
SC19-1266 & SC19-1601 (CONSOLIDATED)

IN THE SUPREME COURT OF FLORIDA

**ADVISORY OPINION TO THE ATTORNEY GENERAL RE: PROHIBITS POSSESSION
OF DEFINED ASSAULT WEAPONS**

**ADVISORY OPINION TO THE ATTORNEY GENERAL RE: PROHIBITS POSSESSION
OF DEFINED ASSAULT WEAPONS
(FINANCIAL IMPACT STATEMENT)**

**INITIAL BRIEF OF NATIONAL SHOOTING SPORTS FOUNDATION
IN OPPOSITION TO THE INITIATIVE**

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IDENTITY AND INTEREST OF OPPONENT

Formed in 1961, the National Shooting Sports Foundation (“NSSF”) is a non-profit trade association for the firearms, ammunition, hunting, and shooting sports industries. Comprised of thousands of manufacturers, distributors, firearms retailers, shooting ranges, sportsmen’s organizations, and publishers nationwide, NSSF was created to promote, protect, and preserve hunting and the shooting sports. NSSF’s national initiatives include conducting industry research, advancing education on hunting and shooting sports, promoting the development of state-of-the-art target shooting facilities, and providing business development services and resources for manufacturers and retailers of firearms.

NSSF has an interest in the text of the Florida Constitution and Florida statutes being faithfully applied by this Court in its review of the ballot title and summary of the Proposed Amendment. For the reasons addressed below, the ballot title and summary are defective in several respects and the Proposed Amendment is an unlawful threat to the rights of NSSF’s members who engage in lawful commerce in firearms and ammunition in Florida and throughout the United States, as well as the interests of its outdoorsmen and sportsmen members. More specifically, NSSF has an interest in this Court’s review both because the Proposed Amendment presents a misleading ballot title and summary that fail to fairly

inform voters of its chief purpose and because it addresses multiple distinct subjects in violation of the Florida Constitution and related statutes.

STATEMENT OF THE CASE AND FACTS

On July 26, 2019, the Attorney General petitioned this Court for an advisory opinion as to the validity of an initiative petition entitled “Prohibits possession of defined assault weapons.” This Court has jurisdiction. Art. V, § 3(b) (10), Fla. Const. The full text of the Proposed Amendment, which would amend article I, section 8 of the Florida Constitution, is set forth in the Attorney General’s Petition.

The Proposed Amendment includes the following ballot title and summary:

BALLOT TITLE: Prohibits possession of defined assault weapons.

BALLOT SUMMARY: Prohibits possession of assault weapons, defined as semiautomatic rifles and shot guns capable of holding more than 10 rounds of ammunition at once, either in fixed or detachable magazine, or any other ammunition feeding device. Possession of hand guns is not prohibited. Exempts military and law enforcement personnel in their official duties. Exempts and requires registration of assault weapons lawfully possessed prior to this provision’s effective date. Creates criminal penalties for violations of this amendment.

The Attorney General subsequently petitioned the Court for an advisory opinion as to the Financial Impact Statement for the Proposed Amendment that was prepared by the Financial Impact Estimating Conference. On September 23, 2019, this Court issued an order consolidating the two cases for all purposes and establishing a briefing schedule.

The National Shooting Sports Foundation submits this brief as an interested party opposed to the Proposed Amendment.

SUMMARY OF THE ARGUMENT

This Court should deny ballot placement to the Proposed Amendment because it is clearly and conclusively defective on multiple grounds.

The Proposed Amendment's ballot title and summary are misleading and fail to provide fair notice to voters of the amendment's true chief purpose and effect for three reasons. First, the ballot title and summary purport to contain the chief purpose of the amendment—a ban on “assault weapons” as that term is defined in the summary. But the ballot title and summary fail to clearly and unambiguously disclose that under the expansive definition of “assault weapons” used in the summary, the Proposed Amendment would actually ban the possession of virtually every semi-automatic rifle and shotgun in Florida, which is the true chief purpose of the initiative. Second, the ballot title and summary fail to inform voters that nearly every current lawful owner of a semi-automatic rifle or shotgun will be forced to register with the Florida Department of Law Enforcement within one year of an undisclosed effective date of the amendment or risk criminal prosecution. Finally, the ballot title and summary fail to disclose that the Proposed Amendment will significantly restrict the existing constitutional right of gun ownership under the Second Amendment.

The Proposed Amendment also violates the Florida Constitution’s single-subject requirement by addressing multiple distinct subjects in the same proposal. The Proposed Amendment bans the possession of “assault weapons” while simultaneously creating a grandfathering clause that requires a gunowner who lawfully possessed an “assault weapon” prior to the amendment to register with the Florida Department of Law Enforcement or risk being charged with a third-degree felony. These are logically separable topics about which individual voters may feel differently. By combining these disparate subjects into a single proposal, the Proposed Amendment engages in the prohibited practice of logrolling.

For these reasons, this Court should prohibit the Proposed Amendment from being placed on the ballot.

ARGUMENT

I. THE PROPOSED AMENDMENT’S BALLOT TITLE AND SUMMARY ARE MISLEADING AND DO NOT FAIRLY AND ACCURATELY INFORM VOTERS OF THE MEASURE’S CHIEF PURPOSE.

Florida law requires the sponsor of an amendment proposed by initiative to prepare a ballot title and summary. § 101.161(1), Fla. Stat. The ballot summary is an explanatory statement, not exceeding 75 words in length, setting out the “chief purpose of the measure” in “clear and unambiguous language.” *Id.* The ballot title is “a caption, not exceeding 15 words in length, by which the measure is

commonly referred to or spoken of.” *Id.* Pursuant to these statutory mandates, “[t]he title and summary must be accurate and informative.” *In re Adv. Op. to Att’y Gen. re Patients’ Right to Know About Adverse Med. Incidents*, 880 So. 2d 617, 621 (Fla. 2004).

When reviewing the validity of a ballot title and summary, this Court has asked two questions: 1) whether the ballot title and summary fairly and accurately inform the voter of the chief purpose of the amendment; and 2) whether the language of the title and summary, as written, is likely to mislead the public. *See, e.g., Adv. Op. to Att’y Gen. re Water & Land Conservation*, 123 So. 3d 47, 50 (Fla. 2013); *Fla. Dep’t of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008). The ultimate purpose of the clarity requirement for the ballot title and summary 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.” *Adv. Op. to Att’y Gen. re Term Limits Pledge*, 718 So. 2d 798, 803 (Fla. 1998) (citation omitted). “Reduced to colloquial terms, a ballot title and summary cannot ‘fly under false colors’ or ‘hide the ball’ with regard to the true effect of an amendment.” *Slough*, 992 So. 2d at 147.

Here, the Proposed Amendment’s ballot title and summary fail to satisfy these basic “truth-in-advertising” requirements on several grounds.

A. The Ballot Title and Summary fail to clearly and unambiguously disclose the Proposed Amendment’s chief purpose: banning the possession of virtually every semi-automatic long-gun.

The first sentence of the ballot summary purports to contain the chief purpose of the Proposed Amendment—“Prohibit[ing] possession of assault weapons.” “Assault weapons” are then defined in the first sentence as “semiautomatic rifles and shotguns capable of holding more than 10 rounds of ammunition at once, either in fixed or detachable magazine, or any other ammunition-feeding device.” Reading that first sentence in conjunction with the ballot title—“Prohibits possession of defined assault weapons”—would lead even a well-informed voter to misunderstand that the Proposed Amendment creates a ban on the possession of only a limited number of semi-automatic long-guns that fall under the summary’s definition of an “assault weapon.” But the well-informed voter would be wrong.

In reality, the expansive definition of “assault weapons” in the ballot summary encompasses nearly every type of semi-automatic long-gun available on the retail market, including guns used for everyday activities such as target shooting, hunting, and skeet shooting. Any semi-automatic rifle or shotgun that holds 10 rounds or less of ammunition is also “capable” of accepting a detachable magazine of any size—*i.e.*, a magazine that holds “more than 10 rounds of ammunition at once.” Detachable magazines with capacities as little as three to as

many as 100 rounds are in common use in Florida and throughout the United States.

With regard to “fixed” magazines, they are not “fixed” in terms of the number of rounds one can hold; they are simply not detachable from the rifle or shotgun. The capacity of a fixed magazine can be extended through items such as a tube extension, which would render a fixed magazine designed to hold less than 10 rounds “capable of holding more than 10 rounds of ammunition at once.”

Magazine extensions are readily available and commonly used by owners of semi-automatic long-guns.

Adding to the confusion, the Sponsor has misleadingly dubbed the Proposed Amendment as a ban on the possession of “assault weapons,” a term which is not currently defined in law or used by gun owners or manufacturers to describe the types of rifles and shotguns the amendment purports to address. What the Sponsor deceptively labels an “assault weapon” is actually a standard semi-automatic rifle or shotgun that fires a single bullet with each pull of the trigger.¹ The Sponsor has strategically used the vague term “assault weapon” to create an illusion that the Proposed Amendment would restrict the possession of fully automatic guns meant for war. But fully automatic firearms such as machine guns have been restricted

¹ By comparison, a fully automatic firearm—*e.g.*, a machine gun—continues to shoot until the trigger is released.

from civilian ownership, possession, and use since the implementation of the 1934 National Firearms Act.²

By using the pejorative term “assault weapons” the Sponsor is affirmatively misleading voters into believing the Proposed Amendment is intended to ban the general public from possessing fully automatic, military-style machine guns. *See generally Slough*, 992 So. 2d at 149 (admonishing the use of “misleading ‘wordsmithing’ . . . in an attempt to persuade voters to vote in favor of [a] proposal”). Most informed voters will have no idea their legally purchased, legally owned, legally used, and legally possessed semi-automatic long-guns would fit the definition of “assault weapon” and they would have to either register them with the government within a year or give them up.

Put simply, it would be illegal to possess virtually any semi-automatic rifle or shotgun in Florida under the broad definition of “assault weapons” in the ballot summary. This is the true chief purpose of the Proposed Amendment. But nothing in the ballot summary provides notice to voters of this monumental change to gun ownership in the state. Failing to adequately explain this constitutional change makes the ballot title and summary fall far short of the clarity requirements in

² *See* 26 U.S.C. ch. 53 (National Firearms Act); *see also* 18 U.S.C. § 922(o) (banning transfer and possession of machine guns not already in lawful circulation).

section 101.161(1), Florida Statutes. Accordingly, the ballot title and summary are legally defective, and the Proposed Amendment must be stricken from the ballot. *See, e.g., Dep't of State v. Hollander*, 256 So. 3d 1300, 1307 (Fla. 2018) (“When the summary of a proposed amendment does not accurately describe the scope of the text of the amendment, it fails in its purpose and must be stricken.” (quoting *Term Limits Pledge*, 718 So. 2d at 804)); *Adv. Op. to Att’y Gen. ex rel. Amendment to Bar Gov’t from Treating People Differently Based on Race in Pub. Edu.*, 778 So. 2d 888, 899-900 (Fla. 2000) (“[B]allot summaries which do not . . . adequately describe the general operation of the proposed amendment must be invalidated.”); *cf. In re Adv. Op. to Att’y Gen. re Use of Marijuana for Certain Med. Conditions*, 132 So. 3d 786, 808-09 (Fla. 2014) (declining to strike proposed amendment from ballot because alleged ballot title and summary defects “do not involve the chief purpose of the amendment or even a significant effect that would result from the amendment if passed”).

Because the ballot title and summary do not use clear and unambiguous language to fairly inform the voter of the chief purpose of the Proposed Amendment, this Court should deny ballot placement to the Proposed Amendment.

B. The Ballot Title and Summary fail to disclose the full scope of the Proposed Amendment’s requirement regarding the “registration of assault weapons.”

In addition to a blanket prohibition on the possession of nearly every semi-automatic rifle and shotgun, the Proposed Amendment includes a strict registration requirement for “assault weapons” lawfully possessed prior to the amendment and sets out criminal penalties for a violation of that requirement. The ballot title and summary fail to disclose the full scope of the registration requirement, which renders them misleading.

Subsection (e)(2) of the Proposed Amendment provides:

If a person had lawful possession of an assault weapon prior to the effective date of this subsection,^[3] the person’s possession of that assault weapon is not unlawful (1) during the first year after the effective date of this subsection, or (2) after the person has registered with the Florida Department of Law Enforcement or a successor agency, within one year of the effective date of this subsection, by providing a sworn or attested statement, that the weapon was lawfully in his or her possession prior to the effective date of this subsection and by identifying the weapon by make, model, and serial number. The agency must provide and the person must retain proof of registration in order for possession to remain lawful under this subsection. Registration records shall be available on a permanent basis to local, state and federal law enforcement agencies for valid law enforcement purposes but shall otherwise be confidential.

³ The Proposed Amendment’s effective date is “thirty days after its passage by the voters.”

Subsection (e)(3) further provides that “[v]iolation of this subsection is a third-degree felony” and “[t]he legislature may designate greater, but not lesser, penalties for provisions.”

Despite the detailed process for registration in the Proposed Amendment, the ballot title is silent about the registration requirement. And then the ballot summary states simply: “Exempts and requires registration of assault weapons lawfully possessed prior to this provision’s effective date. Creates criminal penalties for violations of this amendment.” This is not sufficient to satisfy the clarity requirements in section 101.161(1), Florida Statutes.

Nothing in the ballot summary informs voters that nearly every current lawful owner of a semi-automatic rifle or shotgun will be forced to register with the Florida Department of Law Enforcement within *one year* of an undisclosed effective date of the amendment or risk criminal prosecution. By not providing the timeframe for registration in the summary, a voter would not have fair notice of a key provision of the Proposed Amendment so that he or she can cast “an intelligent and informed ballot.” *Adv. Op. to Att’y Gen. re Right of Citizens to Choose Health Care Providers*, 705 So. 2d 563, 566 (Fla. 1998) (citation omitted). Instead, the voter would be left to guess the length of time a person would have to register with FDLE before deciding how to vote on the Proposed Amendment. Guessing about the scope of a proposal to amend the state constitution is antithetical to the

statutory requirement that the ballot summary be written in “clear and unambiguous language.” § 101.161(1), Fla. Stat.

Finally, the ballot title and summary say nothing about the fact that the grandfathering provision applies only to the *person* who currently possesses the semi-automatic long-gun (not the gun itself), meaning the registered firearm could never lawfully be sold, loaned, or given to another person; if so, the unregistered possessor would be committing a third-degree felony. *See* Amend. § (2)(d) (“If a person had lawful possession of an assault weapon prior to the effective date of this subsection, the person’s possession of that assault weapon is not unlawful . . . after **the person has registered** with the Florida Department of Law Enforcement . . .”) (emphasis added).

Because the ballot title and summary fail to disclose the full scope and true meaning of the registration requirement in the Proposed Amendment, this Court should deny it placement on the ballot.

C. The Ballot Title and Summary fail to disclose the Proposed Amendment’s significant impacts on the existing rights of voters under the Second Amendment.

Finally, the ballot title and summary fail to disclose to voters that the Proposed Amendment will significantly restrict the existing constitutional right of gun ownership under the Second Amendment to the United States Constitution.

Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982) (“The purpose of section

101.161 is to assure that the electorate is advised of the true meaning, and ramifications, of an amendment.”). Failure to disclose this impact renders the ballot summary defective.

The Second Amendment states: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the United States Supreme Court reviewed the District of Columbia’s total ban on the possession of handguns in the home. Noting that the ban amounted to “a prohibition of an entire class of ‘arms’ that is overwhelmingly chosen by American society for th[e] lawful purpose [of self-defense],” the Court struck down the law as a violation of the Second Amendment. *Id.* at 628, 635. The Court explained that such a “severe restriction” on the possession of any handgun would not pass constitutional muster regardless of the permissibility of possessing other types of firearms. *Id.* at 629.

The Proposed Amendment amounts to a near categorical ban on the possession of semi-automatic rifles and shotguns in Florida. Pursuant to *Heller*, this ban would have a significant impact on the existing constitutional rights of anyone who currently possesses a semi-automatic rifle or shotgun or wishes to possess one in the future. Yet, the ballot title and summary never disclose this or even mention the voters’ right to keep and bear arms under the Second

Amendment. The lack of full transparency in the ballot title and summary about the ramifications of the Proposed Amendment make them misleading. The Proposed Amendment should be not be placed on the ballot.

II. THE PROPOSED AMENDMENT VIOLATES THE FLORIDA CONSTITUTION’S SINGLE-SUBJECT REQUIREMENT.

The Florida Constitution restricts constitutional amendments proposed by initiative petition to “one subject and matter directly connected therewith.” Art. XI, § 3, Fla. Const. A proposed amendment meets this single-subject requirement if it has a “logical and natural oneness of purpose.” *Adv. Op. to Att’y Gen. re Voting Restoration Amend.*, 215 So. 3d 1202, 1206 (Fla. 2017). In contrast, “enfolding disparate subjects within the cloak of a broad generality does not satisfy the single-subject requirement.” *Evans v. Firestone*, 457 So.2d 1351, 1353 (Fla. 1984).

The single-subject requirement “is a rule of restraint” placed in the constitution upon the ballot initiative process to allow the people to propose and vote upon “singular changes in the functions of our governmental structure.” *Fine v. Firestone*, 448 So. 2d 984, 988 (Fla. 1984). Unlike other methods of amending the Florida Constitution—such as by the Legislature, the Constitution Revision Commission, or a constitutional convention—a citizen initiative does not “afford an opportunity for public hearing and debate . . . on the proposal itself . . . [and on] the drafting of any constitutional proposal.” *Adv. Op. to Att’y Gen. re Save Our*

Everglades, 636 So.2d 1336,1339 (Fla. 1994) (quoting *Fine*, 448 So.2d at 988).

For these reasons, this Court is called upon to provide “careful scrutiny” of an initiative proposal to ensure that it meets the single-subject requirement. *See Adv. Op. to Att’y Gen. re Limits or Prevents Barriers to Local Solar Elec. Supply*, 177 So. 3d 235, 242 (Fla. 2015).

As an analytical matter, this Court has evaluated compliance with the single-subject requirement by determining whether the initiative engages in “logrolling” of distinct subjects or substantially alters or performs the functions of multiple branches of state government. *See Adv. Op. to Att’y Gen. re Water & Land Conservation*, 123 So. 3d 47, 50 (Fla. 2013). Logrolling is the “practice wherein several separate issues are rolled in to a single initiative in order to aggregate votes or secure approval of an otherwise unpopular issue.” *Save Our Everglades*, 636 So.2d at 1339. In other words, logrolling occurs when a single proposal combines unrelated issues, “some of which electors might wish to support, in order to get an otherwise disfavored provision passed.” *Adv. Op. to Att’y Gen. re Indep. Nonpartisan Comm’n to Apportion Legislative & Cong. Districts*, 926 So. 2d 1218, 1224 (Fla. 2006).

The Proposed Amendment addresses at least three distinct subjects that lack a “logical and natural oneness of purpose.” *Voting Restoration Amend.*, 215 So. 3d at 1206. The Proposed Amendment 1) bans the possession of “assault weapons” as

that term is defined in the amendment; 2) creates a grandfathering clause which requires a gunowner who lawfully possessed an “assault weapon” prior to the amendment to register with the Florida Department of Law Enforcement; and 3) creates a criminal penalty—a third-degree felony—for either possessing or not registering “assault weapons.” These distinct and logically separable topics cannot fairly be characterized as “one subject and matter directly connected therewith” as required by the Florida Constitution. Art. XI, § 3, Fla. Const.

This proposal is not a single plan with various elements necessary to accomplish that plan. *Cf. Adv. Op. to Att’y Gen. re Protect People Especially Youth, From Addiction, Disease, & Other Health Hazards of Using Tobacco*, 926 So .2d 1186, 1192 (Fla. 2006) (holding that a proposal that would create a comprehensive statewide tobacco education and prevention program satisfied the single-subject requirement where various components of advertising, school curriculum, and law enforcement all related to a single unifying purpose). All that would be required to accomplish the goal of a ban on semi-automatic rifles and shotguns would be to craft an amendment that bans particular firearms and delegates authority to a lawmaking entity for the determination of a penalty for possession of the banned firearms. It is not necessary to also establish a criminal penalty, delegate authority to the legislature to increase (but not decrease) the penalty, create specific exceptions to the ban, create a grandfathering provision,

and establish a registration system. The Proposed Amendment goes far beyond a single plan of banning particular firearms, and thus, violates the single-subject requirement.

By combining these disparate subjects into a single proposal, the Proposed Amendment engages in the prohibited practice of logrolling. For example, a voter may favor banning the possession of “assault weapons,” but disfavor including a grandfathering provision for people who owned a firearm prior to the ban. Another voter may support the ban and the grandfathering provision, but oppose criminalizing a violation of the ban. Yet, “[t]he amendment forces the voter who may favor or oppose one aspect of the ballot initiative to vote . . . in an ‘all or nothing’ manner.” *Right of Citizens to Choose Health Care Providers*, 705 So. 2d at 566.

The Proposed Amendment, on its face, violates the single-subject provision of the constitution by addressing multiple subjects that are logically separable and engaging in the prohibited practice of logrolling. Accordingly, this Court should deny ballot placement to the Proposed Amendment.

CONCLUSION

This Court should find the Proposed Amendment invalid and prohibit it from being placed on the ballot.

Respectfully submitted,

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