
IN THE SUPREME COURT OF FLORIDA

Case No. SC00-542

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: FLORIDA TRANSPORTATION INITIATIVE FOR
STATEWIDE HIGH SPEED MONORAIL, FIXED
GUIDEWAY OR MAGNETIC LEVITATION SYSTEM

**INITIAL BRIEF OF
FLORIDIANS FOR 21ST CENTURY
TRAVEL CONNECTIONS & CHOICES**

**SUPPORTING FLORIDA TRANSPORTATION
INITIATIVE FOR STATEWIDE HIGH SPEED
MONORAIL, FIXED GUIDEWAY OR
MAGNETIC LEVITATION SYSTEM**

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STATEMENT OF THE CASE AND FACTS

Floridians for 21st Century Travel Connections & Choices (Floridians) has invoked the initiative petition process of Article XI, section 3, Florida Constitution, to propose an amendment to the Florida Constitution. The amendment would provide for development of a high speed monorail, fixed guideway or magnetic levitation system linking Florida's five largest urban areas.

Pursuant to section 15.21, Florida Statutes (1999), the Secretary of State has submitted the initiative petition to the Attorney General certifying that Floridians has successfully met the signature requirements. Pursuant to section 16.061, Florida Statutes (1999), the Attorney General has requested this Court's opinion as to whether the ballot title and summary of the proposed constitutional amendment comply with section 101.161, Florida Statutes (1999).

This Court has issued an Interlocutory Order requiring all interested parties to file briefs on these issues. This Brief is filed on behalf of Floridians, the sponsor of the petition.

The petition provides:

BE IT ENACTED BY THE PEOPLE OF FLORIDA
THAT:

Article X, Section 19, Florida Constitution, is hereby
created to read as follows:

High Speed Ground Transportation System.

To reduce traffic congestion and provide alternatives to the traveling public, it is hereby declared to be in the public interest that a high speed ground transportation system consisting of a monorail, fixed guideway or magnetic levitation system, capable of speeds in excess of 120 miles per hour, be developed and operated in the State of Florida to provide high speed ground transportation by innovative, efficient and effective technologies consisting of dedicated rails or guideways separated from motor vehicular traffic that will link the five largest urban areas of the State as determined by the Legislature and provide for access to existing air and ground transportation facilities and services. The Legislature, the Cabinet and the Governor are hereby directed to proceed with the development of such a system by the State and/or by a private entity pursuant to state approval and authorization, including the acquisition of right-of-way, the financing of design and construction of the system, and the operation of the system, as provided by specific appropriation and by law, with construction to begin on or before November 1, 2003.

The ballot title and summary for the proposed amendment provides:

FLORIDA TRANSPORTATION INITIATIVE FOR STATEWIDE HIGH SPEED MONORAIL, FIXED GUIDEWAY OR MAGNETIC LEVITATION SYSTEM.

To reduce traffic and increase travel alternatives, this amendment provides for development of a high speed monorail, fixed guideway or magnetic levitation system linking Florida's five largest urban areas and providing for access to existing air and ground transportation facilities and services by directing the state and/or state authorized private entity to implement the financing, acquisition of right-of-way, design, construction and operation of the system, with construction beginning by November 1, 2003.

In his letter to the Court, the Attorney General asked whether the proposed amendment so substantially affects the functions of the Legislative and Executive Branches of state government as to violate the single subject requirement of Article XI, section 3, Florida Constitution. Further, while the Attorney General agrees that the ballot title and summary expresses the chief purpose of the initiative, he asks whether the use of the term "statewide" would mislead voters into believing that the initiative provides for a system encompassing all parts of the state.

SUMMARY OF THE ARGUMENT

Because the people's sovereign right to amend their constitution is at stake, this Court has the responsibility to sustain the high speed ground transportation petition, if possible, considering the proposal as a whole and giving effect to the intent of the drafters and chief purpose of the measure. The standard of review is deferential, and the Court's duty is to uphold the proposal unless it can be shown to be clearly and conclusively defective.

A proposed constitutional amendment complies with the single-subject requirement if it has a logical and natural oneness of purpose or if it may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme. The only purpose of the proposed amendment is

to provide a high speed ground transportation system connecting the five largest urban areas of Florida. The entire amendment is directed to that objective.

A proposed amendment may affect multiple branches of government without violating the single-subject rule as long it does not substantially alter or perform the functions of those branches. While the initiative calls upon the legislative and executive branches of government to implement the development of a high speed ground transportation system, it does not affect the performance of their functions. The amendment clearly embraces "but one subject and matter directly connected therewith."

The title and ballot summary fully inform voters of the chief purpose of the amendment. The fact that the ballot title refers to a statewide system cannot possibly confuse the voters. Section 101.161, Florida Statutes (1999) only calls for a title in order that there will be a caption "by which the measure is commonly referred to or spoken of." This Court has always interpreted the statute to mean that the ballot and title summary must be read together. The ballot summary clearly states that a high speed ground transportation system will link the five largest urban areas of the state. Thus, there could be no possibility that voters could be misled concerning the location

of the proposed high speed ground transportation system. The ballot title and summary should be approved.¹

¹ In order that the remaining signatures may be obtained in a timely manner and the initiative properly placed on the November 2000 ballot, Floridians respectfully request the court to render an early decision on this matter.

ARGUMENT

I. THE PETITION IS ENTITLED TO GREAT DEFERENCE.

Because of the great importance of protecting the people's rights to modify the organic law of Florida, this Court has always recognized that it should be extremely reluctant to remove a proposed constitutional amendment from the ballot. As noted in Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982), the court "must act with extreme care, caution, and restraint before it removes a constitutional amendment from the vote of the people." The Court's "duty is to uphold an initiative petition unless it can be shown to be `clearly and conclusively defective.'" Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337, 339 (Fla. 1978). "Extreme restraint" and "duty" are strong words, which define the standard of review of the high speed ground transportation petition as very deferential.

In Advisory Opinion to the Attorney General Re Tax Limitation, 644 So. 2d 486 (Fla. 1994), the Court explained in more detail its authority in reviewing initiative petitions:

This Court's role in these matters is strictly limited to the legal issues presented by the constitution and relevant statutes. This Court does not have the authority or responsibility to rule on the merits or the wisdom of these proposed initiative amendments, and we have not done so. Infringing on the people's right to vote on an amendment is a power this Court should use only where the record shows the constitutional single-subject requirement has been

violated or the record establishes that the ballot language would clearly mislead the public concerning material elements of the proposed amendment and its effect on the present constitution.

644 So. 2d at 489.

When given the deference to which it is entitled, the high speed ground transportation petition is well within the requirements of the law.

II. THE PETITION SATISFIES THE SINGLE-SUBJECT REQUIREMENT OF ARTICLE XI, SECTION 3, FLORIDA CONSTITUTION.

Article XI, Section 3, Florida Constitution, specifies that any amendment, except for those limiting the power of government to raise revenue, "shall embrace but one subject and matter directly connected therewith." The purpose of the single-subject provision is to prevent "logrolling," a practice in which several separate issues are rolled into a single initiative in order to aggregate votes or secure approval of an otherwise unpopular issue. Advisory Op. to the Atty. Gen.—Save Our Everglades, 636 So. 2d 1336 (Fla. 1994). A proposed constitutional amendment meets the single-subject requirement if it has a logical and natural oneness of purpose or if it may be logically viewed as having natural relation and connection as component parts or aspects of a single dominant plan or scheme. Advisory Op. to Atty. Gen.—Limited Political Terms in Certain Elective Offices, 592 So. 2d 225 (Fla. 1991).

Clearly, the high speed ground transportation initiative has a logical and natural oneness of purpose; i.e., it directs the development of a high speed ground transportation system within the state. All the provisions in the amendment relate to the implementation of this objective. No portion of this amendment is directed toward any other purpose.

The Attorney General suggests that the lack of specifics as to the implementation of the proposed system "makes it difficult to conceive how a remedy could be fashioned by a court, should the Legislature or Governor or Cabinet fail to act, without the court performing legislative or executive functions." Thus, the Attorney General reasons that the initiative affects the functions of the legislative and executive branches of state government and asks whether "such interference" is substantial enough to invoke the proscriptions of Article XI, Section 3.

At the outset, it must be assumed that if this amendment were to be passed, the Legislature, Governor, and the Cabinet, who have sworn to uphold the Constitution, will obey the Constitution and take the necessary steps to implement the amendment. To suggest that these public officers would refuse to follow the law is sheer speculation. See Advisory Op. to Atty. Gen. Re Limited Casinos, 644 So. 2d 71, 74 (Fla. 1994) ("All of the scenarios raised by the opponents relating to possible impacts on other branches of government or on the constitution are premature speculation."); see also Advisory Op. to Atty. Gen. Re Florida Locally Approved Gaming, 656 So.

2d 1259, 1264 (Fla. 1995) ("If the Legislature does not act there is a remedy. See Dade County Classroom Teachers Ass'n v. Legislature, 269 So. 2d 684 (Fla. 1972).").

In any event, this Court has acknowledged that it would be difficult to conceive of a constitutional amendment that would not affect multiple branches of government. Limited Casinos, 644 So. 2d at 74. A proposed amendment may affect multiple branches of government without violating the single-subject rule as long as it does not substantially alter or perform the functions of those branches. Advisory Op. to Atty. Gen.—Fee on Everglades Sugar Production, 681 So. 2d 1124 (Fla. 1996).

The proposed initiative in Limited Casinos authorized the operation of gaming casinos and required the Legislature to implement the amendment by enacting legislation to regulate and license the casinos. In approving the initiative, this Court said:

Opponents further argue that the petition encroaches upon the taxation, regulation, and licensing powers of the legislature because of the 'legislature shall implement' language contained in the petition. We find that this language is incidental and reasonably necessary to effectuate the purpose of the proposed amendment and does not violate the single-subject requirement.

644 So. 2d at 74.

Thus, while the high speed ground transportation initiative calls upon legislative and executive branches of government to implement development of a high speed ground transportation system, it does not affect the performance of their functions. See

Limited Political Terms, (initiative proposing term limits met single subject requirement even though it purported to affect officer holders in three different branches of government).

In Florida Locally Approved Gaming, this Court explained that a proposed amendment meets the single-subject test "when it 'may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme. Unity of object and plan is the universal test.' City of Coral Gables v. Gray, 154 Fla. 881, 883-884, 19 So. 2d 318, 320 (1944)." 656 So. 2d at 1263. There can be no doubt that the single dominant plan or scheme of the Floridians amendment is to direct the development of a high speed ground transportation system in Florida. The amendment meets the single-subject requirement of Article XI, Section 3, Florida Constitution.

III. THE BALLOT TITLE AND SUMMARY ACCURATELY INFORM THE VOTER OF THE CHIEF PURPOSE OF THE AMENDMENT.

Section 101.161(1), Florida Statutes (1999) 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:

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.

This Court has explained that the ballot must be fair and advise the voter sufficiently to enable the voter to cast a ballot intelligently. Askew v. Firestone, 421 So. 2d 151 (Fla. 1982). 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 and ramification of the proposed amendment. Carroll v. Firestone, 497 So. 2d 1204 (Fla. 1986).

The ballot title of the proposed amendment is "Florida Transportation Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation System." As the Attorney General points out, the chief purpose of this amendment is to authorize the development of a high speed ground transportation system within the state of Florida. The Attorney General acknowledges that the ballot title and summary "appear to express its chief purpose." However, the Attorney General questions whether the use of the term "statewide" in the title may mislead voters into believing that the initiative provides for a system encompassing all parts of the state rather than one that will link the five largest urban areas in the state.

It merits emphasis that section 101.161 calls for a title simply so that there will be a caption "by which the measure is commonly referred to or spoken of." The

statute contemplates that the summary, not the short title, will contain the explanatory statement of the substance of the amendment.

The use of the term "statewide" in the title could not possibly confuse the voters concerning the purpose of this amendment. A high speed ground transportation system that connects the five largest urban areas of the state will necessarily encompass the major portion of the state. No reasonable voter would interpret the word "statewide" into meaning that a high speed ground transportation system would be constructed to reach every area and municipality within the state.

The relationship between the title and the summary was exemplified in Limited Casinos. In that case the proposed amendment authorized a limited number of gaming casinos in certain specified counties as well as casinos of limited size in operating paramutual facilities authorized by the Legislature and five limited size riverboat casinos in the remaining counties. The ballot title was "Limited Casinos." In approving the ballot title and summary, the Court said:

Opponents of the petition argue that the ballot title, Limited Casinos, is misleading in that the word 'limited' is subjective and is likely to be perceived by voters as limiting certain types of gambling, or limiting casinos to a few in number, or limiting the number of casinos already in the state. This Court has always interpreted section 101.161(1) to mean that the ballot title and summary must be read together in determining if the ballot information properly informs the voter. The ballot summary makes it clear that the word 'limited' refers to the number of casinos that will be authorized in various locations as well as to the square

footage of the casinos to be located with existing pari-mutuel facilities. We are confident that the public knows that casino gambling is now prohibited and will understand that the effect of the amendment would be to permit casino gambling subject to the limitation contained therein. (Emphasis added.)

644 So. 2d at 75.

Thus, the ballot summary dispels any possibility that the voters could be misled by the title, because the summary clearly specifies that the high speed ground transportation system will link the five largest urban areas of the state.

CONCLUSION

The standard for reviewing initiative petitions is highly deferential. Yet, by any standard, the high speed ground transportation initiative "embraces but one subject and matter directly connected therewith" and the title and ballot summary accurately explains its chief purpose. The court should expeditiously approve the amendment for submission to the voters.

Respectfully submitted this _____ day of April, 2000.

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CERTIFICATE OF FONT AND OF SERVICE

I HEREBY CERTIFY that this brief was prepared using Times New Roman 14 point type, a font that is proportionately spaced; and that a true and accurate copy of the foregoing was furnished by United States mail to The Honorable Robert A. Butterworth, Office of Attorney General, The Capitol, Tallahassee, Florida 32399-1050, this ____ day of April, 2000.

Attorney

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