

STOP initiative, petition to Supreme Court

Number: INFORMAL

Date: December 18, 1995

The Honorable Stephen Grimes
Chief Justice, and Justices of
The Supreme Court of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

Dear Chief Justice Grimes and Justices:

In accordance with the provisions of Article IV, Section 10, Florida Constitution, and Section 16.061, Florida Statutes, it is my responsibility 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 May 1, 1995, the Secretary of State, as required by Section 15.21, Florida Statutes, submitted to this office an initiative petition seeking to amend Article IV, Section 8 of the Florida Constitution. The full text of the proposed amendment provides:

"Shall the following be added to the Florida Constitution, Article IV, Sec. 8:

All state prisoners lawfully sentenced to a term of years shall serve at least eighty-five percent of their term of imprisonment, unless granted pardon or clemency. Parole, conditional release, or any mechanism of sentence reduction may reduce the term of years sentence by no more than fifteen percent. State prisoners sentenced to life imprisonment shall be incarcerated for the rest of their natural lives, unless granted pardon or clemency."

The ballot title for the proposed amendment is "STOP TURNING OUT PRISONERS: LIMIT EARLY RELEASE." The summary for the proposed amendment provides:

"A state constitutional amendment which, except for pardon or clemency, requires that state prisoners sentenced to a term of years shall serve at least eighty-five percent of their terms of imprisonment. Parole, conditional release, or any mechanism of sentence reduction may reduce the term of years sentence by no more than fifteen percent. State prisoners sentenced to life imprisonment shall be incarcerated for the rest of their natural lives, unless granted pardon or clemency."

SINGLE SUBJECT LIMITATION

Section 16.061, Florida Statutes, requires the Attorney General, within 30 days after receipt of a proposed amendment to the Florida Constitution by citizens' initiative, to petition this Honorable Court for an advisory opinion as to whether the test of the proposed amendment complies with Article XI, Section 3, Florida Constitution.

Article XI, Section 3, Florida Constitution, reserves to the people the power to propose the revision or amendment of any portion of the Constitution by initiative. It requires, however, that any such revision or amendment "embrace but one subject and matter directly connected therewith." *Evans v. Firestone*, 457 So. 2d 1351, 1354 (Fla. 1984). The Court has stated that a proposed amendment meets this single subject requirement if it has "a logical and natural oneness of purpose[.]" *Advisory Opinion to the Attorney General--Limited Political Terms in Certain Elective Offices*, 592 So. 2d 225, 227 (Fla. 1991), quoting, *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984).

The proposed amendment requires that except for pardon or clemency, state prisoners serve at least eighty-five percent of their sentences. While the amendment does not prohibit parole, conditional release or any mechanism of sentence reduction that may reduce the term of years of a sentence, such reduction may not exceed fifteen percent. The amendment provides that state prisoners sentenced to life imprisonment be incarcerated for the rest of their natural lives, unless granted pardon or clemency.

The proposed amendment would affect the Parole Commission's powers to grant paroles or conditional releases. See, *Advisory Opinion to the Attorney General--Stop Early Release of Prisoners*, 642 So. 2d 724, 726 (Fla. 1994), in which this Court assumed that a previous petition to stop the early release of prisoners met the single subject requirement but stated that such amendment would have eliminated the commission's primary powers and abolished parole and conditional releases "in a vast majority of cases." The role of the Parole Commission, however, may already be altered by passage of legislation which is awaiting consideration by the Governor. Committee Substitute for House Bill 687 (1995), would significantly affect incentive gain-time that may be earned by inmates. For sentences imposed for offenses committed after October 1, 1995, the department of corrections would be permitted to grant incentive gain time provided that no prisoner may earn any type of gain-time in an amount that would cause a sentence to expire or terminate or would result in a prisoner's release prior to serving 85 percent of the sentence imposed. Except as provided therein, a prisoner is precluded from accumulating further gain-time awards at any point when the tentative release date is the same as that date at which the prisoner will have served 85 percent of the sentence imposed. The bill further states that state prisoners sentenced to life imprisonment shall be incarcerated for the rest of their natural lives, unless granted pardon or clemency, and provides that persons convicted of any capital felony are ineligible for parole. Thus, the role of the Parole Commission may already be significantly altered.

Moreover, the proposed amendment specifically informs the electorate that parole and conditional releases are affected by its terms. The proposed amendment specifically recognizes the clemency and pardon powers set forth in Article IV, Section 8, Florida Constitution, as exceptions to its terms.

Thus, the provisions of the proposed amendment, limiting the early release of prisoners through parole, conditional release, or any mechanism of sentence reduction and creating exemptions for clemency or pardons, would appear to constitute matters directly and logically connected to the subject of the amendment. See *Advisory Opinion to the Attorney General--Limited Casinos*, 644 So. 2d 71 (Fla. 1994).

Therefore, I respectfully request this Honorable Court's opinion as to whether the constitutional amendment, proposed by initiative petition, complies with Article XI, Section 3, Florida Constitution.

BALLOT TITLE AND SUMMARY

Section 16.061, Florida Statutes, also requires the Attorney General 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, Florida Statutes, prescribes the requirements for the ballot title and summary of a proposed constitutional amendment, providing in part:

"Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot . . . 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 stated that "the ballot [must] be fair and advise the voter sufficiently to enable him intelligently to cast his ballot." *Advisory Opinion to the Attorney General--Limited Political Terms in Certain Elective Offices, supra* at 227-228; *Advisory Opinion to the Attorney General--Save Our Everglades Trust Fund, supra*.

This Court in considering an earlier citizens' initiative petition to stop the early release of prisoners concluded that the ballot title and summary were defective because the ballot summary, stating that the measure would ensure state prisoners served eighty-five percent of their sentence, failed to note the exceptions for pardon or clemency or to note the amendment's effect on parole. The Court also stated that the initiative did not address the "somewhat puzzling question of how to determine what constitutes eighty-five percent of a life sentence." 642 So. 2d at 726.

The ballot title and summary of the current amendment do not contain such problems. They set forth the chief purpose of the measure, informing the voter that the measure requires that, except for pardon or clemency, state prisoners sentenced to a term of years shall serve at least eighty-five percent of their terms of imprisonment. While it acknowledges that parole, conditional release or other mechanisms of sentence reduction may reduce the terms of years sentence, such reduction may not exceed fifteen percent. It also reflects the amendment's mandate that state prisoners sentenced to life imprisonment shall be incarcerated for the rest of their natural lives unless granted pardon or clemency.

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

Respectfully submitted,

Robert A. Butterworth
Attorney General

RAB/tgk

Enclosures

cc: The Honorable Sandra B. Mortham
Secretary of State
The Capitol
Tallahassee, Florida 32399-0250

Sheriff Charlie B. Wells
c/o STOP Early Release Committee
4999 Tamiami Trail
Charlotte Harbor, Florida 33980