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IN THE  
SUPREME COURT OF FLORIDA

Case No. 83,969

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Upon A Request From The  
Attorney General For An  
Advisory Opinion As To The  
Validity Of An Initiative Petition

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IN RE:  
ADVISORY OPINION  
TO THE ATTORNEY GENERAL  
TAX LIMITATION

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**INITIAL BRIEF OF BETHUNE BEACH PROPERTY OWNERS ASSOCIATION; INDIAN  
TRAILS HOMEOWNERS ASSOCIATION, INC. AND THE WOODLANDS OF CLEAR  
CREEK HOMEOWNERS ASSOCIATION, INC.  
IN SUPPORT OF TAX LIMITATION INITIATIVE**

R/TIMOTHY JANSEN, P.A.

Florida Bar Number 0691208

210 South Monroe Street

Tallahassee, Florida 32301

Telephone: (904) 224-1440

ATTORNEY FOR Bethune Beach

Property Owners Association; Indian

Trails Homeowners Association, Inc.

and The Woodlands of Clear Creek

Homeowners Association, Inc.

**TABLE OF CONTENTS**

TABLE OF CITATIONS ..... ii

STATEMENT OF FACTS ..... 1

SUMMARY OF THE ARGUMENT ..... 3

ARGUMENT ..... 4

ISSUE I

THE TAX LIMITATIONS AMENDMENT COMPLIES WITH THE  
SINGLE SUBJECT REQUIREMENT ..... 4

ISSUE II

THE TAX LIMITATIONS AMENDMENT BALLOT TITLE  
AND SUMMARY COMPLIES WITH § 101.161 FLA. STAT..... 8

CONCLUSION..... 12

CERTIFICATE OF SERVICE ..... 12

## TABLE OF CITATIONS

### CASE DECISIONS

<u>Askew V. Firestone,</u> 421 So. 2d 151 (Fla. 1982) .....	4,8,9
<u>Carroll v. Firestone,</u> 497 So. 2d 1204 (Fla. 1986) .....	6,9
<u>Evans v. Firestone,</u> 457 So. 2d 1351 (Fla. 1984) .....	4,9
<u>Fine V. Firestone,</u> 448 So. 2d 984 (Fla. 1984) .....	4,5,6
<u>In Re: Advisory Opinion to the Attorney General - Save Our Everglades Trust Fund,</u> Case 83,301 (1994) .....	4,5,6,7,9,10
<u>Weber v. Smathers,</u> 338 So. 2d 819 (Fla. 1976) .....	4

### FLORIDA CONSTITUTION

Article IV, Section 10 .....	1
Article X, Section 12 (d) .....	1,5,6
Article XI, Section 3 .....	1,3,4,6
Article XI, Section 5 (c) .....	5,6

### FLORIDA STATUTES

Section 16.061 .....	1
Section 101.161 .....	3,8,10

## STATEMENT OF THE CASE AND FACTS

The Attorney General initiated this proceeding to test the propriety of the Tax Limitation Amendment, an amendment commenced through the initiative process of Article XI, Section 3, Fla. Constitution. The amendment is entitled "Tax Limitation: Should Two-Thirds Vote be Required for New Constitutionally-Imposed State Taxes/Fees?" 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. In compliance with constitutional and statutory procedural requirements, the Attorney General, by letter dated July 8, 1994, asked the Court to consider whether the proposed constitutional amendment meets the requirements of law for placement on a ballot to the voters of Florida.

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 amendments to determine whether the initiative petition complies with the requirements of Article XI, Section 3 of the Florida Constitution. The Court entered an Order authorizing interested parties to file briefs on or before July 29, and setting oral argument for August 23, 1994. The proposed Tax Limitation Amendment, including an introduction or preamble, states:

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 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.

Respondents are a group of Florida property and homeowner associations united together for the purpose of putting a halt to the "unchecked" and "freewheeling" government regulations which continue to increase existing taxes, impose new taxes, and eliminate existing tax exemptions. These unrestricted and unending tax increases impose a serious financial burden on all landowners in Florida, including the Respondents. Another concern of the Respondents is the steady erosion of their property rights. Their property values have been severely impacted on by the imposition of regulations under the Growth Management Act and numerous other regulatory processes. Respondents, like many other property owners, have been denied use of their property but have not been compensated for their loss. Respondents feel that passage of this initiative proposed by the TAX CAP Committee will restrict the increases in taxes and give the citizens of Florida a chance to vote on how their money is spent. Consequently, the Respondents are an "interested party" to the proceedings before the Court.

## SUMMARY OF THE ARGUMENT

The citizens of the State of Florida seek to exercise the power granted to them by the Constitution, namely the right to "revise or amend any portion or portions of the constitution" by initiative. Article XI, section 3 of the State Constitution. The Court recognizes its duty to act with "extreme care, caution, and restraint before it removes a constitutional amendment from the vote of the people." In fact, the Court must allow the amendment on the ballot unless it is shown to be "clearly and conclusively defective."

The Tax Limitation Amendment seeks to amend Article XI of the Constitution. The single purpose of the amendment is to increase the vote requirement from that of a majority vote to a two-thirds vote when amendments propose new State taxes or fees. The Tax Limitation initiative satisfies all the tests articulated by the Court. The amendment reflects a logical and natural oneness of purpose. It provides for a singular change to the Constitution which is narrowly drawn and has no substantial effect on any other provision of the Florida Constitution. Furthermore, it does not perform any function of government and does not substantially alter the powers, functions or structure of state government.

The Tax limitation Amendment also satisfies the statutory requirements of § 101.161 (1) of the Florida Statutes. The amendment informs the voter of the issue contained within the amendment, identifies the purpose and effect of such amendment, and thereby allows the voter to make an informed and intelligent choice. Thus the amendment complies with all the requirements of the law and the voters of Florida should be allowed to cast their ballot on this amendment in November.

## ARGUMENT

### I. THE TAX LIMITATION AMENDMENT COMPLIES WITH THE SINGLE SUBJECT REQUIREMENT.

The Supreme Court in determining the validity of a proposed Constitutional amendment presented by the people's initiative being included on a ballot has recognized its duty to permit a vote on the proposed amendment unless it is shown to be "clearly and conclusively defective." Weber v. Smathers, 338 So. 2d 819, 821 (Fla. 1976); Fine v. Firestone, 448 So.2d 984, 987 (Fla. 1984). Moreover, the Court has previously recognized its duty to act with "extreme care, caution, and restraint before it removes a constitutional amendment from the vote of the people." Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982). Under these strict standards of review, the challenge to this amendment must fail with respect to both the single subject and ballot summary grounds.

Article XI, Section 3 of the Florida Constitution requires that a Constitutional amendment proposed by initiative petition "embrace but one subject and matter directly connected therewith." Evans v. Firestone, 457 So. 2d 1351, 1352 (Fla. 1984). The Court has previously stated that the single-subject requirement is a rule of restraint, which was "placed in the constitution by the people to allow citizens, by initiative petition, to propose and vote on singular changes in the functions of our governmental structure." Fine v. Firestone, 448 So. 2d at 988. The single-subject limitation also guards against "logrolling", a device wherein several separate issues are rolled into a single initiative in order to aggregate votes or secure approval of an otherwise unpopular issue. In re Advisory Opinion to the Attorney General -- Save Our Everglades Trust Fund, 19 Fla. L. Weekly S276, 277 (Fla. May 26, 1994) (hereinafter referred to as "Everglades"); Fine, at 988.

The Court utilizes a "oneness of purpose" standard in applying the single-subject rule. Fine, at 990. Consequently, the Court must determine whether the proposed measure "may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme." Id.

In order to prevent confusion and thereby allow the public to comprehend the proposed changes to the Constitution, the amendment should identify the provisions of the Constitution which are "substantially affected." Fine, at 989. This in turn incorporates a functional test, as opposed to a locational restraint, whereby the Court must determine whether the proposal "affects a function of government as opposed to whether the proposal affects a section of the constitution." Fine, at 989. "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...." Everglades, at S277.

The single dominant plan or scheme of the Tax Limitation amendment is that any constitutional amendments which seek to impose new State taxes or fees must be approved by a two-thirds vote. At the present time, all constitutional amendments must be approved "by vote of the electors." Fla Const. art. XI, sec. 5 (c). Article X, Section 12 (d) defines the electors as a "majority" of those voting. Consequently, the proposed initiative merely seeks to increase the vote requirement from that of a majority vote to a two-thirds vote when an amendment proposes new State taxes or fees.

Because of the narrow wording of the initiative, the Tax Limitation Amendment will have no effect whatsoever on the enlargement of existing taxes or fees which the Legislature has enacted. Nor will the amendment have any effect on any new State taxes or fees enacted by the



Legislature. The initiative affects only those State taxes or fees imposed by amendment to the Florida Constitution. Upon passage of this limited amendment, the Legislature will still have the power to enact, or increase existing taxes or fees pursuant to those powers. Likewise, the Tax Limitation Amendment neither alters nor performs any of the functions enumerated to the Executive or Judicial branches of government. Unlike the broad sweeping initiative in Everglades, this limited amendment will not create a fourth branch of government. Rather, the initiative merely seeks to increase the numerical requirements for passage of constitutional amendments for new State taxes and fees. The Tax Limitation initiative is more limited than necessary to comply with the functional restraint requirement outlined by the Court in Fine.

The proposed initiative is immune from any logrolling challenge. Each voter will have a single, clearly stated choice to raise the threshold of votes necessary for passage of Constitutional amendments. The amendment embodies one single proposal. Thus no voter will be torn between accepting or rejecting some combination of the proposals which might become construed as the "bitter" with the "sweet" choice as condemned by the Court in Everglades.

The Tax Limitation Amendment explicitly identifies the constitutional provisions affected. More specifically, the amendment directly refers to Article X, section 12(d). The voter is thus on notice that Article XI is being amended. Hence, the Tax Limitation initiative fully complies with the requirement to identify the provisions of the Constitution substantially affected thereby. Fine, at 989.

The Attorney General asserts that the Tax Limitation Amendment fails to make reference to section 5 (c). This argument is without merit. The Court has not held that a proposed amendment must expressly refer to every part of the same article which it is amending. On the

contrary, the Court has approved amendments adding new sections which do not expressly refer to other sections within the subject article. See, Carroll v. Firestone, 497 So. 2d 1204 (Fla. 1986).

In summary, the Tax Limitation Amendment satisfies in full the single-subject test articulated by the Court. Its provisions reflect a logical and natural oneness of purpose. It provides for a singular change to the Constitution which is narrowly drawn and has no substantial effect on any other provision of the Florida Constitution. Furthermore, it does not perform any function of government and does not substantially alter the powers, functions or structure of State government.

II. THE TAX LIMITATION INITIATIVE BALLOT TITLE AND SUMMARY COMPLIES WITH § 101.161, FLA. STAT.

Section 101.161 (1) , Fla. Stat., reads as follows:

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 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 convention 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 Court has set forth numerous opinions outlining the statutory criteria in reviewing proposed amendments to the Constitution. Askew v. Firestone, 421 So. 2d at 155 - 156. In Askew, the foregoing standards were described as follows:

1. "The ballot must be fair and advise the voter sufficiently to enable him intelligently to cast his ballot." 421 So.2d at 154.
2. The measure "must stand on its own merits and not be disguised as something else." 421 So.2d at 156.
3. "A proposed amendment cannot fly under false colors." 421 So.2d at 156.
4. "The burden of informing the public should not fall only on the press and opponents of the measure - the ballot title and summary must do this." Id.

5. "Fair notice" requires "clear and unambiguous explanation of the measure's chief purpose."

In order to satisfy these requirements, however, the Court has ruled, "It is not necessary to explain every ramification of a proposed amendment, only the chief purpose." Carroll v. Firestone, at 1206. In essence, the Court requires that "the voter have notice of the issue contained in the amendment, will not be misled as to its purpose, and can cast an intelligent and informed ballot." Everglades, at S278.

The TAX LIMITATION ballot summary states:

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.

The summary clearly informs the public of the meaning and effect of the proposed amendment. It limits the initiative to "new State taxes or fees which would be imposed by constitutional amendment." It clearly informs the voter that a two-thirds vote will be required to approve constitutional amendments which seek to impose new State taxes or fees. In this case the voter has fair notice of both the meaning and the effect of the proposed amendment. Askew, at 154. The Tax Limitation Amendment does not "fly under false colors" and is not misleading in any detail. It refers precisely and only to the content and effect of the initiative amendment, which is to prohibit new State taxes or fees without two-thirds voter approval. The "chief purpose" of the initiative is plainly identified for the voters to make an informed choice at the ballot. Unlike the initiative in Everglades this initiative does not contain or resemble "political

rhetoric" which the Court has previously disapproved. Everglades, at S278; Evans, at 1355. In sum, the summary gives the voter fair notice of its chief purpose in straightforward and unambiguous terms of both the meaning and effect of the proposed amendment.

The Tax Limitation Amendment contains 15 words and, therefore, complies with the 15 word limit. The title also informs voter in neutral and plain speaking terms of the meaning and effect of the proposed amendment. It refers precisely and only to the content and effect of the initiative. Moreover, the precise language informs the voter of the issue to be resolved by the ballot. The title is also void of "political rhetoric" which is one test utilized by the Court. Everglades, at S278. The Tax Limitation initiative's ballot title complies with all the requirements of § 101.161 (1) Fla. Stat. as applied by the Court.

The Attorney General asserts that the Tax Limitation Amendment violates § 101.161 (1) because the ballot title is phrased in the form of a question. Under the Attorney General's reasoning, an amendment to the Florida Constitution may never include a question. There is no legal basis for such a proposition. Moreover, the Court has never adopted such a position when reviewing amendments to the Constitution. Alternatively, an amendment to the Constitution may need to be phrased in the form of a question in order to satisfy the word limitations of the § 101.161 (1). Likewise, a ballot title phrased in the form of a question, like the instant amendment, may more precisely inform the voter of the meaning and effect of the proposed amendment. The title of this initiative, if anything, conveys more information to the voter. Rather than misleading the voter with a vague title, this amendment specifically identifies the issue contained in the amendment, and thereby allows the voter to make a more informed and intelligent decision on the ballot .

In sum, the Tax Limitation Amendment ballot title and summary are in full compliance with the requirements of § 101.161 (1). The amendment informs the voter of the issue contained in the amendment, identifies the purpose and effect of such amendment, and thereby allows the voter to make an informed and intelligent choice. For these reasons, the Court should approve the proposed amendment.

CONCLUSION

The Tax Limitation Amendment satisfies all Constitutional and Statutory requirements for being submitted to a vote of the people. The Amendment should therefore be approved by this Court for appearance on the ballot.

R. TIMOTHY JANSEN, P.A.  
Florida Bar Number 0691208  
210 South Monroe Street  
Tallahassee, Florida 32301  
Telephone: (904) 224-1440  
ATTORNEY FOR Bethune Beach  
Property Owners Association; Indian  
Trails Homeowners Association, Inc.  
and The Woodlands of Clear Creek  
Homeowners Association, Inc.

By   
R. TIMOTHY JANSEN, ESQUIRE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed to Robert Butterworth, Florida Attorney General, The Capital, Tallahassee, FL 32399-0300, this 29th day of July, 1994.

By   
R. TIMOTHY JANSEN, ESQUIRE