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JUL 29 1994

IN THE SUPREME COURT
STATE OF FLORIDA

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN RE:

ADVISORY OPINION TO THE
ATTORNEY GENERAL --
TAX LIMITATION

CASE NO.: 83,969

INITIAL BRIEF OF THE NATIONAL
FEDERATION OF INDEPENDENT BUSINESS

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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INTRODUCTION

In this brief, the National Federation of Independent Business will be referred to as NFIB. The Appendix to the Brief consists of this Court's Interlocutory Order of July 12, 1994 and the July 8, 1994 Petition for Advisory Opinion from the Attorney General. The symbol (A-) will be used to refer to such appendix and the appropriate page number thereof. All emphasis in this brief has been supplied unless the contrary is indicated.

STATEMENT OF THE FACTS AND OF THE CASE

On July 8, 1994, in accordance with the provisions of Article IV, Section 10 of the Florida Constitution and Florida Statute 16.061, the Attorney General petitioned this Court for a written opinion as to the validity of an initiative petition proposing an amendment to the Florida Constitution circulated pursuant to Article XI, Section 3 of the Florida Constitution. (A-5)

The initiative petition was submitted to the Attorney General on June 22, 1994 pursuant to the directives of Florida Statute 15.21. (A-5) The ballot title, summary and full text of the proposed amendment are as follows:

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

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 revenues 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: Article XI of the Florida Constitution is hereby amended by creating a new Section 7 reading as follows:

Notwithstanding Article 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. (A-5,6)

Following receipt of the July 8, 1994 request for an advisory opinion from the Attorney General, this Court on July 12, 1994 entered an interlocutory order setting forth that the Attorney General has requested the Court's opinion:

...as to whether the validity of an initiative petition circulated pursuant to Article XI, Section 3, Florida Constitution, seeking to create Article XI, Section 7, Florida Constitution, complies with Article XI, Section 3, Florida Constitution, and whether the proposed ballot title and summary comply with Section 101.161, Florida Statutes. (A-1)

The Court directed a briefing schedule for interested parties and scheduled oral argument for review of the Attorney General's request. (A-3)

The National Federation of Independent Business (NFIB) is an interested party. The NFIB is composed of more than 23,000 members and is the state's largest small business advocacy organization with the purpose of providing independent business owners with a voice in the crafting of legislation and regulation affecting their livelihoods. The issue of taxation and the ability of voters to express their views by ballot is a matter of critical interest to the NFIB membership. The NFIB supports the tax limitation initiative now pending before this Court.

SUMMARY OF ARGUMENT

Article XI, Section 3 of the Florida Constitution provides for amendments to any portion of the Constitution by citizen initiative but requires that any such initiative be limited to a single subject. The proposed tax limitation initiative fully complies with this requirement.

The proposed tax limitation initiative would create a new subsection (7) in Article XI of the Florida Constitution and would provide that any proposed Constitutional amendment which imposes a new state tax or fee must be approved by not fewer than two-thirds of the voters, "notwithstanding Article X, Section 12(d)" of the Florida Constitution, which otherwise defines vote of the electors to mean a majority of the voters. The proposed initiative would apply only to Constitutional amendments which appear on the November 8, 1994 ballot or later ballots and would not affect or impact existing Constitutional authority to impose a tax, even if unexercised.

The proposed tax limitation initiative clearly embraces but one specific subject, raising the voter approval requirement, on and after November 8, 1994, from a majority vote to a two-thirds vote for Constitutional amendments which seek to impose new state taxes or fees. Such proposed initiative is in full conformity with the requirements of Article XI, Section 3 of the Florida Constitution.

The tax limitation initiative also fully comports with the requirements of Florida Statute 101.161, which requires that a

ballot title not exceeding 15 words in length and a ballot summary not exceeding 75 words clearly and unambiguously set forth the chief purpose of the proposed amendment. The tax limitation initiative ballot title and summary fairly advise the voter in a neutral manner of the chief purpose of the amendment.

ISSUE NO. 1

**THE INITIATIVE PETITION SEEKING TO CREATE ARTICLE XI,
SECTION 7 OF THE FLORIDA CONSTITUTION, FULLY COMPLIES
WITH ARTICLE XI, SECTION 3 OF THE FLORIDA CONSTITUTION.**

The Attorney General has, pursuant to F.S. 16.061, requested an advisory opinion of this Court as to the text of the initiative petition's compliance with Article XI, Section 3 of the Florida Constitution and the proposed ballot title and summary's compliance with F.S. 101.161. Florida Statute 16.061 specifically provides that the petition may "enumerate any specific factual issues which the Attorney General believes would require a judicial determination."

The Attorney General, in his July 8, 1994 petition to this Court, noted that Article XI, Section 3 of the Florida Constitution authorizes revisions or amendments of any portion of the Constitution by initiative, but requires that any such revision or amendment must "embrace but one subject and matter directly connected therewith." The Attorney General suggests that the proposed initiative may fail "to inform the voter of a change to Article XI, Section 5(c)" which currently requires only a majority vote of the electorate to approve an amendment or a revision to the Constitution, and thus not comply with the single-subject requirement.

The Attorney General also suggests that the effect of the proposed initiative on existing Constitutional provisions that authorize the imposition of a tax, not currently imposed, is unclear. Thus, the Attorney General reasons the proposed

initiative may affect such provisions as Article VII, Section 5(a) and offend the Article XI, Section 3 prohibition against "logrolling" or, conversely, may mislead or confuse the voters if such currently authorized but not imposed taxes are not affected.

The "single-subject" requirement of Article XI, Section 3, Florida Constitution, is set forth in the following 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.

This Court in *Fine v. Firestone*, 448 So.2d 984 (Fla. 1984) noted:

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. (*Supra* at 988.)

This Court in *Advisory Opinion to the Attorney General-- Limited Political Terms in Certain Elective Offices*, 592 So.2d 225, 227 (Fla. 1991) similarly addressed the single-subject test noting:

To state the test another way, a proposed amendment is valid if it "may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme." *Id.* (quoting *City of Coral Gables v. Gray*, 154 Fla. 881, 883-84, 19 So.2d 318, 320 (1944)). The single-subject requirement imposes a "functional as opposed to a locational restraint on the range of authorized amendments." *Fine*, 448 So.2d at 990.

This Court recently addressed the single-subject requirement of Article XI, Section 3 in *In Re Advisory Opinion to the Attorney General--Save Our Everglades Trust Fund*, 19 FLW S.276 (Fla. 1994), noting:

The single subject limitation also guards against "logrolling," a practice wherein several separate issues are rolled into a single initiative in order to aggregate votes or secure approval of an otherwise unpopular issue. (*Supra* at S.277.)

This Court further reiterated in the *Save Our Everglades Trust Fund* case, *supra* at 277, the test which is applied in determining whether the single subject requirement has been met:

This Court utilizes a "oneness of purpose" standard in applying the single-subject rule. *Fine*, 448 So.2d at 990 ("the one-subject limitation deal[s] with a logical and natural oneness of purpose"). This standard in turn incorporates a functional test:

[T]he test should include a determination of whether the proposal affects a function of government as opposed to whether the proposal affects a section of the Constitution...[T]he one-subject limitation...was selected to place a functional as opposed to a locational restraint on the range of authorized amendments.

The tax limitation initiative at issue clearly meets the single-subject requirement. The proposed initiative would create a new subsection (7) in Article XI and provide that any proposed Constitutional amendment which imposes a new state tax or fee is required to be approved by not fewer than two-thirds of the voters. The proposed initiative would further provide that such requirement would be imposed "notwithstanding Article X, Section 12(d) of this Constitution." Article X, Section 12(d) of the Florida Constitution defines vote of the electors to mean "a majority of those voting on the matter." The single-subject matter of the proposed amendment, thus, clearly and exclusively relates to raising the voter approval requirement for Constitutional amendments seeking to impose new state taxes or fees from the current Article X, Section 12(d) requirement of a majority to a

two-thirds vote. The affected Constitutional section is referenced and the single-subject matter requirement is met.

The Attorney General's suggestion that the proposed initiative may fail "to inform the voter of the change to Article XI, Section 5(c), Florida Constitution, which currently requires only a majority vote of the electorate to approve an amendment" is incorrect. Article XI, Section 5(c) clearly contains no requirement that an amendment be approved by a "majority" of the voters.¹ It is Article X, Section 12(d) that requires a "majority" of voters. This Constitutional provision is, as noted, specifically referenced in the proposed tax limitation initiative.

It is also suggested by the Attorney General that the effect of the tax limitation initiative on such Constitutional provisions as Article VII, Section 5(a), which authorizes certain inheritance and income taxes, may be unclear by reason of its reference to a "tax or fee not in effect on November 7, 1994." The operative language of the proposed tax limitation initiative is, however, "no new State tax or fee shall be imposed on or after November 8, 1994 by any amendment to this Constitution..." In the situation suggested by the Attorney General, there is clearly an existing Constitutional provision which authorizes a tax. Though such tax may not yet be implemented by the Legislature, the Constitutional authority for such tax would predate and thus be unaffected by the

¹Article XI, Section 5(c) concerns the effective date of an amendment. The only reference in Article XI, Section 5(c) to a vote of the electors is the following: "If the proposed amendment or revision is approved by vote of the electors, it shall be effective..."

proposed initiative. Any post-November 7, 1994 action by the Legislature to implement pre-existing but hitherto unutilized taxing authority would not be imposition of a "new" tax or fee "imposed on or after November 8, 1994 by any amendment to this Constitution." It would quite simply be the imposition of a new tax by legislation based on constitutional authority that existed prior to November 8, 1994. Again, nothing in the proposed tax limitation initiative impacts such pre-existing but unutilized Constitutional taxing authority such as is found in Article V, Section 5(a). Thus, the tax limitation initiative neither offends the prohibition against "logrolling" nor misleads or confuses the voters concerning what taxes or fees may be imposed or increased.

The Attorney General has also suggested that while the proposed initiative purports to apply to state tax and fee amendments subsequent to November 7, 1994, the proposed initiative does not specify an effective date for the amendment itself. It is asserted that under Article XI, Section 5(c) of the Florida Constitution, an amendment becomes effective on the first Tuesday after the first Monday in January following the election, "or on such other date as may be specified in the amendment or revision." The proposed initiative, however, clearly specifies that it is applicable to proposed state tax and fee amendments on the November 8, 1994 ballot as well as those on later ballots.² The Attorney

²The text of the proposed initiative expressly provides "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..."

General appears to assume a requirement that a separate "effective date" be set forth in the same manner as is commonly found in legislative enactments. However, there is no such Constitutional, statutory nor decisional law requirement to this effect. The proposed initiative clearly and unequivocally sets forth within its text a November 8, 1994 effective date.

In summary, the proposed tax limitation initiative applies to a "new State tax or fee" as appropriately defined within the initiative, which tax or fee is imposed on or after November 8, 1994 "by any amendment to this Constitution." The tax limitation initiative, which would raise the requirement for approval of such a Constitutional amendment from a majority to a two-thirds vote, properly references Article X, Section 12(d) of the Florida Constitution which otherwise defines vote of the electorate to mean a majority of those voting and is in full compliance with the "single-subject" requirement of Article XI, Section 3 of the Florida Constitution.

ISSUE NO. 2

**THE PROPOSED BALLOT TITLE AND SUMMARY FOR THE TAX
LIMITATION INITIATIVE FULLY COMPORT WITH THE REQUIREMENTS
OF F.S. 101.161.**

Florida Statute 101.161 concerns Constitutional amendments submitted to the vote of the people. In subsection (1) of this statute, it is provided in pertinent part:

The wording of the substance of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the joint resolution, constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. 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.

The ballot title and summary in the instant matter provide:

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

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 revenues 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.

In *Askew v. Firestone*, 421 So.2d 151, 155 (Fla. 1982), this Court noted that the requirement for the title and summary of proposed Constitutional amendment ballots is the same as for all ballots, citing with approval the test from *Hill v. Milander*, 72 So.2d 796, 798 (Fla. 1954):

...that the voter should not be misled and that he have an opportunity to know and be on notice as to the proposition on which he is to cast his vote...all that

the Constitution requires or that the law compels or ought to compel is that the voter have notice of that which he must decide...What the law requires is that the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot. (Emphasis the Court's)

Indeed, the ballot title and summary "need not explain every detail or ramification of the proposed amendment," *Advisory Opinion to the Attorney General--Limited Political Terms in Certain Elective Offices, supra* at 228, but must "state in clear and unambiguous language the chief purpose of the measure." *Askew v. Firestone, supra* at 155.

The chief purpose of the proposed tax limitation initiative is to require that new state taxes or fees imposed by amendment to the Florida Constitution be approved by a vote of two-thirds of the voters. The title and ballot summary clearly and unambiguously set forth such chief purpose of the measure. No particular grammatical form as to the title or summary is mandated. Florida Statute 101.161(1) requires only that the ballot title not exceed 15 words in length and the summary not exceed 75 words in length and that the language used be "clear and unambiguous."

The Attorney General suggests that because the ballot title is phrased as a question to the voters, it may, rather than informing the voters of the legal effect of the amendment, pose a question that, "by its very nature, signifies that the issue is unresolved." On the contrary, the use of the question form in the title and the wording of the question only heightens the clarity of the single issue placed before the electorate. Rather than leaving an issue

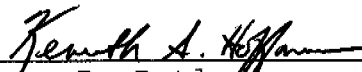
unresolved, the title very succinctly sets forth the chief purpose and precise matter that is being placed before the voters.

Further, the summary clearly and accurately reflects the chief purpose, nature and substance of the proposed tax limitation amendment. Consequently, both the ballot title and summary have fulfilled that which the "law requires" by fairly advising "the voter sufficiently to enable him intelligently to cast his ballot." See *Askew v. Firestone*, *supra* at 155.

CONCLUSION

Based upon the foregoing reasoning and citations of authority, the National Federation of Independent Business respectfully prays that this Court issue an advisory opinion to the Attorney General that the tax limitation initiative petition fully complies with the requirements of Article XI, Section 3 of the Florida Constitution and with the requirements of Florida Statute 101.161.

Respectfully submitted,

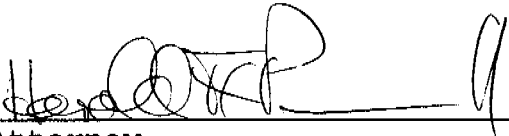


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Robert A. Butterworth, Attorney General, State of Florida, The Capitol, Tallahassee, Florida 32399, this 29th day of July, 1994.



Attorney

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IN THE SUPREME COURT
STATE OF FLORIDA

IN RE:

ADVISORY OPINION TO THE
ATTORNEY GENERAL --
TAX LIMITATION

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APPENDIX

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