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IN THE
SUPREME COURT OF FLORIDA
Case No. 83,969

FILED

SID J WHITE

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ADVISORY OPINION TO THE ATTORNEY GENERAL
IN RE: TAX LIMITATION

SUGGESTING THAT THE TEXT OF 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

REPLY BRIEF OF FRANK BROGAN, EDUCATION COMMISSIONER CANDIDATE; CHRIS
COMSTOCK, COMPTROLLER CANDIDATE; FRANK DARDEN, AGRICULTURAL
COMMISSIONER CANDIDATE; HENRY FERRO, ATTORNEY GENERAL CANDIDATE; JACK
GARGAN, GUBERNATORIAL CANDIDATE; STATE TREASURER TOM GALLAGHER,
GUBERNATORIAL CANDIDATE; L. CHARLES HILTON, CITIZEN STATE OF FLORIDA; R. K.
"SKIP" HUNTER, STATE TREASURER CANDIDATE; TIM IRELAND, STATE TREASURER
CANDIDATE; SENATOR CURT KISER, LIEUTENANT GOVERNOR CANDIDATE; BOB
MILLIGAN, COMPTROLLER CANDIDATE; SANDY MORTHAM, SECRETARY OF STATE
CANDIDATE; JOE SCARBOROUGH, CANDIDATE U.S. CONGRESS; SECRETARY OF STATE
JIM SMITH, GUBERNATORIAL CANDIDATE; BETHUNE BEACH PROPERTY OWNERS
ASSOCIATION; INDIAN TRAILS HOMEOWNERS ASSOCIATION, INC. ; THE WOODLANDS
OF CLEAR CREEK HOMEOWNERS ASSOCIATION, INC.; TREASURE COAST COALITION,
INC.; MONROE COUNTY UNITED; CENTRAL PALM BEACH BOARD OF REALTORS; SCS
COMMUNITIES, INC.; TRANS TECH AGRICULTURAL GROUP; AND CITIZENS FOR
CONSTITUTIONAL PROPERTY RIGHTS IN SUPPORT OF TAX LIMITATION

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Clear Creek Homeowners Association, Inc.; Treasure Coast Coalition, Inc.;
Monroe County United; Central Palm Beach Board of Realtors; and SCS
Communities, Inc.; Trans Tech Agricultural Group; and Citizens for Constitutional
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INTRODUCTION

This brief is filed on behalf of Frank Brogan, Education Commission Candidate; Chris Comstock, Comptroller Candidate; Frank Darden, Agricultural Commissioner Candidate; Henry Ferro, Attorney General Candidate; Jack Gargan, Gubernatorial Candidate; State Treasurer Tom Gallagher, Gubernatorial Candidate; L. Charles Hilton, Citizen State of Florida; R. K. "Skip" Hunter, State Treasurer Candidate; Tim Ireland, State Treasurer Candidate; Senator Curt Kiser, Lieutenant Governor Candidate; Bob Milligan, Comptroller Candidate; Sandy Mortham, Secretary of State Candidate; Joe Scarborough, Candidate U. S. Congress; Secretary of State Jim Smith, Gubernatorial Candidate; Bethune Beach Property Owners Association; Indian Trails Homeowners Association, Inc. ; The Woodlands of Clear Creek Homeowners Association, Inc.; Treasure Coast Coalition, Inc.; Monroe County United; Central Palm Beach Board of Realtors; SCS Communities, Inc.; Trans Tech Agricultural Group and Citizens for Constitutional Property Rights (hereinafter referred to as "Proponents") in response to briefs in opposition filed by League of Women Voters of Florida, Inc., 1000 Friends of Florida, Inc., Common Cause, The Florida Audubon Society, and American Planning Association, Florida Chapter, (hereinafter referred to as "Opponents"). Proponents submit that the proposed amendment satisfies all the legal requirements set forth by the Court and thereby should be certified for the upcoming ballot.

ARGUMENT

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

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 way of the initiative process. Article XI, Section 3 of the State Constitution. On the other hand, the Opponents seek to deny the voters of Florida a chance to vote on the proposed amendment by alleging the initiative violates the "single-subject" requirements of the Constitution. However, in order for the Opponents to deprive the voters of their Constitutional rights, the Opponents must carry the **heavy burden** of demonstrating to the Court that the amendment is "clearly and conclusively defective." Fine v. Firestone, 448 So. 2d 984, 987 (Fla. 1984); Weber v. State, 338 So. 2d 819, 821 (Fla. 1976). Upon careful review of the proposed initiative in this case, the Court will find the Opponents' arguments without merit.

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 151, 156 (Fla. 1982). To succeed on the "single-subject" argument, the Opponents must demonstrate that the amendment violates the Constitutional requirements as outlined by the Court in Fine at 989. Thus, the Court utilizes a "oneness of purpose" standard in applying the single-subject rule. Id. at 990. In essence, the Court must determine whether the proposed amendment affects more than one function of government, affects other provisions of the Constitution, and alters or performs the functions of different branches of government.

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. Currently, 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. Hence, the proposed amendment merely seeks to increase the vote requirement from that of a majority to a two-thirds vote when an amendment proposes new State taxes or fees. There is nothing secret or hidden in the proposed amendment.

The Opponents initial challenge to the petition claims that the amendment "intrinsically concerns, numerous, 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."¹ This argument is neither factually correct nor relevant for the Court's review of this initiative. The Court has previously held that the mere "possibility" of legislative action absolutely precludes invalidation, especially where the "proposed amendment does not mandate any legislation". In Re: Advisory Opinion to the Attorney General English -- the Official Language of Florida, 520 So. 2d 11, 12 (Fla. 1988) (hereinafter referred to as "English"). Since the proposed amendment only limits the people's power to initiate new taxes or fees pursuant the initiative process, the Opponent's arguments that the amendment affects numerous, diverse subjects is without merit.

The Opponents further exaggerate the effects of the proposed amendment by stating that the proposed amendment directly affects two separate subject matters, namely "all types of state taxes and user-fee services."² To further distort the point, the Opponents claim that the amendment affects numerous existing taxes under the Constitution, and user fees authorized by

¹See League brief at page 12.

²See League brief at 14.

the State. The Opponents further confuse the effects of the amendment by "logrolling" these separate subject matters, which are not related to the proposed amendment, and thus claiming that such proposals violate the "single-subject" requirements articulated by the Court in Fine.³

None of the taxes mentioned above are related to the proposed amendment. The taxes cited by the Opponents already are authorized. Moreover, those type of taxes are not derived from the people's power through the initiative process, which is **only** what the proposed amendment seeks to limit. The Opponents reliance on Fine is misplaced. In Fine, the Court invalidated an amendment which sought to limit the Legislatures' ability to impose taxes, fees, and their ability to issue bonds. In the instant case, the proposed amendment places no such limitations on the Legislature. The initiative affects **only** those State taxes or fees imposed by amendment to the Florida Constitution. Since the amendment affects **only** the citizen's power, and not any function of any branch of government, 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, 277 (Fla. May 26, 1994) (hereinafter referred to as "Everglades").

Opponents next argue that the initiative would substantially impact the "ability of state government to issue full faith and credit bonds that must be supported by state tax revenues, as authorized by Article VII, Sections 11, 13, 14, and 17 of the constitution." Once again, the Opponents confuse the true effects of the proposed amendment. The amendment will have no impact whatsoever on the government's ability to authorize, impose, or raise new or existing taxes or fees. Moreover, the amendment has no application or effect on local taxes, fees, or bonds.

³See League brief at 14.

Rather, the initiative merely seeks to impose a higher numerical requirement on constitutional amendments which would impose new State taxes or fees.

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. Thus, the voters of Florida should be allowed to cast their votes on the amendment at the ballot box this November.

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

According to section 101.161(1), the title is to be a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of." Coincidentally, not one of the Opponents have alleged or suggested that the initiative is not commonly referred to or spoken of as "Tax Limitation: Should Two-Thirds Vote Be Required For New Constitutionally-Imposed State Taxes / Fees?" Thus the ballot title utilized in this initiative satisfies the statutory requirements articulated by the Court.

The purpose of the summary is to state the "chief purpose of the measure." Section 101.161 (1) , Fla. Stat. Not one of the Opponents have alleged or suggested that the initiative's summary fails to state the chief purpose of the measure. The Court has previously held that the summary cannot explain in "detail what the proponents hope to accomplish by the passage of the amendment." English, at 13. Moreover, the summary has never been required to explain each and every detail or ramification of the amendment. Carrol v. Firestone, 497 So. 2d 1204 (Fla. 1986) In this case, 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 v. Firestone, 421 So. 2d 151, 154.

Opponents claim the summary fails to inform the voters if the amendment would affect other amendments appearing on the same ballot. As of today, there will not be any amendments

which could appear on the ballot which would result in the hypothetical scenario created by the opposition. The Opponents also claim the summary resembles political rhetoric which "begs for a yes answer from a "tax-shy public".⁴ The mere fact that the amendment may be popular with the public does not necessarily mean that the amendment begs for a "yes" answer. 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, 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". 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. Therefore, the Tax Limitation initiative's ballot title and summary comply with all the requirements of § 101.161 (1) Fla. Stat. as applied by the Court.

⁴See League brief at 24.

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 upcoming ballot in November.

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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 12th day of August, 1994.

By 
R. TIMOTHY JANSEN, ESQUIRE