

IN THE SUPREME COURT  
STATE OF FLORIDA

IN RE:

ADVISORY OPINION TO  
THE ATTORNEY GENERAL -  
TAX LIMITATION

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)  
) CASE NO.: 83,969  
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REPLY BRIEF OF THE TAX CAP COMMITTEE

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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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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.

The opponents of the Tax Limitation Amendment, spearheaded by the League of Women Voters and others (collectively, the "Opponents"), have the burden of demonstrating that the petition is "clearly and conclusively defective." Fine v. Firestone, 448 So. 2d 984, 987 (Fla. 1984); Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337, 339 (Fla. 1978); Weber v. Smathers, 338 So. 2d 819, 821 (Fla. 1976). In attempting to meet this heavy burden, the Opponents argue that the amendment violates the single subject requirement of the Florida Constitution because it "involves, numerous, potentially diverse subjects because it attempts to establish a procedure that will apply in the future to the adoption of a wide variety of State taxes and fees, which are not disclosed and cannot be fully anticipated." League Brief at page 3.<sup>1</sup> Their characterization of the scope of the amendment is overbroad given the rarity of constitutional amendments imposing new State taxes or fees.

The Tax Limitation Amendment is in fact narrowly drawn. It does not apply to any existing taxes or fees. It does not affect any statutory taxes or fees, whether currently imposed or whether imposed in the future. It does not affect any current or future revenue sources for local government. It does not affect taxes currently authorized, but not yet imposed. It does not affect

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<sup>1</sup> The term "League Brief" refers to the brief of the League of Women Voters, et al.

government's ability to raise funds for capital improvements through revenue bonds. Significantly, the Tax Limitation Amendment does not disrupt the ability of the government to continue to draw on its existing sources of revenue, nor does it affect the ability of the government to increase their revenues through the existing sources if future demands require such action. Rather, it simply applies to new State taxes or fees which would be imposed by constitutional amendment.

The narrow scope of the Tax Limitation Amendment is apparent when one examines the traditional revenue sources of the State of Florida. It has traditionally been the Legislature which has imposed the taxes and fees which provide the revenue for State government, and not the people through constitutional amendments. Thus, the opponent's reference to "numerous, potentially diverse subjects" is not only overstated, it is also outside of the scope of analysis for this Court. This Court does not consider such speculative or potential effects when reviewing initiative petitions. Like the amendment in Advisory Opinion To the Attorney General: English -- The Official Language of Florida, 520 So. 2d 11, 12 (Fla. 1988), the proposed amendment "does not mandate any legislation". In English - The Official Language, this Court held that it "would be premature to speculate" how the amendment might affect other constitutional provisions as applied in the future. Id. This Court held, "It may be that, if passed, the amendment could have broad ramifications. Yet, on its face it deals with only one subject." Id.

Like the amendment in English - The Official Language, this amendment should also be examined by what appears "on its face", not by speculation over what effects it may have in the future. The Opponents' argument is phrased so broadly that it fails to recognize that the amendment's effect is limited to new State taxes or fees imposed by constitutional amendment. This amendment applies only to the narrow category of amendments which would impose new State taxes or fees. It is thus of extremely limited scope.

An example of the Opponents' distorted reading of the simple initiative is found in its contention that the amendment would substantially impact the "ability of government to raise tax and bond revenues". League Brief at page 4. This is a striking mischaracterization of the initiative and an attempt by the Opponents to inject governmental impacts which are not within the scope of the Tax Limitation Amendment. The initiative will have no impact on the Legislature's ability to authorize, impose, or raise new or existing taxes or fees. Instead, it merely imposes a stricter voting requirement on constitutional amendments which would impose new State taxes or fees.

The Opponents misstate matters when they contend that the Tax Limitation Amendment will have a substantial impact on "the ability of the legislative, executive, and judicial branches to provide essential services". League Brief at page 4. All existing revenue sources will be entirely unaffected by the passage of this amendment. The Legislature's authority to impose additional taxes

and fees in the future will also be unaffected by this proposal. The Opponents cite "university education, roads and other infrastructure, funds needed to conduct elections, and operation of the courts and the criminal justice system" as services affected by the proposed amendment. League Brief at page 20. Yet, the vast majority of these services are currently funded by taxes imposed through the traditional legislative means, not by constitutional amendment. Thus, their hyperbole and forecasts of doom are simply scare tactics which have no true relevance to the limited purpose of this proposed amendment.

The argument that the Tax Limitation Amendment affects "bond revenues" is another attempt to miscast the initiative, the true purpose of which is simply to raise the threshold of votes required to pass constitutional amendments which would impose new State taxes or fees. The Opponents' attempt to insert the issue of bond revenues into the analysis is unjustified in light of the plain language of the amendment. The amendment will have no affect on the issuance of bonds, either those outstanding or those issued in the future, which are to be repaid by the existing sources of State revenue, including revenues from the various types of projects. These sources of repayment are unaffected by the Tax Limitation Amendment. Therefore, the ability of the State to raise revenue through the issuance of bonds will not be in any way changed if the amendment passes.

The Opponents engage in selective, misleading quoting of the initiative in an attempt to have the reader believe that

legislatively-imposed taxes will be affected by the Tax Limitation Amendment. The Opponents state that this amendment "will apply to the approval of '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 ....'". League Brief at page 13 (quoting from Tax Limitation Amendment). This selective quoting is grossly misleading by failing to mention that the initiative applies only to State taxes or fees which would be "imposed ... by any amendment to this constitution" (further quoting from Tax Limitation Amendment). The deletion of this qualifying language by the Opponents is a blatant attempt to distort the substance of the amendment at issue in this case. In fact, the express limitation of the proposed amendment to new State taxes or fees imposed by constitutional amendment is the heart of the proposal. The Opponents continue this mischaracterization of the Tax Limitation Amendment by representing to this Court that the amendment is intended to apply to "all types of State taxes and ... user-fee services." League Brief at page 14. The Opponents go on to state that the scope includes all taxes under the "general taxing power (Article VII, Section 1), estate and inheritance taxes (Article VII, Section 5), and motor vehicle tax (Article XII, Section 9(a))." Id. The Opponents incorrectly state that the proposed amendment will affect "environmental permitting fees, State highway and bridge tolls, and State park fees". Id.



These are all misrepresentations of the scope of the proposed amendment. All of the taxes mentioned by the Opponents are already authorized. Therefore, they are not "new" taxes.

Despite the Opponents' argument to the contrary, this amendment has no application to constitutional amendments which would eliminate exemptions. The elimination of an exemption to an existing tax by constitutional amendment will be unaffected by the Tax Limitation Amendment because it applies only to the levy of "new" State taxes or fees. The Opponents are simply misdirecting attention from the real issues in this case by reference to subjects such as statutory taxes, user-fees, exemptions and bonds. Again, this narrowly drawn proposal would affect only new State taxes or fees imposed by constitutional amendment. It has no implication for any extant revenue source, nor does it pertain to changes in the rate or base of existing levies.

The Opponents attempt to find ambiguity in the Tax Limitation Amendment by expressing confusion as to whether the amendment is intended to apply to State taxes or fees which are merely "authorized" by amendment. League Brief at pages 4-5. The Opponents' purported confusion is answered by the explicit and unambiguous language of the amendment itself. Both the summary and the text of the amendment refer to the imposition, not the authorization, of new State taxes or fees. The confusion is a contrivance. This amendment unambiguously applies to the imposition of new State taxes or fees. As a result, it affects no

currently authorized State taxes or fees, either in their current form or as they may be changed in the future.

Because the Tax Limitation Amendment applies only to raise the threshold requirement of votes necessary to pass constitutional amendments which would impose new State taxes or fees, it affects no governmental functions. Instead, it merely affects a "citizen function", that is, the voting requirement which the people must satisfy to amend their constitution. The effect is singular. The sole subject is the number of votes required to pass such an amendment, not whether any particular type of State tax or fee should be imposed. The Opponents contend that the initiative reflects "logrolling" by its application to more than one tax which may be proposed in the future. The argument confuses the subject of the Tax Limitation Amendment with the subject of all such hypothetical future proposed amendments. Whatever the subject matter of those amendments yet to be proposed, those proposals will be before the Court for single subject analysis in their own right. The attempt to import all such unknown and unknowable future proposals to amend the Florida Constitution into the Tax Limitation Amendment is bootstrapping in its most flagrant form. Whatever the subjects of those future amendments may be, the Tax Limitation Amendment has but a single subject and concern--the voting percentage required to approve a specified class of amendments to the Florida Constitution.

If the Court accepted the Opponents' argument that all potential taxes in future amendments were now to be considered by

this Court as part of a logrolling analysis, the result would be that no initiative amendment could ever address the topic of voting or procedural requirements for amending the Florida Constitution. Following the Opponents' argument to its logical conclusion, all such proposals involving voting requirements would necessarily implicate limitless subjects involved in speculative future amendments.

For example, if the people desired to amend their Constitution to provide that all constitutional amendments required a two-thirds vote for approval, such an amendment would also fail under the Opponents' analysis because it would involve the subject matter of all potential future amendments which would follow it. This cannot be the purpose of Article XI, section 3. The proper application of the single-subject analysis to the Tax Limitation Amendment is instead to view the subject as the voting requirement, not the particular taxes which may or may not come up for a future vote. In this regard, it is clear that a proposal to require that all amendments to the Florida Constitution secure two-thirds voter approval would embody a single subject. Since the Tax Limitation Amendment is even more restricted, it plainly addresses but a single subject as well.

The Opponents would cast the proposed amendment in the same light as the amendment in Fine, despite the fact that the Fine amendment would have actually capped the Legislature's ability to impose taxes and fees, and its ability to raise money through the

issuance of bonds. In fact, this initiative places no restrictions on the Legislature.

The Court expressly concluded in Fine:

We conclude that the [Fine] proposal contains at least three subjects. It limits the way in which governmental entities can tax; it limits what government can provide in services which are paid for by the users of such services; and it changes how governments can finance the construction of capital improvements with revenue bonds that are paid for from revenue generated by the improvements.

Fine, 448 So. 2d at 992 (emphasis supplied). The Tax Limitation Amendment affects none of these governmental functions. Instead, it would affect only the people's ability to amend their constitution at the ballot box to impose new State taxes or fees upon themselves.

In Fine, this Court was clearly concerned with that proposal's direct and significant impact on existing and ongoing governmental functions. Three separate legislative functions were impaired by the proposal: (1) the funding of ongoing general governmental operations; (2) the limiting effect on the continuing provision of services financed by user-fees; and (3) the interruption of capital improvement programs financed through revenue bonds. Fine, 448 So. 2d at 990-91. All of these effects would have significantly disrupted the ongoing functioning of government. The Opponents' oversimplified argument that the mention of taxes and fees in one amendment is enough to invalidate it is far from the Court's holding in Fine. In Fine, the Court expressly declined to address

the issue of whether two revenue sources necessarily and inevitably represent two subjects. The Court stated:

The petitioner argues that the limitations on the various types of tax revenue are separate subjects because such limitations affect different services and entities of government. Because we find that the [Fine] proposal contains other distinct subjects, we decline to address this contention.

Fine, 448 So. 2d at 991. In the final analysis of the Court, it was the multiple restrictions on the Legislature and the drastic disruption of ongoing governmental functions, which led to the Fine proposal's demise.

Because the Tax Limitation Amendment affects only the people's power to change their Constitution at the ballot box, and does not impair any extant revenue source, and does not deny the Legislature any future source of revenue, the amendment does not "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, S277 (Fla. May 26, 1994). Therefore, it satisfies the single subject requirement of the Florida Constitution.

The Tax Limitation Amendment simply provides that constitutional amendments which seek to impose new State taxes or fees must be approved by a two-thirds vote of the voters voting in the election. Presently, all constitutional amendments must be approved by a "vote of the electors" which is defined to be a "majority of those voting on the matter in an election". Art. X,

§ 12(d), Fla. Const.<sup>2</sup> The Tax Limitation Amendment expressly refers the reader to this current requirement by stating that its application is "[n]otwithstanding Article X, Section 12(d)." The Opponents' argument that it may be very difficult to amend the constitution if two-thirds of the people "voting in the election" must vote in favor of such an amendment is an argument that goes strictly to the merits of the amendment, and not to the satisfaction of the single subject requirement.

The drafters of the Florida Constitution saw wisdom in some super-majority requirements. For example, Article XI, section 1 provides that the Legislature may not propose constitutional amendments unless "three-fifths of the membership of each house of the legislature" agree on a joint resolution. Furthermore, "three-fourths of the membership of each house of the legislature" can call a special election regarding a constitutional amendment. Art. XI, § 5(a), Fla. Const.<sup>3</sup> Other states also employ super-majority requirements which must be satisfied by the electorate.<sup>4</sup>

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<sup>2</sup> The Opponents' reference to Article VI, section 1, is misplaced. That section provides for a "plurality" vote for the elections of officers. See Florida Constitution of 1885, Article XVI, section 8 (predecessor requirement). Clearly, the plurality requirement for elections of officers has no relevance to votes on constitutional amendments where there are only two choices, "yes" or "no".

<sup>3</sup> See also Articles III, V, and VII of the Florida Constitution for a number of super-majority requirements involving legislative powers.

<sup>4</sup> See Gordon v. Lance, 403 U.S. 1 (1971) (West Virginia's requirement that political subdivisions cannot incur bonded indebtedness without the approval of 60% of the voters); Illinois Constitution, Article 14, section 2 (three-fifths vote of the electorate for initiative petitions); Nevada Constitution, Article

Regardless of the existence of other super-majority requirements, it is indisputable that the Opponents' arguments regarding the wisdom of a super-majority requirement should not be made to this Court because such arguments go to the merits of the proposal. Instead, the propriety of a super-majority voting requirement for amendments which would impose new State taxes or fees is an argument which should be made in the court of public opinion. The Tax Limitation Amendment plainly embodies but a single, narrowly drawn subject and so should be approved by this Court.

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VII, section 3 (requiring approval of two-thirds of voters to amend certain sections of Nevada Constitution).

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

The Opponents latch on to the Attorney General's misinterpretation of Section 101.161 of the Florida Statutes in contending that the ballot title standing alone must communicate to voters the "legal effects of the proposed amendment". League Brief at page 24. Like the Attorney General, the Opponents raise the issue whether a ballot title may include a question. Yet, neither the statute nor the case law requires the title by itself to convey the legal effects of the amendment. The statute sets a realistic standard for the ballot title by requiring that "the title shall consist of a caption ...". The ballot title employed by this amendment clearly fits within the definition of a "caption".

It is not the ballot title, but the seventy-five-word ballot summary which must state the "chief purpose of the measure." §101.161(1), Fla. Stat. The ballot summary must fairly advise the voter so that the voter can vote "yes" or "no" to the question which will be posed on the ballot. Even the ballot summary, however, has never been required to explain each and every detail or ramification of the amendment. Carroll v. Firestone, 497 So. 2d 1204, 1206 (Fla. 1986). Nevertheless, the ballot summary in this case easily captures the entire effect of the proposed amendment precisely because the subject matter is so simple. The ballot summary clearly informs the voter that the proposition is limited to new State taxes or fees which would be imposed by constitutional amendment. It clearly expresses that the votes of two-thirds of



those persons "voting in the election" will be necessary to approve constitutional amendments which seek to impose new State taxes or fees. There is nothing ambiguous in this language. Therefore, the "chief purpose" of the Tax Limitation Amendment is plainly communicated to the voter.

The Opponents again unilaterally attempt to manufacture an artificial ambiguity by raising the prospect that this Court will have to deal with a "difficult issue of constitutional interpretation" if this amendment is passed alongside a contemporaneous amendment imposing new taxes. The scenario is purely hypothetical, however, because there are no such taxing amendments on the ballot nor can there be any such amendments on the 1994 ballot because the deadline for ballot certification has passed.

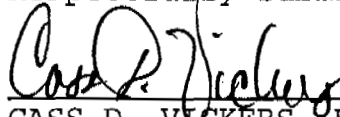
The Opponents contend that the ballot title and summary resemble political rhetoric and "beg" for a "yes" answer. Yet, the title reads simply, "Tax Limitation: Should Two-Thirds Vote Be Required For New Constitutionally-Imposed State Taxes/Fees?". The title does not suggest, much less "beg", that a "yes" answer would be the better answer. To argue that the question "begs" for a "yes" answer simply because the public is "tax-shy" is specious. If the public is "tax-shy", then the amendment may in fact be popular and may therefore pass on the merits; however, the stoic language presented in the ballot title makes no attempt to politicize the issue. It is the principle underlying the proposal, not the language of the ballot summary, which make the Tax

Limitation Amendment popular with the public, as evidenced by its current ballot position as Amendment Number Six. It would be a truly ironic distortion of our constitutional philosophy if an initiative petition was precluded from reaching the ballot simply because it enjoys great popular support.

**CONCLUSION**

For the reasons set forth above, the 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 Tax Cap Committee 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; Gary R. Rutledge, Kenneth A. Hoffman, Harold F.X. Purnell, Post Office Box 551, Tallahassee, Florida 32302-0551; R. Timothy Jansen, 210 South Monroe Street, Tallahassee, Florida 32301; Alan C. Sundberg, Gary L. Sasso, F. Townsend Hawkes, Warren H. Husband, Post Office Drawer 190, Tallahassee, Florida 32302; David Citron, Post Office Box 25588, Ft. Lauderdale, Florida 33320-5588; by United States mail, this 12th day of August, 1994.

  
CASS D. VICKERS

## APPENDIX A

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 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.