
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**

**INITIAL BRIEF AND APPENDIX
OF THE SPONSOR,
FLORIDIANS FOR YOUTH TOBACCO EDUCATION, INC.**

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STATEMENT OF THE CASE AND FACTS

Floridians for Youth Tobacco Education, Inc. is a Florida political committee created principally to promote an amendment to the Florida Constitution through the initiative petition process (the “Youth Tobacco amendment”). [A 1.] See Art. XI, § 3, Fla. Const. The chief purpose of the proposed Youth Tobacco amendment is to use a portion of the Tobacco Settlement money to create a tobacco education and prevention program especially directed toward youth. The Youth Tobacco amendment has qualified for this Court’s review [A 2], and the Attorney General has requested this Court’s advisory opinion as to whether the Youth Tobacco amendment encompasses a single subject, and whether the ballot title and summary comply with the pertinent legal requirements.¹ [A 3.] The Court has jurisdiction. Art. V, § 3(b)(10), Fla. Const.²

¹ Section 16.061, Florida Statutes (2005), requires the Attorney General to petition this Court within 30 days after receiving an initiative from the Secretary of State, "requesting an advisory opinion regarding the compliance of the text of the proposed amendment or revision with s. 3, Art. XI of the State Constitution and the compliance of the proposed ballot title and substance with s. 101.161." This section implements Florida Constitution article IV, section 10, which requires the Attorney General to "request the opinion of the justices of the supreme court as to the validity of any initiative petition circulated pursuant to Section 3 of Article XI."

² Article V, section 3(b)(10) provides that "The supreme court ... [s]hall, when requested by the attorney general pursuant to the provisions of Section 10 of Article IV, render an advisory opinion of the justices, addressing issues as provided by general law."

Title, Ballot Summary, and Text
Of the Youth Tobacco Amendment

The ballot title for the proposed Youth Tobacco amendment is “Protect People, Especially Youth, From Addiction, Disease, and Other Health Hazards of Using Tobacco.”

The ballot summary provides 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.

The full text of the amendment provides as follows:

BE IT ENACTED BY THE PEOPLE OF FLORIDA THAT:

Article X, Florida Constitution, is amended to add the following:

Section 27. **Comprehensive Statewide Tobacco Education And Prevention Program.** In order to protect people, especially youth, from health hazards of using tobacco, including addictive disorders, cancer, cardiovascular diseases, and lung diseases; and to discourage use of tobacco, particularly among youth, a portion of the money that tobacco companies pay to the State of Florida under the Tobacco Settlement each year shall be used to fund a comprehensive statewide tobacco education and prevention program consistent with recommendations of the U.S. Centers for Disease Control and Prevention (CDC), as follows:

(a) **Program.** The money appropriated pursuant to this section shall be used to fund a comprehensive statewide tobacco education and prevention program consistent with the recommendations for effective program components in the 1999 Best Practices for Comprehensive Tobacco Control Programs of the CDC, as such Best Practices may be amended by the CDC. This program shall include, at a minimum, the following components, and may include additional components that are also contained within the CDC Best Practices, as periodically amended, and that are effective at accomplishing the purpose of this section, and that do not undermine the effectiveness of these required minimum components:

(1) an advertising campaign to discourage the use of tobacco and to educate people, especially youth, about the health hazards of tobacco, which shall be designed to be effective at achieving these goals and shall include, but need not be limited to, television, radio, and print advertising, with no limitations on any individual advertising medium utilized; and which shall be funded at a level equivalent to one-third of each total annual appropriation required by this section;

(2) evidence-based curricula and programs to educate youth about tobacco and to discourage their use of it, including, but not limited to, programs that involve youth, educate youth about the health hazards of tobacco, help youth develop skills to refuse tobacco, and demonstrate to youth how to stop using tobacco;

(3) programs of local community-based partnerships that discourage the use of tobacco and work to educate people, especially youth, about the health hazards of tobacco, with an emphasis on programs that involve youth and emphasize the prevention and cessation of tobacco use;

(4) enforcement of laws, regulations, and policies against the sale or other provision of tobacco to minors, and the possession of tobacco by minors; and

(5) publicly-reported annual evaluations to ensure that moneys appropriated pursuant to this section are spent properly, which shall include evaluation of the program's effectiveness in reducing and preventing tobacco use, and annual recommendations for

improvements to enhance the program's effectiveness, which are to include comparisons to similar programs proven to be effective in other states, as well as comparisons to CDC Best Practices, including amendments thereto.

(b) **Funding.** In every year beginning with the calendar year after voters approve this amendment, the Florida Legislature shall appropriate, for the purpose expressed herein, from the total gross funds that tobacco companies pay to the State of Florida under the Tobacco Settlement, an amount equal to fifteen percent of such funds paid to the State in 2005; and the appropriation required by this section shall be adjusted annually for inflation, using the Consumer Price Index as published by the United States Department of Labor.

(c) **Definitions.** "Tobacco" includes, without limitation, tobacco itself and tobacco products that include tobacco and are intended or expected for human use or consumption, including, but not limited to, cigarettes, cigars, pipe tobacco, and smokeless tobacco. The "Tobacco Settlement" means that certain Settlement Agreement dated August 25, 1997, entered into in settlement of the case styled as State of Florida, et al. v. American Tobacco Company, et al., Case No. 95-1466 AH (Fla. 15th Cir. Ct.), as amended by Stipulation of Amendment dated September 11, 1998; and includes any subsequent amendments and successor agreements. "Youth" includes minors and young adults.

(d) **Effective Date.** This amendment shall become effective immediately upon approval by the voters.

SUMMARY OF THE ARGUMENT

The Court must pass on only two legal issues in this proceeding: whether the amendment complies with the single-subject requirement, and whether the ballot title and summary inform the voter of the chief purpose of the amendment. In this original proceeding, the Court reviews the proposed amendment *de novo*. Because of the inherently political nature of the initiative petition process, the Court has always tempered its review by the principle that the sovereign right of the people to amend their constitution should be preserved unless a proposed amendment is “clearly and conclusively defective.” Thus, review is deferential.

The Youth Tobacco amendment satisfies the single-subject rule because it has a logical and natural oneness of purpose and may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme. The amendment has only one chief purpose, which is to use a portion of the Tobacco Settlement money to create a tobacco education and prevention program especially directed toward youth. The amendment also includes directly connected matter, which the constitution expressly allows. The amendment does not substantially alter or perform the functions of multiple branches or levels of government, nor does it substantially affect other provisions of the constitution without disclosing them. The amendment thus satisfies the single-subject requirement.

The title and ballot summary of the Youth Tobacco amendment comply with the governing legal requirements. They inform the voter of the chief purpose of the amendment in language that is clear and crisp and unambiguous. The summary accurately tracks key features of the text of the amendment. It discloses significant details such as the use of Centers for Disease Control standards for the tobacco education and prevention program, the fact that the program will emphasize youth and mandate one-third of the required funding be used for advertising, the level of funding and adjustment for inflation, and the fact that the text sets forth definitions. Both the title and the summary satisfy the governing word limits. Thus, the title and summary pass muster. Floridians For Youth Tobacco Education, Inc. urges the Court to approve the Youth Tobacco amendment for submission to the voters.

ARGUMENT

Standard of Review. Sponsoring an initiative petition is the exercise of a unique right under the Florida Constitution. The initiative petition process is the only method of constitutional amendment or revision that empowers the people at all stages of the process. Given this context, although the Court's review is *de novo*, the Court applies its review deferentially in order to protect the sovereign right of the people to amend their own organic law in whatever manner they choose. *See Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982) (applying standard of "extreme care, caution, and restraint"); *Pope v. Gray*, 104 So. 2d 841,

842 (Fla. 1958) (reviewing initiatives represents the “most sanctified” aspect of the Court’s jurisdiction).

An initiative petition must be upheld unless it is “clearly and conclusively defective.” *Weber v. Smathers*, 338 So. 2d 819, 822 (Fla. 1976) (quoting *Goldner v. Adams*, 167 So. 2d 575, 575 (Fla. 1964)), *receded from on other grounds*, *Floridians Against Casino Takeover v. Let’s Help Florida*, 363 So. 2d 337 (Fla. 1978). The Court lacks authority to pass on the merits, wisdom, draftsmanship, or constitutionality of a proposed amendment in these proceedings. *See Advisory Op. to Atty. Gen. Re Tax Limitation*, 644 So. 2d 486, 489 (Fla. 1994); *Weber v. Smathers*, 338 So. 2d at 821-22. The Youth Tobacco amendment easily satisfies the governing standard of review, and the Court should approve it for submission to the voters.

I. THE YOUTH TOBACCO AMENDMENT SATISFIES THE SINGLE-SUBJECT REQUIREMENT.

With one exception not applicable here, Article XI, Section 3, Florida Constitution, restricts citizens' initiatives to "one subject and matter directly connected therewith." As developed in case law over the years, the single-subject rule has three components: the prevention of logrolling, avoiding the substantial altering or performing of multiple functions of government, and ensuring that the amendment’s impact on the Florida Constitution is limited and accurately disclosed. An examination of each component of the single-subject rule reveals

that the Youth Tobacco amendment complies fully with the governing law; and accordingly, this Court should approve it for submission to the voters.

A. The Amendment Is Not Guilty Of Logrolling.

One purpose of the single-subject rule is to prevent "logrolling," which is the combining of different issues into one initiative so that people have to vote for something they might not want, in order to gain something different that they do want. *Advisory Op. to Att’y Gen. re: Florida Transportation Initiative for Statewide High Speed Monorail (“High-Speed Rail”)*, 769 So. 2d 367, 369 (Fla. 2000); *Advisory Op. to Att’y Gen.—Save Our Everglades*, 636 So. 2d 1336 (Fla. 1994). Although opponents of citizens’ initiatives sometimes reflexively assert a single-subject violation whenever they see a list or series of details included in a proposed amendment, the Court has frequently made it clear that such an argument is meritless, by approving many amendments that include substantial detail in lists, operative provisions, definitions, and exceptions. *See, e.g., In re Advisory Op. to Att’y Gen. re Patients’ Right to Know About Adverse Medical Incidents*, 880 So. 2d 617, 618-19 (Fla. 2004); *Advisory Op. to Att’y Gen. re Florida’s Amendment to Reduce Class Size*, 816 So. 2d 580, 581-82 (Fla. 2002); *Advisory Op. to Att’y Gen. re Protect People From the Health Hazards of Second-Hand Smoke (“Smoke-Free Workplaces”)*, 814 So. 2d 415, 416-17 (Fla. 2002); *Advisory Op. to Att’y Gen. – Fee on Everglades Sugar Production*, 681 So. 2d 1124, 1127-30 (Fla. 1996);

Advisory Op. to Att’y Gen. re Limited Casinos, 644 So. 2d 71, 72-73 (Fla. 1994); *Advisory Op. to Att’y Gen. re Limited Marine Net Fishing*, 620 So. 2d 997, 997-98 (Fla. 1993). The key feature of logrolling is *disparity* of subjects, and thus logrolling does not exist merely because an amendment sets forth *related* provisions that "may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme." *Advisory Op. to Atty. Gen. re Fla. Locally Approved Gaming*, 656 So. 2d 1259, 1263 (Fla. 1994) (quoting *City of Coral Gables v. Gray*, 154 Fla. 881, 883-884, 19 So. 2d 318, 320 (1944)).

The Youth Tobacco amendment complies with the single-subject rule because it manifests a "logical and natural oneness of purpose." *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984). Its single subject is the use of a portion of the tobacco settlement money to create a tobacco education and prevention program especially directed toward youth. All of its provisions relate directly to that single subject. Viewed as a whole, it "may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme." *Florida Locally Approved Gaming*, 656 So. 2d at 1263.

Because of prior precedent, the Court in *Advisory Opinion to Attorney General Re: Slot Machines*, 880 So. 2d 522 (Fla. 2004), upheld a proposed amendment that authorized voters in certain counties to approve the use of slot

machines and also specified that any taxes derived therefrom should supplement public education statewide. However, four Justices expressed the view that in future cases they would consider amendments similar in nature to constitute logrolling in violation of the single-subject rule. The Youth Tobacco Amendment does not run afoul of this admonition, because it only specifies that a certain source of money be used for a particular purpose. It does not also authorize conduct that would otherwise be prohibited by law. The Youth Tobacco amendment satisfies the single-subject requirement, and the Court should approve it for placement on the ballot.

B. The Amendment Does Not Substantially Alter Or Perform Multiple Functions Of Government.

A second reason for the single-subject rule is to prevent one initiative from "substantially altering or performing the functions of multiple aspects of government." *High-Speed Rail*, 769 So. 2d at 369. The concern addressed in this requirement is to prevent "multiple 'precipitous' and 'cataclysmic' changes in state government." *Advisory Op. to the Att'y Gen. re Right to Treatment & Rehab. For Non-Violent Drug Offenses*, 818 So. 2d 491, 495 (Fla. 2002).

The Court has always recognized that a constitutional amendment may, and almost always will, *affect* multiple branches of government. *E.g., Limited Casinos*, 644 So. 2d at 74. Although it may be difficult to articulate a bright-line test for determining when an amendment crosses from permissible *effect* to impermissible

usurpation of a government function, the Court's consistent standard is that an amendment must *substantially* perform or alter the function of *multiple* branches of government before it may be stricken. *High Speed Rail*, 769 So. 2d at 369-70; *Advisory Op. To Atty. Gen. re Fish & Wildlife Conservation Comm'n*, 705 So. 2d 1351, 1353 (Fla. 1998); *Limited Casinos*, 644 So. 2d at 74; *Fine v. Firestone*, 448 So. 2d 984, 988 (Fla. 1984).

In this case, the Youth Tobacco amendment does not substantially alter or perform the functions of multiple branches of government. It has no appreciable impact on either the executive or judicial branches, save that each branch must comply with the amendment as the need arises in the course of conducting its customary business. The fact that government is required to comply with a provision of the Florida Constitution does not constitute the usurpation of a branch's function within the meaning of the single-subject rule for initiatives. *See, e.g., Advisory Op. to Att'y Gen. re Term Limits Pledge*, 718 So. 2d 798, 802 (Fla. 1998); *Advisory Op. to Att'y Gen. re: Public Funding of Political Candidates' Campaigns*, 693 So. 2d 972, 975 (Fla. 1997); *Advisory Op. to Att'y Gen. re Limited Political Terms in Certain Elective Offices*, 592 So. 2d 225, 227 (Fla. 1991); *In re Adv. Op. to At'ty Gen., English – The Official Language of Fla.*, 520 So. 2d 11, 13 (Fla. 1988); *Carroll v. Firestone*, 497 So. 2d at 1205-06; *Smathers v. Smith*, 338 So. 2d 825, 831 (Fla. 1976).

The Court also has established that an amendment may mandate the expenditure of state funds without improperly usurping the Governor's veto power: "Additionally, assuming the amendment would place some restrictions or limits on the veto power regarding the budget for money to [implement the amendment], we do not find this to be the type of 'precipitous' or 'cataclysmic' change prohibited by the single subject restriction." *High-Speed Rail*, 769 So. 2d at 371. As the Court there noted, "Such a restriction, unlike the adequate public [education] funding amendment, would not in any event 'substantially alter' the Governor's powers or 'perform multiple functions of government.'" *Id.* Similarly, the Youth Tobacco amendment does not rise to the level of a "precipitous" or "cataclysmic" change in state government nor usurp the Governor's powers within the meaning of the single-subject rule.

The Youth Tobacco amendment does impact the legislative branch, because it mandates that the Legislature create and fund a comprehensive statewide tobacco education and prevention program. However, impact on one branch of government does not violate the single-subject rule, and the impact this amendment has on the legislative branch does not even rise to the level of usurpation that would violate the single-subject rule if more than one branch of government were impacted.

The Court has never rejected an amendment for providing details of its operation, even if those details have the effect of limiting some of the Legislature's

lawmaking discretion by requiring that the Legislature include certain points and principles in a statutory framework.³ Instead, the Court frequently approves the practice of including sufficient operational details so that the voter understands what the proposal entails and what its chief purpose and ramifications portend. This is vastly preferable to presenting a perfunctory or purely conceptual amendment devoid of the detail sufficient to understand what it entails. The Youth Tobacco amendment properly sets forth the framework of the program contemplated thereunder, leaving it up to the Legislature to enact implementing legislation consistent with the amendment and to delegate further details of implementation, if it so wishes, to the agency or agencies of its choice. This does not constitute the usurpation of the Legislative lawmaking function.

The Youth Tobacco amendment likewise does not usurp the Legislative appropriation function in violation of the single-subject rule. The amendment does not approach the level of restrictions on the state's budget that the Court condemned in *Advisory Opinion to the Attorney General Re Requirement For Adequate Public Education Funding*, 703 So. 2d 446 (Fla. 1997). In *Public Education Funding*, the proposed amendment would have required the state to expend forty percent of its

³ If it were a *per se* improper usurpation of the Legislative function to include operational details in a citizens' initiative, then no such amendment could ever purport to be self-executing. The Court, however, has approved amendments that included all of their operational details and expressly provided that they were self-executing. *E.g. Advisory Op. to Att'y Gen. re The Medical Claimant's Liability Compensation Amendment*, 880 So. 2d 675, 676 (Fla. 2004); *Net Ban*, 620 So. 2d at 998.

entire appropriations under Article III (not including federal funds or lottery proceeds), for public education funding. 703 So. 2d at 447. The court held that this massive restriction on the entire state budget violated the single-subject rule, because it limited the entirety of the state's other functions to the remaining sixty percent of the budget, thus rendering many other government functions, including those in the other branches of government, impossible to fund, and effectively preventing the Governor from exercising his line-item veto power if doing so would reduce the total appropriation below forty percent. *Id.* at 449.

Far from running afoul of the funding-provision principles this Court established in *Public Education Funding*, the Youth Tobacco amendment satisfies this aspect of the single-subject rule because it exercises appropriate restraint with respect to funding. It designates as the source of funding the annual payments that tobacco companies make to the state of Florida, because the Tobacco Settlement itself requires that such funds be used, in part, to fund programs just such as the one proposed in the Youth Tobacco amendment, and historically the Legislature has used some of these funds for this purpose.⁴ Thus, the Court's concern in *Public Education Funding* is not implicated here, because the Youth Tobacco amendment draws from

⁴ The Youth Tobacco amendment defines the "Tobacco Settlement" as "that certain Settlement Agreement dated August 25, 1997, entered into in settlement of the case styled as State of Florida, et al. v. American Tobacco Company, et al., Case No. 95-1466 AH (Fla. 15th Cir. Ct.), as amended by Stipulation of Amendment dated September 11, 1998." The Tobacco Settlement is available online at the following address: <http://stic.neu.edu/Fl/flsettle.htm>.

a revenue source funded by private parties in settlement of a legal dispute, rather than from the state's general revenue.

The Court in *Public Education Funding* explained that that case was different from prior cases in which it had approved the approach of designating a specific source of revenue and mandating that funds generated from that source be used for the purpose specified in the amendment. 703 So. 2d at 450 (citing *Advisory Op. to Att'y Gen. re Funding for Criminal Justice*, 639 So. 2d 972, 974 (Fla. 1994), and *Everglades Sugar Production*, 681 So. 2d at 1132, both of which mandated that all revenue from specified taxes be appropriated for the uses specified in the respective amendments). Pursuant to these authorities, the Youth Tobacco amendment does not violate the single-subject rule by designating a source of revenue in the Tobacco Settlement funds, and also mandating that the Legislature appropriate a percentage of these funds for the purpose set forth in the amendment. Further, it designates only a small percentage of the Tobacco Settlement funds for the purpose of the amendment (fifteen percent, adjusted annually for inflation), rather than 100% as was the case with the casino, lottery, and slot machine tax revenues. It does not suffer from the *Public Education Funding* flaw of sweeping nearly half of the state's entire general revenues off the table. Its restraint and specificity comply with both the letter and the spirit of the single-subject rule.

C. The Amendment Does Not Substantially Impact Other Provisions Of The Florida Constitution Without Disclosing Them.

The Court has noted in its analysis of the single-subject requirement that an amendment must disclose any provisions of the Florida Constitution that it substantially impacts, and that a substantial impact on multiple sections could violate the single-subject rule. *See, e.g., Advisory Op. to the Att’y Gen. re Physician Shall Charge The Same Fee For The Same Health Care Service To Every Patient*, 880 So. 2d 659, 663 (Fla. 2004).

The Youth Tobacco amendment does not violate this component of the single-subject rule. The Florida Constitution does not presently address youth tobacco use or any of the details of the tobacco education and prevention program to be created under the Youth Tobacco amendment. The Youth Tobacco amendment accurately discloses that it would create a new section in the Florida Constitution.⁵ Although the Florida Constitution addresses workplace smoking restrictions in Article X, section 20, the Youth Tobacco amendment does not amend or affect that provision in any respect. The Youth Tobacco amendment

⁵ The Youth Tobacco amendment assigns section number 27 to the new constitutional provision, simply because that was the next available section number when the amendment was drafted (and still is). As a practical matter, by the time the amendment is adopted, that section number may be in use by another provision, in which case the Secretary of State is authorized to assign an appropriate section number. § 15.155(1), Fla. Stat. (2005); *see Same Fee*, 880 So. 2d at 660 n.1.

does not substantially affect any existing provision of the Florida Constitution, and therefore it satisfies this aspect of the single-subject rule.

II. THE BALLOT TITLE AND SUMMARY FAIRLY AND UNAMBIGUOUSLY DISCLOSE THE CHIEF PURPOSE OF THE YOUTH TOBACCO AMENDMENT.

Section 101.161(1), Florida Statutes (2005) provides that whenever a constitutional amendment is submitted to the vote of the people, a summary of the amendment shall appear on the ballot. The statute further states as follows:

The substance of the amendment or other public measure 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. (2005). The Court analyzes three aspects of ballot titles and summaries: whether the summary fairly informs the voter of the “chief purpose” of the measure, whether the summary is misleading; and whether the title and summary comply with the word-length and other technical requirements of the statute. In this review, the Court always reads the ballot title and summary together to determine whether they accurately inform the voter. *Advisory Op. to Att’y Gen. re: Voluntary Universal Pre-Kindergarten Education*, 824 So. 2d 161, 166 (Fla. 2002) (citing *Tax Limitation*, 673 So. 2d at 868).

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 provides 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.

The ballot title and summary of the Youth Tobacco amendment easily pass each category of scrutiny, and this Court should approve them.

A. The Summary Fairly Informs The Voter Of The Chief Purpose Of The Measure.

The statute demands of the ballot summary only that it disclose the "chief purpose of the measure." § 101.161(1), Fla. Stat. (2005). The Court has ruled that the purpose of this statute is "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; *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954) ("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."). The Court has

applied the requirement to mean that the language disclosing the chief purpose must be clear, unambiguous, and not misleading. *Public Funding of Political Candidates' Campaigns*, 693 So. 2d at 976; *Askew v. Firestone*, 421 So. 2d at 154-55. While a ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, they need not explain every detail, ramification, or effect of the proposed amendment. *Grose v. Firestone*, 422 So. 2d 303, 305 (Fla. 1982).

The ballot summary clearly and unambiguously discloses the chief purpose and legal effect of the Youth Tobacco amendment, which is to use a portion of the tobacco settlement money to create a tobacco education and prevention program especially directed toward youth. The summary accurately reflects the text of the amendment, covering all of the main provisions of the amendment and specifically including references to key features that may be of note to the voter. Among these details fairly disclosed in the summary are the identification of the Tobacco Settlement payments as the source of funding, a description of the program and its reliance on Centers for Disease Control practices, a disclosure that some program components are mandatory, that youth are emphasized, that one-third of the total funding must be used for advertising, that the annual funding is 15% of the 2005 Tobacco Settlement payment, that the amount will be adjusted annually for inflation, that the text of the amendment provides definitions, and that the

amendment will be effective immediately. That disclosure is tremendously detailed, particularly given the strict word limit; and yet it is readable, understandable, and an accurate reflection of the amendment itself. It gives the voter the information necessary to make an informed decision. A voter who sees these details disclosed in the ballot summary will have an accurate understanding of the issue to be determined, and is on notice to investigate further if she wishes to do so. *See Carroll v. Firestone*, 497 So. 2d 1204, 1207 (Fla. 1986) (Boyd, J., concurring) (immaterial to validity of summary whether voters choose to educate themselves or not, as long as the chief purpose of the measure is disclosed so that they have the opportunity to inform themselves). The ballot summary of the Youth Tobacco amendment more than satisfies the requirement that it fairly inform the voter of the chief purpose of the measure. The Court should approve it so that the voters may express their views on the amendment at the polls.

B. The Summary Is Not Misleading To The Public.

The ballot summary of the Youth Tobacco amendment is not misleading. First, as already discussed, it fully and fairly discloses the chief purpose of the measure, and goes even further to disclose details of the proposal. Beyond that, the ballot summary uses language that is readily understandable; it advises the voter that definitions are provided in the text of the amendment; and it avoids impermissible rhetoric.

The Court in *Smoke-Free Workplaces* specifically approved the use of two of the key terms that the Youth Tobacco amendment uses in its ballot title and summary: “protect” and “health hazards.” In *Smoke-Free Workplaces*, the tobacco industry and the Restaurant Association challenged the title and summary because of their use of these terms, asserting that they constituted “impermissible political or inflammatory rhetoric” and the “judicial adjudication of unproven facts.” 814 So. 2d at 420. The Court rejected both of these arguments, holding that these terms did not mislead voters and did not constitute impermissible political rhetoric or the adjudication of any fact. *Id.* at 420-21. The same terms used in substantially the same context in the Youth Tobacco amendment are, likewise, not improper.

C. The Title And Summary Comply With The Technical 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." This title does not exceed fifteen words, and is the common reference for the proposed amendment. It thus satisfies the governing legal requirements. § 101.161(1), Fla. Stat. (2005).

The ballot summary likewise satisfies the word-length limitation of section 101.161(1). It is 73 words long, and would be 75 words long if the hyphenated

phrase “one-third” were counted as two words⁶ and if the term “15%” were counted as two words. The sponsors used every possible word in an attempt to fairly, fully, and accurately inform the voter.

CONCLUSION

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

Respectfully submitted this 8th day of December, 2005.

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⁶ The ballot summary for the *Class Size* initiative utilized a hyphenated phrase, “phased-in,” which if counted as two words would have caused the summary to exceed the word limit. See 816 So. 2d at 581. Apparently, the Court’s approval of that ballot summary indicates that a hyphenated phrase counts as only one word. Nevertheless, the sponsor of the Youth Tobacco amendment erred on the side of caution and allowed for the possibility that this amendment’s use of the hyphenated phrase “one-third” might count as two words.

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 8th day of December, 2005.

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

- A 1 Title, Ballot Summary, and Text of the Youth Tobacco Amendment
- A 2 Secretary of State's certification of entitlement to advisory opinion
- A 3 Attorney General's request for advisory opinion