

O.A. 6-391

027

IN THE SUPREME COURT OF FLORIDA

FILED

SID J. WHITE

MAY 1 1991

CLERK SUPREME COURT

By _____
Chief Deputy Clerk

IN RE:

ADVISORY OPINION TO THE
ATTORNEY GENERAL - HOMESTEAD
VALUATION LIMITATION

CASE NO. 77,506

INITIAL BRIEF OF PROPONENT,
SAVE OUR HOMES, INC.

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STATEMENT OF THE CASE

Citizens of Florida have signed petitions seeking to place before the voters a proposed amendment to Article VII, §4 of the Florida Constitution.

The Secretary of State has determined that the statutory requirements of §15.21, Fla.Stat., have been met and has submitted the petition to the Attorney General.

The Attorney General has petitioned this Court for an advisory opinion as to:

A. "Whether the text of the proposed revision (sic)¹ to the State Constitution providing for a limitation on increases in homestead property valuation for ad valorem tax purposes comports with Article XI, §3 of the Florida. Constitution"; and

B. "Whether the proposed ballot title and substance comply with §101.161, Fla.Stat. (1990)."

This Court has jurisdiction to render such an advisory opinion. Article V, §3(b)(10), Fla. Const.

¹It appears that the proposal before this Court, being directed to a single section of the Constitution, is more properly characterized as an amendment, rather than a revision. See e.g. Adams v. Gunter, 238 So.2d 824 (Fla. 1970). Under our current Constitution, it is a distinction which is no longer dispositive. Compare Article XI, §3, Fla. Const.

POINTS OF ARGUMENT

I.

THE PROPOSED AMENDMENT TO ARTICLE VII, §4, EMBRACES "BUT ONE SUBJECT AND MATTER DIRECTLY CONNECTED THEREWITH" AND THEREFORE COMPLIES WITH ARTICLE XI, §3 OF THE FLORIDA CONSTITUTION.

II.

THE PROPOSED BALLOT TITLE AND SUBSTANCE COMPLY WITH §101.161, FLORIDA STATUTES.

SUMMARY OF THE ARGUMENT

The proposed amendment before the Court embraces but one subject - the limitation of increases in valuation of homestead property during a citizen's ownership of that property. If passed by the voters, the amendment will assure the citizens of Florida that, while ad valorem taxes on their homestead may be increased by their elected representatives, those taxes will not be significantly increased by market forces over which they have no control.

The ballot title and summary accurately describe the proposed amendment, and adequately provide the voter with fair notice of both the substance of the amendment and the issue on which his vote is solicited.

This Court has properly declined to interfere with the citizens' right to vote on proposed amendments unless a proposal is shown to be "clearly and convincingly defective" under Article XI, §3, Fla. Const.. No such showing can be made in this case. The Court should answer the questions posed by the Attorney General in the affirmative, and allow Florida's citizens to vote on this proposed amendment.

ARGUMENT

I.

THE PROPOSED AMENDMENT TO ARTICLE VII, §4, EMBRACES "BUT ONE SUBJECT AND MATTER DIRECTLY CONNECTED THEREWITH" AND THEREFORE COMPLIES WITH ARTICLE XI, §3 OF THE FLORIDA CONSTITUTION.

This proposed amendment will, if passed, protect the citizens of Florida from an increased tax burden on their homestead based solely upon an unrealized increase in the value of that homestead property. It accomplishes this goal by providing limitations on increases in "just valuation" during the citizen's ownership of his homestead property.²

The proposed amendment provides that:

(c) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided herein.

1. Assessments subject to this provision shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following:

(A) three percent (3%) of the assessment for the prior year.

(B) the percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

²All homestead property would again be assessed at "just value" upon a change of ownership, loss of homestead status, or "change, alteration, reduction or improvement" of the property.

2. No assessment shall exceed just value.
3. After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year. Thereafter, the homestead shall be assessed as provided herein.
4. New homestead property shall be assessed at just value as of January 1st of the year following the establishment of the homestead. That assessment shall only change as provided herein.
5. Changes, additions, reductions or improvements to homestead property shall be assessed as provided for by general law; provided, however, after the adjustment for any change, addition, reduction or improvement, the property shall be assessed as provided herein.
6. In the event of a termination of homestead status, the property shall be assessed as provided by general law.
7. The provisions of this amendment are severable. If any of the provisions of this amendment shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of this amendment.

Article VII, §4 of the Florida Constitution recognizes, as a general rule, that a "just valuation" should be the starting point for ad valorem tax purposes. However, the Constitution also reflects a recognition that exceptions to that general rule are an appropriate method of promoting societal goals. The farmer, for example, is afforded tax relief, and thereby encouraged to retain his farmland as agricultural property, by a constitutional provision allowing for valuation based on use. Similarly, lands which produce "high water recharge for Florida's aquifers" are

afforded an exception to the "just value" rule³, as are other types of property.⁴ This proposal promotes a societal goal perhaps more important than agriculture and aquifers: the protection of a homestead by limiting increases in taxation based solely on economic, rather than democratic, forces.⁵

The Constitution of Florida "is a document of limitation by which the people of the state have restricted the forces of government in the exercise of dominion and power over their property" ⁶ Among the rights which the citizens of Florida specifically reserve to themselves is the right to propose, and call for a vote upon, amendments to this organic document.⁷

³Article VII, §4(a), Fla. Const.

⁴Article VII, §4(b), Fla. Const.

⁵Nothing in this proposal prohibits an increase in the millage rate on homestead property. Article VII, §9, Fla. Const.

⁶Smathers v. Smith, 338 So.2d 825, 827 (Fla. 1976).

⁷Article XI, §3 of the Florida Constitution provides:

§3. **INITIATIVE.** - The power to propose the revision or amendment of any portion or portions of this Constitution by initiative is reserved to the people, provided that, any such revision or amendment shall embrace but one subject matter and matter directly connected therewith. It may be invoked by filing with the secretary of state a petition containing a copy of the proposed revision or amendment, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to 8% of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen.

Because we are "dealing with a constitutional democracy in which sovereignty resides in the people"⁸, this Court has correctly declined to interfere with the right of the people to vote on a proposed amendment to their constitution unless it can be demonstrated that the proposal is "clearly and conclusively defective."⁹

The proposed amendment clearly meets the sole criteria imposed upon initiative proposals. It deals, simply and in a straight forward manner, with but one subject: the limitation of increases in valuations of homestead property which may occur during a citizen's ownership of that property. If passed, the citizens of Florida will be assured that their homestead property will be assessed at "just value as of January 1, 1992." Thereafter, so long as they own, and do not alter, their homestead property, the value may be increased only by the smaller of 3% of the assessment for the prior year; the percentage increase in the consumer price index; or the increase in just value.¹⁰

Under the current constitutional scheme adopted by the voters of Florida, ad valorem taxes on homestead property have historically been subject to increase by two factors. First, their elected representatives may, through increases in millage, increase

⁸Gray v. Golden, 89 So.2d 785, 790 (Fla. 1956).

⁹Weber v. Smathers, 338 So.2d 819, 821 (Fla. 1976), quoting Goldner v. Adams, 167 So.2d 575 (Fla. 1964).

¹⁰In no circumstance may the property be assessed at a level which would exceed "just value".

the tax burden on real property¹¹, including homestead.¹² Under this amendment, the Constitution would continue to allow elected representatives to obtain additional revenues in this fashion. This proposal limits only the second factor, an increase in taxes based not on action by elected officials, but resulting from the increase in value caused by the operation of market forces alone.

Because the proposal is limited both in scope and in application, it is clear that the proposed amendment "may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme."¹³ Since "unity of object and plan is the universal test"¹⁴ and because this proposal exhibits a "logical and natural oneness of purpose ... "¹⁵, the proposed amendment satisfies the "single subject" requirement of Article XI, §3, Fla. Const.

Unlike the "Citizen's Choice" proposal considered by this Court in Fine v. Firestone, this proposal does not deal with several types of taxation; does not impose any restriction on the expenditure of ad valorem taxes or other fees; and does not

¹¹Article VII, §9, Fla. Const.

¹²With regard to homestead property, of course, an increase in the millage would still be subject to, and reduced by, the constitutional provision for an exemption in the value of homestead property up to \$25,000.00. Article XII, §6(d), Fla. Const.

¹³Fine v. Firestone, 448 So.2d 984, 990 (Fla. 1984), citing with approval City of Coral Gables v. Gray, 154 Fla. 881, 19 So.2d 318 (1944).

¹⁴City of Coral Gables v. Gray, supra, at 883-84, 19 So.2d 320.

¹⁵Fine v. Firestone, supra at 990.

interfere with funding of capital improvements.¹⁶ Nor does the proposed amendment deal with both substantive and procedural functions, or affect more than one branch of government.¹⁷ In short, the proponents of this measure have heeded this Court's warning to avoid "enfolding disparate subjects within the cloak of a broad generality".¹⁸ By limiting the proposal to a single issue, the limitation of increased valuation on homestead property, the proponents have assured that passage of this amendment will not be the product of "log rolling" by an "aggregation of dissimilar provisions [designed] to attract support of diverse groups to assure its passage" ¹⁹

It may be that the amendment, if passed, would have some impact on the ability of taxing entities to raise tax revenues without the necessity of taking the politically unpopular measure of voting for increased millage. It is clear, however, that so long as an amendment deals with one subject, the fact that that subject may have broad ramifications does not render the proposal

¹⁶In Fine, this Court discussed the distinction between the Citizens Choice proposal there under review and Proposition 13, an amendment to the California Constitution. Here, as in Proposition 13, the proposed amendment deals only with ad valorem taxes, and affects only one revenue source. Fine v. Firestone, supra at 992, n.3, citing Amador Valley Joint Union High School District v. State Board of Equalization, 22 Cal.3rd 208, 149 Cal.Rptr. 239, 583 P.2d 1281 (1978).

¹⁷Compare Evans v. Firestone, 457 So.2d 1351 (Fla. 1984).

¹⁸Id. at 1353.

¹⁹Evans v. Firestone, supra at 1354, quoting Fine v. Firestone, 448 So.2d 984, 988 (Fla. 1984).

constitutionally infirm.²⁰ It is also clear that the wisdom of the proposal, in a legislative sense, is not a matter properly considered by this Court.²¹

The proposed amendment is limited to a single subject: a limitation on increases in value of homestead property during a citizen's ownership. The remaining provisions, which provide a mechanism for implementing that limitation, are clearly germane to that subject and are "matters connected therewith".

The proposed amendment complies with Article XI, §3 of the Florida Constitution.

²⁰In Re: Advisory Opinion to the Attorney General English - The Official Language of Florida, 520 So.2d 11 (Fla. 1988).

²¹Floridians Against Casino Takeover v. Let's Help Florida, 363 So.2d 337 (Fla. 1978), Weber v. Smathers, 338 So.2d 819 (Fla. 1976), Fine v. Firestone, 448 So.2d 984, 997 (Fla. 1984), Shaw, J. concurring in result.

II.

THE PROPOSED BALLOT TITLE AND SUBSTANCE COMPLY
WITH §101.161, FLORIDA STATUTES.

The Florida legislature requires that the voter on a proposed constitutional amendment should "be given fair notice so that he or she may make an informed decision on the merits of the provision."²² This legislative mandate is contained in §101.161, Fla.Stat. (1990).²³ The ballot title and summary for the proposed amendment provides:

HOMESTEAD VALUATION LIMITATION

Providing for limiting increases in homestead property valuations for ad valorem tax purposes to a maximum of 3% annually and also providing for reassessment of market values upon changes in ownership.

²²Evans v. Firestone, 457 So.2d 1351, 1355 (Fla. 1984).
(emphasis removed)

²³That statute provides:

101.161. **Referenda Ballots**

(1) Whenever a constitutional amendment ... is submitted to the vote of the people, the substance of such amendment ... shall be printed in clear and unambiguous language on the ballot ... followed by the word "YES," and also by the word "NO," and shall be styled in such a manner that a "YES" vote will indicate approval of the proposal and a "NO" vote will indicate a rejection.**** The substance of the amendment 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 summary clearly complies with both the mandate of §101.161, Fla. Stat. (1990), and with this Court's directive that "the voter should not be misled and ... [should] have an opportunity to know and be on notice as to the proposition on which he is to cast his vote" ²⁴ Because the space limitation imposed by the legislature makes it impossible to "explain in detail what the proponents hope to accomplish by the passage of the amendment" ²⁵, inclusion of all possible affects of the amendment is not required in the summary. ²⁶ It is required only that the ballot summary "states the chief purpose of this amendment and provides the electorate with fair notice of the intent of the amendment." ²⁷

All that the Constitution requires or that the law compels or ought to compel is that the voter have notice of that which he must decide. 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. Hill v. Milander, 72 So.2d 796, 798 (Fla. 1954)

²⁴Askew v. Firestone, 421 So.2d 151, 155 (Fla. 1982) quoting Hill v. Milander, 72 So.2d 796, 798 (Fla. 1954).

²⁵In Re: Advisory Opinion to the Attorney General - English The Official Language of Florida, 520 So.2d 11, 13 (Fla. 1988).

²⁶Grose v. Firestone, 422 So.2d 303,305 (Fla. 1982), Smathers v. Smith, 338 So.2d 825 (Fla. 1976).

²⁷Grose v. Firestone, 422 So.2d 303, 305 (Fla. 1982).

This proposed ballot summary was carefully drawn to alert the voter as to the single issue on which his vote is solicited. The summary complies with the provisions of §101.161, Fla. Stat. (1990), and should be approved by this Court.

CONCLUSION

The proponents seek to afford the electorate of Florida the opportunity to vote on a proposed amendment to their Constitution. If passed, the amendment would limit increases in the assessed value of homestead property, for ad valorem tax purposes, during a citizen's ownership of the homestead.

This proposed amendment deals with but a single subject, valuation of homestead property. Its ballot summary fairly and succinctly apprises the voter of the issue on which his decision is requested.

For those reasons, this Court should decline to interfere with the right of the citizens of Florida to vote on this amendment and constitutionally limit any increase in ad valorem taxation on their homes brought about by market forces over which they have little, if any, control.

The questions posed by the Attorney General should, therefore, be answered in the affirmative.

Respectfully submitted,

GARVIN & TRIPP, P.A.

By: 

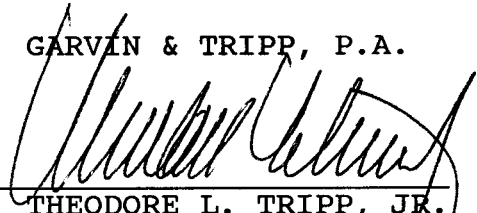
THEODORE L. TRIPP, JR.
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SAVE OUR HOMES, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to HON. ROBERT A. BUTTERWORTH, Attorney General, Office of the Attorney General, Tallahassee, Florida 32399, this 29th day of April, 1991.

GARVIN & TRIPP, P.A.

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