
IN THE SUPREME COURT OF FLORIDA

Case No. 86,600

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

ADVISORY OPINION
TO THE ATTORNEY GENERAL

RE: TAX LIMITATION

REPLY BRIEF OF
TAX CAP COMMITTEE
SUPPORTING THE TAX LIMITATION PETITION

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TABLE OF CONTENTS

	Page
REPLY ARGUMENT	1
I. THE TAX LIMITATION PETITION IS WITHIN THE EXCEPTION TO THE SINGLE-SUBJECT RULE.	2
II. THE TITLE AND BALLOT SUMMARY ARE CLEAR AND UNAMBIGUOUS.	6
A. The Petition <u>Means</u> "Voting In The Election," And It <u>Says</u> "Voting In The Election."	7
B. "Imposed" Does Not Mean "Authorized" Or "Made Possible."	9
C. <u>This</u> Title Is Not Misleading Merely Because It Is A Question.	10
D. The Originator Of A Proposed Amendment Is Irrelevant; Any Qualified Proposed Constitutional Amendment Is Covered.	11
III. THE PURELY THEORETICAL POTENTIAL FOR RETROACTIVE APPLICATION IS COMPLETELY HARMLESS.	13
IV. SIMULTANEOUS PASSAGE OF THIS PETITION AND A COVERED TAX-IMPOSING PETITION WOULD REQUIRE A SUPERMAJORITY VOTE ON THE TAX-IMPOSING PETITION.	15
CONCLUSION	15
CERTIFICATE OF SERVICE	17

TABLE OF AUTHORITIES

	Page(s)
CASES	
<u>Advisory Opinion to the Attorney General</u> <u>Re: Florida Locally Approved Gaming ("FLAG"),</u> 656 So. 2d 1259, 1261 (Fla. 1995)	1, 14
<u>Advisory Opinion to the Attorney General</u> <u>re Limited Casinos,</u> 644 So. 2d 71, 74 (Fla. 1994)	8
<u>Advisory Opinion to the Attorney General</u> <u>re Tax Limitation ("Tax Limitation I"),</u> 644 So. 2d 486 (Fla. 1994)	1-6, 9, 11, 14, 15
<u>Askew v. Firestone,</u> 421 So. 2d 151, 156 (Fla. 1982)	4
<u>Carroll v. Firestone,</u> 497 So. 2d 1204, 1207 (Fla. 1986)	8
<u>In re Advisory Opinion to the Attorney General --</u> <u>Save Our Everglades,</u> 636 So. 2d 1336, 1342 (Fla. 1994)	11
FLORIDA CONSTITUTION	
Art. X, § 12(d)	6
Art. XI, § 3	2, 6, 11, 15
FLORIDA STATUTES	
§ 100.371(2)	1
§ 101.161	15

REPLY ARGUMENT

Tax Cap Committee ("Tax Cap") is the sponsor of the Tax Limitation initiative petition to amend the Florida Constitution. The Tax Limitation petition would require a favorable two-thirds vote of the voters voting in an election to pass any proposed constitutional amendment that would impose any new State tax or fee. Tax Cap Committee and a supportive party, Florida TaxWatch, have already filed briefs and appeared at oral argument in support of the Tax Limitation petition. Since then, three entities opposing the petition -- The Florida Audubon Society, 1000 Friends of Florida, Inc., and Common Cause (collectively, the "Opponents") -- have filed a consolidated brief, which the Court has accepted, and to which Tax Cap now responds. The issues raised in the Opponents' brief have been addressed already in briefing or at oral argument, except for one that the Court already addressed -- and resolved favorably to Tax Cap Committee -- in its opinion in Advisory Opinion to the Attorney General re Tax Limitation, 644 So. 2d 486 (Fla. 1994) ("Tax Limitation I").¹ Tax Cap will address that issue first, and then restate its previous arguments in opposition to other issues the Opponents have raised.

¹ The Tax Limitation petition continues to be viable for the November 1996 general election because the petition signatures are good for four years under section 100.371(2), Fla. Stat. (1993). See also Advisory Opinion To The Attorney General Re: Florida Locally Approved Gaming, 656 So. 2d 1259, 1261 (Fla. 1995).

I. THE TAX LIMITATION PETITION IS WITHIN THE EXCEPTION TO THE SINGLE-SUBJECT RULE.

The Opponents argue first that the Tax Limitation petition is not entitled to this review because it does not qualify for the constitutional exception to the single-subject requirement of article XI, section 3, Florida Constitution. As that section existed when this petition was first before the Court in 1994, all initiative petitions were subject to the single-subject rule. The Tax Limitation petition was stricken from the ballot upon this Court's determination that taxes and fees are two subjects, violating the then-existing single-subject rule applicable to initiative petitions. Tax Limitation I, 644 So. 2d at 491.

However, article XI, section 3, Florida Constitution was amended in 1994 to eliminate the single-subject requirement for initiative petitions that limit the ability of government to raise revenue. The section now reads as follows:

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 and matter directly connected therewith.

Art. XI, § 3, Fla. Const. (emphasis added to reflect 1994 amendment). Under article XI, section 3, as amended, an initiative petition that limits the power of government to raise revenue may embrace more than one subject.

This Court has already recognized that the chief purpose of the Tax Limitation petition is to limit the power of government to raise revenue:

In summary, the first two [Tax Limitation and Voter Approval of New Taxes initiatives] 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 first two initiatives would substantially limit the ability of government to raise revenue

644 So. 2d at 489 (emphasis added). That ought to end any inquiry into whether the Tax Limitation petition qualifies for the exception to the single-subject rule.

Both the Secretary of State and the Attorney General recognized that this petition falls within the recently-created exception to the single-subject rule. The Attorney General's request for an advisory opinion said so quite clearly:

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.

[A 3 at 3 (emphasis added).]² Even the Opponents concede in their brief that the Tax Limitation petition would "limit governmental power to raise revenue that might be granted *through constitutional amendment*" [Opponents' Br. at 8 (italics original).] However, the Opponents characterize this as an "ancillary effect." Id.

Despite this Court's previous conclusion that the Tax Limitation petition limits the ability of government to raise

² Appendix references are to the Appendix filed with Tax Cap Committee's Initial Brief.

revenue, and without acknowledging that conclusion, the Opponents argue that the Tax Limitation petition is a limitation on the voter's ability to amend the constitution and thus still subject to the single-subject requirement. [Opponents' Br. at 8.] Elsewhere, the Opponents claim that the purpose of the proposed amendment is to "restrict the people's ability to amend the constitution." [Id. at 15.] The Opponents mischaracterize the chief purpose of the Tax Limitation petition, and thereby have the tail wagging the dog. That is not the right way to review a proposed constitutional amendment; the proper standard of review is very deferential. See, e.g., Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982); Tax Cap In. Br. 11-12. The chief purpose of the Tax Limitation petition is clear from a fair reading of the clear language of the proposal.

The chief purpose of the Tax Limitation petition is, as this Court has recognized in Tax Limitation I, to limit the ability of government to raise revenue. The Tax Limitation petition makes it much more difficult to pass constitutional amendments that impose new State taxes or fees. The method of achieving the limitation -- voting on constitutional amendments -- is not the chief purpose of the petition, but is a method by which to achieve the chief purpose. The method of achieving the goal is ancillary to the chief purpose of the limitation itself, and not the other way around as the Opponents mischaracterize it.

The Opponents further mischaracterize the purpose of the Revenue Limits amendment that created the exception to the single-subject rule for initiative petitions, and thus mistakenly conclude that the Tax Limitation petition is inconsistent with the Revenue

Limits amendment. They say the Revenue Limits amendment was intended to give voters greater ability to amend the constitution [Opponents' Br. at 8], but they stop too soon and fail to examine the stated purpose of the Revenue Limits amendment. That purpose was set forth clearly in the ballot summary for that petition:

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.

Tax Limitation I, 644 So. 2d at 496. The only expansion promised in the Revenue Limits amendment was an expanded power to limit the power of government to raise revenue. The Tax Limitation petition does just that, making it much harder to pass constitutional amendments that would impose a new State tax or fee; i.e., "expanding" the people's ability to limit the power of government to raise revenue. The Tax Limitation petition is entirely consistent with the Revenue Limits amendment.

The Opponents criticize the Tax Limitation petition for affecting only constitutionally-imposed revenue sources and not extending to statutory or other "traditional and usual forms of taxation." [Opponents' Br. at 8.] The Opponents fail to explain how a limited scope causes the Tax Limitation to be anything other than a limitation on the power of government to raise revenue. The proponents of the petition were concerned with the imposition of new State taxes and fees by constitutional amendment, and that is what they chose to address in their petition. They are not required to go any further. The exception to the single-subject rule does not say, as the Opponents apparently read it, "except for

those limiting all methods by which government may raise revenue." The exception applies to amendments that limit the power of government to raise revenue. The Tax Limitation petition does just that; this Court has said so; and that settles it.

**II. THE TITLE AND BALLOT SUMMARY ARE
CLEAR AND UNAMBIGUOUS.**

The Opponents suggest, without clearly arguing the point, that the Tax Limitation petition deals with subjects other than limiting government revenue because it has "unannounced collateral effects." [Opponents' Br. at 9.] However, it appears that the Opponents' real argument in this section of their brief is that the ballot title and summary of the Tax Limitation petition may mislead the voter in two respects. First, the Opponents claim that the voter might not understand that the supermajority is to be measured by voters voting in the election rather than voters voting on the matter or on the question.³ Second, the Opponents claim that the voter might not understand what "imposed" means. In a separate section of their brief, the Opponents argue that the Tax Limitation petition is misleading because the title is phrased as a question and for various other reasons addressed elsewhere in this brief.

³ The Tax Limitation petition is not fatally defective because its title and summary do not specify by article and section number the default majority-rules provision of article X, section 12(d), Florida Constitution. Note that the Court approved the Revenue Limits petition even though its title and summary failed to specify by article and section number that the single-subject rule for initiative petitions appears in article XI, section 3, Florida Constitution. Tax Limitation I, 644 So. 2d at 496. In both cases, specifying the article and section number would not add any meaningful information and would not be necessary in order to communicate the intended change to the voter.

Tax Cap Committee has already addressed these issues, but will do so again.

A. **The Petition Means "Voting In The Election," And It Says "Voting In The Election."**

The summary of the Tax Limitation petition, like the full text of the proposed amendment, says that a two-thirds vote of the "voters voting in the election" will be required to pass any proposed constitutional amendments that impose new State taxes or fees. The phrase "voting in the election" means just what it says. It does not mean anything that it does not say. It is clear and unambiguous. It is up to the voter to read this phrase and figure out how it may work in any given election. During the informational campaign preceding the election, the voter will have every opportunity to become educated about how the phrase may work.

Consider a hypothetical to illustrate how the clear language of the petition would work, and why Tax Cap is not required to, and could not, explain the obvious and its many potential applications in the title and summary. For the sake of simplicity, assume that "Proposition X," a constitutional amendment imposing a new State tax or fee, appears on a general election ballot with several other matters. Assume that 100,000 voters vote in the election. Two-thirds of the 100,000 voters voting in the election would be 66,667 voters, and thus in order for Proposition X to pass under the Tax Limitation amendment, 66,667 voters would have to vote in favor of Proposition X. If any fewer than 66,667 voters vote for Proposition X, it will fail, even if every voter who votes on Proposition X votes in favor of it.

Anyone who can understand simple mathematical calculations can figure that out, as the Opponents did. [Opponents' Br. at 9.] That result flows directly and naturally from the clearly-stated requirement that two-thirds of voters "voting in the election" must approve Proposition X. Tax Cap is not required to do the math for the voters and set forth the potential results in the ballot title or summary:

This Court has construed section 101.161(1) [Florida Statutes] to mean that the ballot title and summary for a proposed amendment must state the chief purpose of the measure in clear and unambiguous language. ... This is so that the voter is put on fair notice of the content of the proposed amendment to enable the casting of an intelligent and informed vote. ... However, we have held that the ballot information need not explain every detail or ramification of the proposed amendment.

Advisory Opinion to the Attorney General re Limited Casinos, 644 So. 2d 71, 74 (Fla. 1994) (citations omitted); see also 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."). All that matters is that the voter is placed on fair notice through clear and unambiguous ballot language, and has an opportunity to become fully informed. The Tax Limitation petition satisfies these requirements. Whatever the Opponents' -- or the Court's -- opinion on the wisdom or merits of the proposal, it is irrelevant here.

**B. "Imposed" Does Not Mean "Authorized"
Or "Made Possible."**

The Opponents' concern with the meaning of "imposed" is blind to the clear meaning of the word "imposed" and the intent of the drafters as this Court has already recognized it. [See Tax Cap In. Br. at 16-18.] The Court has already recognized that the Tax Limitation petition is intended to have a narrow scope, applying only to such proposed constitutional amendments that themselves impose a new State tax or fee. See Tax Limitation I, 644 So. 2d at 491 & n.2. The Opponents thus suggest mistakenly that the Tax Limitation petition is ambiguous because it might apply to new State taxes or fees "authorized" by a constitutional amendment, made possible by the repeal of an existing exemption, or made possible by the increase of an existing tax cap.

The Tax Limitation petition does not say "authorize" or "made possible" or anything of similar effect; it says "impose." A constitutional amendment that itself imposes a new State tax or fee goes beyond "authorizing" it or making it possible; it takes the next step and finishes the job. Therefore, contrary to the Opponents' suggestion, the Court will not be called upon to redraft the Tax Limitation amendment in operation, but merely to apply its clear language to determine if a future constitutional amendment "imposes" a new State tax or fee.

It is not possible at this date, absent the pendency of any proposed constitutional amendments that might be subject to the

supermajority requirement,⁴ to determine how the Tax Limitation petition would be applied in every conceivable context. The title and ballot summary certainly cannot, and are not required to, explore every possible ramification. Certainly one can expect that the drafters of future revenue-raising constitutional amendments will attempt to circumvent the Tax Limitation amendment in ways that no one can predict now, and the Court will have to be the final arbiter of whether any particular proposal succeeds in doing that. The need to construe future proposed constitutional amendments to determine whether they are required to garner a supermajority vote is not the same thing as rewriting this proposed amendment, as the Opponents suggest. The Tax Limitation petition sets forth in clear and unambiguous language the guidelines for determining its application in the future, and it means what it says. The Tax Limitation petition is not misleading, and satisfies the requirements of section 101.161, Florida Statutes.

C. **This Title Is Not Misleading Merely Because It Is A Question.**

The Opponents claim that the use of a question in the title may be misleading. Far from "begging for a 'yes' answer," as the Opponents suggest [Opponents' Br. at 15], the title of this petition is neutral and informative, simply stating the issue before the voter. It only begs for a "yes" answer if the voter is

⁴ The Opponents have conceded that there were no constitutional amendments "imposing a 'new State tax or fee'" adopted at the November 1994 general election, and have not noted any new proposals that would be subject to the supermajority requirement. Tax Cap Committee is likewise unaware of the pendency of any such proposals.

inclined to vote "yes"; it is equally likely to beg for a "no" answer from a voter inclined to vote "no." It is not infected with the political rhetoric that led this Court to condemn the "Save Our Everglades" proposal. In re Advisory Opinion to the Attorney General -- Save Our Everglades, 636 So. 2d 1336, 1342 (Fla. 1994). And finally, contrary to the Opponents' accusation, Tax Cap Committee was not warned before drafting this proposal that the Court would look critically upon a title in the form of a question; the warning was issued in the same decision in which this proposal was already before the Court. Tax Limitation I, 644 So. 2d at 496 n.4. The Court acknowledged that "the use of a question in the ballot title is not per se misleading." Id. at 496. This particular title is not misleading merely because it is in the form of a question.

**D. The Originator Of A Proposed
Amendment Is Irrelevant; Any
Qualified Proposed Constitutional
Amendment Is Covered.**

The Opponents note that the Tax Limitation petition would extend to any constitutional amendment that imposes a new State tax or fee, whether it originates by initiative petition (and is thus exempted from the single-subject requirement of article XI, section 3), or by the other methods of constitutional amendment addressed in article XI (not subject to the single-subject requirement of article XI, section 3). [Opponents' Br. at 8, 15-16.] The Opponents claim that the petition is misleading for failing to list these other potential originating sources of constitutional

amendments. [Id. at 16.]⁵ But, as Tax Cap explained at oral argument, the ballot title and summary place the voter on notice that any constitutional amendment imposing a new State tax or fee would be subject to the supermajority requirement. The summary says "by constitutional amendment," period. If a constitutional amendment imposing a new State tax or fee is at issue, no matter where it originates, it is subject to the supermajority requirement. The Tax Limitation petition is not misleading for failing to list each potential originating source of a constitutional amendment, because the source is irrelevant.

The fact that the Tax Limitation petition would make it harder for every originating source of a revenue-raising constitutional amendment to secure popular approval of the amendment is an obvious result of the supermajority requirement. The petition does not eliminate the need for, or erase the function of, the Tax and Budget Reform Commission, for instance; it merely changes the procedural requirements for effecting a particular topic of constitutional amendment that the Commission (and other potential originators of constitutional amendments) might propose. Each body that could produce a revenue-raising constitutional amendment -- voters, the legislature, a revision commission, the Tax and Budget Reform Commission, a constitutional convention, or others that may be created in the future -- will continue to exist and to operate in exactly the way it did before adoption of the Tax

⁵ The Opponents incorrectly state that the Tax Limitation petition would apply to "every form of constitutional change." [Opponents' Br. at 8 (emphasis added).] The petition would apply only to a narrow class of proposed constitutional amendments.

Limitation petition. Each body is placed on notice that if the Tax Limitation petition is adopted, it will be harder statistically to get popular approval of a certain narrowly-defined category of constitutional amendments. Voters considering the Tax Limitation petition are told by its title and ballot summary that it covers constitutional amendments, and it is up to the voters to educate themselves as to what sources may originate constitutional amendments. The petition is not misleading for failing to spoon-feed voters this readily-available information.⁶

**III. THE PURELY THEORETICAL POTENTIAL FOR
RETROACTIVE APPLICATION IS
COMPLETELY HARMLESS.**

The Tax Limitation petition was prepared in anticipation of an appearance on the November 1994 general election ballot, and thus was drafted to apply to constitutional amendments "on the November 8, 1994 ballot and those on later ballots." The date and its intended effect are clearly disclosed to the voters. The Opponents have conceded that no amendments on the November 8, 1994 ballot would be affected by the Tax Limitation petition. [Opponents' Br. at 11 n.3.] Nevertheless, the Opponents fear that other retroactive amendments in the future could be "bizarre,"

⁶ Note that it took the Opponents twenty-eight words merely to list the potential originating sources of constitutional amendments. [Opponents' Br. at 8.] Given only 75 words within which to explain the chief purpose and ramifications of an initiative petition, and given the irrelevance of the originating source of revenue-raising amendments, it is not reasonable to expect Tax Cap to have listed every potential source for the voter. It would, therefore, be unreasonable and unfair to strike the proposal from the ballot for failing to list these details.

"unhealthy," and "pernicious." [Opponents' Br. at 11.] Future amendments with retroactive application will have to defend themselves; the theoretical effective reach of this proposed amendment is perfectly harmless.

The use of the 1994 date was, as the Court recognized, intended to prevent "the exacting of a fee as proposed in the 'Save-Our-Everglades' amendment without a favorable two-thirds vote of the electorate." See Tax Limitation I, 644 So. 2d at 491 n.2. The petition's focus on the date of the originally-anticipated ballot position is an understandable drafting choice, although one that the Court has cautioned ought not be repeated in future petitions. See Advisory Opinion to the Attorney General Re Florida Locally Approved Gaming, 656 So. 2d 1259, 1264 (Fla. 1995) ("Proponents of amendments to the constitution would be well advised to avoid this type of problem [date-specific implementation] in the future"). Tax Cap Committee was not aware of any potential problem until well after it had obtained all signatures needed for a ballot position, and the FLAG warning was not issued until eight months after the Court struck down the Tax Limitation proposal on single-subject grounds. Under the circumstances, and particularly in view of the absence of any actual harm flowing from the use of the specific and now past date, the Court should not invalidate the Tax Limitation petition on these grounds.

IV. SIMULTANEOUS PASSAGE OF THIS
PETITION AND A COVERED TAX-IMPOSING
PETITION WOULD REQUIRE A
SUPERMAJORITY VOTE ON THE TAX-
IMPOSING PETITION.

The Opponents claim that the simultaneous passage of the Tax Limitation petition and a tax-or-fee-imposing constitutional amendment would present "a novel issue of constitutional interpretation." The Opponents apparently have not focused on the stated effective force and specific intent of the Tax Limitation petition, which is to require a two-thirds vote of voters voting in the election as to any constitutional amendment imposing a new State tax or fee on or after November 8, 1994. Just such a constitutional amendment was circulated to appear on the same 1994 general election ballot with the Tax Limitation petition, and the Court noted that the intent and effect of the petition would have been to require the two-thirds vote of voters voting in the election to pass that constitutional amendment. Tax Limitation I, 644 So. 2d at 491 n.2. That is why the date appears in the proposal: it means what it says and is not misleading in the least.

CONCLUSION

The Tax Limitation petition limits the power of government to raise revenue, and thus falls within the exception to the single-subject requirement of article XI, section 3, Florida Constitution. The petition is entitled to this Court's opinion on whether the petition complies with the legal requirements of section 101.161, Florida Statutes. Tax Cap has demonstrated that the ballot title and summary are accurate and not misleading, and

that they fairly disclose the chief purpose and ramifications of the proposed amendment. Accordingly, the Court should approve the Tax Limitation petition for placement on the ballot in the November 1996 general election.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was furnished to the following by United States mail this 4th day of March, 1996.

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