

Supreme Court of Florida

THURSDAY, JULY 15, 2004

CORRECTED ORDER

CASE NO.: SC04-1053

ADVISORY OPINION TO THE
ATTORNEY GENERAL

RE: PUBLIC PROTECTION
FROM REPEATED
MEDICAL MALPRACTICE

The Attorney General has asked the Court for an advisory opinion as to whether the financial impact statement prepared by the Financial Impact Estimating Conference on the constitutional amendment, proposed by initiative petition, entitled "Public Protection from Repeated Medical Malpractice," is in accordance with section 100.371, Florida Statutes. The financial impact statement provides as follows:

The direct financial impact on state and local governments resulting from the proposed initiative would be minimal. There will likely be additional costs to the state of less than \$1 million per year, but these costs will be offset by licensure fees. Beyond the direct impact, if the amendment results in shortages of physicians, there could be some increase in Medicaid and health insurance costs paid by state and local governments.

Article XI, section 5, Florida Constitution, addresses financial impact statements and provides as follows in relevant part:

(b) The legislature shall provide by general law, prior to the holding of an election pursuant to this section, for the provision of a statement to the public regarding the probable financial impact of any amendment proposed by initiative pursuant to section 3.

(Emphasis added.) Pursuant to article XI, section 5(b), the Legislature amended section 100.371(6)(a), Florida Statutes, to provide as follows in relevant part:

[T]he Financial Impact Estimating Conference shall complete an analysis and financial impact statement to be placed on the ballot of the estimated increase or decrease in any revenues or costs to state or local governments resulting from the proposed initiative.

Ch. 2004-33, § 3, Laws of Fla. (emphasis added). Further, the Legislature amended section 100.371(6)(b), Florida Statutes, to provide as follows in relevant part:

3. Principals of the Financial Impact Estimating Conference shall reach a consensus or majority concurrence on a clear and unambiguous financial impact statement, no more than 75 words in length, and immediately submit the statement to the Attorney General. Nothing in this subsection prohibits the Financial Impact Estimating Conference from setting forth a range of potential impacts in the financial impact statement. Any financial impact statement that a court finds not to be in accordance with this section shall be remanded solely to the Financial Impact Estimating Conference for redrafting. The Financial Impact Estimating Conference shall redraft the financial impact statement within 15 days.

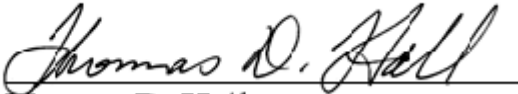
Ch. 2004-33, § 3, Laws of Fla. (emphasis added). Reading section 100.371(6)(b)(3) in conjunction with section 100.371(6)(a), as well as with article XI, section 5(b), Florida Constitution, the phrase "range of potential impacts" in section 100.371(6)(b)(3) must relate to the phrase "probable financial impact" set forth in the constitution.

The Court finds that the third sentence in the financial impact statement does not comply with section 100.371(6), Florida Statutes, as amended by chapter 2004-33, section 3, Laws of Florida, and the Court remands the statement to the Financial Impact Estimating Conference for redrafting pursuant to section 100.371(6)(d)(1).

No motion for rehearing will be allowed.

PARIENTE, C.J., and ANSTEAD, LEWIS and CANTERO, JJ., concur.
LEWIS, J., specially concurs with an opinion.
BELL, J., concurs in result only.
WELLS, J., dissents with an opinion.
QUINCE, J., dissents with an opinion in which WELLS, J., concurs.

A True Copy
Test:


Thomas D. Hall
Clerk, Supreme Court



jn
Served:

JON L. MILLS
TIMOTHY MCLENDON
SCOTT HENRY CARRUTHERS
HON. JEB BUSH, GOVERNOR
HON. JAMES E. KING
HON. JOHNNIE BYRD
HON. GLENDA HOOD
FINANCIAL IMPACT ESTIMATING CONFERENCE
HON. CHARLES J. CRIST, JR.

LEWIS, J., specially concurring.

I write to address the related positions asserted in the dissenting opinions. One offers that, “[t]he statute requires only that there be ‘a clear and unambiguous financial impact statement, no more than 75 words in length.’” The other posits that the majority has too narrowly interpreted the statutory provision governing financial impact statements, and that such statements may include potential impacts and ranges of items beyond dollar estimates, and apparently whether possible, speculative, or otherwise, and without reference to that which is “probable” as set forth in our constitution. My concern is that these constructions will render financial impact statements a vehicle for any manner of content and language, including politicized statements designed as an attempt to sway the voters of this state, as long as those statements are clear and unambiguous. I submit that this process cannot be divorced from its constitutional base of authority and if the statute does so, as the dissents posit, the entire legislative scheme is of very questionable constitutional validity.

In Smith v. Coalition to Reduce Class Size, 827 So. 2d 959 (Fla. 2002), this Court determined that the statutory requirement for the placement of a fiscal impact statement on an initiative to amend the constitution was contrary to the constitutionally based initiative process, did not ensure ballot integrity, and

therefore, was unconstitutional. See id. at 963. Subsequent to this decision, Florida voters adopted a constitutional amendment creating a constitutional basis for the legislature to provide a “statement to the public regarding the probable financial impact of any amendment proposed by initiative” Art. XI, § 5(b), Fla. Const. (emphasis added). The Florida Legislature implemented that constitutional charge by amending sections 101.161(1) (addressing ballot titles and summaries) and 100.371(6) (addressing substantive requirements for financial impact statements) of the Florida Statutes. Section 100.371(6)(b)(3) sets forth several criteria governing financial impact statements, providing as follows:

Principals of the Financial Impact Estimating Conference shall reach a consensus or majority concurrence on a clear and unambiguous financial impact statement, no more than 75 words in length, and immediately submit the statement to the Attorney General. Nothing in this subsection prohibits the Financial Impact Estimating Conference from setting forth a range of potential impacts in the financial impact statement.

Ch. 2004-33, § 3, Laws of Fla.

The statutory sections implementing Article XI, section 5 of the Florida Constitution have their origins, and only source of existence, in the language of that underlying constitutional provision, and the subject statutes cannot be interpreted in a manner that would override the constitutional authority. The Constitution limits financial impact statements to providing the “probable financial impact” of any

amendment. See Art. XI, § 5(b), Fla. Const. Regardless of how clear or unambiguous, a statement which exceeds or is contrary to that constitutional parameter due to editorializing or politicizing comments should not appear within a financial impact statement of a citizen's ballot initiative.

Moreover, I disagree with the interpretation that the statutory language permitting a "range of potential impacts" that may be included in financial impact statements overrides and erases the constitutional foundation to broadly encompass potential impacts beyond financial estimates. As provided in the constitutional amendment approved by the voters of this state, the language and content appearing in a financial impact statement must be the "financial" (i.e., monetary, economic-type) impacts of any proposed amendment that are "probable." While a "range" of "probable financial" impacts may be consistent with the constitutional basis, a mere "range of potential impacts" standing alone fails to honor the limited constitutional grant. I conclude that there is no constitutional basis to support the statutory scheme without reference to the underlying constitutional provision.

WELLS, J., dissenting.

The Attorney General has requested the Court for a review only as to whether the financial impact statement prepared by the Financial Impact Estimating Conference is in accordance with section 100.371(6), Florida Statutes (2004). This scope of review tracks the language of the statute.

The statute requires only that there be “a clear and unambiguous financial impact statement, no more than 75 words in length.” § 100.371(6)(b)(3), Fla. Stat. Therefore, the scope of the requested review is necessarily limited to whether the financial impact statement is “clear and unambiguous,” and contains no more than seventy-five words. I do not find the financial impact statement unclear, ambiguous, or more than seventy-five words in length. Therefore, I find no basis for rejecting the financial impact statement. I would approve the statement for placement on the ballot.

I conclude that the majority has exceeded the scope of review requested by the Attorney General and contemplated in the statute.

In response to the specially concurring opinion, I do not believe that this Court has jurisdiction in this proceeding to decide the issue which that opinion argues.

QUINCE, J., dissenting.

I dissent from the majority's decision to remand this financial impact statement to the Financial Impact Estimating Conference. I conclude that the statement complies with the requirements of section 100.371(6), Florida Statutes, as amended by chapter 2004-33, section 3, Laws of Florida. The statute provides that “[n]othing in this subsection prohibits the Financial Impact Estimating Conference from setting forth a range of potential impacts in the financial impact statement.” Ch. 2004-33, § 3, Laws of Fla. (emphasis added). This phrase broadly encompasses potential impacts beyond a mere dollar estimate. As interpreted by the majority, the statutory phrase becomes a redundancy. I would approve this financial impact statement for placement on the ballot as it complies with the statutory requirements.

WELLS, J., concurs.