irrelevant to its legal validity. I am concerned, however, that the net fishing amendment is more appropriate for inclusion in Florida's statute books than in the state constitution.

The legal principles in the state constitution inherently command a higher status than any other legal rules in our society. By transcending time and political mores, the constitution is a document that provides stability in the law and society's consensus on general, fundamental values. Statutory law, on the other hand, provides a set of legal rules that are specific, easily amended, and adaptable to the political, economic, and social changes of our society.

The power to change both the constitution and statutory law is, theoretically, vested in the people. The power to amend the constitution is implicit in the declaration in article I, section 1, Florida Constitution, that [a]ll political power is inherent in the people." The 1968 revision of the state constitution adopted the Revision Commission's recommendation to include a section explicitly dealing with the initiative process. According to article XI, section 3, "[t]he power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people" Recognizing the sovereignty of the people, I still feel compelled to express my view that the permanency and supremacy of state constitutional jurisprudence is jeopardized by the recent proliferation of constitutional amendments.

Undoubtedly, some of Florida's most crucial legal principles have evolved as a result of the initiative process. However, the legislative power of the state is vested in the Legislature, art. III, § 1, and on matters that are statutory in nature, a concerted effort should be made to have the Legislature address the subject. The technical requirements, such as the single-subject rule and the requirements of section 101.161(1), Florida Statutes (1991), appear insufficient to prevent abuse of the amendment process. At this juncture, rather than espouse any particular solution as to how to prevent such abuse, I merely express my thought that some issues are better suited as legislatively enacted statutes than as constitutional amendments. It is my hope that the next Revision Commission will have the opportunity to establish some criteria regarding the subject matter of initiatives that will preserve the constitution as a document of fundamental laws, while still preserving the popular power of the people.

Advisory Opinion to the Attorney Gen.--Limited Marine Net Fishing, 620 So. 2d

997, 999-1000 (Fla. 1993) (McDonald, J., concurring) (footnote and citation omitted) (emphasis supplied). Unfortunately, as of this date, no changes to the citizen's initiative process have been made, and thus the number of initiatives continues to proliferate without restriction as to their subject matter. Unless changes are made to the citizen's initiative process, this Court has no choice but to restrict its review solely to whether the proposed constitutional amendment comports with the single subject and ballot summary requirements.

ANSTEAD and LEWIS, JJ., concur.

Original Proceeding - Advisory Opinion to the Attorney General

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