



TAXATION AND BUDGET REFORM COMMISSION

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Staff Analysis and Economic Impact Statement

Measure: SR 11 REFERENCE: ACTION:

Sponsor: Ad Hoc Ballot Summary Issues 1.
Committee 2.
3.

Subject: 75-Word Ballot Summary Limit

Date: December 14, 2007

I. Summary:

Statutory Recommendation 11 makes the Taxation and Budget Reform Commissions and the Constitution Revision Commissions exempt from the 75-word ballot summary limit in s. 101.161(1), F.S.

II. Present Situation:

Section 101.161(1), Florida Statutes, limits ballot summaries for constitutional amendments to 75 words, except for constitutional amendments proposed by the Legislature. Within its jurisdiction, the authority of the Taxation and Budget Reform Commission (TBRC) to propose constitutional amendments is coextensive with that of the Legislature. Thus, application of the 75-word limit to the TBRC may improperly restrict the ability of the TBRC to carry out its constitutional duties and responsibilities.¹

Section 101.161(1), F.S., states in part:

(1) 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 wording of the substance of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the joint resolution, constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. *Except for amendments and ballot language proposed by joint resolution, the substance of the amendment or other public measure shall be an*

¹ This unequal treatment may be a violation of equal protection. See *Sancho v. Smith*, 830 So. 2d 856, 863-864 (Fla. 1st DCA 2002). In that case, the election supervisors asserted that the legislative exemption from the 75-word limit violated equal protection. However, the Court found that the supervisors did not have standing to assert the claim. The TBRC may have standing to make the equal protection argument.

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. (Emphasis added).

History of the 75-Word Limit

The 75-word ballot summary limit and the requirement of “clear and unambiguous language” were created in 1980 through HB 536.² The staff analysis for a companion bill, explained that the 75-word limit was needed to provide space on voting machines to display ballot summaries for multiple amendments.³ Voting technology has since changed. The staff analysis for another companion to HB 536 predicted that the requirement for clear and unambiguous language would “create yet another basis for challenging an amendment and would result in the courts reviewing the language and determining the outcome.”⁴

Legislative Exemption from 75-Word Limit

In 2000, the Florida Supreme Court in *Armstrong v. Harris* invalidated a legislatively proposed amendment to the Florida Constitution that was designed to prevent the Court from invalidating the death penalty.⁵ The Court stated that the Legislature did not accurately explain the proposed constitutional change to “cruel *and* unusual punishment” from “cruel *or* unusual punishment.”⁶

The Legislature responded to *Armstrong*, by exempting itself from the 75-word ballot summary limit.⁷ The Legislature also resubmitted the death penalty amendment to the voters at the 2002 General Election with a 540 word ballot summary.

The amendment with the revised summary was challenged again.⁸ One of the bases of the challenge was an allegation that the ballot summary was too long.⁹ The Court found that

² Ch. 80-305, L.O.F.

³ Fla. H.R. Comm. on Ethics & Elections, HB 675 (1980) Staff Analysis (Apr. 9, 1980). The analysis stated:

In recent years numerous constitutional amendments have appeared on the general election ballots (1978 – 9 amendments; 1976 – 9 amendments; 1974 – 7 amendments). A majority of the counties currently use voting machines, which have a limited space. When many amendments appear on the ballot, space for printing the substance of the amendments creates a problem. This problem is compounded in the six counties that are required to print their ballots in both English and Spanish. Limiting the length of the wording of constitutional amendments on the ballot would result in shorter ballots and adding the ballot title would give the voter the subject matter being voted on.

⁴ Fla. H.R. Comm. on Ethics & Elections, CS/HB’s 248 and 675, Staff Analysis (April 14, 1980).

⁵ *Armstrong v. Harris*, 773 So. 2d 7 (Fla. 2000).

⁶ See *id.* at 17-18.

⁷ Section 1, ch. 2001-361, L.O.F.

⁸ *Sancho v. Smith*, 830 So. 2d 856 (Fla. 1st DCA 2002).

⁹ *Id.* at 863.

the length of the ballot summary did not violate the statutes or the State Constitution. Moreover, the Court acknowledged that “[i]t would be difficult to describe all of [changes to the Constitution] in a brief statement.”¹⁰

Increasing Ballot Summary Lengths

A comparison of the ballot summaries from SJR 2-D (2007) and the ballot summaries for the constitutional amendments creating the Constitution of 1968 shows how much ballot summary requirements have changed over time. The longest of the ballot summaries on the 1968 ballot was 90 words and related to the creation of an entire article of the Constitution. In contrast, the ballot summary for SJR 2-D (2007), the current property tax amendment, is 498 words.

The 254-word ballot summary from SJR 4-B (2007), the earlier property tax amendment, apparently was not long enough to tell voters everything they needed to know. As a result, the amendment was removed by a court from the special election ballot for January 29, 2008.¹¹

Inherent Complexity of Tax Amendments

Cases including *Armstrong v. Harris*, *Hersh v. Browning*, and *Smith v. American Airlines*¹² show that courts are expecting ballot summaries to educate voters. Previously, ballot summaries may have needed to have enough detail to enable voters to distinguish one ballot measure from another.¹³ Moreover, constitutional amendments addressing tax matters are inherently complex. Since 1968, courts have invalidated five non-citizen initiated constitutional amendments. Three of those five amendments have addressed tax matters.¹⁴ Accordingly, the TBRC may need more than 75 words to accurately explain its constitutional amendments to the voters.

¹⁰ *Id.* at 865.

¹¹ *Hersh v. Browning*, No. 37-2007-CA-1862 (Fla. 2d Cir. Ct. Sept. 24, 2007).

¹² In *Smith v. American Airlines, Inc.*, 606 So. 2d 618 (Fla. 1992), the court invalidated a constitutional amendment proposed by the last TBRC finding the ballot summary ambiguous. Had the last TBRC been exempt from the 75-word limit. The ballot summary and the outcome of the case may have been different.

¹³ See, *Hill v. Millander*, 72 So. 2d 796, 798 (Fla. 1954). In *Hill*, the Court explained the limited purposes of a ballot summary as follows:

In numerous instances we have held that the only requirements in a election of this kind are that the voter should not be misled and that he have an opportunity to know and be on notice as to the proposition on which he is to cast his vote. . . . It is a matter of common knowledge that many weeks are consumed, in advance of elections, apprising the electorate of the issues to be determined and that in this day and age of radio, television, newspaper and many other means of communicating and disseminating information, it is idle to argue that every proposition on a ballot must appear at great and undue length. Such would hamper instead of aiding the intelligent exercise of the privilege of voting. It is a matter of common knowledge that one does not wait until he enters the election booth to decide how he is going to cast his ballot. What the law requires is that the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot.

¹⁴ *Florida Assn. of Realtors v. Smith*, 825 So. 2d 532 (Fla. 1st DCA 2002) (invalidating a legislative amendment relating to sales tax exemptions); *Smith v. American Airlines, Inc.*, 606 So. 2d 618 (Fla.

Citizen Initiative Amendments Distinguishable

The citizen initiative process to propose constitutional amendments is distinguishable from the process used by the Legislature and the Taxation and Budget Reform Commission. Citizen initiative proponents are not bound by public records and open meeting laws. Moreover, citizen initiatives are not sent through a process that accepts public testimony or amendments. Lastly, citizen initiatives, unlike amendments proposed by the Legislature and the TBRC, are limited to a single subject. As such, the 75-word limit likely can continue to apply to citizen initiatives.¹⁵

Justifications for Exempting the TBRC from the 75-Word Ballot Summary Limit

Several reasons exist to explain why the TBRC should be exempt, just as the Legislature is exempt, from the 75-word ballot summary limit.

- The authority of the TBRCs (within their subject-matter jurisdiction) and CRCs to propose constitutional amendments to the voters is co-extensive with that of the Legislature. Thus, the 75-word limit as applied to the TBRCs and CRCs may be an unconstitutional restraint on TBRC and CRC authority.
- Like constitutional amendments proposed by the Legislature, amendments proposed by the TBRCs and CRCs are not bound by the single-subject limitation applicable to citizen initiatives.
- Under the Supreme Court's new rigorous standards of reviewing ballot summaries, the 75-word limit likely may restrict the ability of the TBRCs and CRCs to propose complex amendments. In fact, the Legislature had to make itself exempt from the 75-word limit in order to satisfy the Supreme Court's recent ballot summary review standards to propose an amendment to preserve the death penalty. Moreover, the ballot summary for SJR 2-D (2007), the property tax amendment, is 498 words.
- Like amendments proposed by the Legislature and unlike citizen initiatives, TBRC and CRC constitutional amendments are developed through a deliberative process that is open to the public.

III. Effect of Proposed Changes:

Statutory Recommendation 11 makes the Taxation and Budget Reform Commissions and the Constitution Revision Commissions exempt from the 75-word ballot summary limit in s. 101.161(1), F.S.

1992) (invalidating an amendment proposed by the TBRC relating to the taxation of leaseholds in government property); *Hersh v. Browning*, No. 37-2007-CA-1862 (Fla. 2d Cir. Ct. Sept. 24, 2007) (invalidating a legislative amendment pertaining to property taxes); *Armstrong v. Harris*, 773 So. 2d 7 (Fla. 2000) (invalidating a legislative amendment pertaining to the preservation of the death penalty); *Askew v. Firestone*, 421 So. 2d 151 (Fla. 1982) (invalidating a legislative amendment pertaining to lobbying by former legislators).

¹⁵ See, *Florida Hometown Democracy v. Cobb*, 953 So. 2d 666, 675-676 (Fla. 1st DCA 2007) (upholding the 75-word ballot summary limit as applied to citizen initiatives).

IV. Constitutional Issues:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This measure may increase the costs of printing ballots.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

1 A bill to be entitled

2 An act relating to ballot summaries; amending s. 101.161,
3 F.S.; removing the limits on ballot summary length for
4 amendments and public measures except those proposed by
5 initiative; providing an effective date.
6

7 Be It Enacted by the Legislature of the State of Florida:
8

9 Section 1. Subsection (1) of section 101.161, Florida
10 Statutes, is amended to read:

11 101.161 Referenda; ballots.—

12 (1) Whenever a constitutional amendment or other public
13 measure is submitted to the vote of the people, the substance of
14 such amendment or other public measure shall be printed in clear
15 and unambiguous language on the ballot after the list of
16 candidates, followed by the word "yes" and also by the word
17 "no," and shall be styled in such a manner that a "yes" vote
18 will indicate approval of the proposal and a "no" vote will
19 indicate rejection. The wording of the substance of the
20 amendment or other public measure and the ballot title to appear
21 on the ballot shall be embodied in the joint resolution,
22 constitutional revision commission proposal, constitutional
23 convention proposal, taxation and budget reform commission
24 proposal, or enabling resolution or ordinance. Except for
25 amendments and ballot language proposed by joint resolution,
26 constitution revision commission, or taxation and budget reform
27 commission, the substance of the amendment or other public
28 measure shall be an explanatory statement, not exceeding 75
29 words in length, of the chief purpose of the measure. In
30 addition, for every amendment proposed by initiative, the ballot

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31 shall include, following the ballot summary, a separate
32 financial impact statement concerning the measure prepared by
33 the Financial Impact Estimating Conference in accordance with s.
34 100.371(5). The ballot title shall consist of a caption, not
35 exceeding 15 words in length, by which the measure is commonly
36 referred to or spoken of.

37 Section 2. This act shall take effect upon becoming a law.