D47 O.A. 10-13-92

FILED
SID J. WHITE
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CLERK, SUPREME COURT
By Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

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

Petitioners,

-vs- CASE NO. 80,489

JIM SMITH, SECRETARY OF STATE,

Respondent.

RESPONSE TO ORDER TO SHOW CAUSE

Respondent, the Honorable Jim Smith, Secretary of State, by and through undersigned counsel, makes this response to the Show Cause Order of this Court entered September 22, 1992. In response to the Court's Order, Respondent would show the following:

I. JURISDICTION

Respondent acknowledges the jurisdiction of this Court pursuant to Article V, § 3(b)(8), Florida Constitution; see Fine v. Firestone, 448 So.2d 984 (Fla. 1984); Askew v. Firestone, 421 So.2d 161 (Fla. 1982). Respondent does not concur in Petitioners' assessment that the petition is based only on legal questions. It may be appropriate for the Court to receive testimony regarding the substantive issue which this case presents.

Prior to the 1968 adoption of the Florida Constitution, the people of this state had no mechanism by which to directly propose amendments to the

state constitution. The 1968 Constitution changed this. See Article XI, § 3. In its original format, this section did not specifically state that such amendments were limited to "one subject and matter directly connected therewith." However, an amendment to this section in 1972 made that change. Since that time, eight initiatives have made ballot position by a showing that the petition has been signed by at least 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 eight percent of the votes cast in the last preceding presidential election.[1] Of these eight initiatives, two were removed from the ballot by this Court prior to the general election. Evans v. Firestone, 457 So.2d 1361 (Fla. 1984) and Fine v. Firestone, 448 So.2d 984 (Fla. 1984). Of the remaining six, three were adopted and three were not. The following summarizes the results of the six initiatives which made ballot position:

1976	Ethics in Government	Adopted
1978	Casino Gambling	Not adopted
1984	Citizens Choice on Government Revenue	Removed from ballot by court
1984	Citizens Rights on Civil Actions	Removed from ballot by court
1986	State Operated Lotteries	Adopted
1986	Casino Gambling	Not adopted
1988	Limitation of Non-economic Damages in Civil Actions	Not adopted
1988	English is the Official Language of Florida	Adopted

As noted above, the two initiative petitions which had obtained ballot position and which were removed from the ballot several weeks prior to the general election were Citizens' Choice on Government Revenue and Citizens

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1 In 1992, an initiative petition required 386,866 legitimate signatures to obtain ballot position.

Rights *on* Civil Actions. There was **a** great deal of controversy at that time over the suspension of the initiative process because the supporters of the two initiatives had spent a great deal of time and money in obtaining ballot position.

In reaction to the controversy, the Florida Legislature directed the Florida Advisory Council on Intergovernmental Relations ("ACIR") to study the constitutional initiative process and make recommendations for change. ACIR made several recommendations to the Legislature and during the next two **years,** committees of the Legislature explored various possibilities oriented towards *a* more streamlined **and** effective process. In 1986, a constitutional amendment was proposed by **the** Legislature to amend Article IV of the Constitution **by** including a new **§** 10 which would **read** as follows:

> The attorney general shall, as directed by general law, request the opinion of the justices of the supreme court as to the validity of any initiative petition circulated pursuant to Section **3** of Article XI. The justices shall, subject to their rules of procedure, permit interested persons to be heard on the questions presented and shall render their written opinion expeditiously.

This proposed amendment sought to provide an early determination of whether an initiative petition violated **§ 3** of Article **XI** thereby avoiding significant expenditures of time, effort and money in pursuing a defective initiative petition.[2] **This** amendment was adopted by the citizens of Florida in **1986.**

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[2] See House of Representatives Committee on Judiciary Staff Analysis, PCS/HJR 71, February 18, **1986.** (Appendix **A)** This Staff Analysis noted "that an advisory opinion would not be binding on a challenge brought subsequent to the adoption of the proposed amendment. Nevertheless, to the extent a challenge raises issues addressed in the advisory opinion, the opinion would, as a practical matter, prove to be extremely persuasive."

II. STATUTORY PROVISIONS

After the adoption of Article IV, § 10, Florida Constitution, the Legislature enacted Section 15.21, Florida Statutes, which allows sponsors of initiatives the option of seeking judicial review of the ballot title, summary, and text of a proposed revision or amendment when the sponsors obtain the signatures of at least ten percent of the number of electors statewide in at least one-fourth of the congressional districts required by Article XI, § 3 of the Constitution.

Section 15.21, Florida Statutes, provides that the Secretary of State will, upon receipt of a request by initiative sponsor for judicial review of the initiative, forward the proposed revision or amendment to the Attorney General. Likewise, Section 16.061, Florida Statutes, mandates that the Attorney General, within 30 days, will petition the Supreme Court to render an advisory opinion regarding the compliance of the text of the proposed amendment or revision with Article XI, § 3, Florida Constitution, and the compliance of the proposed ballot title and summary with Section 101.161, Florida Statutes.

Section 101.161, Florida Statutes, provides that the summary of a proposed constitutional amendment must, in clear and unambiguous language not exceeding 75 words in length, explain the chief purpose of the measure. In addition, each constitutional amendment must contain a ballot title not exceeding 15 words by which the measure is commonly referred.

III. CASE HISTORY

On March 5, 1991, the Attorney General petitioned this Court consistent with Article IV, § 10, of the Florida Constitution, and Section 16.061, Florida Statutes (1989), for a written opinion as to the validity of a petition entitled "Homestead Value Limitation," which had been submitted to the Attorney General by the Secretary of State on February 12, 1991, pursuant to Section 15.21, Florida Statutes (1989). On March 8, 1991, this Court entered an Interlocutory Order in response to the Attorney General's petition. The Court directed that interested parties

> shall file their briefs on or before May 1, 1991, and serve a copy thereof on the Attorney General. The reply brief shall be filed on or before May 20, 1991. Oral argument is scheduled for 9 a.m., Monday, June 3, 1991. All parties who have filed a brief and have asked to be heard shall have the opportunity of presenting oral argument. The amount of time allocated to each party will be determined after the filing of the briefs.

(Appendix B)

On April 1, 1991, the Florida Bar News ran a notice at the request of the Supreme Court of Florida which published the Court's interlocutory order in full. (Appendix C) As a result of that notice, one brief in support of the amendment was received by the Court, "Initial Brief of Proponent, Save Our Homes, Inc." No briefs were received from any opponents of the amendment. See In re: Advisory Opinion to the Attorney General--Homestead Valuation Limitation, Case No. 77,506.

On July 3, 1991, this Court issued its opinion In re Advisory Opinion to the Attorney General--Homestead Valuation Limitation, 581 So.2d 586 (Fla. 1991).

In reaching its decision, this Court did not address, nor was it requested to address, the issues raised in the instant petition. But see footnote 12 of the Brief of Proponent Save Our Homes, Inc.: "With 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* $26,000. Article XII, § 6(d), Fla. Const."

IV. ARGUMENT

Despite the fact that the legislative history examining Article XI, § 3 indicates it was passed as a solution to last-minute challenges to citizen-initiated petitions, there is no clear legal basis to *say* that a party's failure to take advantage of the advisory opinion process constitutes a waiver or estoppel in this Court. Indeed, as indicated above, House Staff Analysis suggests a contrary result. Nonetheless, this Court now finds itself less than one month before the general election with a substantive question of whether this amendment should appear on the ballot. The Respondent will abide by this Court's determination as to this issue and will make his best effort to remove the question from the ballot should the Court deem that appropriate.[3]

The question before the Court is whether passage of Proposed Amendment 10 would result in the repeal of the $25,000 homestead exemption for tax levies (other than school) districts provided for in Article VII, § 6(d), Florida

[3] Section 101.62, Florida Statutes, and the consent decree issued by the United States District Court, Northern District of Florida, in United States of America v. State of Florida, et al., Case No, TCA 80-1055, required that overseas absentee ballots be printed and mailed by September 18, 1992. As a result, it would be impassible to remove the proposed constitutional amendment from certain ballots.

Constitution. Petitioners allege that passage of the amendment would activate the last sentence of § 6(d), which provides that the subsection "shall stand repealed on the effective date of any amendment to § 4 which provides for the assessment of homestead property at a specified percentage of its just value." If the Petitioners' conclusion as to the effect of Amendment 10 is correct, then the ballot title and summary would appear to be defective as the summary would not fairly advise the electorate of the effect of the amendment. Cf. Askew v. Firestone, 421 So.2d 161, 155 (Fla. 1982) (ballot title and summary of proposed constitutional amendment prohibiting former legislators from lobbying for two years after leaving office unless they filed a financial disclosure was invalid, since it did not give electorate fair notice of actual change by advising public that there currently was a complete two-year ban on lobbying and the chief effect of the amendment was to abolish present two-year total prohibition).

As noted above, the proponents of Proposed Amendment 10 previously argued in their brief to this Court:

> 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 an homestead property have historically been subject to increase by two factors. First, their elected

representatives may, through increases in millage,[11] increase the tax burden on real property, 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.

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

11 Article VII, § 9, Fla. Const.

12 With 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.

In order to resolve this issue, this Court must determine whether: § 6(d) contains a so-called "poison pill" to prevent any change in the homestead exemption system of real property taxation in Florida, If so, the Court must also determine whether Proposed Amendment 10's potential reduction of taxes based upon a capping of tax increases at a maximum of three percent per year above the current tax rate on the date of ratification is the type of amendment contemplated in § 6(d), which states: "This subsection shall stand repealed on the effective date of an amendment to § 4, which provides for the assessment of homestead property at a specified percentage of its just value." Assuming the answers to the first and second questions are yes, the Court must further determine whether the ballot summary of Proposed Amendment 10 sufficiently apprises the voter of the impact the amendment will have upon the state

constitution and whether the Proposed Amendment embraces more than one subject matter and therefore fails to satisfy the mandate of § 3 of Article IX of the Constitution, which states, in pertinent part, that "the power which provides that initiative driven amendments to the state constitution ' 'shall embrace but one subject and matter directly connected therewith.'"

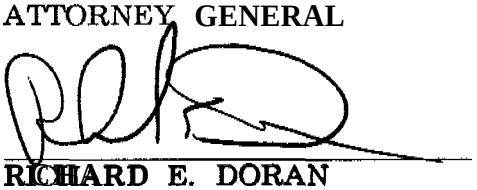
Resolution of this case can be completed within the framework of a challenge to the technical sufficiency of the ballot summary as presented by the Petitioners. However, Respondent suggests that this case is unusual in that it presents for the first time litigation one year after the Court's favorable advisory opinion to the Attorney General as to the validity of an initiative opinion. In addition, Petitioners presented their petition to the Court less than five weeks prior to the general election, More importantly, beneath the technical issue of ballot access, lies a substantive legal question which will require the Court to engage in constitutional and statutory interpretation. Cf. Advisory Opinion to the Attorney General--Limited Political Terms in Certain Elective Offices, 592 So.2d 225 (Fla. 1991) (court declined to consider substantive issue of whether the amendment could constitutionally limit federal terms of office noting that it was limited to addressing whether the proposed amendment and ballot title and summary complied with Article XI, § 3, Florida Constitution). As noted in this most recent decision, the test for resolving disputes over the sufficiency of a ballot summary are resolved by determining that "the ballot be fair and advise the voters sufficiently to enable him to intelligently cast his ballot," and that the ballot summary does not conceal a conflict within existing constitutional provision or otherwise omit material facts necessary far the voter to make an informed decision. Id. at 227. Of course, this Court has made such a facial determination regarding this proposed amendment. 581 So.2d at 588.

IV. CONCLUSION

The fundamental issues in this case go beyond a mere assessment of technical ballot summary and single subject discussion. Therefore, the Respondent and the Attorney General shall leave to the proponents and opponents of this citizen initiative the argument on the merits. Respondent is advised by his counsel that counsel has been in communication with the sponsors of this initiative and that the sponsors will file a responsive pleading in this Court in support of their petition. Any oral argument on the merits of the petition should be left to the sponsors of this initiative. Therefore, counsel for the Respondent will be prepared to address any technical questions the Court may have, but will not argue in support or opposition to the merits of these constitutional and statutory interpretation issues,

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



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COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing RESPONSE TO ORDER TO SHOW CAUSE has been furnished to JANE C. HAYMAN, Deputy General Counsel, and NANCY STUPARICH, Assistant General Counsel, Florida League of Cities, Inc., 201 West Park Avenue, Post office Box 1757, Tallahassee, Florida 32302, Counsel for Petitioner Florida League of Cities, Inc.; to IRWIN J. BLOCK, ROSS A. MCVOY, and BENJAMIN K. PHIPPS, Fine, Jacobson, Schwartz, Nash & Block, 802 First Florida Bank Building, Post office Box 1361, Tallahassee, Florida 32302, Counsel for Petitioner Florida Association of Counties. Inc.: and to TED TRIPP, 2632 East First Street, Fort Myers, Florida 33902, Counsel for Save Our Homes, Inc., by U. S. Mail this 2ND day of October, 1992.

RICHARD E. DORAN

IN THE SUPREME COURT OF FLORIDA

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

Petitioners,

-vs- **CASE NO. 80,489**

JIM SMITH, SECRETARY OF STATE,

Respondent.

APPENDIX TO
RESPONSE TO ORDER TO SHOW CAUSE

Date: February 18, 1986
Revised:
Final:

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
STAFF ANALYSIS

BILL# PCS/HJR 71

SPONSOR Rep. Robinson & others

EFFECTIVE DATE

IDENTICAL/SIMILAR **BILLS** PCS/HB 72

RELATING TO Initiative petitions

OTHER COMMITTEES OF **REFERENCE**

I. SUMMARY:

A. Present Situation:

Article XI, Section 3 of the Florida Constitution, reserves to the **people** of **Florida the power** to propose revisions or amendments to the Constitution, provided that such revisions or amendments embrace but one subject and matter directly connected therewith. Section 100.371, F.S., sets out the procedure for placing constitutional amendments proposed by initiative on the ballot. Section 101.161, F.S., requires that a summary ***of*** a proposed amendment be printed in clear and unambiguous **language** on the **ballot** and that the ballot title **appear as** a caption consisting of the name **by which the measure is commonly** referred.

B. Effect of Proposed Changes:

PCS/HJR **71 proposes** the **addition of** Section 10 to Article IV of the Florida Constitution, providing that the Attorney General shall request the state Supreme Court to render a written opinion as to the validity of an initiative petition. The section would further require that such an opinion **be** rendered not later than 30 days after a request is filed and docketed.

APPENDIX A

II. **ECONOMIC IMPACT:**

A. Public:

None

B. Government:

None

III. **STATE COMPREHENSIVE PLAN IMPACT:**

None

IV. COMMENTS:

The Florida Supreme Court has previously found constitutional amendments proposed by initiative to have violated the single subject requirement of Section 3 of Article XI of the Florida Constitution. See Evans v. Firestone, 457 So.2d 1351 (Fla. 1984); Fine v. Firestone, 448 So.2d 984 (Fla. 1984). The court has also held that a proposed constitutional amendment failed to meet the summary and ballot title criteria of s. 101.161, F.S., *See* Evans, **supra**; Askew v. **Firestone**, **421** So.2d **151** (Fla. 1982). In each case, the court's ruling resulted in the proposed constitutional amendment being removed from the ballot. Such a determination often involves a significant expenditure of time.

This proposed amendment, together with the enacting language of PCS/HB 72, are **designed** to provide a method **by** which an initiative proposal's compliance with constitutional and statutory requirements could **be** ascertained expeditiously.

It should **be** noted, however, that an advisory opinion would not be binding on a challenge brought subsequent to the adoption of the proposed amendment. Nonetheless, to the extent the challenge raises issues **addresed** in the advisory opinion, the opinion would, as a practical matter, prove to **be** extremely persuasive.

The Proposed Committee Substitute for HJR 71 includes additional language in the proposed ballot summary to clarify the **intent** that the **Supreme** Court render an advisory opinion within 30 days as required by the language of the amendment. This change is designed to

conform the **proposal with** the **requirements of** Askew v. Firestone, supra, which held that the **ballot** summary **must address every** change **effected by** the **proposed constitutional** amendment.

V. AMENDMENTS:

VI. PREPARED BY Paul Anderson (PA)

VII. STAFF DIRECTOR Richard Hixson

Supreme Court of Florida

AMENDED

FRIDAY, MARCH 8, 1991

IN RE:

ADVISORY OPINION TO THE ATTORNEY GENERAL - HOMESTEAD VALUATION LIMITATION

CASE NO. 77,506

INTERLOCUTORY ORDER

Attorney General, Robert A. Butterworth, pursuant to the provisions of Art. IV, s. 10, Fla. Const., and s. 16.061, Fla. Stat. (1989), has requested this Court's opinion as to whether the text of the proposed amendment to limit increases in homestead property valuations for ad valorem tax purposes complies with Art. XI, s. 3, Fla. Const., and whether the proposed ballot title and substance comply with s. 101.161, Fla. Stat. (1590). The petition provides:

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,

APPENDIX B

3- The Florida Bar News
april 1, 1991

Official Notice

IN RE: ADVISORY OPINION TO THE ATTORNEY GENERAL-
HOMESTEAD VALUATION LIMITATION

CASE NO. 77,506

INTERLOCUTORY ORDER

Attorney General Robert A. Butterworth, pursuant to the provisions of Art, IV, §10, Fla. Const., and §16.061, Fla. Stat. (1989), has requested this Court's opinion as to whether the text of the proposed amendment to limit increases in homestead property valuations for ad valorem tax purposes complies with Art. XI, §3, Fla. Const., and whether the proposed ballot title and substance comply with 5101.161, Fla. Stat. (1990). The petition provides:

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 vnlue 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.

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.

Section 16.061, Fla. Stat. (1989), requires the Attorney General, within 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 Art. XI, § 3, Fla. Const., and compliance of the proposed ballot title and substance with 5101.161, Fla. Stat. (1990).

It is, therefore, the order of the Court that interested parties shall file their briefs on or before May 1, 1991, and serve a copy thereof on the Attorney [illegible]

APPENDIX C