

IN THE SUPREME COURT
STATE OF FLORIDA

IN RE:

ADVISORY OPINION TO
THE ATTORNEY GENERAL -
TAX LIMITATION

)
)
) CASE NO.: 83,969
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)
)

INITIAL BRIEF OF RESPONDENT
TAX CAP COMMITTEE

SUGGESTING THAT THE PROPOSED AMENDMENT
COMPLIES WITH FLORIDA CONSTITUTION, ARTICLE
XI, SECTION 3, AND THAT THE TITLE AND BALLOT
SUMMARY COMPLY WITH FLORIDA STATUTES SECTION
101.161

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STATEMENT OF THE CASE AND FACTS

By letter dated July 8, 1994, the Attorney General petitioned this Court for an advisory opinion concerning the Tax Limitation Amendment, an initiative petition proposing an amendment to the Florida Constitution entitled "Tax Limitation: Should Two-Thirds Vote be Required for New Constitutionally-Imposed State Taxes/Fees?". The full text of the ballot title, summary and proposed amendment is set forth in Appendix A. The proposed amendment provides that no new State tax or fee shall be imposed on or after November 8, 1994, by constitutional amendment unless two-thirds of the electors voting in the election approve such amendment. It does not affect any constitutional amendment other than one pertaining to new State taxes or fees, any taxes or fees imposed by the Legislature, nor any taxes or fees presently imposed by the Constitution. The Tax Limitation Amendment was submitted by the Florida Secretary of State to the Attorney General in accordance with the dictates of Florida Statutes Section 15.21.

The Attorney General's request was submitted pursuant to the requirements of Article IV, Section 10 of the State Constitution and Florida Statutes Section 16.061. The Court acts on such requests to determine whether the initiative petition complies with the requirements of Article XI, Section 3 of the Florida Constitution and Florida Statutes Section 101.161. Pursuant to Article IV, Section 10 and Article V, Section 3(b)(10) of the Florida Constitution, the Court entered an order permitting interested persons to file briefs and scheduling oral argument for

August 23, 1994. This initial brief is submitted on behalf of the Tax Cap Committee as Respondent.

The Tax Cap Committee is a political committee organized pursuant to Florida Statutes Section 106.03. It was organized in 1993 for the purpose of sponsoring initiatives proposing amendments to the Florida Constitution in accordance with Article XI, Section 3 thereof. The Tax Cap Committee is chaired by David Biddulph, a homeowner and businessman in New Smyrna Beach, Florida. The Tax Cap Committee is the sponsor of the Tax Limitation Amendment now pending before this Court.

SUMMARY OF ARGUMENT

Article XI, Section 3 of the Constitution of the State of Florida provides the citizens of Florida with the power to propose the revision or amendment of any portion of the Constitution by initiative, provided that such initiative may embrace but one subject and matter directly connected to that subject. The Tax Limitation initiative petition seeks to add a single new section to Article XI of the Florida Constitution. New Section 7 would place stricter voting requirements on proposals to effect a certain class of amendments to the Florida Constitution. It provides that any proposed constitutional amendment which imposes a new State tax or fee would require the approval of two-thirds of the electors voting in the election in which the proposed amendment is considered.

Article XI currently requires that proposed amendments be approved by a "vote of the electors," defined in Article X, Section 12(d) of the Florida Constitution to mean a "vote of the majority of those voting on the matter." Thus, the single purpose and effect of the Tax Limitation Amendment is to raise the voter approval requirement for only those constitutional amendments which seek to impose new State taxes or fees. It therefore satisfies the single subject requirement of Article XI, Section 3 of the Florida Constitution and should be placed on the ballot.

The Tax Limitation Amendment also meets the statutory requirements of Section 101.161 of the Florida Statutes. That section provides that when a constitutional amendment is submitted to the voters, an explanatory statement (ballot summary) of the

proposal's "chief purpose" shall be stated clearly and unambiguously. The statute limits the ballot summary to seventy-five words and the title to fifteen words. The ballot title is to be a caption by which the measure is commonly called. The Tax Limitation Amendment title and summary are in full compliance with these requirements. The summary clearly expresses the measure's limited purpose. The summary and title are devoid of political rhetoric. The summary presents the issue to be decided in a neutral manner, and fully informs the voter so that an intelligent ballot decision can be made.

I. THE TAX LIMITATION AMENDMENT DEALS WITH THE SINGLE SUBJECT OF THE PERCENTAGE OF VOTES NECESSARY TO PASS A CONSTITUTIONAL AMENDMENT IMPOSING NEW STATE TAXES OR FEES.

In 1968, the people adopted Article XI, Section 3 of the Florida Constitution permitting the amendment of the Constitution by initiative petitions. As originally adopted, that section authorized "amendments to any section" of the Constitution. In Adams v. Gunter, 238 So. 2d 824, 829 (Fla. 1970), the Court removed from the ballot a proposed amendment to create a unicameral Legislature, finding that it would have effected a "revision" rather than an "amendment" to the Florida Constitution. Thereafter, Article XI, Section 3 was revised to expand the permissible scope of initiative petitions, to permit both amendments and revisions and to allow changes to more than one section or article. H.J.R. 2835, Laws of Florida (1972). The clear intent of the people in the 1972 amendment was to increase public access to the ballot, to make resort to the initiative process more expedient.

The Tax Limitation Amendment reflects a theme of enormous importance to the voters of the State of Florida, the unbridled growth of new taxes. Although it is drawn with a very limited purpose, it has attracted the support of more than 500,000 registered voters and has been certified for inclusion on the ballot as Amendment Number Six. See Appendix B. The Florida Constitution is, as this Court has said, a document by which the people impose limits on their government. Smathers v. Smith, 338 So. 2d 825, 827 (Fla. 1976). The Respondent respectfully submits that the Tax Limitation Amendment presents precisely the sort of

exercise of political power inherent in the people which the initiative process was designed to accommodate.

This Court has held that the people should be permitted to vote on a proposed amendment unless it is shown to be "clearly and conclusively defective." Fine v. Firestone, 448 So. 2d 984, 987 (Fla. 1984); (for convenience, "Fine"); Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337, 339 (Fla. 1978) (for convenience, "Floridians"); Weber v. Smathers, 338 So. 2d 819, 821 (Fla. 1976). No such showing can be made with respect to the Tax Limitation Amendment, either on single subject or ballot summary grounds. This portion of the Respondent's brief considers the single subject requirement.

Its "primary and fundamental concern" is to preclude "logrolling," i.e. combining discrete changes in a single proposal so that the voter is put to the choice of accepting all of them in order to have the benefit of the one he or she favors. Evans v. Firestone, 457 So. 2d 1351, 1354 (Fla. 1984). The single subject limitation imposes a functional constraint, prohibiting changes in multiple government functions in a single proposal. Fine, 448 So. 2d at 990. The guiding principle for reviewing proposed initiatives for compliance with the single subject requirement is found in the search for a "logical and natural oneness of purpose." Fine, 448 So. 2d at 990. And the amendment should identify the provisions of the Constitution which are "substantially affected." Fine, 448 So. 2d at 989. The Tax Limitation Amendment satisfies those several demands of the single subject constraint.

The test for determining whether an initiative satisfies the single subject requirement has recently been stated as follows: "Although a proposal may affect several branches of government and still pass muster, no single proposal can substantially alter or perform the functions of multiple branches" In re Advisory Opinion to the Attorney General -- Save Our Everglades Trust Fund, 19 Fla. L. Weekly S276, 277 (Fla. May 26, 1994) (for convenience "Save Our Everglades"). In asking whether a proposed amendment substantially changes or performs more than one function, reference is had of course to **existing** functions, to the allocation of powers and duties among the three branches of government under the current constitutional scheme. Because the Tax Limitation proposal neither alters nor performs **any** current governmental functions, it satisfies the single subject requirement. It relates only to the people's own power to amend their Constitution.

The initiative before this Court simply provides that constitutional amendments which seek to impose new State taxes or fees must be approved by a two-thirds vote. It does not affect statutory levies, any taxes or fees now imposed by the Constitution, nor amendments on any topic other than State taxes or fees. Presently, all constitutional amendments must be approved "by vote of the electors." Art. XI, § 5(c), Fla. Const. A "vote of the electors" is defined to be a "majority" of those voting. Art. X, § 12(d), Fla. Const. Thus, the limited effect of the proposed amendment would be to raise the requirement from a majority vote to a two-thirds vote for the limited category of

amendments which propose new State taxes or fees. The people would simply require a higher level of voter approval for any amendments that would add to the Florida Constitution a new State exaction, that is State taxes or fees which are not in effect on November 7, 1994, the day before the election.

It should be noted at this juncture that the imposition of State taxes and fees is, at present, almost exclusively a function of statute law. It is not generally the business of the Florida Constitution to raise funds for appropriation by the State Legislature. The Constitution does authorize certain taxes, but leaves to the Legislature the decision whether to employ such taxes and to determine the tax base and rate. For example, Article VII, Section 1 authorizes a license tax on motor vehicles, boats, airplanes, trailers, trailer coaches and mobile homes "as defined by law" and "in the amounts and for the purposes prescribed by law." The Legislature has acted on that authorization by enacting Chapter 320, Florida Statutes. Article VII, Section 7 provides that pari-mutuel taxes may be preempted to the State or allocated in whole or in part to the counties. That constitutional provision does not impose any taxes; the Legislature has done that with the adoption of Chapter 550, Florida Statutes.

Because it addresses only new State taxes or fees imposed by amendment to the Florida Constitution, the Tax Limitation Amendment will have no effect whatever upon the enlargement of existing taxes or fees which the Legislature has enacted, nor upon the enactment of any new taxes or fees by the Legislature. Thus the Legislature

would be free, by way of illustration, to increase the State sales tax rate above 6%, to repeal any sales tax exclusions, deductions, or credits, or to extend the sales tax to services, as was done in 1987. Ch. 87-6 and Ch. 87-101, Laws of Florida. Likewise, the inclusion in the Constitution of taxes and fees now in effect, either as is, or at some higher rate and on an expanded base, will not be affected by the Tax Limitation Amendment because they would not be **new** taxes or fees. The entire spectrum of State taxes and fees now in use, and any changes which either the Legislature or people may wish to make to any or all of them, are beyond the reach of the Tax Limitation Amendment.

The Attorney General expresses doubt as to the interaction of the Tax Limitation Amendment with Article VII, Section 5(a), concerning taxes upon the estates, inheritances and incomes of natural persons. It has no effect on Article VII or any other existing provision in the Florida Constitution. The Tax Limitation initiative applies only to amendments to the Constitution. Article VII, Section 5(a) prohibits estate, inheritance and income taxes "in excess of the aggregate of amounts which may be allowed to be **credited upon or deducted from any similar tax** levied by the United States or any state." [Emphasis added]. Florida already imposes an estate tax in the amount of the federal estate tax credit. § 198.02, Fla. Stat. There is no federal inheritance tax. And the Internal Revenue Code does not allow a credit or deduction against federal personal income **tax** for state personal income taxes, but rather a deduction for them against adjusted gross **income**.

I.R.C. § 164(a)(3). With the Internal Revenue Code in that condition, Article VII, Section 5(a) of the Florida Constitution effectively prohibits a State personal income tax. If Congress were to amend the Internal Revenue Code to permit a direct offset against federal tax, rather than an income deduction (a highly improbable hypothetical, given the enormous reduction in federal tax collections it would bring), the Legislature could, without violating Article VII, Section 5(a) enact a Florida personal income tax. Nothing in the Tax Limitation Amendment would preclude that since the initiative constrains only **constitutional** levies pursuant to an amendment, not taxes or fees adopted by the Legislature. If, by contrast, a proposal were put forward to amend Article VII, Section 5(a), so that it **required** a State personal income tax, that proposed amendment would be subject to the two-thirds voting requirement specified in the Tax Limitation Amendment. The same would be true with respect to an inheritance tax.

The bottom line is this. The Legislature's role and prerogatives in enacting taxes and fees are untouched by the Tax Limitation Amendment. In the words of the Court, the amendment "does not augment or detract from any of the legislative powers enumerated in the Constitution." In re Advisory Opinion to the Attorney General -- Funding for Criminal Justice, No. 83,781 slip op. (Fla. July 15, 1994). The same is true of executive and judicial functions. The proposal neither changes nor performs any extant function of government. This initiative stands in stark contrast to those which the Court has disapproved. The Save Our

Everglades initiative, for example, would have intruded upon the powers of all three branches of government, so extensively that the Court found that it would have created "a virtual fourth branch of government with authority to exercise the powers of the other three on the subject of remedying Everglades pollution." Save Our Everglades, 19 Fla. L. Weekly at S278.

The Tax Limitation Amendment has no such expansive ambitions or reach. It deals narrowly with a modestly conceived purpose, the amendment of the State Constitution to impose new State taxes and fees. It treats not any powers, duties or functions of any branch of government, but rather addresses only the people's own power to effect a very specific class of proposed amendments to the Constitution. It does no more than require a higher level of public support for any new State levy which might be imposed by constitutional amendment than the majority vote approval which now obtains. This is not an amendment which will change or usurp any program, activity, service or function in which any branch of Florida government is now engaged.

It does not entail "undisclosed collateral effects" of the kind which concerned the Court in In re Advisory Opinion to the Attorney General -- Restricts Laws Related to Discrimination, 19 Fla. L. Weekly S109, S111 (Fla. March 3, 1994) (J. Kogan concurring) (for convenience, "Discrimination"). Its purpose is singular, to change the voting requirement applicable to specified proposals to amend the Florida Constitution.

Because the Tax Limitation Amendment is restricted to **new** State tax or fee measures, it affects no existing functions. Any statutory taxes or fees producing revenue as of November 7, 1994, may be elevated to constitutional status or altered as the people or Legislature see fit, without concern for the two-thirds voting requirement. Examples would include sales taxes, corporate income taxes, documentary stamp and intangible taxes, hunting license fees and all other levies which are now used to fund the government of the State of Florida. The rates or amounts of those levies and the bases on which they operate, may be increased without reference to the Tax Limitation Amendment. In restricting itself to **new** levies, the Tax Limitation Amendment, like the term limits initiative which this Court approved, clearly "writes on a clean slate." Advisory Opinion to the Attorney General -- Limited Political Terms, 592 So. 2d 225, 228 (Fla. 1991).

This initiative is completely unlike the multi-subject measure the Court rejected in Fine. By limiting overall revenue growth, the Fine cap would have precluded the Legislature from increasing taxes and fees. The Tax Limitation Amendment places no constraints on the Legislature. Secondly, the Tax Limitation Amendment does not attempt to limit the **revenues** available to the State. The Fine cap would have placed absolute limits on the aggregate revenue received by the State. The initiative here under consideration does not purport to put a ceiling on the amount or rate of State revenue growth. Nor (as the Save Our Everglades proposal would have done) does it any way direct, inhibit or constrain the

expenditure of State funds. Unlike Fine, the Tax Limitation Amendment does not affect the State's prerogative of raising fees to cover the provision of services or facilities to its citizens and guests. Nor does it curtail or diminish the State's ability to finance capital improvements through the issuance of revenue bonds. It is not a revenue, expenditure or budget cap.

The initiative now before the Court affects no ongoing governmental activity. The impact, if any, of the amendment would be purely prospective.¹ It has no effect on the ongoing duties of any executive agency. Not a single State employee will have his or her duties disrupted or affected by this change to the Florida Constitution. No statutes, regulations, or judicial rules will be affected in any way. The proposed amendment simply raises the threshold of votes necessary for passage of constitutional amendments in the narrow category of those amendments which propose new State taxes or fees.

Members of this Court have expressed concern that the increasing number of initiative petitions may serve to dilute constitutional jurisprudence. Advisory Opinion to the Attorney General -- Stop Early Release of Prisoners, No. 83,702, slip op. (Fla. July 7, 1994) (Grimes, J., dissenting) (for convenience,

¹Despite the Attorney General's expressed concern regarding the effective date of the amendment, Article XI, section 5(c) of the Florida Constitution provides that the effective date of an amendment may be "such other date as may be specified in the amendment" This amendment specifies that it is effective with respect to any proposals to impose new taxes by constitutional amendment on or after November 8, 1994. That is plainly an effective date provision. No decision of this Court requires that the specific words "effective date" appear in the proposal.

"Stop Early Release"); Advisory Opinion to the Attorney General -- Limited Marine Net Fishing, 620 So. 2d 997, 1000 (Fla. 1993) (McDonald, J., concurring). The proposed amendment in this case will have the opposite effect. Within its limited ambit, this amendment will make it harder to amend the Florida Constitution, thereby promoting the "permanency and supremacy of State constitutional jurisprudence" valued by this Court. Limited Marine Net Fishing, 670 So. 2d at 1000.

The Tax Limitation Amendment also avoids the logrolling violation which has been the basis for this Court's invalidation of other measures pursuant to the single subject limitation. See e.g., Discrimination, 19 Fla. L. Weekly at S110. There voters were asked to give a single "yes" or "no" answer to what the Court found to be ten questions -- the amendment dealt with ten classifications of people entitled to protection from discrimination. The amendment now before the Court, by contrast, does not embody more than one discrete proposal. It does not force a voter to accept or reject some combination of proposals which might be individually presented. Rather, it puts forward a solitary proposition -- a requirement for a greater voter approval rate for proposals to amend the Florida Constitution to impose new State taxes or fees. It therefore has a singular, unified objective. Floridians, 363 So. 2d at 339.

The Tax Limitation Amendment affirmatively identifies the constitutional provisions substantially affected. Discrimination, 19 Fla. L. Weekly at S110; Fine, 448 So. 2d at 989. It is drawn as

an amendment to Article XI, entitled "Amendments" and pertaining to amendments to the Florida Constitution. That, of course, is the subject of the Tax Limitation Amendment, though restricted to a narrow class of proposed amendments. The elector is thus on notice that Article XI is being amended. And the amendment specifically refers to Article X, Section 12(d) which provides that a "vote of the electors" means the vote of the majority of those voting on the matter in the election. Reference is made to that phrase because the Tax Limitation Amendment would specify a higher voter approval rate with respect to those proposed amendments which it covers than the majority approval required of other proposed amendments. Art. XI, § 5(c), Fla. Const.

The Court's interest in having a proposal identify the other provisions of the Constitution which are substantially affected is in assuring that it embodies but a single subject. Fine, 448 So. 2d at 989. That is plainly the case here and the Attorney General's suggestion that the Tax Limitation Amendment is faulty because it does not refer to section 5(c) of the article it would amend is misguided. The subject of Article XI is amendments to the Florida Constitution. Section 1 deals with amendments proposed by the Legislature, section 2 those made by the Revision Commission, section 3 those made by initiative, section 4 amendments by constitutional convention, section 5 the election process, and section 6 proposals by the Taxation and Budget Reform Commission. The Tax Limitation Amendment would add a new section 7 dealing with proposed amendments concerning new State taxes or fees. New

section 7 does not in any way amend section 5(c)'s requirement for approval by "vote of the electors." What it amends is the definition of that phrase found in Article X, Section 12(d) and the voter's attention is expressly directed to this change. The absence of a reference in the Tax Limitation Amendment to section 5 in no way suggests that the amendment contains some second subject, and an examination of the proposal itself makes clear that it does not. Conversely, including a reference to section 5 would not change the scope, effect or operation of the amendment in any way and so would not be eliminating some second subject from the proposal -- that is so because there is no second subject.

The decisions in which the Court has invoked this principle reflect amendments drawn to one **article** which the Court found would substantially affect other **articles** that are in no way identified. In Fine, for example, a proposal to amend Article VII would also have substantially affected Articles IX and XII. Fine, 448 So. 2d at 991. In Discrimination, a proposed amendment to Article I also "encroaches on municipal home rule powers [Article VIII] and on the rulemaking authority of executive agencies [Article IV] and the judiciary [Article V]." Discrimination, 19 Fla. L. Weekly at S110. And in Stop Early Release, a proposed amendment to Article I would also have substantially affected and amended Article IV, authorizing, at section 8(c), the Legislature to create a parole and probation commission. Stop Early Release, No. 83,702 at p. 5.

The Court has not held that a proposed amendment must expressly refer to every part of the same article which it is

amending and the suggestion that failing to do so somehow necessarily enfolds a second subject into the proposal is intellectually absurd. The Court has, in fact, approved amendments adding new sections which do not refer to other sections within the same article. See e.g., Carroll v. Firestone, 497 So. 2d 1204, 1206 (Fla. 1986) (adding a new section 15 to Article X, permitting State operated lotteries, an amendment which lifted, as to the State, the prohibition against lotteries found in section 7 of the same article).

In sum, the Tax Limitation Amendment satisfies every formulation of the single subject test which this Court has articulated. It adheres to the demand that citizen initiatives reflect a "logical and natural oneness of purpose." Fine, 448 So. 2d at 990. It is of very limited scope. It is narrowly and precisely drawn. It makes a singular change, one pertaining to the amendment of the Florida Constitution -- and then only with respect to a given class of proposed amendments, namely those which would impose new State taxes or fees. The proposal does not alter or perform any functions of government; no extant functions, duties, responsibilities or prerogatives of any branch of State government are implicated. That it embraces but a single subject is plain and undeniable, and the Respondent respectfully requests that the Court so find.

II. THE TAX LIMITATION AMENDMENT ACCURATELY
SETS FORTH THE SUBSTANCE OF THE PROPOSAL
IN THE BALLOT SUMMARY.

Section 101.161 of the Florida Statutes sets forth the requirements for the ballot summary when a proposed constitutional amendment is submitted to the voters. The statute provides that the "substance of such amendment . . . shall be printed in clear and unambiguous language on the ballot" § 101.161, Fla. Stat. There shall be an "explanatory statement . . . of the chief purpose of the measure." The ballot title shall "consist of a caption . . . by which the measure is commonly referred to or spoken of." § 101.161, Fla. Stat.

Although the ballot summary must fairly advise the voter so that the voter can intelligently cast his or her ballot, the ballot language need not explain each and every detail or ramification of the amendment. Carroll, 497 So. 2d at 1206. Because the proposition in the instant initiative is limited and straightforward, the ballot language easily captures the entire effect of the proposed amendment. The summary clearly informs the voter that it applies only to "new State taxes or fees." It defines the phrase "new State taxes or fees." It clearly informs the voter that the proposition is limited to new State taxes or fees which would be imposed by constitutional amendment. It also clearly informs the voter that a two-thirds vote will be necessary to approve constitutional amendments which seek to impose such new taxes or fees. All of the proposal's essential elements are presented in the ballot summary.

The "chief purpose" of the Tax Limitation Amendment, to prohibit new State taxes or fees without two-thirds voter approval, is plainly communicated to the voter. The ballot title and summary certainly insure that "the public has fair notice of the meaning and effect of the proposed amendment." Discrimination, 19 Fla. L. Weekly at S110. The ballot summary must be "accurate and informative." Smith v. American Airlines, 606 So. 2d 618, 621 (Fla. 1992). The title and summary are not misleading by omission and do not fly under false colors through the use of political rhetoric, as did the ballot title and summary disapproved by this Court in Save Our Everglades, 19 Fla. L. Weekly at S278. Rather the legal effect of the proposed amendment is conveyed in informative and neutral terms. The voter will have no difficulty ascertaining the purpose of the measure, to require two-thirds voter approval for constitutional amendments proposing new State taxes or fees, and deciding either to accept or reject that proposition.

The Attorney General, in his petition to this Court, raises the issue whether a ballot title may include a question and still satisfy the requirements of Section 101.161, Florida Statutes. The petition states,

This Court, therefore, may wish to consider whether the use of a question under any circumstances can adequately inform the voter of the substance of an initiative petition as required by Section 101.161, Florida Statutes.

Petition of the Attorney General, at page 3. Since he has included the contention in his referral to the Court of all four Tax Cap

Committee initiatives, it is apparently the Attorney General's view that a ballot title may never include a question. The Court has never so held and there is no basis for doing so here.

The Attorney General's petition misconstrues the meaning of Section 101.161. That section does not require the ballot title to express by itself the substance or chief purpose of the amendment. Such a task would be impossible in a fifteen-word title. Rather, Section 101.161(1) requires only that the title "consist of a caption . . . by which the measure is commonly referred to or spoken of." It is the seventy-five-word ballot summary which must state the "chief purpose of the measure." § 101.161(1), Fla. Stat.

Even so, it is clear that a question can, and this one does, impart a great deal of information. The question in this ballot title, "Should two-thirds vote be required for new constitutionally imposed State taxes/fees?" imparts a good deal more information about the details of the measure than would just the title "Tax Limitation." Yet, the Attorney General would apparently find the title "Tax Limitation" acceptable since it would contain no question. The title here chosen conveys more than did the titles "Homestead Valuation Limitation" and "Limiting Marine Net Fishing," both of which were approved by this Court. Limited Marine Net Fishing, 620 So. 2d at 997, 999 (McDonald, Jr., concurring); In Re Advisory Opinion to the Attorney General -- Homestead Valuation Limitation, 581 So. 2d 586, 587 (Fla. 1991). The ballot titles in those cases contained virtually no information about the details of the measures. Instead, they merely expressed the topics covered by

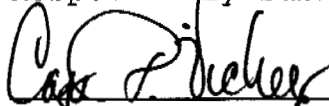
the measures. The title in this case identifies the topic for the voters more clearly than did the titles used in the cases cited above. The title is just as informative as it would be if presented in statement form -- e.g., "Requires Two-Thirds Vote for New Constitutionally Imposed State Taxes/Fees." The fact is that every ballot proposal to amend the Constitution presents a question to the voter; here, the question in the ballot title does no more than help elucidate the question the voter is being asked to decide. The Attorney General misreads the statute and would have the Court draw a distinction based entirely on form and disregarding substance.

The ballot title and summary, in conclusion, are in full compliance with the requirements of the statute as this Court has interpreted them. The voter is in no sense misled and is given a clear and understandable statement of the effect which the proposed amendment would have. Accordingly, the Respondent asks that the Court approve the measure under Florida Statutes Section 101.161.

CONCLUSION

For the reasons set forth above, Respondent Tax Cap Committee respectfully submits that the Tax Limitation initiative petition fully complies with the single subject requirement of Article XI, Section 3, of the Florida Constitution and the statutory requirements of Section 101.161 of the Florida Statutes. Accordingly, the Respondent requests that this Court issue an advisory opinion to the Attorney General so stating.

Respectfully submitted,




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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to The Honorable Robert A. Butterworth, Attorney General, The Capitol, Tallahassee, FL 32301, by United States mail, this 29th day of July, 1994.


CASS D. VICKERS

APPENDICES

APPENDIX A

Ballot Title: **TAX LIMITATION: SHOULD TWO-THIRDS VOTE BE REQUIRED FOR NEW CONSTITUTIONALLY-IMPOSED STATE TAXES/FEES?**

SUMMARY: Prohibits imposition of new State taxes or fees on or after November 8, 1994 by constitutional amendment unless approved by two-thirds of the voters voting in the election. Defines "new State taxes or fees" as revenue subject to appropriation by State Legislature, which tax or fee is not in effect on November 7, 1994. Applies to proposed State tax and fee amendments on November 8, 1994 ballot and those on later ballots.

FULL TEXT OF PROPOSED AMENDMENT: Section XI of the Florida Constitution is hereby amended by creating a new Section 7 reading as follows:

Notwithstanding Section X, Section 12(d) of this constitution, no new State tax or fee shall be imposed on or after November 8, 1994 by any amendment to this constitution unless the proposed amendment is approved by not fewer than two-thirds of the voters voting in the election in which such proposed amendment is considered. For purposes of this section, the phrase "new State tax or fee" shall mean any tax or fee which would produce revenue subject to lump sum or other appropriation by the Legislature, either for the State general revenue fund or any trust fund, which tax or fee is not in effect on November 7, 1994 including without limitation such taxes and fees as are the subject of proposed constitutional amendments appearing on the ballot on November 8, 1994. This section shall apply to proposed constitutional amendments relating to State taxes or fees which appear on the November 8, 1994 ballot, or later ballots, and any such proposed amendment which fails to gain the two-thirds vote required hereby shall be null, void and without effect.



FLORIDA DEPARTMENT OF STATE

Jim Smith
Secretary of State

DIVISION OF ELECTIONS

Room 1801, The Capitol, Tallahassee, Florida 32399-0250
(904) 488-7690

July 21, 1994

Mr. David Biddulph, Chairman
Tax Cap Committee
4194 South Atlantic Avenue
Ocean Village Square
New Smyrna Beach, Florida 32169

Dear Mr. Biddulph:

Re: Tax Limitation: Should two-thirds vote be required for new constitutionally-imposed state taxes/fees?

This is to inform you that your committee, Tax Cap Committee, has received the required number of signatures for placement on the General Election Ballot, November 8, 1994. The amendment number is Six. We are enclosing a copy of the certification.

If you have any further questions, please contact this office.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dorothy W. Joyce".

Dorothy W. Joyce
Division Director

DWJ/pr

Enclosures

APPENDIX "B"

FLORIDA DEPARTMENT OF STATE
DIVISION OF ELECTIONS

SUMMARY OF SIGNATURES NEEDED FOR BALLOT POSITION
PURSUANT TO ARTICLE XI, SECTION 3, FLORIDA CONSTITUTION

Political Committee: Tax Cap Committee

Amendment Title: Tax Limitation: Should 2/3 vote be required for new
constitutionally-imposed state taxes/fees?

Congressional District	Voting Electors in the 1992 Presidential Election	8% Required By Article XI, Section 3 Florida Constitution	Signatures Certified for the 1994 General Election
FIRST	237,308	18,985	19,206
SECOND	244,849	19,588	10,861
THIRD	161,466	12,917	16,447
FOURTH	249,764	19,981	32,217
FIFTH	280,218	22,417	14,270
SIXTH	228,756	18,300	26,208
SEVENTH	232,093	18,567	23,721
EIGHTH	216,317	17,305	4,435
NINTH	284,016	22,721	19,583
TENTH	274,110	21,929	21,929
ELEVENTH	204,150	16,332	21,875
TWELFTH	203,327	16,266	19,304
THIRTEENTH	296,348	23,708	23,006
FOURTEENTH	286,503	22,920	30,200
FIFTEENTH	277,161	22,173	26,932
SIXTEENTH	271,387	21,711	21,042
SEVENTEENTH	141,624	11,330	4,226
EIGHTEENTH	169,082	13,527	4,832
NINETEENTH	289,505	23,160	34,706
TWENTIETH	252,206	20,176	27,640
TWENTY-FIRST	148,415	11,873	4,655
TWENTY-SECOND	261,655	20,932	19,863
TWENTY-THIRD	157,624	12,610	16,464
TOTAL	5,367,884	429,428	443,622

DATE: 07/21/94 11:27 am