

# Supreme Court of Florida

THURSDAY, JUNE 10, 2004

CASE NO.: SC04-943

ADVISORY OPINION TO THE ATTORNEY GENERAL

RE: FLORIDA MINIMUM WAGE AMENDMENT

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Charles J. Crist, Jr., pursuant to the provisions of Article IV, section 10, Florida Constitution, and section 16.061, Florida Statutes, has requested this Court's opinion as to whether the text of the proposed amendment seeking to amend the Florida Constitution to establish a Florida minimum wage complies with Article XI, section 3, Florida Constitution, and whether the proposed ballot title and substance comply with section 101.161, Florida Statutes. The petition provides:

- (a) **Public Policy.** All working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship.
- (b) **Definitions.** As used in this amendment, the terms "Employer," "Employee" and "Wage" shall have the meanings established under the federal Fair Labor Standards Act (FLSA) and its implementing regulations.
- (c) **Minimum Wage.** Employers shall pay Employees Wages no less than the Minimum Wage for all hours worked in Florida. Six months after enactment, the Minimum Wage shall be established at an hourly rate of \$6.15. On September 30th of that year and on each following September 30th, the state Agency for Workforce Innovation shall calculate an adjusted Minimum Wage rate by increasing the current Minimum Wage rate by the rate of inflation during the twelve months prior to each September 1st using

the consumer price index for urban wage earners and clerical workers, CPI-W, or a successor index as calculated by the United States Department of Labor. Each adjusted Minimum Wage rate calculated shall be published and take effect on the following January 1st. For tipped Employees meeting eligibility requirements for the tip credit under the FLSA, Employers may credit towards satisfaction of the Minimum Wage tips up to the amount of the allowable FLSA tip credit in 2003.

(d) **Retaliation Prohibited.** It shall be unlawful for an Employer or any other party to discriminate in any manner or take adverse action against any person in retaliation for exercising rights protected under this amendment. Rights protected under this amendment include, but are not limited to, the right to file a complaint or inform any person about any party's alleged noncompliance with this amendment, and the right to inform any person of his or her potential rights under this amendment and to assist him or her in asserting such rights.

(e) **Enforcement.** Persons aggrieved by a violation of this amendment may bring a civil action in a court of competent jurisdiction against an Employer or person violating this amendment and, upon prevailing, shall recover the full amount of any back wages unlawfully withheld plus the same amount as liquidated damages, and shall be awarded reasonable attorney's fees and costs. In addition, they shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, reinstatement in employment and/or injunctive relief. Any Employer or other person found liable for willfully violating this amendment shall also be subject to a fine payable to the state in the amount of \$1000.00 for each violation. The state attorney general or other official designated by the state legislature may also bring a civil action to enforce this amendment. Actions to enforce this amendment shall be subject to a statute of limitations of four years or, in the case of willful violations, five years. Such actions may be brought as a class action pursuant to Rule 1.220 of the Florida Rules of Civil Procedure.

(f) **Additional Legislation, Implementation & Construction.**

Implementing legislation is not required in order to enforce this amendment. The state legislature may by statute establish additional remedies or fines for violations of this amendment, raise the applicable Minimum Wage rate,

reduce the tip credit, or extend coverage of the Minimum Wage to employers or employees not covered by this amendment. The state legislature may by statute or the state Agency for Workforce Innovation may by regulation adopt any measures appropriate for the implementation of this amendment. This amendment provides for payment of a minimum wage and shall not be construed to preempt or otherwise limit the authority of the state legislature or any other public body to adopt or enforce any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits, or that extends such protections to employers or employees not covered by this amendment. It is intended that case law, administrative interpretations, and other guiding standards developed under the federal FLSA shall guide the construction of this amendment and any implementing statutes or regulations.

(g) **Severability.** If any part of this amendment, or the application of this amendment to any person or circumstance, is held invalid, the remainder of this amendment, including the application of such part to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the parts of this amendment are severable.

The ballot title and summary for the proposed amendment provides:

This amendment creates a Florida minimum wage covering all employees in the state covered by the federal minimum wage. The state minimum wage will start as \$6.15 per hour six months after enactment, and thereafter be indexed to inflation each year. It provides for enforcement, including double damages for unpaid wages, attorney's fees, and fines by the state. It forbids retaliation against employees for exercising this right.

Section 16.061, Florida Statutes, requires the Attorney General, within thirty (30) days after receipt of the proposed amendment or revision to the State Constitution by initiative petition, to petition this Honorable Court for an advisory opinion regarding compliance of the text of the proposed amendment with Article

substance with section 101.161, Florida Statutes.

The full text of the Attorney General's letter is attached hereto as an exhibit and made a part thereof.

IT IS, THEREFORE, the order of the Court that interested parties shall simultaneously file both the initial and answer briefs on or before 3:00 p.m., Friday, June 18, 2004, and serve a copy thereof on the Attorney General. Please file an original and seven (7) copies of all briefs. In addition to paper briefs, per this Court's Administrative Order In Re: Mandatory Submission of Electronic Copies of Documents on Computer Diskette dated November 13, 2002, counsel are directed to include a copy of all briefs on a DOS formatted 3-1/2 inch diskette in Word Perfect 5.1 (or higher) format compatible in WordPerfect 10. **PLEASE LABEL ENVELOPE TO AVOID ERASURE.** Briefs submitted on diskette will be placed on the Court's Internet site (<http://www.flcourts.org>). Oral argument is scheduled for 9:00 a.m., Tuesday, June 29, 2004. A maximum of ten (10) minutes to the side is allowed for the argument. All parties who have filed a brief and have asked to be heard may, in the Court's discretion, be permitted to participate in oral argument.

A True Copy

Test:

  
Thomas D. Hall  
Clerk, Supreme Court



tc

Served:

HON. JEB BUSH, GOVERNOR  
HON. JOHNNIE BYRD  
LOUISE PETERSON

HON. JAMES E. KING  
HON. GLENDA HOOD  
HON. CHARLES J. CRIST, JR.