

IN THE SUPREME COURT  
STATE OF FLORIDA

IN RE:

ADVISORY OPINION TO  
THE ATTORNEY GENERAL -  
TAX LIMITATION

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CASE NO.: 86,600

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REPLY BRIEF OF FLORIDA TAXWATCH

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SUGGESTING THAT THE PROPOSED TAX LIMITATION AMENDMENT IS EXEMPT  
FROM THE SINGLE-SUBJECT RULE AND COMPLIES WITH THE FLORIDA  
CONSTITUTION AND FLORIDA STATUTES SECTION 101.161

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TaxWatch files this reply brief in support of the Tax Limitation initiative being placed on the ballot.

To deny the Florida voters the opportunity to vote on this proposed amendment, the Florida Audubon Society, 1000 Friends of Florida, Inc. and Common Cause ("Opponents") bear a heavy burden of demonstrating to the Court that the amendment is "clearly and conclusively defective." Floridians Against Casino Takeover v. Let's Help Florida, 363 So.2d 337, 339 (Fla. 1978). Opponents have not met their burden.

**I. THE PROPOSED TAX LIMITATION AMENDMENT IS EXEMPT FROM THE SINGLE-SUBJECT RULE**

Opponents argue that the proposed tax limitation amendment is not exempt from the single-subject requirement of Article XI, Section 3, Florida Constitution. Opponents have misconstrued the purpose and effect of the proposed amendment, and have ignored the Attorney General's and the Florida Supreme Court's interpretation of the purpose and effect of the proposed amendment as limiting the power of government to raise revenue.

**A. The Attorney General Concluded That The Proposed Amendment Is Exempt From The Single Subject Requirement**

As the Court is aware from TaxWatch's Initial Brief, the Court previously held that the proposed amendment violated the single subject requirement; however, the voters subsequently amended their Constitution to exempt from the single subject

requirement all initiatives that limit the power of government to raise revenue.

Based on that amendment, the Attorney General petitioned this Court for an advisory opinion pursuant to Article XI, Section 3, Florida Constitution. In his letter to the Court, the Attorney General concluded that the proposed amendment is exempt from the single subject requirement:

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.

**B. The Florida Supreme Court Found That The Proposed Amendment Is A Revenue Limitation Provision**

The Florida Supreme Court, in Advisory Opinion to the Attorney General re Tax Limitation, 644 So.2d 486, 489-91 (Fla. 1994), found that the proposed amendment "restrict[s] the authority of governmental entities to enact new taxes and user-fees, to increase present tax rates, and to eliminate tax exemptions . . . [and] would substantially limit the ability of government to raise revenue . . . ." The proposed amendment limits the power of government to raise revenue because the "power" of the government to impose new taxes or fees via or in response to a constitutional amendment would be limited to those amendments that passed by a two-thirds vote of those voting in the election.

II. THE BALLOT TITLE CONVEYS THE MEANING OF THE PROPOSED  
AMENDMENT IN COMPLIANCE WITH SECTION 101.161, FLORIDA  
STATUTES

As TaxWatch demonstrated in its Initial Brief, the ballot title complies with Section 101.161, Florida Statutes because it consists of a "caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of." The title is not misleading and it is not rhetoric. The question format tracks the voters response such that a "no" answer to the question would also be a "no" vote on the amendment.

Opponents disingenuously assert that Tax Cap failed to heed the Court's warning that it runs the risk that its ballot title will be deemed misleading because the ballot title is framed as a question. However, as the Court is aware, this proposed amendment was before the Court when the Court gave its warning; therefore, Tax Cap has not ignored the Court's warning.

Opponents lump together their arguments regarding the ballot title and the summary and thus fail to recognize that each performs a separate task. Practically speaking, a ballot title for which only 15 words are allowed cannot accomplish all the things that Opponents suggest it must.

III. THE BALLOT SUMMARY CLEARLY AND UNAMBIGUOUSLY EXPLAINS THE  
CHIEF PURPOSE OF THE PROPOSED AMENDMENT IN COMPLIANCE WITH  
SECTION 101.161, FLORIDA STATUTES

Opponents argue that the ballot summary is misleading because it does not disclose to the voters that it applies to all methods of amending the constitution. The ballot summary states that the amendment "[p]rohibits imposition of new State taxes or fees . . . by constitutional amendment unless approved by two-thirds of the voters voting in the election." The ballot summary does not mislead the voters into thinking that only some constitutional amendments that impose new states taxes or fees will be affected. It is clear that all such amendments will be subject to the two-thirds vote requirement.

Opponents also allude to the "impact that the proposed amendment will have on diverse government functions", but fail to discuss any. Perhaps Opponents discussed no such impact because there will be none or because their fears are merely speculative. The proposed amendment would not effect "diverse government functions"; only the government's ability to impose taxes through amendment to the constitution would be affected. For example, the means by which the legislature or the taxation and budget reform commission perform their functions relating to the proposal of constitutional amendments would be unaffected by this amendment. The investigation, evaluation, and consideration involved with proposing a constitutional amendment would not change. The only change would be that amendments that would impose new states taxes or fees would have to be approved by two-thirds of those voting in the election. The voters would still have the full benefit of the expertise, research, and evaluation

done by the legislature and the taxation and budget reform commission.

Additionally, any fear that an amendment proposed by a governmental body such as the legislature or the tax and budget reform commission would be adversely affected by the Tax Limitation amendment is not only speculative but unrealistic.

The legislature and the tax and budget reform commission are unlikely to impose a new tax or fee through constitutional amendment. They have not done so in the past and they are unlikely to do so in the future. As this Court has pointed out, the constitution is the framework of the government containing the general principles upon which the government must function. City of Jacksonville v. Continental Am., 113 Fla. 168, 151 So. 488 (1933). "It is not designed to provide detailed instructions for the method of its implementation." Johns v. May, 402 So.2d 1166, 1169 (Fla. 1981).

The legislature would pass a statute if it wanted to enact a new tax. The tax and budget reform commission would likely include its recommendation for any new taxes in the report it is required to submit to the legislature setting forth "any recommended statutory changes related to the taxation or budgetary laws of the state." Article XI, Section 6, Florida Constitution.

As a practical matter, the impact of the two thirds requirement will fall on any effort to impose a tax through an amendment offered through the initiative process. The recent



invalid initiative proposal aimed at the sugar industry was, of course, an example of this type of effort. While the wisdom of the tax limitation amendment is not before the court, TaxWatch believes that a supermajority voting requirement is a desirable method to protect the constitution from becoming a tax code rather than a statement of principles. Speculative fears of injury to traditional functions of government should not be given credence by the Court. See, Advisory Opinion to the Attorney General: English--the Official Language of Florida, 520 So.2d 11, 12-13 (Fla. 1988).

Opponents also raise, without discussion, the concern that voters will be confused as to which proposed taxes the Tax Limitation amendment would apply. The proposed amendment and the ballot summary clearly state that the amendment only applies to constitutional amendments that would impose new states taxes or fees. Existing state taxes or fees and modifications to them would not be affected. Additionally, any questions as to the amendment's applicability in a particular situation would properly be a question of interpretation for the courts. An amendment should not stricken from the ballot simply because there is speculation that it might require a judicial interpretation. If that were the case, many of the amendments to the federal constitution, including the bill of rights, could never have been passed.

IV. OPPONENTS' OTHER MISCELLANEOUS ARGUMENTS ARE ALSO NOT  
COMPELLING

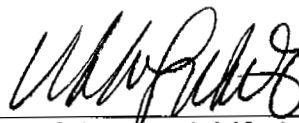
Opponents also take issue with the fact that the Tax Limitation amendment would require that future constitutional amendments that would impose new state taxes or fees be approved by two-thirds of the voters voting in the election rather than two-thirds of those voting on the question. Opponents make the unremarkable observation that an amendment could be defeated even if every voter who casts a vote on the question votes in favor of the amendment. This is not a difficult concept to grasp -- voters learn in basic civics, government, or math classes that not casting a vote under these circumstances has the same effect as a no vote. Moreover, if so few people choose to cast a vote on the question that it fails to receive a yes vote from two-thirds of the voters voting in the election, then it can be argued that it should not be a part of the Florida Constitution. Moreover, with a 75 word limitation for the ballot summary, basic voting should not have to be explained. No word in the ballot summary is expendable or should have been replaced with a discussion of basic voting.

Opponents also argue that the effective date of the Tax Limitation amendment could produce "unhealthy results." However, as the opponents recognize, there were no amendments imposing new state taxes or fees adopted at the 1994 election; therefore, any concerns are speculative and should not weigh against the initiative being placed on the ballot.

CONCLUSION

The Tax Limitation initiative is exempt from the single-subject requirement of Article XI, Section 3, Florida Constitution. The ballot title and summary are clear, informative, and not misleading. Florida Citizens should be given the opportunity to debate and vote on this ballot initiative.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to:

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