IN THE SUPREME COURT OF FLORIDA

FLORIDA LEAGUE OF CITIES, INC.,
and FLORIDA ASSOCIATION OF COUNTIES, INC.,

Petitioners, CASE NO. _____

v.

JIM SMITH, Secretary of State,

Respondent.

PETITION FOR AN EXPEDITED WRIT OF MANDAMUS

Petitioners, Florida League of Cities, Inc. and Florida Association of Counties, Inc., petitions the Supreme Court of Florida, pursuant to Art. V, §3(b)(8), Fla. Const. and Fla. R. App. P. 9.100, to issue a writ of mandamus to Respondent, Jim Smith as Secretary of State, directing the Respondent to remove proposed Amendment 10 -- Homestead Valuation Limitation (proposed Amendment 10) from the November 1992 ballot. Proposed Amendment 10 repeals the Homestead Exemption provided in subsection (6)(d) of Article VI of the Florida Constitution. It does so by limiting the assessment of homestead property to a percentage of just value.[1]

The ballot title summary of proposed Amendment 10 fails to give the electorate any notice of this repeal. The public is denied fair notice of the effect of proposed Amendment 10 in violation of Section 101.161, Florida Statutes (1991). This Court has not had an opportunity to review this defect in the ballot

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[1] "Just value," as used in Art. VII, means "fair market value." Walter V. Schuler, 176 So.2d 81 (Fla. 1965).

summary to determine if its severity requires removal of proposed Amendment 10 from the ballot.

Similarly, this Court has not previously determined whether an amendment which both proposes an annual cap on the assessment of homestead property under section 4 of Article VII of the Florida Constitution, and at the same time, invokes the repeal of the homestead exemption found in subsection (6)(d) of Article VII, violates the single subject rule imposed on initiatives under section 3 of Article XI.

Specifically, the Petitioners show to this court the following:

I.

BASIS FOR JURISDICTION

This petition for a writ of mandamus is brought pursuant to Article V, Section 3(b)(8), of the Florida Constitution and pursuant to Fla. R. App. P. 9.030(a)(3) and 9.100. Pursuant to this authority, this Court has jurisdiction to issue writs of mandamus to state officers. The Secretary of State is a constitutional state officer. Art. IV, § 4, Fla. Const. Mandamus is the proper means, in the instant case, for ascertaining whether a proposed constitutional amendment addresses more than a single subject and whether its ballot summary fails to adequately apprise the voters of the proposal's content. Fine v. Firestone, 448 So.2d 984 (Fla. 1984); Askew v. Firestone, 421 So.2d 151 (Fla. 1982).[2]

[2] Pursuant to Fla. R. App. P. 9.100(g), this Court may request development of a factual record, if necessary.

This petition is based on legal questions which do not require factual findings.

II.

THE FACTS ON WHICH PETITIONERS RELY

1. This is an action for a writ of mandamus to prevent Respondent Smith from submitting proposed Amendment 10 to the electorate on the November, 1992 ballot.

2. Proposed Amendment 10 states:

> **HOMESTEAD VALUATION LIMITATION**
>
> (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.
>
> 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.

3. The ballot title summary of proposed Amendment 10 states:

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

4. Homestead property that has experienced an increase in just value after January 1, 1993 will be assessed at a specified percentage of its just value if proposed Amendment 10 is adopted.

5. Subsection (6)(d) of Article VII of the Florida Constitution states:

By general law and subject to conditions specified therein, the exemption shall be increased to a total of the following amounts of assessed value of real estate for each levy other than those of school districts: fifteen thousand dollars with respect to 1980 assessments; twenty thousand dollars with

> respect to 1981 assessments; twenty-five thousand dollars with respect to assessments for 1982 and each year thereafter. However, such increase shall not apply with respect to any assessment roll until such roll is first determined to be in compliance with the provisions of section 4 by a state agency designated by general law. This subsection shall stand repealed on the effective date of any amendment to section 4 which provides for the assessment of homestead property at a specified percentage of its just value.

6. Petitioner, Florida League of Cities, Inc. (League) is a Florida corporation not for profit. A.at A.[3] The League's membership represents 385 municipalities and 5 charter counties throughout the State of Florida. A. at B. As provided in its charter, the League's purposes include action to promote the general improvement of municipal government, the efficient administration of local government, and the welfare of the citizens of the League membership. A. at C.

7. The League's membership is primarily responsible for the funding of municipal services throughout the State. The funding of municipal services is primarily provided from the revenues received from the ad valorem taxes levied by the League membership. The League's membership is directly affected by the level of assessment of both homestead and non-homestead property within its taxing jurisdiction.

8. Petitioner, Florida Association of Counties, Inc. (FAC) is a Florida not for profit corporation. The membership of FAC

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[3] An appendix pursuant to Fla. R. App. P. 9.220 accompanies this petition. All citations to the appendix will be indicated by the symbol "A." followed by the appropriate page from the appendix.

consists of all sixty-seven counties in the state of Florida. The FAC was organized to advocate and coordinate the collective position of its members. A. at E. As ad valorem tax levying political subdivisions of the State of Florida, all of the FAC membership will be directly affected by the level of assessment of both homestead and non-homestead property within its taxing jurisdiction.

9. Both Petitioners are owners of real property in the State of Florida and are subject to ad valorem taxation. A. at B. and F. As taxpayers, Petitioners are concerned with amount of assessments available to the local governments for taxation in the cities and counties where Petitioners' property is located. The amount of tax revenue available affects the level of services taxpayers such as Petitioners may be entitled to receive.

10. Respondent, Secretary Smith as head of the Department of State is responsible for the operation of the Division of Elections. § 20.10, Fla. Stat. (1991). Respondent has the ministerial duty for furnishing to the Supervisor of Elections of each county the designated number, ballot title, and substance of each proposed constitutional amendment which is to appear on the ballot. § 100.371(1) and § 101.161(2), Fla. Stat. (1991).

11. On February 12, 1991, Respondent notified Attorney General Bob Butterworth, pursuant to § 15.21, Fla. Stat. (1991), that supporters of an initiative petition obtained 10% of the signatures in one-fourth of the Congressional districts. Art. XI, Fla. Const.

12. On March 5, 1991, Attorney General Bob Butterworth, pursuant to § 16.061, Fla. Stat. (1991) and Art. IV, § 10, Fla. Const., petitioned this Court for a written advisory opinion as to the technical validity of the initiative petition containing proposed Amendment 10.

13. In response to the Attorney General's letter requesting an advisory opinion, this Court issued an interlocutory order asking for interested parties to file briefs on or before May 1, 1991. Pursuant to this Court's order notice was published in the Florida Bar News.

14. Save Our Homes, Inc. filed a brief in support of proposed Amendment 10 and presented oral argument to the Court. No argument nor brief was presented addressing the repeal of the Homestead Exemption contained in subsection 6(d) of Art. VII.

15. During oral argument, this Court asked if its review extended beyond the narrow, technical review of the single subject and statutory test presented to it. In particular, the Court asked if its review extended to ruling, anticipatorily, on the merits. Both counsel replied that that proceeding was merely a technical review. Tape of Oral Argument Case No. 77,506, Florida Supreme Court.

16. On July 3, 1991, the Court issued its advisory opinion, In re Advisory Opinion to the Attorney General -- Homestead Valuation Limitation, 581 So.2d 586 (Fla. 1991). In its review, the Court addressed only section (4) of Article VII.

17. Subsequent to the issuance of this Court's advisory

opinion, Respondent Secretary Smith officially designated proposed Amendment 10 for inclusion on the November, 1992 ballot. A. at G.

III.

THE NATURE OF THE RELIEF SOUGHT

The petitioner requests that this Court issue its writ of mandamus to Jim Smith as Secretary of State directing the Secretary of State to remove proposed Amendment 10 entitled "Homestead Valuation Limitation" from the November 1992 ballot.

IV.

ARGUMENT

A. PROPOSED AMENDMENT 10 VIOLATES SECTION 101.161, FLA. STAT. (1991) AND SECTION 3, ARTICLE XI, FLA. CONST. BY REPEALING THE HOMESTEAD EXEMPTION CONTAINED IN SUBSECTION 6(d), ARTICLE VII, FLA. CONST. WITHOUT NOTICE TO THE ELECTORATE.

Petitioners submit that proposed Amendment 10 violates the ballot summary title requirements in section 101.161, Fla. Stat. and the single subject requirement of the Florida Constitution found in section 3 of Article X. Proposed Amendment 10 appears to amend section 4 of Article VII[4] as well as repeal the Homestead Exemption contained in subsection 6(d) of Article VII.

Proposed Amendment 10 directs property appraisers to reassess

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[4] Proposed Amendment 10 does not clearly state on its face which section of the Florida Constitution is to be amended. Proposed Amendment 10 only references the addition of "(c)." Only section 4, 9, and 15 of Article VII of the Florida Constitution can accommodate a new "subsection (c)." Section 9 involves local government's ad valorem millage caps and section 15 involves revenue bonds for scholarship loans. Therefore, it is only logical to conclude that Proposed Amendment 10 seeks to amend Section 4 of the Florida Constitution.

all homestead property by January 1, 1993 to reflect "just value."[5] Thereafter, any annual increase in the amount of the assessed just value of homestead property is limited to 3% of the previous year's just value assessment or the annual percentage increase in the consumer price index, whichever is less. Thus, homestead property that has an increase in its just value after January 1, 1993 will be assessed at a "specified percentage of its just value."[6] Proposed Amendment 10 does not require the homestead property to be reassessed to accurately reflect 100% of its just value unless and until the property is sold or otherwise is no longer qualified as homestead property.

Subsection 6(d) of Article VII of the Florida Constitution is repealed when section 4 of Article VII is amended to provide for assessments at less than just value. Subsection 6(d) reads, in pertinent part, as follows:

> (d) By general law and subject to conditions specified therein, the exemption shall be increased to a total of the following amounts of assessed value of real estate for each levy other than those of school districts: fifteen thousand dollars with respect to 1980 assessments; twenty thousand dollars with respect to 1981 assessments; twenty-five thousand dollars with respect to

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[5] "Just value," as used in Art. VII, means "fair market value." Walter v. Schuler, 176 So.2d 81 (Fla. 1965).

[6] For example, a home assessed at $100,000 on January 1, 1993 may not be assessed the following year at more than 103% of the previous year's just value assessment, $103,000, despite a actual increase of more than 3% in the just value of the property. Therefore, any actual increase, greater than 3%, in just value is not accurately reflected in the assessment and the property is assessed at less than its just value or at a specified percent of just value.

> assessments for 1982 and each year thereafter.... This subsection shall stand repealed on the effective date of an amendment to section 4 which provides for the assessment of homestead property at a specified percentage of its just value. (Emphasis added.)

Since proposed Amendment 10 appears to amend section 4 of Article VII[7] and provides for an assessment of homestead property at a specified percentage of its just value, subsection (d) of section 6, Article VII stands repealed, as well as the Homestead Exemption therein. The plain meaning[8] of subsection 6(d) dictates that result. In re Order on Prosecution of Criminal Appeals by 10th Judicial Circuit Public Defender, 561 So.2d 1130 (Fla. 1990).

By proposing the repeal of the homestead exemption found in subsection 6(d) of Article VII,[9] proponents of Amendment 10

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[7] Proposed Amendment 10 does not clearly state on its face which section of the Florida Constitution is to be amended. Proposed Amendment 10 only references the addition of "(c)." Only section 4, 9, and 15 of Article VII of the Florida Constitution can accommodate a new "subsection (c)." Section 9 involves local government's ad valorem millage caps and section 15 involves revenue bonds for scholarship loans. Therefore, it is only logical to conclude that Proposed Amendment 10 seeks to amend Section 4 of the Florida Constitution.

[8] The principles governing the interpretation of statutes are generally applicable interpretating constitutional sections. 10 Fla. Jur. 2d 21. A fundamental rule of statutory construction provides that a statute should be construed so as to ascertain and give effect to its underlying legislative intent. City of Tampa v. Thatcher Glass Corp., 445 So.2d 578, 579 (Fla. 1984); Lowery v. Parole and Probation Comission, 473 So.2d 1248, 1249 (Fla. 1985). In interpretating statutes, the best evidence of legislative intent is generally the plain meaning of the statute. In Re Order of prosecution of criminal Appeals by Tenth Judicial Circuit Public Defender, 561 So.2d 1130.

[9] A $5,000 homestead tax exemption was added to the Florida Constitution in 1933 during the Great Depression. When the Florida Constitution was revised in 1968, the $5,000 exemption was carried

support a trade-off a significant portion of the homestead exemption in exchange for a percentage limitation on increases in assessments. If the subsection 6(d) homestead exemption is repealed, the $5,000 homestead exemption provided for in subsections (a) and (b) of section 6 or Article VII remains.[10] However, the additional homestead exemption in subsection (d) of section 6 of Article VII is lost.

Proposed Amendment 10, seeks to amend the Florida Constitution, which mandates "a just valuation of all property for ad valorem taxation, ..."[11] Art. VII, 54, Fla. Const.; see also, In re Advisory Opinion to the Attorney General -- Homestead

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forward in subsections (a) and (b) of section 6, Article VII, and is self executing. In 1979, the Legislature enacted SJR 1-B which permitted an increase, by general law, of the homestead exemption to $25,000 for school tax. This was adopted by the people at the time of the Presidential Preference Primary in March 1980. This is subsection (c). In 1980, the Legislature enacted, SJR 4-E which was approved in the second primary election in October of that year. That amendment added subsections (d) and (e). Subsection (d) authorized incremental increases, to $15,000 for 1980, $20,000 for 1981, and $25,000 for 1982, in the various non school ad valorem taxes. Subsection (e) authorized ad valorem tax relief for renters, but the Legislature has never enacted it.

[10] As explained in note .9, supra, the $5,000 homestead exemption in subsections (a) and (b) is self executing and therefore services the repeal of subsection (d). The $20,000 additional exemption for schools also would be preserved. Subsection (d)'s repeal would eliminate all of the additional present $20,000 exemption for taxes imposed by all other governmental entities (except schools), e.g. cities, counties, and special districts.

[11] This section permits (subject to general law) valuation of certain properties at less than just value. These include: agricultural properties, water aquifer re-charge areas, and non-commercial recreational lands. None of these are assessed at a percentage of value, but rather are assessed based on their character or use. Paragraph (b) permits the total exemption of stock in trade (inventory).

Valuation Limitation, 581 So.2d 586 (Fla. 1991). "Just valuation," as used in Art. VII, 54, means "fair market value," that is, the amount a willing (but not obligated) purchaser and willing (but not obligated) seller would agree upon, and not some percentage or portion of that amount. Walter v. Schuler, 176 So.2d 81 (Fla. 1965).

In 1980, the homestead exemption was amended twice (once in March and again in October) to increase the homestead exception from taxation from $5,000 to $25,000 (first for school purposes, and then for all other taxes). Art. VII, §6(d), Fla. Const. (1980). The increase expressly was conditioned upon assessment at just -- that is full valuation:

> By general law ... the [homestead] exemption shall be increased to ... twenty-five thousand dollars with respect to assessments for 1982 and each year thereafter. However, such increase shall not apply with respect to any assessment roll until such roll is first determined to be in compliance with the provisions of section 4 .... This subsection [increasing the homestead exemption to $25,0001 shall stand repealed on the effective date of any amendment to section 4 which provides for assessment of homestead property at a specified percentage of its just [or full] value. (emphasis added).

Art. VII, §6(d), Fla. Const. (1980). Section 4 of Article VII, Fla. Const. then, as now, required assessments at just, or full, 100% valuation. Art. VII, 54, Fla. Const. (1980); See Walter v. Schuler, 176 So.2d 81.

When subsection 6(d) was added to the Florida Constitution in

1980 by SJR 4-E[12], a double "fail safe" was provided to insure the integrity of just valuation. First, the Legislature was required to insure, by general law, that all 67 property appraisers were assessing real property at full value. Until these assessments reached full value, the local governments' tax rolls could not be certified by the Department of Revenue. Without the certification, the tax rolls could not be used for ad valorem tax calculation nor could the local governments benefit from the additional revenues available from the increased assessment. The Legislature implemented this provision of subsection 6(d) by enacting the 1980 TRIM law, Chapter 80-274, Laws of Florida (codified at Chs. 129, 192-97, 199, 200, 205, 218, 228, 236, 237, 320, 371 and 373, Fla. Stat.)

Second, the future integrity of just valuation was insured by adding a repeal provision in subsection 6(d), Article VII. Thus, if homestead property was taxed at a percentage of just valuation, subsection (d) is automatically repealed and the value of the homestead exemption reverts to $5000 for .counties, cities, and special districts taxes. The condition that homestead property is valued at 100% of assessed valuation remains encompassed in Article VII, section 6.

The legislative history of the addition of subsection (d) to section 6 of Art. VII confirms that the increased homestead exemption was passed to offset recent and anticipated increases in tax assessments due to rises in property values. Pajcic, Webber

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[12] See supra note 9.

and Francis, Truth or Conseauences: Florida Opts for Truth in Millage in Response to the Proposition 13 Syndrome in 8. F.S.U.L. Rev. 593. At the time, Article VII, subsection 6(d) was adopted, a number of initiative proposals had been circulated to limit tax increases by limiting assessments to less than one hundred percent of just or full value. The subsection 6(d) homestead exemption thus hinges, and expressly so, on nothing less than assessments based on one hundred percent valuations. See A. at H., I. and J.

In summary, the intent of the Legislature as well as the plain meaning of the repeal provision contained in subsection 6(d) of Article VII clearly shows that an amendment to section 4 of Article VII that results in less than just valuation repeals the homestead exemption in subsection 6(d). Proposed Amendment 10, if adopted, has this effect without placing the electorate on notice.

1. Fair Notice

Section 101.161(1), Fla. Stat. establishes the technical requirements for the submission of a constitutional amendment to the electorate. In relevant part the section states:

> (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 after the list of candidates, followed by the word "yes" and also by the word "no," and shall be styled in such manner that a "yes vote will indicate approval of the proposal and a "no" vote will indicate rejection .... The substance of the amendment or other public measure 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.

Even though a ballot summary is technically correct, if it fails to inform the voter of the real changes which the amendment would effectuate, the ballot summary is defective. Wadhams v. Board of County Commissioners, 567 So.2d 414 (Fla. 1990). In Evans v. Firestone, 457 So.2d 1351, 1355 (Fla. 1984), this Court acknowledged that the Florida Legislature intended that a 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 decision." Proposed Amendment 10 does not give fair notice so that the electorate may make an informed decision on its merits.

Petitioners acknowledge that a portion of the electorate might wish to repeal the homestead exemption. Proposed Amendment 10 does not inform this group that a "Yes" vote would achieve their wish. Petitioners, also, acknowledge that a portion of the electorate does not wish to repeal the homestead exemption. Likewise, proposed Amendment 10 does not give fair notice to this group to vote "No."

Proposed Amendment 10 misleads the electorate. By failing to provide notice of the repeal of the subsection 6(d) homestead exemption, proposed Amendment 10 is defective since it misleads the public concerning a material change to an existing constitutional provision. Askew v. Firestone, 421 So.2d 151, 156 (Fla. 1982). Nowhere in the text of the ballot title summary, the proposed amendment itself or in the literature supporting passage of proposed Amendment 10, A at K., is repeal of subsection 6(d)

noticed.

While it might be impossible to explain in detail within the space limitation imposed section 101.161, Fla. Stat., omission of a subject of such great importance and impact as the repeal of the homestead exemption is a fatal flaw. Fair notice, much less any notice, is not provided. Evans V. Firestone, 457 So.2d 1351.

Although, in some circumstances, all possible effects of a proposed constitutional amendment is not required, the chief purpose of a proposed constitutional amendment must be noticed. Since proposed Amendment 10 has a dual effect of repealing the subsection 6(d) homestead exemption and placing a cap on homestead assessment valuation, the chief purpose is ambiguous. Grose v. Firestone, 422 So.2d 303, 305 (Fla. 1982).

Thus, proposed Amendment 10 is clearly and conclusively defective. Askew V. Firestone, 421 So.2d 151. Without the Court's intervention at this time, the public is left with casting an uninformed vote.

2. Single Subject Requirement

Proposed Amendment 10 embraces more than one subject matter and therefore fails to comply with Section 3 of Article XI of the Florida Constitution. There it states in pertinent part:

> 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 and matter directly connected therewith. (emphasis added).

Pursuant to this provision, the Court must determine if the

proposed amendment calls upon citizens to vote for a single change in their government as identified in the proposal. Fine v. Firestone, 448 So.2d at 993. If the proposal encompasses more than a single change, or requires adoption of a proposal which the citizens would, or do, oppose in order to obtain a change which they support, the proposal should be removed from the ballot, and a writ of mandamus is issuable.' Id.

Proposed Amendment 10, which caps assessments at a specified 3% per annum increase for each parcel of homestead property's just value and constitutes a repeal of subsection 6(d) of Article VII encompasses more than a single change. Proposed Amendment 10 requires adoption of a proposed amendment which the electorate would, or do, oppose in order to obtain a change in the constitution which they support, thereby violating the single subject requirements of section 3 of Article XI.

As the Court made clear in Fine v. Firestone, the very purpose for the single-subject restrictions imposed by section 3 of Article XI, allowing popular initiatives to amend the constitution, is to protect against multiple precipitous changes to the constitution.

> It is apparent that the authors of article XI realized that the initiative method [for amending the constitution] did not provide a filtering legislative process for the drafting of any specific proposed constitutional amendment or revision. The legislative, revision commission, and constitutional convention processes of sections 1, 2 and 4 all afford an opportunity for Public hearing and debate not only on the proposal itself but also on the drafting of any constitutional proposal. That opportunity for input in the drafting of a proposal is not present under the initiative process and this is one of the

> reasons the initiative process is restricted to single-subject changes in the state constitution. The single-subject requirement in article XI, section 3, mandates that the electorate's attention be directed to a change regarding one specific subject of government to protect against multiple precipitous changes in our state constitution. This requirement avoids voters having to accept part of an initiative proposal which they oppose in order to obtain a change in the constitution which they support. (Emphasis added) Fine V. Firestone, at 488.

The single-subject limitation on constitutional change by initiative is also intended to direct the electorate's attention to one subject and matters connected with that one subject. Id. at 489. Although an initiative may amend multiple sections of the constitution, it must identify the articles or sections substantially affected. Id. Proposed Amendment 10 does neither, of course. The discrete subject matter incorporated in Article VII, section 4, relating to the methods for valuing real and personal property prescribed for taxation and to which proposed Amendment 10 relates, is wholly different from the subject matter of Article VII, section 6, which provides for the homestead exemption from taxation, and which requires valuation of 100% The subject matter nor the matter connected therewith of the two provisions are not the same.

This distinction notwithstanding, proposed Amendment 10 repeals subsection 6(d) without ever identifying that provision as substantially affected. The manner in which an initiative proposal affects other sections of the constitution is, of course, an appropriate factor for the Court to consider in determining whether

more than a single subject is included in that initiative. Id. at 490. The conflict between proposed Amendment 10 and subsection 6(d) clearly confirms that this initiative violates the single-subject mandate.

Thus, proposed Amendment 10 contains at least two subjects. It limits the method or manner in which certain real property may be valued for ad valorem taxation purposes; it also redefines exemptions from taxation by repealing the twenty-five thousand dollar homestead exemption. Proposed Amendment 10 therefore fails to meet either the intent or purpose of section 3 of Article XI of the Florida Constitution.

B. THIS COURTS'S ADVISORY OPINION IN IN RE ADVISORY OPINION TO THE ATTORNEY GENERAL -- HOMESTEAD VALUATION LIMITATION, 581 So.2d 586 (Fla. 1991) DOES NOT BAR THIS COURT FROM ISSUING THE WRIT REQUESTED HEREIN.

This Court is not precluded from issuing a writ of mandamus because it previously entered an advisory opinion addressing the facial validity of proposed Amendment 10.

The doctrine of res judicata provides that "a final judgment or decree rendered by a court of competent jurisdiction, on the merits is conclusive on the rights of the parties and their privies and constitutes a bar to a subsequent suit or action involving the same cause of action or subject matter.@@ 32 Fla. Jur. 2d 107. No final judgment has been issued on the validity of proposed Amendment 10 as it relates to the repeal of the subsection 6(d) homestead exemption. This Court's Advisory opinion only addressed technical compliance of proposed Amendment 10 with the ballot title

summary and single subject requirement as it relates to section 4 of Article VII. In re Advisory Opinion to the Attorney General -- Homestead Valuation Limitation: In re Advisory Opinion to the Attorney General -- Homestead Valuation Limitation, Initial Brief of Proponent, Save Our Homes, Inc. at 1. Since no final judgment has been issued, the doctrine *of* res judicata does not apply here.

A fundamental difference in the nature of an advisory opinion and a final adjudication exists. The Florida Supreme Court did not render a "final judgment or decree" in In Re: Advisory Opinion to the Attorney General--Homestead Valuation Limitation, 581 So.2d 586 (Fla. 1991). Rather, the Court issued an "advisory opinion." A general principle of law states:

> Although advisory opinions [by the Florida Supreme Court] are frequently very persuasive and in fact are usually adhered to, they are not binding as judicial precedents. The rationale for this rule is that opinions rendered by a court in its capacity as advisory to another department of government should not be controlling over actual cases decided on hearing and argument by counsel.

13 FLA. JUR. 2d Courts and Judges 5147 (1979).

In Lee v. Dowda, 19 So.2d 570 (Fla. 1944), this Court acknowledged that advisory opinions were not binding on a subsequent decision of the Court. The Court concluded that an advisory opinion may be a factor considered by an adjudicating court but is not conclusive evidence.

In Petition of Kilgore, 65 So.2d 30 (Fla. 1953), Justice Terrell, in a concurring opinion, further explained the purpose of an advisory opinion. At the time of the opinion from the Florida

Supreme Court. Justice Terrell stated:

> It is well understood that advisory opinions to the Governor are not of the dignity and status as those rendered on brief and adversary argument. They are confined to pointing out the Governor's authority or duty under the provision of the constitution cited, without argument of the question presented or citation of authority in support of the conclusion ....
>
> Requests for advisory opinions are for the constitutional guidance of the Governor. They may also involve a choice of policy or conduct under the constitution about which he is in doubt. If the Court should decide that the request was not within the scope of his constitutional inquiry and so advise him, or if for any other reason the answer is such that the Governor concludes that action should be deferred for the present, he may govern himself accordingly. Such opinions are what the name implies, "advisory" only. They are much like opinions from lawyer to client and partake of the nature of confidential communications.

Id. at 29-30.

Because there is no opportunity for adversarial type debate and because the Court is only asked to provide an advisory opinion as to the facial constitutionality of a proposal, the opinion in In re Advisory Opinion to the Attorney -- Homestead Valuation Limitation is not a final judgment and therefore is not subject to res judicata.[13]

Even if this Court's advisory opinion is considered a final

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[13] Although Art. IV, §10 provides 'that this Court shall issue an advisory opinion as to the initiative petition's compliance with Art. XI, §3, there is no provision in either the Florida Constitution or the Florida Statutes providing that an advisory opinion issued by the Supreme Court is binding or a final judgment.

judgment, res judicata does not preclude this Court from hearing this claim. For res judicata to preclude this Court from acting on this petition, four conditions related to the earlier and present suit must occur simultaneously: (1) identity of the things sued for; (2) identity of the cause of action; (3) identity of the parties, and (4) identity of the quality in the person for or against whom the claim is made. Pfeiffer V. Roux Laboratories, Inc., 547 So.2d 1271 (Fla. 1st DCA 1989), citing Albrecht v. State, 444 So.2d 8 (Fla. 1984).

In the case at issue, Petitioners were not parties to the advisory opinion request, named in the record, properly served, nor appeared on behalf of either party. Furthermore, Petitioners were not in privity with the Attorney General, as required by section 10 of Article IV, Florida Constitution and Section 16.061, Fla. Stat. (1991). The Attorney General's role was not to be adversarial, but rather only to present a prima facie case for technical correctness. In re Advisory Opinion to the Attorney General -- Homestead Valuation Limitation, Tape of oral argument on June 3, 1991. Since no privity exists between Petitioners and the Attorney General, res judicata cannot bar this Court from reviewing Petitioners' request for a writ of mandamus. See City of Lake Worth v. Walton, 462 So.2d 1137 (Fla. 4th DCA 1984) (res judicata not appropriately invoked where second action was brought against different party than first).

Additionally, the relief requested in the advisory opinion and in the instant petition request differ. The relief requested in

the advisory opinion was for a mere technical review of the court's opinion on a narrow issue. In contrast, the relief requested in this request is to review the constitutionality and statutory compliance of the repeal provision of proposed Amendment 10.

The essential elements of the cause of action must also be identical. Pfeiffer at 1272. This factor exists when the facts, degree of proof or evidence necessary to maintain the actions are identical. This Court did not address the requisite elements of the single subject analysis and ballot title summary review regarding the homestead repeal issue in the advisory opinion proceeding. Accordingly, the elements are substantially different.

Lastly, the "identity of the quality or capacity of the person for or against whom the claim is made" in the two actions differ. This final factor addresses whether there is a privity or other relationship between parties filing suit in both actions. 32 FLA. JUR. 2d Judsments and Decrees §147 (1979). "[T]he doctrine of res judicata does not apply to actions in one of which a party acts as an agent of the government, and in the other, in his individual capacity." (footnote omitted). 32 FLA. JUR. 2d Judgments and Decrees §159 (1979). Based on the same reasons discussed above concerning the parties to the suits, this final factor is not present in the instant case.

In conclusion, the doctrine of res judicata is inapplicable since the four factors discussed above are not present between the two cases.

WHEREFORE, Petitioners pray the Court:

A. Review this Petition on an expedited basis.

B. Issue a Writ of Mandamus to Secretary of State Jim Smith mandating the removal of Amendment 10 from the November, 1992 ballot.

Respectfully submitted,

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Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing PETITION FOR EXPEDITED WRIT OF MANDAMUS was hand-delivered on the 18th day of September, 1992, to Jim Smith, Secretary of State, The Capitol, Tallahassee, Florida and to the Clerk of the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida.

Benjamin K. Phipps