

SUPREME COURT OF FLORIDA

ADVISORY OPINION TO THE
ATTORNEY GENERAL RE:
PROVIDE MEDICAID COVERAGE
TO ELIGIBLE LOW-INCOME ADULTS

CASE NO. SC19-1070

Amended Motion to Dismiss based on Supplemental Authority

The Florida Senate requests the Court dismiss the petition in this case for want of jurisdiction and would add the following points to the motion to dismiss:

1. Since the Senate filed its motion to dismiss the Petition for Advisory Opinion, an additional basis for this Court to dismiss this matter has arisen.
2. On April 8, 2020, the Governor signed into law Senate Bill 1794, an act relating to constitutional amendments. The act, codified as Chapter 2020-15, Laws of Florida, took effect pursuant its terms upon becoming a law. *See Id* at § 8.
3. Section 1 of Ch. 2020-15, Laws of Florida, amends section 15.21(3), Florida Statutes, by raising the signature threshold requirement for this Court’s review from 10 percent of the required signatures for ballot placement to 25 percent of the required signatures. It also requires such threshold to be met in one half of the congressional districts instead of the prior requirement of one quarter.
4. Section 6 of Ch. 2020-15, Laws of Florida, makes clear “[t]he provisions of this act, including the ballot requirements for certain disclosures and statements,

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apply to constitutional amendments proposed by initiative which are proposed for the 2020 general election and each election thereafter...”

5. Therefore, sponsors of initiative petitions to be placed on the 2020 ballot must submit 191,500 (25 percent of the requisite 766,200) signed and verified forms before meeting the threshold for this Court’s review. This initiative is ineligible for the 2020 ballot and seeking placement on the 2022 ballot which the threshold for review and placement will established after the presidential election in November.
6. According to the Florida Secretary of State’s website, as of April 9, 2020, the Medicaid Initiative has 90,420 verified signatures.¹
7. Even if the Court to invoke jurisdiction, were to calculate the signature threshold based upon the number of statewide electors in the 2016 presidential election, 90,420 is still less than the requisite 191,550 signatures. Furthermore, the Initiative only meets the 25 percent figure in two of the twenty seven congressional districts. (Districts 20 and 24).^{2,3}

¹ <https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=73891&seqnum=1> (last accessed on April 9, 2020.)

²

<https://dos.elections.myflorida.com/initiatives/initSignDetailCounty.asp?account=73891&seqnum=1&ctype=CSV&elecyear=2022> (last accessed on April 9, 2020)

³ The Senate is filing this motion in regards to this Initiative because it has appeared in this matter as an interested party. The same disqualification would seem to apply to two other initiatives before this Court, Regulate Marijuana like Alcohol (19-1536), and Prohibits Possession of Defined Assault Weapons (19-1266). The Senate is not an interested party in either of those cases.

8. Therefore, the Initiative has not received the threshold number of signatures to reach the purview of the Court and the Court should dismiss this matter for lack of jurisdiction.

Memorandum of Law in Support of Motion to Dismiss

“The Florida Supreme Court is a court of limited jurisdiction, with authority to hear only those matters specified in Florida's Constitution.” *Mallet v. State*, 280 So. 3d 1091, 1092 (Fla. 2019) (internal citation omitted). The Constitution grants jurisdiction to the Court to render an advisory opinion regarding the validity of citizen initiatives. *See* Art. V, § 3(b)(10), Fla. Const. However, the Court’s jurisdiction over citizen initiatives is only invoked when the Attorney General requests “as directed by general law” an advisory opinion of the justices. *See* Art. IV, § 10, Fla. Const. So this type of proceeding is one of the few where the jurisdiction of the Court is established by procedures outlined in general law.

Section 16.061, Florida Statutes, requires the Attorney General to submit the petition for the Court’s review within thirty days after receiving it from the Secretary of State. Section 15.21, Florida Statutes, outlines the requirements that must be met before the Secretary of State may submit the petition to the Attorney General. Before the Secretary of State submits a petition to the Attorney General, she must receive a letter confirming the sponsor has submitted the requisite number of signed petition forms, i.e. 10 percent of 8 percent of the voters in the preceding presidential election.

See 15.21(3), Fla. Stat. This requirement was amended by Ch. 2020-15, Laws of Florida, which increased the requirement from 10 percent to 25 percent of 8 percent of the voters.

Section 6 of ch. 2020-15, Laws of Florida, sets forth an applicability clause to clarify the Legislature’s intent that all provisions of the act, which would include the higher signature threshold, apply to citizen initiatives to be placed on the 2020 ballot and each election thereafter. The higher threshold applies to all citizen initiatives, which includes petitions pending before the Court. Therefore, regardless of whether the Court’s jurisdiction was previously triggered under the old law, the new law now requires the sponsor to obtain a higher threshold of signatures.

The amendment to § 15.21(3), Florida Statutes, creates a new threshold for Court review, and therefore any pending cases need to meet that threshold. This Court has held “that when the jurisdiction of a court depends upon a statute which is repealed or otherwise nullified, the jurisdiction falls even over pending causes, unless the repealing statute contains a saving clause.” *State ex rel. Arnold v. Revels*, 109 So. 2d 1, 3 (Fla. 1959); *see also Griffith v. Florida Parole and Probation Com’n*, 485 So. 2d 818 (Fla. 1986).

In *Rothermel v. Florida Parole and Probation Com’n*, 441 So.2d 663, the First District was confronted with a situation where the statute providing for appeal of orders of the Commission was repealed. The court noted the common law rule

“When the right of appeal is cut off, a pending appeal dies, just as when a statutory cause of action is cut off by repeal without saving clause a pending action upon it dies.... The appellants no longer have a standing in court.” *See id.* at 665 (quoting *U.S. v. Hammond*, 99 F. 2d 557, 558 (5th Cir. 1938)). The Supreme Court in dealing with the same issue approved of *Rothermel* in *Griffith*. *See Griffith* at 820. “Without jurisdiction, the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.” *See Id.* at 821 (quoting *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514 (1868)).

The Third District held that an amendment to an ethics statute that occurred while a case was on appeal nullified the penalty against the official. *See Kinzer v. State Com’n on Ethics* 654 So.2d 1007, 1009 (3rd DCA 1995). The First District has also held that an amendment to a statute adjusting jurisdiction from a judge of compensation claims to the Division of Administrative Hearings nullifies proceedings even after a final hearing when no final order was entered. *See Fla. Birth-Related Neurological Injury Compensation Ass’n v. DeMarko*, 640 So.2d 181 (Fla. 1st DCA 1994).

Therefore, in the absence of an advisory opinion in this case, the amendment of section 15.21(3), Florida Statutes, nullifies the prior jurisdictional threshold and creates a new one which is binding on any case not final as of April 8, 2020.

Based on the foregoing, the Florida Senate moves this court dismiss the petition until such time as the Secretary of State has determined the jurisdictional threshold provided in section 15.21(3), Florida Statutes, as amended, has been met.

Respectfully submitted,

/s/
Jeremiah Hawkes (FBN 472270)
General Counsel
Ashley Urban (FBN 105253)
Deputy General Counsel
THE FLORIDA SENATE
302 The Capitol
404 South Monroe Street
Tallahassee, Florida 32399-1100
Telephone: 850-487-5237
hawkes.jeremiah@flsenate.gov
urban.ashley@flsenate.gov

*Counsels for the Florida Senate and
President Bill Galvano*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed electronically with the Clerk of the Court via the Florida eFiling Portal which will serve all parties of record this 11th day of April 2020.

s/ Jeremiah Hawkes