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IN THE SUPREME COURT OF FLORIDA

Case No. 86,600

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

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ADVISORY OPINION  
TO THE ATTORNEY GENERAL

RE: TAX LIMITATION

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INITIAL BRIEF AND APPENDIX OF  
TAX CAP COMMITTEE  
SUPPORTING THE TAX LIMITATION PETITION

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INITIAL BRIEF

There is no lawful reason why the electors of this State should not have the right to determine the manner in which the Constitution may be amended. This is the most sanctified area in which a court can exercise power.<sup>1</sup>

Neither the wisdom of the provision nor the quality of its draftsmanship is a matter for our review.<sup>2</sup>

TAX CAP COMMITTEE ("Tax Cap") has invoked the initiative petition process of article XI, section 3, Florida Constitution, to propose an amendment to the Florida Constitution, the "Tax Limitation petition," that would require two-thirds of the voters voting in an election to approve any proposed amendment to the Florida Constitution that would impose any new State tax or fee, failing which the proposed amendment would be null and void. [A 1.] Pursuant to this Court's Interlocutory Order of October 12, 1995 [A 2], Tax Cap submits this initial brief in support of the Tax Limitation petition.

The Tax Limitation petition has its genesis in the potential for unfairness and damage that can result from the tide of popular initiatives circulated pursuant to article XI, section 3, Florida Constitution. One of the ways the people can use the initiative petition process is to target a politically unpopular group or industry or entity, and, preying on emotion and

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<sup>1</sup> Pope v. Gray, 104 So. 2d 841, 842 (Fla. 1958) (citations omitted).

<sup>2</sup> Weber v. Smathers, 338 So. 2d 819, 821-22 (Fla. 1976) (quoting from Gray v. Golden, 89 So. 2d 785, 790 (Fla. 1956), and applying the rule of deference to an initiative petition proposed under article XI, section 3, Florida Constitution).

sensationalism through the media, impose a burden that would not survive the more deliberative legislative process. Tax Cap has proposed the Tax Limitation petition to prevent this abuse.

The Tax Limitation petition would make it harder for the people to amend the Florida Constitution in a manner that imposes a new state tax or fee. Although Tax Cap is also concerned with the people's right to have a direct voice in taxes imposed by the legislature and by local governments, that concern is addressed in a separate proposed amendment, the "Voter Approval Required For New Taxes" petition. See Advisory Opinion to the Attorney General re Tax Limitation, 644 So. 2d 486, 492-94 (Fla. 1994) ("Tax Limitation I").<sup>3</sup> The Tax Limitation petition is intended to have a narrow scope, applying only to proposed constitutional amendments that themselves impose a new state tax or fee, such as the one the Court struck from the ballot last year. See In re Advisory Opinion to the Attorney General -- Save Our Everglades, 636 So. 2d 1336 (Fla. 1994) (defining details of fee imposed). See also Tax Limitation I, 644 So. 2d at 491 & n.2 (recognizing that this was the intent of the Tax Limitation petition).

The Tax Limitation petition comes to this Court armored in the people's fundamental right to modify their organic law as they see fit. Opponents have the burden of demonstrating that it is "clearly and conclusively defective." Florida League of Cities

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<sup>3</sup> Although the Court struck the Voter Approval of New Taxes petition from the ballot for the November 1994 general election, Tax Cap has revised the petition under the title "Voter Approval Required For New Taxes" and will seek a ballot position for a future election.

v. Smith, 607 So. 2d 397, 398 (Fla. 1992); Goldner v. Adams, 167 So. 2d 575 (Fla. 1964). The Court's duty is to protect the people's sovereign right to amend their constitution. The Court's ruling last year that the Tax Limitation petition contained more than one subject is, because of the 1994 amendment to article XI, section 3 of the constitution, no longer a valid reason to prevent the people from voting on this amendment. The petition remains viable for the general election in 1996, and is entitled to review for its compliance with the ballot title and summary requirements of Florida law. The constitution as amended in 1994, and the governing statute, confine the Court's review of this revenue-limiting proposal to a determination of whether the title and ballot summary of the Tax Limitation petition fairly inform the voter of the chief purpose and legal effect of the proposed amendment in a manner that is accurate and informative. The title and ballot summary satisfy the applicable tests. Accordingly, the Court should approve the Tax Limitation petition for placement on the ballot in the November 1996 general election.

STATEMENT OF THE CASE AND FACTS

In accordance with article IV, section 10, Florida Constitution and section 16.061, Florida Statutes (1993), the Florida Attorney General has petitioned this Court for an advisory opinion on the validity of Tax Cap's Tax Limitation initiative petition (the "Tax Limitation petition"). The sole issues before the Court are whether the ballot title and substance of the Tax Limitation petition comply with section 101.161(1), Florida Statutes.<sup>4</sup>

The ballot title of the Tax Limitation petition is "Tax Limitation: Should Two-Thirds Vote Be Required For New Constitutionally-Imposed State Taxes/Fees?"

The ballot summary of the Tax Limitation petition reads as follows:

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 and those on later ballots.

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<sup>4</sup> Section 101.161(1) provides, in pertinent part:

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 Tax Limitation petition seeks to amend article XI of the Florida Constitution by adding 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.

Tax Cap's Tax Limitation petition received the requisite number and distribution of signatures to qualify for placement on the ballot for the November 1994 general election, but this Court

struck the proposed amendment from the ballot on single-subject grounds because it covered both taxes and fees. Tax Limitation I, 644 So. 2d at 491. The Court determined that "[b]ecause of this finding, we need not address the other issues raised by the opponents." Id.

In the same decision, the Court approved another of Tax Cap's petitions entitled "Revenue Limits: May People's Amendments Limiting Government Revenue Be Allowed To Cover Multiple Subjects?" Id. at 496. The Revenue Limits amendment was approved by 58% of the voters in the November 1994 general election [A 7], and applies to the Tax Limitation petition. The effect of the Revenue Limits amendment was to "eliminate the single-subject requirement of article XI, section 3, for initiatives that deal solely with limiting 'the power of government to raise revenue.'" Tax Limitation I, 644 So. 2d at 496.

The adoption of the Revenue Limits amendment to article XI, section 3 of the Florida Constitution, coupled with the provisions of Florida law making the signatures on Tax Cap's Tax Limitation petitions valid for four years,<sup>5</sup> makes it possible for Tax Cap to return to this Court for an advisory opinion on its Tax Limitation petition's compliance with the title and ballot summary requirements of Florida law. The Florida Secretary of State is of the opinion that Tax Cap is entitled to this review "because the Court never ruled on whether the ballot title and substance

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<sup>5</sup> § 100.371(2), Fla. Stat. (1993). See Advisory Opinion To The Attorney General Re: Florida Locally Approved Gaming, 656 So. 2d 1259, 1261 (Fla. 1995) ("FLAG").

complies with Section 101.161, Florida Statutes, as is required by Section 16.061, Florida Statutes." [A 4.] The Florida Attorney General requested this Court's advisory opinion, stating that it was his "responsibility" to do so under article IV, section 10, Florida Constitution [A 3 at 1], but raised a so-called "factual issue" as to "whether section 100.371(2), Fla. Stat. [sic], authorizes the resubmission of a petition that has been previously stricken by this Court and whether the Court's previous consideration of these issues bars reconsideration of this initiative petition." [A 3 at 2.] The Attorney General also concludes that the Tax Limitation petition "fall[s] within the scope of the exception to the single subject requirement now expressed in Article XI, Section 3, Florida Constitution." [A 3 at 3.]

The Attorney General suggests that the title of the Tax Limitation petition may be defective because it is in the form of a question. [A 3 at 4.] The Attorney General further suggests that the phrase "constitutionally-imposed" used in the title may mislead voters into thinking the amendment would apply to "taxes or fees imposed by the Legislature since a legislatively created tax is, in fact, imposed pursuant to the authority granted to the Legislature by the Constitution." [A 3 at 4.] The Attorney General says that the ballot summary does not inform the voter that the amendment would modify article X, section 12(d), Florida

Constitution<sup>6</sup> "by changing the definition of 'vote of the electors' to require a two-thirds vote." Finally, the Attorney General points out, without raising any challenge on this point, that the proposed amendment does not include an effective date and therefore by operation of law would become effective on the first Tuesday after the first Monday in January after the election in which it is approved. [A 3 at 4.]

#### SUMMARY OF THE ARGUMENT

Because the people's sovereign right to amend their constitution is at stake, the Court's duty is to uphold the Tax Limitation petition if possible, considering the proposal as a whole and giving effect to the intent of the drafters and the chief purpose of the measure. The issue in this proceeding is whether the title and summary comply with statutory length limits and accurately disclose the true meaning and ramifications of the proposed amendment.

The title and ballot summary of the Tax Limitation petition comply with the statutory requirement that they accurately disclose the chief purpose of the proposed amendment. They are accurate, informative, objective, and free from political rhetoric. The chief purpose is, as the summary plainly states, to require a two-thirds majority of voters voting in an election to approve any

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<sup>6</sup> Article X, section 12 of the Florida Constitution defines "vote of the electors" as "the vote of the majority of those voting on the matter in an election, general or special, in which those participating are limited to the electors of the governmental unit referred to in the text."

proposed constitutional amendment that imposes a new state tax or fee, or else the proposed amendment will fail. The summary clearly and accurately summarizes the definition of "new State taxes or fees" that is set forth in full in the text of the amendment. The summary clearly informs the voter that the proposal will impose a two-thirds majority requirement for passage of proposed constitutional amendments that seek to impose a new state tax or fee, and that the supermajority will be measured by the voters "voting in the election."

The title and ballot summary accurately inform the voter that the Tax Limitation amendment would have ramifications with regard to any constitutional amendment in effect on or after November 8, 1994 that imposes a new state tax or fee. The title and ballot summary accurately inform the voter that the ramification is to require a two-thirds vote of those voting in the election in order to pass that amendment. Other details of scope, implementation, and potential application to specific examples need not be disclosed in the summary, and as a practical matter cannot be disclosed in the summary because of the strict length limit and because potential future applications cannot be predicted. The ballot summary is not defective for failing to include such details.

The title of the Tax Limitation petition, "Tax Limitation: Should Two-Thirds Vote Be Required for New Constitutionally-Imposed State Taxes/Fees?," complies with the requirements of Florida law. It does not exceed the fifteen-word limit established in section 101.161, Florida Statutes (1993). The

measure is commonly referenced by this caption. Therefore, the title satisfies these requirements of section 101.161.

Although the Attorney General has questioned whether the title is misleading because it is in the form of a question, the title of the Tax Limitation petition is not misleading, because it states the purpose of the proposed amendment and the issue before the voter. It requests a "yes" or "no" answer to the question, which is exactly how the issue will be presented to the voter on the ballot. In addition, this Court has stated that the title must always be read together with the summary in determining if the ballot information properly informs the voter. The title of the Tax Limitation petition, taken together with the summary, properly informs the voter and thus satisfies this aspect of section 101.161.

Although the summary does not identify the section of the constitution requiring a simple majority vote in other elections (which is identified by article and section numbers in the first line of the text of the proposed amendment), the summary is not thereby rendered misleading. Voters must be deemed to have enough common sense and general knowledge to understand that the outcome of a vote is usually decided by a majority, and thence to realize that two-thirds is greater than a majority. The title and summary make it clear that the chief effect of the Tax Limitation amendment is to create this supermajority requirement for the specified types of constitutional amendments.

Because the title and summary of the Tax Limitation petition satisfy the requirements of Florida law, the Court should

approve the petition for placement on the ballot in the November 1996 general election.

#### ARGUMENT

##### I. THE TAX LIMITATION PETITION IS ENTITLED TO GREAT DEFERENCE.

Because of the grave importance of protecting the people's right to modify the organic law of Florida, the Court has always recognized that it should be extremely reluctant to remove a proposed constitutional amendment from the ballot. Each proposed amendment is to be reviewed with "extreme care, caution and restraint." Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982). The Court's "duty is to uphold the proposal unless it can be shown to be 'clearly and conclusively defective.'" Floridians Against Casino Takeover v. Let's Help Florida, 363 So. 2d 337, 339 (Fla. 1978) (emphasis added; citing Weber, 338 So. 2d at 821-22, and Goldner, 167 So. 2d 575). "Extreme restraint" and "duty" are strong words, defining the standard of review of the Tax Limitation petition as very deferential.

A court's duty to uphold an initiative petition unless clearly and conclusively defective is similar to -- but, because of the people's unique and fundamental constitutional right to amend the constitution, stronger than -- a court's duty to uphold a legislative enactment. Acts of the legislature are presumptively constitutional and entitled to deference, owing in part to the fact that the legislature itself is subject to the same duty to uphold the Florida and federal Constitutions that governs judicial action.

Gray v. Golden, 89 So. 2d at 790.<sup>7</sup> The rule of deference to legislative enactments is "even more impelling when considering a proposed constitutional amendment which goes to the people for their approval or disapproval." Id. at 790. This Court has applied this "even more impelling" rule to initiative petitions. Weber, 338 So. 2d at 821-22. Particularly when given the deference it requires, the Tax Limitation petition is well within the requirements of the law.

**II. THE TAX LIMITATION PETITION IS ENTITLED TO THIS COURT'S REVIEW, WHICH IS LIMITED TO WHETHER THE PETITION COMPLIES WITH THE LEGAL REQUIREMENTS FOR TITLE AND BALLOT SUMMARY.**

The Attorney General suggests, without arguing to the contrary, that the Court might wish to consider whether the Tax Limitation petition is entitled to review even though the same petition was before the Court last year. The Secretary of State took the position that Tax Cap is entitled to an advisory opinion as to whether the Tax Limitation petition complies with section 101.161, Florida Statutes (1993). [A 4.] The Attorney General questions "whether the Court's previous consideration of these issues bars reconsideration of this initiative petition." [A 3 at 2 (emphasis added).] But the Court has not considered the only

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<sup>7</sup> See also, e.g., City of Daytona Beach v. Del Percio, 476 So. 2d 197 (Fla. 1985) (statute susceptible of two interpretations must be interpreted in the manner that renders it valid); State v. Kinner, 398 So. 2d 1360, 1363 (Fla. 1981) (strong presumption of constitutionality continues until disproved beyond all reasonable doubt); Boynton v. State, 64 So. 2d 536 (Fla. 1953) (adopt valid interpretation rather than one that would invalidate statute); Hanson v. State, 56 So. 2d 129, 131 (Fla. 1952) ("all intendments favored towards its [statute's] validity"). See also Pope v. Gray, 104 So. 2d at 842.



issues that continue to apply to the Tax Limitation petition, and so this proceeding does not constitute a "reconsideration" as the Attorney General suggests. Tax Cap, of course, agrees with the Secretary of State that the Court is required to render an advisory opinion on whether the Tax Limitation petition complies with section 101.161.

Tax Cap obtained enough signatures on its petitions to be legally entitled to an advisory opinion under sections 15.21<sup>8</sup> and 16.061, Florida Statutes, and article IV, section 10, Florida Constitution.<sup>9</sup> Section 16.061 requires the Attorney General to request this Court's advisory opinion "regarding the compliance of the text of the proposed amendment or revision with s. 3, Art. XI of the State Constitution and the compliance of the proposed ballot title and substance with s. 101.161." (Emphasis added.) The

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<sup>8</sup> Section 15.21 requires the Secretary of State to "immediately submit an initiative petition to the Attorney General" if the sponsor has met three conditions, and Tax Cap has met all three:

(1) Registered as a political committee pursuant to s. 106.03;

(2) Submitted the ballot title, substance, and text of the proposed revision or amendment to the Secretary of State pursuant to ss. 100.371 and 101.161; and

(3) Obtained a letter from the Division of Elections confirming that the sponsor has submitted to the appropriate supervisors for verification, and the supervisors have verified, forms signed and dated equal to 10 percent of the number of electors statewide and in at least one-fourth of the congressional districts required by s. 3, Art. XI of the State Constitution.

<sup>9</sup> Article IV, section 10, Florida Constitution, requires the Attorney General to "request the opinion of the justices of the supreme court as to the validity of any initiative petition circulated pursuant to Section 3 of Article XI."

Court's ruling on this petition in Tax Limitation I was limited to the single-subject question. 644 So. 2d at 491. The Court did not reach the issue of the petition's compliance with section 101.161, and Tax Cap is entitled to that review because of events subsequent to this Court's decision in Tax Limitation I.

When the people adopted the Revenue Limits amendment to article XI, section 3, in 1994, they eliminated the single-subject requirement for the Tax Limitation amendment (and any others that "limit the power of government to raise revenue"). The Revenue Limits amendment thus mooted the Court's sole stated basis for striking this Tax Limitation petition from the 1994 ballot. The signatures Tax Cap has obtained for the Tax Limitation petition are valid for four years, under section 100.371(2), Florida Statutes (1993), and therefore the Tax Limitation petition remains viable for the November 1996 general election. Tax Cap is entitled to exercise its right under article XI, section 3, as amended, to attempt to amend the Florida Constitution.

A similar situation arose in Florida League of Cities v. Smith, 607 So. 2d 397 (Fla. 1992). In League of Cities, this Court rendered an advisory opinion pursuant to article IV, section 10, Florida Constitution, approving a proposed constitutional amendment for compliance with the single-subject rule and the title and ballot summary requirements.<sup>10</sup> Opponents of the measure

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<sup>10</sup> The measure at issue, entitled "Homestead Valuation Limitation," was approved in In re Advisory Opinion to the Attorney General -- Homestead Valuation Limitation, 581 So. 2d 586 (Fla. 1991). The people adopted it in the November 1992 general election. Art. VII, § 4, Fla. Const.

subsequently filed a petition for a writ of mandamus, raising a new issue not addressed in the advisory opinion. This Court ruled that "[r]enewed litigation [following rendition of an advisory opinion concerning the validity of a proposed constitutional amendment] will be entertained only in truly extraordinary cases, such as in the present case where a vital issue was not addressed in the earlier opinion." 607 So. 2d at 399 (emphasis added). Here, the Court's earlier advisory opinion in Tax Limitation I did not address the "vital issue" of whether or not the Tax Limitation petition complies with the requirements of section 101.161, Florida Statutes. Consistent with League of Cities and with Tax Cap's entitlement to an advisory opinion on the only legal requirements that still pertain to the Tax Limitation petition, the Court should render its opinion on whether the Tax Limitation petition complies with section 101.161, Florida Statutes.

**III. THE TAX LIMITATION PETITION SATISFIES THE REQUIREMENTS OF SECTION 101.161(1), FLORIDA STATUTES.**

**A. The Title And Summary Accurately Inform The Voter Of The Chief Purpose And Ramifications Of The Proposal.**

One of the challenges that the Attorney General directed to the title of the Tax Limitation petition may have been intended to extend to the summary as well, but has no merit in either application. The Attorney General suggests that the voter may be unsure whether the Tax Limitation petition would extend to taxes and fees imposed by the Florida Legislature. This suggestion misinterprets the clear meaning and intent of the Tax Limitation petition.

In this case, the title and summary mean exactly what they say: the two-thirds requirement will apply only to a tax or fee that is imposed by a constitutional amendment. If it is, and assuming it falls within the definition of a "new State tax or fee" contained within the Tax Limitation petition and accurately summarized in the ballot summary, then a two-thirds vote will be required to pass the amendment. If the tax or fee in question is not imposed by a constitutional amendment, then a two-thirds vote is not required. The ballot summary cannot and has never been required to explain all potential situations under which a constitutional amendment may apply. It is enough that the ballot summary explains very clearly the general rule that courts must later apply to determine the applicability of the provision.

If the Attorney General's concern rests with the definition of "imposed," the concern can and should be addressed by

reference to the drafters' intent. The Court has noted that the Tax Limitation amendment would not, without a favorable two-thirds vote, allow the exaction of a fee as proposed in the fee-imposing initiative petition that was circulated but stricken from the ballot in 1994. Tax Limitation I, 644 So. 2d at 491 n.2. That petition specified the amount of the fee, the taxpayers against whom it was to be assessed, where the revenues were to be deposited, and how the revenues were to be expended. Save Our Everglades, 636 So. 2d at 1338. The legislature in this instance was to be a mere conduit to implement the very specific mandates of the proposed constitutional amendment. Thus, the constitutional amendment itself "imposed" the fee.

Reasoning by analogy, then, the Tax Limitation petition would apply to any constitutional amendment that mandates assessment of a specified state tax or fee (as defined in the Tax Limitation petition) and leaves no discretion to the Florida Legislature. It would not extend to a constitutional amendment that merely authorizes, permits, or purports to "require" the legislature to impose a tax or fee, but leaves the amount and other details to the legislature's discretion. If the legislature itself implemented such a new state tax or fee, the tax or fee would be a legislatively-imposed tax or fee and not a "tax or fee imposed on or after November 8, 1994 by any amendment to this constitution."

Each future constitutional amendment that may come within the scope of the Tax Limitation petition will have to be tested under these guidelines drawn from the clear meaning and intent of

the Tax Limitation petition, which are clearly and adequately disclosed in the title and summary. No one can predict at this time what specific proposals may be subjected to the test in the future nor whether the proposals will have to garner a two-thirds vote to pass. Too many variables that are presently unknown, particularly the specific language of proposed constitutional amendments, will have to be examined. The ballot summary is certainly not required to undertake this task in order to comply with section 101.161.

The Court has said that the ballot summary is not required to include all possible effects, Grose v. Firestone, 422 So. 2d 303, 305 (Fla. 1982), nor to "explain in detail what the proponents hope to accomplish." Advisory Opinion to the Attorney General English -- The Official Language of Florida, 520 So. 2d 11, 13 (Fla. 1988). It is enough that the ballot summary clearly and accurately sets forth the general rule to be applied and informs the voter of the chief purpose of the proposal so that an informed decision is possible. The voters are put on notice of the issues and the voters have the opportunity to inform themselves of the details merely by studying the full text of the amendment. No more is required. See Carroll v. Firestone, 497 So. 2d 1204, 1207 (Fla. 1986) (Boyd, J., concurring) ("The fact that people might not inform themselves about what they are voting for or petitioning for is immaterial so long as they have an opportunity to inform themselves."). Therefore, the title and ballot summary are legally sufficient.

**B. The Title Is Short Enough, Is The Common Name Of The Proposal, And Does Not Mislead Voters.**

Section 101.161, Florida Statutes (1993), requires that "[t]he 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 title of the Tax Limitation petition is "Tax Limitation: Should Two-Thirds Vote Be Required for New Constitutionally-Imposed State Taxes/Fees?" This fifteen-word title obviously complies with the length requirement of section 101.161. The measure is commonly referenced by its title, thus satisfying the second aspect of section 101.161.

The Attorney General challenges the title of the Tax Limitation petition on two grounds. First, the Attorney General suggests that the title may be fatally misleading because it is phrased in the form of a question "that, by its very nature, signifies that the issue is unresolved." [A 3 at 4.] Second, the Attorney General suggests that the title may be misleading because it "refers to 'constitutionally-imposed' state taxes or fees," which the Attorney General suggests may leave the voter "unsure as to whether the amendment affects only new taxes or fees that are imposed by the Florida Constitution or whether it also extends to taxes or fees imposed by the Legislature since a legislatively created tax is, in fact, imposed pursuant to the authority granted to the Legislature by the Constitution." [A 3 at 4.] Neither issue raised by the Attorney General constitutes a defect in the title of the Tax Limitation petition.

The title is not misleading merely because it is phrased in the form of a question. The Court has issued a warning that "the use of a question in the title or summary may place a proposal in jeopardy of being removed from the ballot because a question can convey a double meaning." Tax Limitation I, 644 So. 2d at 496 n.4. This warning is certainly not a prophylactic rule, however, as the Court expressly stated in Tax Limitation I: "[T]he use of a question in the ballot title is not per se misleading . . . ." Id. at 496. The Court in Tax Limitation I approved a ballot title phrased as a question: "Revenue Limits: May People's Amendments Limiting Government Revenue Be Allowed To Cover Multiple Subjects?" Id. Thus, the Court must resolve on a case by case basis the issue of whether a title phrased as a question is misleading.

The title of the Tax Limitation petition, "Tax Limitation: Should Two-Thirds Vote Be Required for New Constitutionally-Imposed State Taxes/Fees?," accurately informs the voter that the subject of the proposed amendment is a tax limitation, and accurately implies that a two-thirds vote is not presently required. It is not fatally defective for suggesting that the issue is unresolved, as the Attorney General argues, because this petition in fact raises the issue for resolution. On the ballot, voters are asked to answer "yes" or "no," and therefore it makes perfect sense to put the issue before the voter in the form of a question that requires a yes or no answer. [See A 6 (1994 ballot).] The title is accurate and informative and should be approved.



The Attorney General further argues that the title may be misleading because it "refers to 'constitutionally-imposed' state taxes or fees," which the Attorney General suggests may leave the voter "unsure as to whether the amendment affects only new taxes or fees that are imposed by the Florida Constitution or whether it also extends to taxes or fees imposed by the Legislature since a legislatively created tax is, in fact, imposed pursuant to the authority granted to the Legislature by the Constitution." [A 3 at 4.] He argues, in effect, that all taxes, including those imposed by the Florida Legislature, must be "constitutional," as opposed to "unconstitutional," in order to be implemented, and therefore that the title suggests a much broader scope than the text would allow.

The Attorney General is assigning an improper meaning to the phrase "constitutionally-imposed." If the phrase is interpreted to mean "constitutional," as opposed to "unconstitutional," then the result would be to require a two-thirds vote for taxes and fees that pass constitutional muster but only a majority vote for those that are deemed to be unconstitutional. This demonstrates that the Attorney General's construction of the phrase "constitutionally-imposed" is illogical and entitled to no consideration whatsoever.

The Court should reject the Attorney General's misinterpretation of the title for the additional reason that the title cannot properly be evaluated in isolation. Section 101.161 requires the Court to read the summary and the title together. Advisory Opinion to the Attorney General re Limited Casinos, 644 So. 2d 71, 75 (Fla. 1994) ("This Court has always interpreted

section 101.161(1) to mean that the ballot title and summary must be read together in determining if the ballot information properly informs the voter."). The ballot summary clearly explains that the taxes and fees targeted by the Tax Limitation petition are those imposed "by constitutional amendment." The title and summary together are perfectly clear and not misleading.

The law is well settled that an interpretation that gives effect to other sections, implements the drafters' intent, and results in a finding of validity, is to be preferred over an interpretation that would result in invalidation of the entire provision. The Court's "duty is to uphold the proposal unless it can be shown to be 'clearly and conclusively defective.'" Floridians, 363 So. 2d at 339 (emphasis added; citing Weber, 338 So. 2d at 821-22, and Goldner, 167 So. 2d 575). The Court should reject the Attorney General's mistaken interpretation of the title.

If the Attorney General means to suggest that the title is misleading for failing to explain all of the potential applications of the Tax Limitation petition, the suggestion must fail. A fifteen-word title cannot possibly be expected to detail ramifications of a proposed constitutional amendment, and the Court has never imposed such a requirement. Giving full effect to the chief purpose of the petition and the correct interpretation of the title when read in context with the summary, it remains perfectly clear that the title accurately informs the voter of the chief purpose of the proposed amendment and satisfies the requirements of section 101.161.

**C. The Ballot Summary Fairly And Adequately  
Informs The Voter That A Supermajority  
Requirement Would Replace A Typical  
Majority Requirement For Covered  
Amendments.**

The Attorney General suggests that the ballot summary of the Tax Limitation petition may mislead the voters because, he claims, the summary "does not inform the voter" that the effect of the Tax Limitation petition would be to modify the provision of the Florida Constitution stating that a majority vote is required to pass a matter in an election (such modification applying only to amendments within the scope of this proposal). [A 3 at 4.] The apparent thrust of this challenge is that the summary does not inform the voter that a majority vote typically prevails in an election, and does not state where in the constitution this general rule is set forth. The argument surely is not that the summary fails to inform the voter that this will change if the subject amendment is adopted; it could hardly be any clearer that the Tax Limitation petition would require a two-thirds majority vote on amendments within its scope. If, then, the Attorney General's concern is failure to inform the voter of the status quo and the article and section numbers that express the rule, the concern is meritless in this case.

The voter must be presumed to have a certain amount of common sense and knowledge, and to know from learning and experience that the majority rules. Tax Cap should not have to tell voters that. Nor should Tax Cap have to tell voters which part of the constitution provides that the majority rules, since the article and section number would add absolutely nothing to the

pertinent analysis. Under these circumstances, considering the very basic and commonly understood principle that the majority rules, the ballot summary is not fatally defective for failing to advise the voter expressly that this amendment would modify article X, section 12(d) of the Florida Constitution in cases falling within the scope of the Tax Limitation petition.

**CONCLUSION**

The Tax Limitation petition arrives at this Court entitled to a great deal of deference, and can be barred from the ballot only if shown to be "clearly and conclusively defective." The sole issues before the Court are the legal sufficiency of the title and ballot summary, both of which comply with the requirements of section 101.161 by accurately informing the voter of the chief purpose and effects of the proposed amendment. Accordingly, the Court should approve the Tax Limitation petition for submission to the voters in the November 1996 general election.

**HOLLAND & KNIGHT**

*Susan L. Turner*

Chesterfield Smith (FBN 075041)  
Julian Clarkson (FBN 013930)  
Susan L. Turner (FBN 772097)  
P.O. Drawer 810  
Tallahassee, FL 32302  
(904) 224-7000

**Attorneys for  
Tax Cap Committee**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing with the attached Appendix was furnished to the following by hand delivery or by United States mail this 21st day of November, 1995.

*Jusan L. Turner*  
Attorney

The Honorable Robert A. Butterworth           (hand delivery)  
Attorney General  
The Capitol  
Tallahassee, FL 32301

Donald M. Middlebrooks                           (mail)  
Vikki L. Wulf  
Steel, Hector & Davis  
777 S. Flagler Drive, Suite 1900  
West Palm Beach, FL 33401-6105

TAL-72360

INDEX TO APPENDIX

- A 1 The Tax Limitation petition form, including title, summary, and text of the proposed amendment
- A 2 This Court's October 12, 1995 Interlocutory Order setting briefing and argument schedule
- A 3 Attorney General's October 9, 1995 request for an advisory opinion on the Tax Limitation petition
- A 4 Secretary of State's September 11, 1995 letter resubmitting Tax Limitation petition for the advisory opinion procedure (with attachments)
- A 5 This Court's October 4, 1994 decision in Tax Limitation I
- A 6 Ballot from 1994 general election, illustrating the Yes-No format
- A 7 Results of 1994 voting on the Revenue Limits amendment



# TAX LIMITATION

## FLORIDA CONSTITUTIONAL AMENDMENT PETITION FORM

XXXXXX

### PROPOSED FLORIDA CONSTITUTIONAL AMENDMENT

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.

**PRESS HARD**  
PLEASE PRINT LEGIBLY (Same as registered to vote)

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_

COUNTY \_\_\_\_\_

ZIP \_\_\_\_\_ PHONE \_\_\_\_\_

COMPLETE { CONGRESSIONAL DISTRICT  PRECINCT NUMBER  IF KNOWN

Mail Petitions and Badly Needed Donations To: Tax Cap Committee  
P.O. Box 193, New Smyrna Beach, FL 32170-0193  
Print Political Advertisement Property of Tax Cap Committee, Copyright © 1994 Tax Cap Committee  
Phone: Proactive Voters and their supporters call  
1-800-4 TAX LIMIT (482-9546) or 1-800-454744

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.

### YOUR SIGNATURE ONLY PUTS THE PROPOSED AMENDMENT TO A VOTE

I am a Florida registered voter. I petition the Secretary of State to place this ballot title, summary and proposed constitutional amendment, on a general election ballot.

X \_\_\_\_\_  
Signature (Same as registered to vote) Date \_\_\_\_\_

PLEASE READ CAREFULLY

**SIGN AND DATE PETITION 1 ABOVE**

# Supreme Court of Florida

THURSDAY, OCTOBER 12, 1995

ADVISORY OPINION TO THE  
ATTORNEY GENERAL

CASE NO. 86,600

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

## INTERLOCUTORY ORDER

Attorney General, Robert A. Butterworth, pursuant to the provisions of Article IV, Section 10, Florida Constitution, and Section 16.061, Florida Statutes, has requested this Court's opinion as to whether the validity of an initiative petition circulated pursuant to Article XI, Section 3, of the Florida Constitution, seeking to create Article XI, Section 7, of the Florida Constitution, complies with Article XI, Section 3, of the Florida Constitution, and whether the petition's ballot title and summary comply with Section 101.161, Florida Statutes. The full text of the proposed amendment provides:

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.

The ballot title for the proposed amendment is "Tax Limitation: Should Two-Thirds Vote Be Required for New Constitutionally - Imposed State Taxes/Fees?" The summary for the proposed amendment provides:

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.

Section 16.061, Florida Statutes, requires the Attorney General,  
within 30 days after receipt of the proposed amendment or revision  
to the State Constitution by initiative petition, to petition this  
Honorable Court for an advisory opinion regarding compliance of  
the text of the proposed amendment with Article XI, Section 3,  
Florida Constitution, and compliance of the proposed ballot title  
and substance with Section 101.161, Florida Statutes.

The full text of the Attorney General's letter is attached hereto  
as an exhibit and made a part thereof.

IT IS, THEREFORE, the order of the Court that interested parties  
shall file their briefs on or before November 1, 1995, and serve a  
copy thereof on the Attorney General. Reply briefs shall be filed  
on or before November 21, 1995. Please file an original and seven  
copies of all briefs. Please send to the Court, either in Word  
Perfect format or ASCII text format, a 3-1/2 inch diskette of the  
briefs on the merits filed in this case. Oral argument is  
scheduled for 9 a.m. WEDNESDAY, JANUARY 3, 1996. All parties who  
have filed a brief and have asked to be heard may have the

opportunity of presenting oral argument. The amount of time allocated to each party will be determined after the filing of the briefs.

A True Copy

TEST:

Sid J. White  
Clerk Supreme Court.

sg

cc: The Honorable Robert A.  
Butterworth  
The Honorable Sandra B.  
Mortham  
Mr. David Biddulph



86,600

# STATE OF FLORIDA

OFFICE OF ATTORNEY GENERAL

ROBERT A. BUTTERWORTH

October 9, 1995

**FILED**

SID J WHITE

OCT 9 1995

The Honorable Stephen Grimes  
Chief Justice, and  
Justices of the Supreme Court  
of Florida  
The Supreme Court Building  
Tallahassee, Florida 32399-1925

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

Dear Chief Justice Grimes and Justices:

In accordance with Article IV, Section 10, Florida Constitution, and Section 16.061, Florida Statutes, it is my responsibility to petition this Honorable Court for a written opinion as to the validity of an initiative petition circulated pursuant to Article XI, Section 3, of the Florida Constitution.

On September 11, 1995, the Secretary of State submitted to this office an initiative petition seeking to create Article XI, Section 7, of the Florida Constitution. The full text of the proposed amendment provides:

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.

The ballot title for the proposed amendment is "Tax Limitation: Should Two-Thirds Vote Be Required for New Constitutionally - Imposed State Taxes/Fees?" The summary for the proposed amendment provides:

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.

#### FACTUAL ISSUES

The proposed amendment was previously reviewed by this Court in its order of October 4, 1994. Advisory Opinion to the Attorney General--Tax Limitation, 644 So. 2d 486 (Fla. 1994). The Court found that the initiative failed to meet the single-subject requirement of Article XI, Section 3, of the Florida Constitution because it combined taxes and fees.

During the November 8, 1994, general election, the voters approved an amendment to Article XI, Section 3, of the Florida Constitution that removed the single-subject limitation on initiatives limiting the power of government to raise revenue. In light of this change and the provisions of Section 100.371(2), Florida Statutes, stating that signatures obtained on initiative petitions are valid for a period of four years, the Secretary of State resubmitted to this office the initiative petition seeking to create Article XI, Section 7, of the Florida Constitution.

The Court may wish to consider whether section 100.371(2), Fla. Stat., authorizes the resubmission of a petition that has been previously stricken by this Court and whether the Court's previous consideration of these issues bars reconsideration of this initiative petition.

#### CONSTITUTIONAL REQUIREMENTS

Section 16.061, Florida Statutes, requires the Attorney General, within 30 days after receipt of a proposed revision or amendment

to the Florida Constitution by citizens' initiative, to petition this Honorable Court for an advisory opinion as to whether the text of the proposed amendment complies with Article XI, Section 3, of the Florida Constitution.

As amended by the electors during the 1994 general election, Article XI, Section 3, of the Florida Constitution requires that any revision or amendment proposed by initiative, "except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith." As noted supra, this Court previously concluded that the language of this proposed amendment embraced more than one subject. The proposed amendment seeks to impose a two-thirds voter approval requirement for the imposition of new state taxes. Such a requirement is a limitation on the state's ability to raise revenue, and thus would fall within the scope of the exception to the single subject requirement now expressed in Article XI, Section 3, Florida Constitution.

BALLOT TITLE AND SUMMARY

Section 16.061, Florida Statutes, requires the Attorney General, within 30 days after receipt of a proposed revision or amendment to the Florida Constitution by citizens' initiative, to petition this Honorable Court for an advisory opinion as to whether the petition's ballot title and summary comply with Section 101.161, Florida Statutes.

Section 101.161, Florida Statutes, prescribes the requirements for the ballot title and summary of a proposed constitutional amendment, providing in part:

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 . . . . 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.

This Court has stated that "section 101.161 requires that the ballot title and summary for a proposed constitutional amendment state in clear and unambiguous language the chief purpose of the measure." Askew v. Firestone, 421 So. 2d 151, 154-155 (Fla.

1982). The ballot title and summary, therefore, must be "clear and unambiguous" and not mislead voters as to the content of the proposed amendment. They must give "fair notice" of the proposed amendment's purpose. Advisory Opinion to the Attorney General-- Limited Political Terms in Certain Elective Offices, 592 So. 2d 225, 228 (Fla. 1991).

The proposed initiative petition is entitled "Tax Limitation: Should Two-Thirds Vote Be Required For New Constitutionally-Imposed State Taxes/Fees?" Thus, the ballot title is phrased as a question to the voters. Rather than informing the voter of the legal effect of the amendment, the ballot title poses a question that, by its very nature, signifies that the issue is unresolved. This Court advised in Advisory Opinion to the Attorney General-- Tax Limitation, supra at 496 n.4, that the "use of a question in the title or summary may place a proposal in jeopardy of being removed from the ballot because a question can convey a double meaning."

The title refers to "constitutionally imposed" state taxes or fees. The voter may be unsure as to whether the amendment affects only new taxes or fees that are imposed by the Florida Constitution or whether it also extends to taxes or fees imposed by the Legislature since a legislatively created tax is, in fact, imposed pursuant to the authority granted to the Legislature by the Constitution. While the text of the amendment indicates that it is modifying Article X, Section 12(d), Florida Constitution, by changing the definition of "vote of the electors" to require a two-thirds vote approving a constitutionally imposed state tax or fee, the summary does not inform the voter of such effect.

The proposed amendment purports to apply to constitutional amendments seeking to impose state taxes or fees after November 8, 1994. The proposed amendment, however, does not specify an effective date for the amendment itself. Therefore, pursuant to Article XI, section 5(c), Florida Constitution,

If the proposed amendment or revision is approved by vote of the electors, it shall be effective as an amendment to or revision of the constitution of the state 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.

Therefore, I respectfully request this Honorable Court's opinion as to whether the constitutional amendment, proposed by initiative petition, complies with Article XI, Section 3, Florida

The Honorable Stephen Grimes  
Page Five

Constitution, and whether the proposed ballot title and summary  
for such amendment comply with Section 101.161, Florida Statutes.

Sincerely,



Robert A. Butterworth  
Attorney General

RAB/tgk

Enclosures

cc: The Honorable Sandra B. Mortham  
Secretary of State  
The Capitol  
Tallahassee, Florida 32399-0250

Mr. David Biddulph  
Post Office Box 193  
New Smyrna Beach, Florida 32170





FLORIDA DEPARTMENT OF STATE  
Sandra B. Mortham  
Secretary of State

86,600

**FILED**

SID J. WHITE

OCT 9 1995

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

11 September 1995

The Honorable Bob Butterworth  
Attorney General  
State of Florida  
The Capitol  
Tallahassee, Florida 32399-1050

Dear Attorney General Butterworth,

Re: Tax Cap Committee - Revenue Limits: May People's Amendments Limiting Government Revenue Be Allowed to Cover Multiple Subjects? Article XI, Section 3, Florida Constitution

The above-referenced issue, which was approved by the voters on November 8, 1994, provides that amendments proposed by initiative must be limited to single subject, "except for those limiting the power of government to raise revenue."

The Tax Cap Committee now contends that the Tax Limitation Amendment which was disallowed by the court can now be placed on the ballot for 1996. This amendment was not approved by the Court because it dealt with more than a single subject. The Court pointed out that because of its finding that there was a violation of the single subject requirement it need not address any of the other issues raised by the opponents. Section 16.061, Florida Statutes, requires that after receiving an initiative petition from us, your office must petition the Supreme Court regarding compliance with the single subject requirement and compliance of the proposed ballot title and substance with Section 101.161, Florida Statutes. Florida law provides the validity of signatures be for a period of four years.

It is this office's opinion that the Tax Cap Committee has enough signatures for ballot position. Furthermore, we are obligated to resubmit this amendment to your office for an advisory opinion from the Supreme Court because the Court never ruled on whether the ballot title and substance complies with Section 101.161, Florida Statutes, as is required by Section 16.061, Florida Statutes.

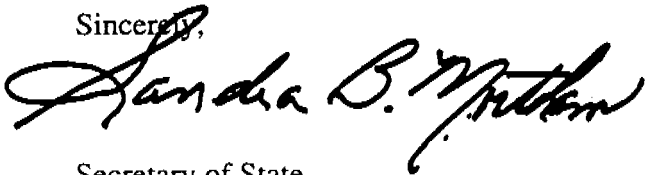
The Honorable Bob Butterworth

11 September 1995

Page Two

If you have any questions, please contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Sandra B. Milton". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Secretary of State

SBM/dpr

Enclosures



# TAX LIMITATION

## FLORIDA CONSTITUTIONAL AMENDMENT PETITION FORM

XXXXXX

PRESS HARD  
PLEASE PRINT LEGIBLY (Same as registered to vote)

**PROPOSED FLORIDA CONSTITUTIONAL AMENDMENT**

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.

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_

COUNTY \_\_\_\_\_

ZIP \_\_\_\_\_ PHONE \_\_\_\_\_

COMPLETE { CONGRESSIONAL DISTRICT  PRECINCT NUMBER  P. ENOUGH

Mail Petitions and Badly Needed Donations To: Tax Cap Committee  
P.O. Box 193, New Smyrna Beach, FL 32170-0193  
Full Petition Instructions: Property of Tax Cap Committee, Copyright © 1994 Tax Cap Committee  
Name: Proprietary means and/or materials used  
1-800-4 TAX LIMIT (482-9546) or 408-223-1744

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.

### YOUR SIGNATURE ONLY PUTS THE PROPOSED AMENDMENT TO A VOTE

I am a Florida registered voter. I petition the Secretary of State to place this ballot title, summary and proposed constitutional amendment, on a general election ballot.

X \_\_\_\_\_  
Signature (Same as registered to vote) Date

PLEASE READ CAREFULLY

**SIGN AND DATE PETITION 1 ABOVE**



FLORIDA DEPARTMENT OF STATE

Sandra B. Mortham  
Secretary of State

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

MEMORANDUM

To: Ethel Baxter  
From: Mike Cochran *MC*  
Date: September 8, 1995  
Re: Tax Limitation Amendment

Last year the Florida Supreme Court approved Constitutional Amendment Number 4, Revenue Limits. This amendment was approved by the voters, appears as Article XI, Section 3, Florida Constitution, and provides that amendments proposed by initiative must be limited to a single subject, "except for those limiting the power of government to raise revenue." In other words, the single subject requirement is eliminated from amendments proposed by initiative which "limit the power of government to raise revenue." Advisory Opinion to the Attorney General Re: Tax Limitation, et al. v Jim Smith, 644 So. 2d 486, 496 (Fla. 1994).

Because of the foregoing, the Tax Cap Committee now contends that the Tax Limitation amendment which was disallowed by the court in Smith, can now be placed on the ballot for 1996. In Smith, this amendment was not approved by the court because it dealt with more than a single subject. The court also pointed out that because of its finding that there was a violation of the single subject requirement, it need not address any of the other issues raised by the opponents. Smith, at 491.

Section 16.061, Florida Statutes, requires that after receiving an initiative petition from us, the Attorney General must petition the Supreme Court regarding compliance with the single subject requirement and compliance of the proposed ballot title and substance with Section 101.161, Florida Statutes.

Inasmuch as the Smith court chose not to address any issues related to Section 101.161, Florida Statutes, because it did not have to, it is my opinion that while Tax Cap still has enough signatures for ballot position, we are still obligated to submit this amendment to the Attorney General for an advisory opinion from the Supreme Court. In short, the Supreme Court has never ruled on whether the ballot title and substance complies with Section 101.161, Florida Statutes, as is required by Section 16.061, Florida Statutes. If we were to merely place the proposed amendment on the ballot without going through the review process, the Secretary could be sued and ordered to strike the measure from the ballot.

MC/pr  
cc: David Rancourt



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 that reads "Dorothy W. Joyce".

Dorothy W. Joyce  
Division Director

DWJ/pr

Enclosures

STATE OF FLORIDA

DEPARTMENT OF STATE

STATE OF FLORIDA )  
 )  
COUNTY OF LEON )

WHEREAS, Tax Cap Committee, is a duly registered political committee under Florida Law formed for the purpose of proposing an amendment to the Constitution of the State of Florida by Initiative Petition.

WHEREAS, said Committee has prepared an Initiative Petition which has met the format requirements of the Florida Department of State (Florida Administrative Code Rule 1S-2.009).

WHEREAS, said Initiative Petition has been circulated in the State of Florida and has been signed by the requisite number of electors in the requisite number of congressional districts pursuant to Article XI (3), Florida Constitution of 1968. (See attachments)

THEREFORE, I, Jim Smith, Secretary of State of the State of Florida, having received certificates of verification from the supervisors of elections pursuant to Section 100.371, Florida Statutes, do hereby issue a Certificate of Ballot position pursuant to said statute for the proposed constitutional amendment, which is known as: Tax Limitation: Should 2/3 vote be required for new constitutionally-imposed state taxes/fees? and assign Number Six to said proposed constitutional amendment pursuant to Section 101.161, Florida Statutes.

Given under my hand and the  
Great Seal of the State  
of Florida at Tallahassee,  
the Capital, this the  
Twenty-First day of  
July, A.D., 1994.



*Jim Smith*  
Secretary of State

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

FLORIDA DEPARTMENT OF STATE  
DIVISION OF ELECTIONS

SIGNATURES CERTIFIED BY DISTRICT BY COUNTY

Political Committee: Tax Cap Committee

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

Congressional District	County	Signatures Certified
FIRST	Bay	1,053
	Escambia	11,882
	Holmes	114
	Okaloosa	875
	Santa Rosa	4,150
	Walton	1,132
	TOTAL	19,206
SECOND	Baker	0
	Bay	3,208
	Calhoun	0
	Columbia	605
	Franklin	389
	Gadsden	1,554
	Gulf	486
	Hamilton	27
	Jackson	422
	Jefferson	515
	Lafayette	197
	Leon	0
	Liberty	167
	Madison	668
	Suwannee	875
	Taylor	1,048
Wakulla	341	
Washington	359	
TOTAL	10,861	
THIRD	Alachua	1,088
	Baker	0
	Clay	303
	Columbia	289
	Duval	10,542
	Flagler	54
	Lake	34
	Levy	33
	Marion	295
	Orange	367

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FLORIDA DEPARTMENT OF STATE  
DIVISION OF ELECTIONS

SIGNATURES CERTIFIED BY DISTRICT BY COUNTY

Political Committee: Tax Cap Committee

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

Congressional District	County	Signatures Certified
THIRD	Putnam	1,647
	Seminole	373
	St. Johns	359
	Volusia	1,063
	TOTAL	16,447
FOURTH	Duval	18,635
	Flagler	2,338
	Nassau	104
	St. Johns	6,476
	Volusia	4,664
TOTAL	32,217	
FIFTH	Alachua	4,361
	Citrus	3,754
	Dixie	0
	Gilchrist	719
	Hernando	3,497
	Levy	483
	Marion	780
	Pasco	3
	Sumter	673
TOTAL	14,270	
SIXTH	Baker	0
	Bradford	1,149
	Clay	3,705
	Duval	4,701
	Lake	8,919
	Marion	4,125
	Putnam	2,836
	Union	773
TOTAL	26,208	

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FLORIDA DEPARTMENT OF STATE  
DIVISION OF ELECTIONS

SIGNATURES CERTIFIED BY DISTRICT BY COUNTY

Political Committee: Tax Cap Committee

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

Congressional District	County	Signatures Certified
SEVENTH	Orange	0
	Seminole	9,685
	Volusia	14,036
	TOTAL	23,721
EIGHTH	Orange	2,187
	Osceola	2,248
	TOTAL	4,435
NINTH	Hillsborough	7,149
	Pasco	4
	Pinellas	12,430
	TOTAL	19,583
TENTH	Pinellas	21,929
	TOTAL	21,929
ELEVENTH	Hillsborough	21,875
	TOTAL	21,875
TWELFTH	Desoto	997
	Hardee	678
	Highlands	6
	Hillsborough	3,085
	Pasco	0
	Polk	14,538
TOTAL	19,304	
THIRTEENTH	Charlotte	3,782
	Hillsborough	2,387

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FLORIDA DEPARTMENT OF STATE  
DIVISION OF ELECTIONS

SIGNATURES CERTIFIED BY DISTRICT BY COUNTY

Political Committee: Tax Cap Committee

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

Congressional District	County	Signatures Certified
THIRTEENTH	Manatee	5,847
	Sarasota	10,990
	TOTAL	23,006
FOURTEENTH	Charlotte	7,562
	Collier	3,460
	Lee	19,178
	TOTAL	30,200
FIFTEENTH	Brevard	21,178
	Indian River	2,297
	Osceola	2,592
	Polk	865
	TOTAL	26,932
SIXTEENTH	Glades	12
	Hendry	2,155
	Highlands	19
	Martin	4,040
	Okeechobee	331
	Palm Beach	9,451
	St. Lucie	5,034
	TOTAL	21,042
SEVENTEENTH	Dade	4,226
	TOTAL	4,226
EIGHTEENTH	Dade	4,832
	TOTAL	4,832

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FLORIDA DEPARTMENT OF STATE  
DIVISION OF ELECTIONS

SIGNATURES CERTIFIED BY DISTRICT BY COUNTY

Political Committee: Tax Cap Committee

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

Congressional District	County	Signatures Certified
NINETEENTH	Broward	18,449
	Palm Beach	16,257
	TOTAL	34,706
TWENTIETH	Broward	25,364
	Dade	1,185
	Monroe	1,091
TOTAL	27,640	
TWENTY-FIRST	Dade	4,655
	TOTAL	4,655
TWENTY-SECOND	Broward	9,841
	Dade	2,442
	Palm Beach	7,580
TOTAL	19,863	
TWENTY-THIRD	Broward	11,516
	Dade	263
	Hendry	303
	Martin	52
	Okeechobee	160
	Palm Beach	3,718
	St. Lucie	452
TOTAL	16,464	
GRAND TOTAL		443,622

DATE: 07/21/94 11:26 am



FLORIDA DEPARTMENT OF STATE

Jim Smith  
Secretary of State

June 22, 1994

The Honorable Bob Butterworth  
Attorney General  
State of Florida  
The Capitol  
Tallahassee, Florida 32399-1050

Dear Attorney General Butterworth:

Re: Tax Cap Committee

Section 15.21, Florida Statutes, provides that the Secretary of State shall submit to the Attorney General an initiative petition when a political committee has obtained ten percent of the signatures in one fourth of the Congressional Districts as required by Article XI of the Florida Constitution.

Section 16.061, Florida Statutes, provides that the Attorney General must then petition the Supreme Court for an advisory opinion regarding the compliance of the text of the proposed amendment, ballot title and substance of the amendment to the State Constitution.

Tax Cap Committee, the above-referenced political committee, has successfully met the signature requirement, and I am, therefore, submitting its proposed constitutional amendment, ballot title and substance of the amendment.

Sincerely,

Secretary of State

JS/dpr  
Enclosures

cc: Mr. David Biddulph  
Post Office Box 193  
New Smyrna Beach, FL 32169

**ADVISORY OPINION TO THE ATTORNEY  
GENERAL RE TAX LIMITATION.  
ADVISORY OPINION TO THE ATTORNEY  
GENERAL RE VOTER APPROVAL OF NEW  
TAXES.  
ADVISORY OPINION TO THE ATTORNEY  
GENERAL RE PROPERTY RIGHTS.  
ADVISORY OPINION TO THE ATTORNEY  
GENERAL RE REVENUE LIMITS.  
The LEAGUE OF WOMEN VOTERS OF  
FLORIDA, INC., et al., Petitioners,  
v.  
Jim SMITH, etc., Respondent.**

Nos. 83969, 83968, 83967, 83966 and 84089.

Supreme Court of Florida.

Oct. 4, 1994.

Rehearing Denied Nov. 4, 1994.

Attorney General petitioned Court for advisory opinion on validity of four initiative petitions to amend the State Constitution. The Supreme Court, Overton, J., held: (1) proposed tax limitation amendment must be stricken from ballot because amendment failed to meet single-subject requirement because it combined taxes and fees; (2) proposed voter approval of new taxes amendment must be stricken from ballot because amendment substantially affected specific provisions of Constitution without identifying those provisions for voters, and ballot title and summary were misleading because of use of a question to describe initiative; (3) proposed property rights amendment must be stricken from ballot because it violated single-subject requirement since it substantially altered functions of multiple branches of government, and ballot title and summary did not properly advise voters, were not accurate and informative, and were misleading and ambiguous; (4) proposed revenue limits amendment was properly on the ballot; and (5) writ of mandamus was not an appropriate remedy to require Secretary of State to disapprove verified signatures on petitions.

Writ denied.

Overton, J., specially concurred with opinion in

which Grimes, C.J., concurred.

Shaw, J., concurred in part and dissented in part and filed opinion in which Kogan, J., concurred.

Kogan, J., concurred in part and dissented in part and filed opinion in which Shaw, J., concurred.

**[1] CONSTITUTIONAL LAW ⇔ 9(.5)  
92k9(.5)**

In rendering advisory opinion on validity of initiative petitions to amend Constitution, Supreme Court's role is strictly limited to legal issues presented by Constitution and relevant statutes; Court does not have authority or responsibility to rule on merits or wisdom of the proposed initiative amendments.

**[2] CONSTITUTIONAL LAW ⇔ 9(1)  
92k9(1)**

Infringing on people's right to vote on an amendment is a power court should use only where record shows the constitutional single-subject requirement has been violated or record establishes that the ballot language would clearly mislead public concerning material elements of the proposed amendment and its effect on the present Constitution. West's F.S.A. Const. Art. 11, § 3; West's F.S.A. § 101.161(1).

**[3] CONSTITUTIONAL LAW ⇔ 9(1)  
92k9(1)**

Proposed tax limitation amendment to Constitution failed to meet requirement that amendment to Constitution proposed by initiative embrace one subject since initiative combined taxes and fees, and thus, had to be stricken from ballot. West's F.S.A. Const. Art. 11, § 3.

**[4] CONSTITUTIONAL LAW ⇔ 9(1)  
92k9(1)**

Proposed new taxes amendment to Constitution substantially affected specific provisions of Constitution without identifying those provisions for voters, thus violating principle that electorate be advised of effect proposal has on existing sections of Constitution; thus, amendment had to be stricken from ballot. West's F.S.A. Const. Art. 7, §§ 1(a), b), 2, 5, 7, 9.

**[5] CONSTITUTIONAL LAW ⇔ 9(1)**

92k9(1)

Ballot title, reading, "Voter Approval of New Taxes: Should New Taxes Require Voter Approval in this State?[,]" and summary of proposed voter approval of new taxes amendment were misleading and had to be stricken from ballot since question was used to describe initiative and thus implied that there was presently no cap or limitation on taxes in constitution although there was such a limitation for local governmental entities and inheritance and income tax. West's F.S.A. Const. Art. 7, §§ 5(b), 9; West's F.S.A. § 101.161(1).

**[6] CONSTITUTIONAL LAW ⇌ 9(1)**

92k9(1)

Proposed property rights amendment to constitution violated single-subject requirement, and had to be stricken from ballot, since it substantially altered functions of multiple branches of government and had distinct and substantial affect on each local governmental entity; ability to enact zoning laws, to require development plans, to have comprehensive plans for community, to have uniform ingress and egress along major thoroughfares, to protect public from diseased animals or diseased plants, to control and manage water rights, and to control or manage storm-water drainage and flood waters, all would be substantially affected by provision. West's F.S.A. Const. Art. 11, § 3.

**[7] CONSTITUTIONAL LAW ⇌ 9(1)**

92k9(1)

Proposed property rights amendment failed to give adequate notice that it substantially affects numerous provisions of Constitution as required under principle that electorate be advised of effect proposal has on existing sections of Constitution.

**[8] CONSTITUTIONAL LAW ⇌ 9(1)**

92k9(1)

Ballot title and summary must advise electorate of true meaning and ramifications of constitutional amendment and, in particular, must be accurate and informative. West's F.S.A. § 101.161(1).

**[9] CONSTITUTIONAL LAW ⇌ 9(1)**

92k9(1)

Ballot title and summary of proposed property rights amendment did not properly advise voters and was not accurate and informative since proposal would result in major change in function of government

because it would require all entities of government to provide compensation from tax revenue to owners or businesses for damages allegedly caused to their property by government's exercise of its police powers. West's F.S.A. § 101.161(1).

**[10] CONSTITUTIONAL LAW ⇌ 9(1)**

92k9(1)

Ballot title and summary of proposed property rights were misleading and ambiguous since text of initiative is not limited to real property interests, it is silent as to meaning of term "owner," and includes no reference as to whether owner includes businesses. West's F.S.A. § 101.161(1).

**[11] CONSTITUTIONAL LAW ⇌ 9(1)**

92k9(1)

Proposed revenue limits amendment to Constitution did not violate single-subject requirement, and, though it was exceedingly close to being misleading, it was not so close as to be removed from ballot. West's F.S.A. Const. Art. 11, § 3; West's F.S.A. § 101.161(1).

**[12] CONSTITUTIONAL LAW ⇌ 9(1)**

92k9(1)

While use of a question in ballot title to amend Constitution is not per se misleading, it may raise issue of whether title is sufficiently informative, and may place proposal in jeopardy of being removed from ballot since a question can convey a double meaning. West's F.S.A. § 101.161(1).

**[13] CONSTITUTIONAL LAW ⇌ 70.1(1)**

92k70.1(1)

Writ of mandamus, in which organization sought to require Secretary of State to disapprove verified signatures on petitions for initiatives and to require their resubmission on grounds that consolidated petition format used was not approved by Secretary and petition form was allegedly misleading to electorate, was not an appropriate remedy since question of whether joining of initiative petitions was proper was question legislature should resolve by appropriate statutory provisions, and since relief requested in mandamus was not matter within mandated authority of Secretary of State.

**[13] MANDAMUS ⇌ 74(1)**

250k74(1)

Writ of mandamus, in which organization sought to require Secretary of State to disapprove verified

signatures on petitions for initiatives and to require their resubmission on grounds that consolidated petition format used was not approved by Secretary and petition form was allegedly misleading to electorate, was not an appropriate remedy since question of whether joining of initiative petitions was proper was question legislature should resolve by appropriate statutory provisions, and since relief requested in mandamus was not matter within mandated authority of Secretary of State.

\*488 Robert A. Butterworth, Atty. Gen., and Louis F. Hubener, III, Asst. Atty. Gen., Tallahassee, for petitioner in Nos. 83969, 83968, 83967 and 83966.

Cass D. Vickers and Thomas M. Findley of Messer, Vickers, Caparello, Madsen & Goldman, Tallahassee, for Tax Cap Committee; R. Timothy Jansen, Tallahassee, for Frank Brogan, Educ. Com'r Candidate et al.; Gary R. Rutledge, Kenneth A. Hoffman and Harold F. X. Purnell of Rutledge, Ecenia, Underwood, Purnell & Hoffman, Tallahassee, for Nat. Federation of Independent Business; Joseph W. Little, Gainesville, for Tax Cap Committee and David Biddulph; Michael Block, President, pro se, for Florida Tax Reduction Movement, Inc.; and Jonathan M. Coupal, Director of Legal Affairs, Sacramento, CA, for Florida Tax Reduction Movement, Howard Jarvis Taxpayers Ass'n, American Tax Reduction Movement, and Nat. Taxpayers Union; and Toby Prince Brigham and Amy Brigham Boulris of Brigham, Moore, Gaylord, Schuster & Merlin, Miami, for Florida Farm Bureau Federation and Florida Forestry Ass'n; and Steven L. Brannock and Stacy D. Blank of Holland and Knight, Tampa, for Farm Credit of Southwest Florida, ACA, Farm Credit of Cent. Florida, ACA, Farm Credit of South Florida, ACA, Farm Credit of North Florida, ACA and Farm Credit of Northwest Florida, ACA; Nancie G. Marzulla, President and Chief, Legal Counsel, Washington, DC, for Defenders of Property Rights; Gary W. Smith of Lawsmith, Atlanta, GA, and G. Stephen Parker, Atlanta, GA, for Southeastern Legal Foundation; and David Citron, pro se, Fort Lauderdale, 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.

Alan C. Sundberg, Gary L. Sasso, F. Townsend Hawkes and Warren H. Husband of Carlton, Fields, Ward, Emmanuel, Smith & Cutler, Tallahassee, Florida, and Jon Mills, Gainesville, for League of Women Voters of \*489 Florida, Inc., 1000 Friends of Florida, Inc., Common Cause, The Florida Audubon Society, and American Planning Association, Florida Chapter; Dan R. Stengle, Gen. Counsel, and David J. Russ, Asst. Gen. Counsel, Tallahassee, for Dept. of Community Affairs; Jane C. Hayman, Deputy Gen. Counsel, and Nancy Stuparich and Kraig A. Conn, Asst. Gen. Counsel, Tallahassee, for Florida League of Cities, Inc.; and David Gluckman of Gluckman & Gluckman, Tallahassee, amici curiae for Florida Wildlife Federation and Sierra Club, in Opposition to Initiative.

Alan C. Sundberg, F. Townsend Hawkes and Warren H. Husband, Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A., Tallahassee, for petitioner in No. 84089.

Robert B. Beitler, Office of Gen. Counsel, Dept. of State, and John Beranek, Kenneth R. Hart and J. Jeffry Wahlen, Macfarlane, Ausley, Ferguson & McMullen, Tallahassee, for The Tax Cap Committee, for respondent in No. 84089.

OVERTON, Justice.

In accordance with article V, section 3(b)(10), of the Florida Constitution, and section 16.061, Florida Statutes (1993), the Attorney General has petitioned this Court for an advisory opinion on the validity of four initiative petitions to amend the Florida Constitution. These four proposals were submitted to elector signatories on initiative petitions in a consolidated format. We have joined them for review in this opinion but will address the four proposals separately.

In summary, the first two are revenue limitation provisions that restrict the authority of governmental entities to enact new taxes and user-fees, to increase present tax rates, and to eliminate tax exemptions. The third initiative changes the responsibility of governments in the exercise of their police power by requiring all entities of government to compensate property owners in a manner not now required by the constitution. The fourth initiative eliminates the single-subject requirement for initiative proposals



that limit the power of government to raise revenue. The first two initiatives would substantially limit the ability of government to raise revenue, the third would substantially increase the fiscal obligations of a governmental entity if it should exercise its police power functions, and the fourth initiative would make it easier for the public to pass revenue limiting constitutional amendments.

Subsequent to the Attorney General's filing of these initiatives, The League of Women Voters of Florida, Inc. filed a petition for a writ of mandamus directed to the Secretary of State. That petition asks this Court to, among other things, order the Secretary of State to withdraw his certification of each of the four initiatives proposed by the Tax Cap Committee, principally on the grounds that the signatures were obtained in a misleading manner.

[1][2] This Court's role in these matters is strictly limited to the legal issues presented by the constitution and relevant statutes. This Court does not have the authority or responsibility to rule on the merits or the wisdom of these proposed initiative amendments, and we have not done so. Infringing on the people's right to vote on an amendment is a power this Court should use only where the record shows the constitutional single-subject requirement has been violated or the record establishes that the ballot language would clearly mislead the public concerning material elements of the proposed amendment and its effect on the present constitution.

In summary, and as we will explain in detail in this opinion, we find that the proposals entitled "Tax Limitation," "Voter Approval of New Taxes," and "Property Rights" violate either the single-subject or the ballot title and summary requirement, or both, and must be stricken from the ballot. We further find that the proposal entitled "Revenue Limits" is approved for placement on the ballot. Finally, we conclude that The League of Women Voters' petition for a writ of mandamus should be denied.

As we have explained in prior opinions, our analysis of these proposed amendments is limited to two issues. The first concerns the single-subject requirement, where we must determine whether the proposed amendment violates article XI, section 3, of the Florida Constitution. That provision states that an \*490 amendment to the constitution proposed

by initiative "shall embrace but one subject and matter directly connected therewith." Second, we must address the clarity of the ballot language and determine whether the ballot title and summary are misleading. Our responsibility for the clarity of ballot title and summary language is dictated by the provisions of section 101.161(1), Florida Statutes (1993), which states:

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.... 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 ... proposal....  
(Emphasis added.)

In addressing the propriety of proposed constitutional amendments previously submitted through the initiative process, we have developed some basic legal principles to guide the Court in our mandated judicial review. With regard to the single-subject requirement we have stated, "This single-subject provision is a rule of restraint designed to insulate Florida's organic law from precipitous and cataclysmic change." In re Advisory Opinion to the Attorney General--Save Our Everglades Trust Fund, 636 So.2d 1336, 1339 (Fla.1994). This provision was established, in part, to prevent "log-rolling," which forces voters to "accept part of an initiative proposal which they oppose in order to obtain a change in the constitution which they support." *Fine v. Firestone*, 448 So.2d 984, 988 (Fla.1984). "Log-rolling" is a practice that requires voters to cast an all-or-nothing vote on a proposal that affects multiple functions or entities of government.

While we have made it clear that the single-subject test is functional and not locational, we have also emphasized and held that when an amendment "changes more than one government function, it is clearly multi-subject." *Evans v. Firestone*, 457 So.2d 1351, 1354 (Fla.1984). Further, and just as important, we have made clear that "how an initiative proposal affects other articles or sections of the constitution is an appropriate factor to be considered in determining whether there is more than one subject included in an initiative proposal." *Fine*, 448 So.2d at 990. [FN1] We explained in

(Cite as: 644 So.2d 486, \*490)

Fine that identifying the articles or sections of the constitution substantially affected "is necessary for the public to be able to comprehend the contemplated changes in the constitution." *Id.* at 989. It is also important so that the question of the initiative's effect on other unnamed provisions is not left unresolved and open to various interpretations. See *id.*

FN1. Identifying an existing section of the constitution that is affected is also important with regard to the clarity requirement of section 101.161.

In addressing our responsibility to assure that proposed amendments meet the requirements of section 101.161(1), we have stated that the purpose of this statute "is to assure that the electorate is advised of the true meaning, and ramifications, of an amendment," *Askew v. Firestone*, 421 So.2d 151, 156 (Fla.1982). We have explained that the statute requires the title and summary to be (a) "accurate and informative," *Smith v. American Airlines*, 606 So.2d 618, 621 (Fla.1992), and (b) objective and free from political rhetoric, see *Evans*, 457 So.2d at 1355; *Save Our Everglades*, 636 So.2d at 1341.

We now turn to each of the subject initiatives in the order in which they were presented to the public on the Tax Cap Committee petition.

#### Proposed Tax Limitation Amendment

[3] This proposal seeks to create article XI, section 7, of the Florida Constitution. The full text of the proposed amendment provides:

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 \*491 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.

The ballot title for the proposed amendment is:

Tax Limitation: Should Two-Thirds Vote Be Required for New Constitutionally-Imposed State Taxes/Fees?

The summary for the proposed amendment provides: 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 Attorney General has written to inform the Court of his opposition to the "Tax Limitation" initiative and suggests that the initiative substantially affects other provisions in the constitution without clearly identifying these provisions and that its language is ambiguous. The initiative is also opposed by The League of Women Voters of Florida, Inc., Common Cause, The Florida Audubon Society, and the American Planning Association. These groups make essentially the same arguments as the Attorney General. In defense of the initiative, the Tax Cap Committee states that the initiative is limited in scope and is not ambiguous.

We find that this initiative fails to meet the single-subject requirement because it combines taxes and fees. The proponents have stated that this initiative is intended to "make it harder to amend the constitution" for both taxes and fees. Specifically, this proposal would require a two-thirds vote (1) to change the methods of general taxation or establish alternative methods of general taxation by constitutional amendment and (2) to change or authorize by constitutional provision an exaction of any new user fee. We have previously stated that

tax and user fee provisions may not be joined in a single initiative. See *Fine*, 448 So.2d at 990-91. "General tax revenue, utilized for governmental operations and user fee revenue, primarily utilized to fund services received by the paying customers, do not have a natural relation and connection as component parts or aspects of a single dominant plan or scheme, and, therefore, are clearly separate subjects...." *Id.* at 991. Despite our clear pronouncement in *Fine*, the "tax limitation" initiative improperly attempts to combine provisions concerning both taxes and user fees in a single initiative and, as a result, it violates the single-subject requirement. Because of this finding, we need not address the other issues raised by the opponents. [FN2]

FN2. We note that this provision would not allow the exaction of a fee as proposed in the "Save-Our-Everglades" amendment without a favorable two-thirds vote of the electorate. If both this proposal and "Save-Our-Everglades" were on the ballot, and both passed, the provisions of this amendment were intended to render null and void the provisions of the "Save-Our-Everglades" amendment unless that amendment passed by a two-thirds vote.

#### Proposed Voter Approval of New Taxes Amendment

[4] This initiative petition seeks to amend article VII, section 1, of the Florida Constitution, and provides as follows:

Add this subsection to Article VII, Section 1, two days after voters approve:

( ) VOTER APPROVAL OF NEW TAXES. No new taxes may be imposed except \*492 upon approval in a vote of the electors of the taxing entity seeking to impose the tax.

1. DEFINITION OF NEW TAX. The term new tax, for this subsection, includes the initiation of a new tax, the increase in the tax rate of any tax, or the removal of any exemption to any tax.

2. EMERGENCY TAXES. This subsection shall not apply to taxes enacted, for an effective period not to exceed 12 months, by a three-fourths vote of the governing body of a taxing entity after the governing body has made a finding of fact that failure to levy the tax will pose an imminent and particularly described threat to the health or safety of the public.

The ballot title for the proposed amendment is

Voter Approval of New Taxes: Should New Taxes Require Voter Approval in this State?

The summary for the proposed amendment provides: This provision requires voter approval of new taxes enacted in this State. New taxes include initiation of new taxes, increases in tax rates and eliminating exemptions to taxes.

It does not limit emergency tax increases, lasting up to 12 months, which are approved by a three-fourths vote of a taxing entity's governing body. The amendment is effective two days after voters approve.

With regard to this initiative, the Attorney General suggests that it: (1) presents a form of "log-rolling" in that a voter is not given the opportunity to disapprove of the initiative's application to state, local, or regional taxes, but is forced to accept all of these separate applications or none of them; (2) substantially alters or performs the functions of multiple branches of government because it mandates voter approval of new taxes at state, regional, and local levels; (3) substantially affects other provisions of the constitution without identifying these other provisions; and (4) does not adequately inform the voters of its impact on state and local government and the services provided by each.

With regard to the ballot language, the Attorney General suggests that the proponents of the initiative may not have properly informed the voter of the legal effect of the initiative. He further notes that the title of the initiative may confuse the voters by implying that new taxes would be imposed if the amendment passes and that the title and summary are misleading because they do not clearly indicate that the initiative applies to local taxing entities as well as the state. The other opponents of the initiative make similar arguments concerning the single-subject requirement and ballot title and summary.

In response, the proponents of the initiative assert that the "Voter Approval of New Taxes" initiative complies with the single-subject requirement because its sole objective is to require that all laws imposing new taxes be subject to approval of the voters of the taxing entity. They assert that only one section of one article of the constitution and only one function of government is affected and, consequently, that there is no log-rolling and that the initiative fully complies with the single-subject

mandate.

While a debatable issue exists as to whether this "Voter Approval of New Taxes" initiative violates the single-subject requirement by dealing with three subjects, we need not address that claim because this initiative substantially affects specific provisions of the constitution without identifying those provisions for the voters, in violation of the principles we established in *Fine*.

First, this initiative substantially affects article VII, section 9, a cornerstone of home-rule power. That existing constitutional provision reads as follows:

Section 9. Local taxes.--

(a) Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.

(b) Ad valorem taxes, exclusive of taxes levied for the payment of bonds and taxes levied for periods not longer than two years when authorized by vote of the electors who are the owners of freeholds \*493 therein not wholly exempt from taxation, shall not be levied in excess of the following millages upon the assessed value of real estate and tangible personal property: for all county purposes, ten mills; for all municipal purposes, ten mills; for all school purposes, ten mills; for water management purposes for the northwest portion of the state lying west of the line between ranges two and three east, 0.05 mill; for water management purposes for the remaining portions of the state, 1.0 mill; and for all other special districts a millage authorized by law approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation. A county furnishing municipal services may, to the extent authorized by law, levy additional taxes within the limits fixed for municipal purposes.

(Emphasis added.) Section 9 is both a grant and a limitation on the authority of local governmental entities to tax. It is directly interrelated to the home-rule powers contained in article VIII, and provides that, when authorized by law and without voter approval, counties may tax for county purposes up to ten mills; municipalities may tax for municipal purposes up to ten mills; and school

boards may tax for school purposes up to ten mills. Provisions are also made for water management districts and special districts. In an analysis of the proposed Constitution of 1968 prepared at the request of the legislature, the Legislative Reference Bureau stated:

Millages are limited to 10 mills for all county purposes, ten mills for municipal purposes, and ten mills for school purposes. Bond millages are excluded, and additional millages without limitation are permitted if approved by freeholders paying taxes. Counties providing municipal services may be authorized to levy additional taxes.

In *State v. Dickinson*, 230 So.2d 130, 135 (Fla.1969), this Court approved that interpretation of this provision, stating the following:

It is our view that both the legislature and the people intended to limit ad valorem taxation for county and municipal purposes in all areas of the State to a twenty-mill maximum beyond which millages could be raised but only if approved by referendum of the tax-paying property-holders directly affected.

(Emphasis deleted.) While some local governmental entities are currently close to the ten-mill cap, other governmental entities have considerable leeway left in their taxing authority under this provision. There is no question that this proposed initiative amendment eliminates the ten-mill authorization without voter approval. Nothing has been said in this proposal concerning this substantial change in article VII, section 9, of the present constitution. It is, as previously stated, an important part of the home-rule powers granted to local government by our present constitution. In *Fine*, we expressly stated that an initiative could not substantially affect existing provisions of the constitution without identifying such provisions. 448 So.2d at 989. We stated that identifying articles or sections of the constitution substantially affected is an important factor and "is necessary for the public to be able to comprehend the contemplated changes in the constitution." *Id.* The "Voter Approval of New Taxes" initiative substantially affects article VII, section 9, without identifying it.

In addition, this provision also substantially affects the following provisions in the Constitution: (1) article VII, section 1(a), which confers upon the legislature, without the requirement of a referendum, the power to impose taxes by general

law, e.g., sales taxes, cigarette taxes and liquor taxes; (2) article VII, section 1(b), which confers upon the legislature the authority to impose taxes without a referendum on the operation of motor vehicles, boats, airplanes, trailers, trailer coaches, and mobile homes; (3) article VII, section 2, which provides legislative authority to impose some forms of intangible personal property taxes without a referendum; (4) article VII, section 5, which provides, with restrictions, legislative authority to impose estate and inheritance taxes to the extent that they are credited towards the federal tax, and, in addition, this section provides for a corporate income tax up to 5% and authorizes a rate in excess of 5% if approved by three-fifths vote of both houses \*494 of the legislature; and (5) article VII, section 7, which provides legislative authority to impose pari-mutuel taxes. Each of these provisions was placed in the constitution for a distinct and specific purpose. They will all be substantially affected by this initiative proposal. None have been identified and, consequently, this proposed initiative violates the principle we clearly established in *Fine* that the electorate must be advised of the effect a proposal has on existing sections of the constitution.

[5] We also agree with the attorney general that the ballot title and summary are misleading because of the use of the question to describe this initiative. It is misleading in this instance because it implies that there is presently no cap or limitation on taxes in the constitution at the present time when, in fact, there is such a limitation for local governmental entities in article VII, section 9, and the inheritance and income tax in article VII, section 5(b). For the reasons expressed, this proposal must be stricken from the ballot.

#### Proposed Property Rights Amendment

[6] This proposal seeks to amend article I, section 2, of the Florida Constitution. The full text of the proposed amendment provides:

Insert the underlined words in Article I, Section 2: Basic Rights--All natural persons are equal before the law and have inalienable rights, among which are the right to enjoy and defend life [and] liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by

law. No person shall be deprived of any right because of race, religion or physical handicap. Any exercise of the police power, excepting the administration and enforcement of criminal laws, which damages the value of a vested private property right, or any interest therein, shall entitle the owner to full compensation determined by jury trial with a jury of not fewer than six persons and without prior resort to administrative remedies. This amendment shall take effect the day after approval by the voters.

The ballot title for the proposed amendment is:

Property Rights: Should Government Compensate Owners When Damaging The Value Of Homes Or Other Property?

The summary for the proposed amendment provides:

This amendment entitles an owner to full compensation when government action damages the value of the owner's home, farm, or other vested private property right or interest therein. Excepts administration and enforcement of criminal laws. Owners--including natural persons and businesses--are entitled to have full compensation determined by six-member jury trial without first having to go through administrative proceedings. This amendment becomes effective the day after voter approval.

The Attorney General and other opponents of the initiative suggest that this proposal will substantially alter the ability of multiple governmental entities to perform their functions and that the ballot title and summary of this initiative are misleading and ambiguous. In response, the proponents of the initiative assert that there is no single-subject violation and state that, although the "Property Rights" initiative will affect multiple branches of government, it will not substantially alter or perform the constitutional functions of any of them because government is, in their words, "always free to refrain from actions which would damage vested rights and thus avoid any compensation claim."

[7] We find that the "Property Rights" initiative violates the single-subject requirement because it substantially alters the functions of multiple branches of government. Cf. *Save Our Everglades*, 636 So.2d at 1340 ("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...."). This initiative not only substantially alters the

(Cite as: 644 So.2d 486, \*494)

functions of the executive and legislative branches of state government, it also has a very distinct and substantial \*495 affect on each local governmental entity. The ability to enact zoning laws, to require development plans, to have comprehensive plans for a community, to have uniform ingress and egress along major thoroughfares, to protect the public from diseased animals or diseased plants, to control and manage water rights, and to control or manage storm-water drainage and flood waters, all would be substantially affected by this provision. We agree with the opponents of the initiative that the ability of the legislature to comply with the directive in article II, section 7 ("It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise."), is substantially affected. We also note that the initiative transfers all administrative remedies for police power actions that damage private property interests from the executive branch to the judicial branch. Given this substantial effect on the executive, legislative, and local branches of government, we find that the "Property Rights" initiative violates the single-subject requirement. [FN3]

FN3. We note in passing that the initiative also fails to give adequate notice that it substantially affects numerous provisions of the constitution as required by Fine.

[8][9] We have made clear that the ballot title and summary must advise the electorate of the true meaning and ramifications of the amendment and, in particular, must be accurate and informative. See, e.g., Smith, 606 So.2d at 621. The "Property Rights" ballot title and summary do not properly advise the voters, and it is not accurate and informative. This proposal would result in a major change in the function of government because it would require all entities of government to provide compensation from tax revenue to owners or businesses for damages allegedly caused to their property by the government's exercise of its police powers. Because most true police power actions of government are not now compensable, the fiscal impact of this proposal would be substantial. The proponents of the initiative acknowledge that the police powers affected by this initiative are broad and, in their words, "take any number of forms, such as flooding, deprivation of access,

environmental regulation and permitting, zoning ordinances, and development exactions, among others." The ballot title and summary are devoid of any mention of these consequences.

[10] The Attorney General suggests that, while the summary could lead a voter to believe that the initiative is limited to real property interests, the text of the initiative is not so limited. He notes that the initiative's language would mandate compensation for the shareholders of a corporation whenever the state has successfully prosecuted an antitrust suit because that suit would adversely affect the value of the company's stock. The Attorney General further notes that the term "owner," as used in the summary of the proposed initiative, includes natural persons and businesses; yet, the text of the proposed initiative is silent as to the meaning of the term "owner" and includes no reference to businesses. He concludes that, as a result of these circumstances, the ballot title and summary are misleading. We agree with the Attorney General and find that the ballot title and summary are misleading and ambiguous.

Accordingly, we find that the proposed "Property Rights" initiative violates both the single-subject and ballot title and summary requirements and must be stricken from the ballot.

#### Proposed Revenue Limits Amendment

[11] This proposal seeks to amend article XI, section 3, of the Florida Constitution. The full text of the proposed amendment provides:

Insert the underlined words in Article XI, Section 3, immediately after voters approve, for amendments effective thereafter:

INITIATIVE.--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, except for those limiting the power of government to raise revenue, shall embrace but one subject \*496 and matter directly connected therewith.

The ballot title for the proposed amendment is:

Revenue Limits: May People's Amendments Limiting Government Revenue Be Allowed To Cover Multiple Subjects?

The summary for the proposed amendment provides:

This provision would expand the people's rights to initiate constitutional changes limiting the

(Cite as: 644 So.2d 486, \*496)

power of government to raise revenue by allowing amendments to cover multiple subjects. This provision is effective immediately after voter approval for amendments effective thereafter.

This proposed constitutional amendment would eliminate the single-subject requirement of article XI, section 3, for initiatives that deal solely with limiting "the power of government to raise revenue." The single-subject requirement would remain for all other types of initiative petitions and for petitions that combine revenue limitation and other subjects.

The Attorney General does not suggest that this initiative violates the single-subject requirement, but does note that the ballot title and summary may not give the voter fair notice of the initiative's purpose. He asserts that the ballot title and summary do not inform the voter that the real objective of this initiative petition is to permit "log-rolling," at least in the context of initiatives that limit revenue. He further notes that the initiative would effect a fundamental change in the procedures for amending the constitution by the voters and that the title and summary fail to mention "log-rolling" as a collateral consequences of the initiative.

The League of Women Voters, and other opponents, argue that the proposal violates the single-subject rule in that it presents three distinct subjects under the broad heading of "revenue" coupled with a fourth subject pertaining to amending the constitutional amendment process. With regard to the ballot title and summary, the opponents assert that each are misleading because neither mentions that the initiative will alter the single-subject rule in article XI, section 3. They contend that the true purpose of the proposal is to abrogate the constitutional protections of the single-subject rule and that nowhere in the ballot title or summary is this purpose revealed. As a result, the opponents contend that the title and summary are misleading.

[12] We reject the contentions that this initiative violates the single-subject requirement, and conclude that it substantially alters just one section of the constitution. The one significant question for the Court to resolve is whether the ballot title and summary are misleading, as suggested by the Attorney General and other opponents of the initiative. While the use of a question in the ballot

title is not per se misleading, it does, particularly in this context, raise an issue of whether the title is sufficiently informative. Nevertheless, we conclude that, while the format and content of this ballot title bring it exceedingly close to being misleading, we find that it is not such that we should remove the initiative from the ballot. [FN4]

FN4. For future proposals, we note that the use of a question in the title or summary may place a proposal in jeopardy of being removed from the ballot because a question can convey a double meaning.

Accordingly, we find that the initiative entitled "Revenue Limits" complies with the single-subject and ballot title and summary requirements and should retain its place on the ballot.

#### Petition for Writ of Mandamus

[13] We deny The League of Women Voters of Florida, Inc.'s petition for a writ of mandamus, in which the League sought to require the Secretary of State to disapprove the verified signatures on the petitions and to require their resubmission. The League sought this petition principally because the consolidated petition format used to obtain the signatures for the four Tax Cap Committee petitions was not approved by the Secretary of State and because the petition form was allegedly misleading to the electorate.

We deny mandamus relief, and find that a writ of mandamus is not an appropriate remedy \*497 under the circumstances of this case. While the joining of these four initiative petitions in a joint petition format raises important questions concerning the integrity of the initiative process, we conclude that this is a question the legislature should resolve by appropriate statutory provisions, and that the relief requested in the mandamus is not a matter within the mandated authority of the Secretary of State. Consequently, the petition for a writ of mandamus must be denied.

#### Conclusion

In conclusion, for the reasons expressed, we direct that the "Tax Limitation," "Voter Approval of New Taxes," and "Property Rights" proposals be removed from the ballot. The "Revenue Limits"

proposal is approved and the petition for mandamus is denied.

It is so ordered.

GRIMES, C.J., HARDING, J., and McDONALD, Senior Justice, concur.

OVERTON, J., concurs specially with an opinion, in which GRIMES, C.J., concurs.

SHAW, J., concurs in part and dissents in part with an opinion, in which KOGAN, J., concurs.

KOGAN, J., concurs in part and dissents in part with an opinion, in which SHAW, J., concurs.

WELLS, J., recused.

OVERTON, Justice, concurring specially.

I write separately to again suggest that the legislature and this Court devise a process whereby misleading language in the ballot title and summary can be challenged and corrected in sufficient time to allow a vote on the proposal. See *Evans v. Firestone*, 457 So.2d 1351, 1356 (Fla.1984) (Overton, J., concurring); *Askew v. Firestone*, 421 So.2d 151, 157 (Fla.1982) (Overton, J., concurring specially). As I previously noted, devising such a process does not require a constitutional change and necessitates only a statutory enactment. Oregon has a detailed process that requires petitions to be on specified forms prepared by the Secretary of State and, rather than allowing the proponents to draft the ballot title and summary, gives that task to the Attorney General. See ch. 250, Or.Rev.Stat. (1993). If there is an objection to the ballot summary, the Oregon Supreme Court then has the responsibility to determine whether the language is insufficient or unfair, as explained in its decisions in *Zajonc v. Paulus*, 292 Or. 19, 636 P.2d 417 (1981), and *Priestley v. Paulus*, 287 Or. 141, 597 P.2d 829 (1979). The Oregon Supreme Court also has the authority to rewrite and correct any misleading language. Unfortunately, the ballot title and summary are now written by the proponents of an initiative and this Court does not presently have the authority to correct and rewrite ballot title and summary language. Using uniform petition forms, having an independent entity such as the Attorney General draft the ballot title and summary language,

and giving this Court the authority to correct misleading language, would eliminate some of the major problems that result in our having to remove proposals from the ballot.

GRIMES, C.J., concurs.

SHAW, Justice, concurring in part, dissenting in part.

I concur in the majority opinion with the following exception: I would allow the "voter approval of new taxes" initiative to remain on the ballot.

#### I. PROPOSED VOTER APPROVAL OF NEW TAXES AMENDMENT

The majority concludes that this initiative substantially affects specific provisions of the constitution without identifying those portions for the voters in violation of the principles established in *Fine v. Firestone*, 448 So.2d 984 (Fla.1984), and must be stricken from the ballot. I disagree. Section 101.161(1), Florida Statutes (1993), provides in relevant part:

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.... The wording of \*498 the substance of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the ... proposal.... The substance of the amendment or other public measure shall be an explanatory statement ... of the chief purpose of the measure. Failure to state every specific ramification of a proposed amendment is not fatal where the summary adequately explains the amendment's chief purpose. *Carroll v. Firestone*, 497 So.2d 1204, 1206 (Fla.1986).

I find the ballot summary sufficiently clear to give voters notice of its chief purpose, i.e., no new taxes can be imposed unless they are first cleared by the voters in the affected districts. I also find that the initiative has a logical and natural oneness of purpose and embraces but a single subject. In my opinion, it complies with both article XI, section 3 of the Florida Constitution and section 101.161(1).



## II. CONCLUSION

Based on the foregoing, I concur in part and dissent in part from the majority opinion. I add a caveat. By phrasing the title to the proposed amendments in the form of a question rather than a statement, the drafters flirt with invalidity. Under section 101.161(1), the title should be a succinct caption by which the proposal can be characterized, and this generally can be best accomplished through an affirmative assertion rather than a query.

KOGAN, J., concurs.

KOGAN, Justice, concurring in part, dissenting in part.

I concur with the majority opinion regarding League of Women Voters v. Smith, Advisory Opinion to the Attorney General re Property Rights and Advisory Opinion to the Attorney General re Revenue Limits.

I only concur with the majority opinion in Advisory Opinion to the Attorney General re Tax Limitation because of this Court's opinion in Fine v. Firestone, 448 So.2d 984 (Fla.1984), which indicated that taxes and user fees are two separate subjects and cannot be combined in the same amendment. However, if I were writing on a clean slate I would not so hold.

I must, however, dissent from the majority opinion concerning Advisory Opinion to the Attorney General re Voter Approval of New Taxes. I believe that it, in fact, does meet the single subject rule. I also find that the ballot summary is not confusing and in fact does apprise voters of exactly what the amendment purports to do--require a public referendum on all new taxes. I would permit this proposed amendment to be placed on the ballot.

SHAW, J., concurs.

END OF DOCUMENT

**PROPOSED CONSTITUTIONAL AMENDMENTS**

**NO. 1  
CONSTITUTIONAL AMENDMENT  
ARTICLE III, SECTION 3**

**Start of Regular Sessions of the Legislature**

Proposing an amendment to the State Constitution, effective upon approval, to provide that the annual 60-day regular sessions of the Legislature begin on the first Tuesday after the first Monday in March.

YES  
 NO

*Passed*

**NO. 2  
CONSTITUTIONAL AMENDMENT  
ARTICLE VII, SECTION 1  
ARTICLE XII, SECTION 21**

**Limitation on State Revenue Collections**

Limits state revenue collections to the prior year's allowed revenue plus an adjustment for growth based on the growth rate of state personal income over the preceding five years, with excess collections deposited in the budget stabilization fund until fully funded and then refunded to taxpayers. Defines state revenues." Allows the Legislature to increase his limit by 2/3 vote. Requires adjustment of the limitation to reflect transfers of responsibility for funding governmental functions.

YES  
 NO

*Passed*

**NO. 3  
CONSTITUTIONAL AMENDMENT  
ARTICLE X, SECTION 16**

**Limiting Marine Net Fishing**

Limits the use of nets for catching saltwater finfish, shellfish, or other marine animals by prohibiting the use of gill and other entangling nets in all Florida waters, and prohibiting the use of other nets larger than 500 square feet in mesh area in nearshore and inshore Florida waters. Provides definitions, administrative and criminal penalties, and exceptions for scientific and governmental purposes.

YES  
 NO

*Passed*

**NO. 4  
CONSTITUTIONAL AMENDMENT  
ARTICLE XI, SECTION 3**

**Revenue Limits: May People's Amendments Limiting Government Revenue be Allowed to Cover Multiple Subjects?**

This provision would expand the people's rights to initiate constitutional changes limiting the power of government to raise revenue by allowing amendments to cover multiple subjects. This provision is effective immediately after voter approval for amendments effective thereafter.

YES  
 NO

*Passed*

**NO. 8  
CONSTITUTIONAL AMENDMENT  
ARTICLE X, SECTION 7**

**Limited Casinos**

Authorizing a limited number of gaming casinos in Broward, Dade, Duval, Escambia, Hillsborough, Lee, Orange, Palm Beach and Pinellas Counties, with two in Miami Beach; and limited-size casinos with existing and operating pari-mutuel facilities; and if authorized by the legislature up to five limited-size riverboat casinos in the remaining counties, but only one per county. Mandating implementation by the legislature. Effective upon adoption, but prohibiting casino gaming until July 1, 1995.

YES  
 NO

*Failed*

**Amendments 5, 6, and 7 were removed from the ballot by the Florida Supreme Court**

## ARTICLE XI, SECTION 3

## Revenue Limits: May People's Amendments Limiting Government Revenue Be Allowed To Cover Multiple Subjects?

This provision would expand the people's rights to initiate constitutional changes limiting the power of government to raise revenue by allowing amendments to cover multiple subjects. This provision is effective immediately after voter approval for amendments effective thereafter.

County	Yes	No
Alachua	28,243	23,698
Baker	2,822	1,699
Bay	17,004	17,701
Bradford	3,605	2,278
Brevard	81,493	59,083
Broward	214,095	142,429
Calhoun	1,149	1,780
Charlotte	27,986	20,084
Citrus	23,264	15,330
Clay	20,983	10,185
Collier	32,860	19,540
Columbia	6,924	4,531
Dade	195,123	135,132
DeSoto	2,949	2,602
Dixie	1,749	1,906
Duval	112,470	50,461
Escambia	42,458	24,971
Flagler	8,132	5,332
Franklin	1,576	1,728
Gadsden	4,948	4,321
Gilchrist	1,827	1,423
Glades	1,401	1,029
Gulf	2,075	2,475
Hamilton	1,301	941
Hardee	2,680	1,991
Hendry	3,219	1,804
Hernando	26,148	20,403
Highlands	13,915	10,289
Hillsborough	128,318	86,974
Holmes	1,817	2,173
Indian River	20,673	12,971
Jackson	5,697	5,197
Jefferson	1,836	1,731
Lafayette	863	916
Lake	29,958	23,968

County	Yes	No
Lee	76,055	48,310
Leon	33,454	35,168
Levy	4,010	3,568
Liberty	618	920
Madison	2,379	1,712
Manatee	40,683	35,396
Monroe	13,854	7,123
Marion	39,045	25,276
Martin	20,807	18,339
Nassau	9,179	4,913
Okaloosa	21,952	21,897
Okneechee	3,812	2,440
Orange	99,869	62,519
Osceola	18,698	11,291
Palm Beach	153,604	130,995
Pasco	58,233	41,911
Pinellas	162,245	131,137
Polk	60,045	49,001
Putnam	10,977	7,087
Santa Rosa	17,763	11,166
Sarasota	59,995	56,508
Seminole	48,573	34,736
St. Johns	20,491	11,112
St. Lucie	31,935	18,622
Sumter	5,630	4,122
Suwannee	4,353	3,494
Taylor	2,451	2,463
Union	1,365	1,103
Volusia	63,948	47,957
Wakulla	2,781	2,916
Walton	4,692	5,251
Washington	2,248	3,106
Totals	2,167,305	1,560,635
Percent	58.1	41.9

