

July 5, 2001

The Honorable Charles T. Wells
Chief Justice, and
Justices of The Supreme Court
of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

Dear Chief Justice Wells 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 Office 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 June 6, 2001, this office received from the Secretary of State an initiative petition seeking to amend the Florida Constitution to limit the cruel and inhumane confinement of pigs during pregnancy. The full text of the proposed amendment states:

BE IT ENACTED BY THE PEOPLE OF FLORIDA THAT:

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

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.

- (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.

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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) This section shall take effect six years after approval by the electors.

The ballot title for the proposed amendment is "**Animal Cruelty Amendment: Limiting Cruel and Inhumane Confinement of Pigs During Pregnancy.**" The summary for the proposed amendment states:

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.

BALLOT TITLE AND SUMMARY

Section 16.061, Florida Statutes, requires the Attorney General's Office to petition this Honorable Court for an advisory opinion as to whether the proposed ballot title and summary comply with section 101.161, Florida Statutes.

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

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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 on several occasions "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); *Advisory Opinion to the Attorney General--Limited Political Terms in Certain Elective Offices*, 592 So. 2d 225, 228 (Fla. 1991). However, the ballot 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 the voters are advised of the true meaning of an

amendment.

The purpose of this initiative is to prohibit the confinement or tethering of pregnant pigs. The ballot title and summary appear to express this chief purpose. However, this office would note that the ballot summary prohibits the confinement or tethering of a pregnant pig on a "farm." While the term "farm" may have a commonly understood meaning, the text of the amendment defines the term to mean any land, building, support facility and other appurtenances used in the production of animals for food or fiber. Thus, for example, an individual owning a single pregnant pig in any setting would be subject to the prohibitions of the amendment if such pig or its offspring were intended to be used for food or fiber. Similarly, since the definition of "farm" uses the term "production of animals" (rather than pigs) for food or fiber, the proposed amendment would apply, for example, to a chicken farmer who had a single pregnant pet pig.

The public may not be aware that the proposed amendment would preclude the transportation of a pregnant pig in a cage or crate other than for veterinary purposes. Thus, the amendment would not allow the transportation of pregnant pigs to market unless the cage, crate or enclosure is large enough to allow the pig to turn around freely without touching any side of the enclosure.

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Therefore, I respectfully request this Honorable Court's opinion as to whether the ballot title and summary of the proposed constitutional amendment comply with section 101.161, Florida Statutes.

SINGLE SUBJECT LIMITATION

Section 16.061, Florida Statutes, requires the Attorney General's Office to petition this Honorable Court for an advisory opinion as to whether the text of the proposed amendment complies with Article XI, section 3, Florida Constitution.

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). *And see, 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."

The proposed amendment appears to embrace a single subject and matters directly connected therewith. I would note, however, that subsection (d) of the proposed amendment contains a reference to "s. 775.082(4)(a), Florida Statutes (1999), as amended." Under the rules of construction, a specific reference The Honorable Charles T. Wells
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to a statute incorporates the statute as it exists at that time, unaffected by any subsequent amendment or repeal. However, the reference in the proposed amendment refers to a specific statute "as amended." It is unclear whether the provisions of section 775.082(4)(a) as they exist in the 1999 statutes are intended as the benchmark or whether the sponsors intended to incorporate any subsequent amendment.

Therefore, I respectfully urge this Honorable Court to consider whether the constitutional amendment, proposed by initiative petition, complies with Article XI, section 3, Florida Constitution.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

cc: The Honorable Katherine Harris
Secretary of State

The Honorable Jeb Bush
Governor, State of Florida

The Honorable John McKay
President, Florida Senate

The Honorable Tom Feeney
Speaker, Florida House of Representatives

Ms. Pam Huizenga Van Hart
Chairperson, Floridians for Humane Farms