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SUPREME COURT OF FLORIDA

ADVISORY OPINION TO THE
ATTORNEY GENERAL

CLERK, SUPREME COURT
~~Chief Deputy Clerk~~

RE: PEOPLE'S PROPERTY RIGHTS
AMENDMENTS PROVIDING
COMPENSATION FOR RESTRICTING
REAL PROPERTY USE MAY COVER
MULTIPLE SUBJECTS

CASE NO. 88,696

Upon Request from the Attorney General for An Advisory Opinion
As to the Validity of An Initiative Petition

ANSWER BRIEF OF
THE DEPARTMENT OF COMMUNITY AFFAIRS,
THE FLORIDA LEAGUE OF CITIES, INC., AND
THE FLORIDA ASSOCIATION OF COUNTIES, INC.
IN OPPOSITION TO
THE "PEOPLE'S PROPERTY RIGHTS" INITIATIVE

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ARGUMENT

I. THE PEOPLE'S PROPERTY RIGHTS AMENDMENT DOES NOT MEET THE SINGLE SUBJECT REQUIREMENT OF ARTICLE XI, SECTION 3 OF THE FLORIDA CONSTITUTION

The sponsors of the People's Property Rights amendment argue that, with respect to the single subject requirement, the initiative is identical to the revenue proposal approved in Advisory Opinion to the Attorney General Re: Tax Limitation, 644 So. 2d 486, 496 (Fla. 1994) ("Tax Limitation I"). Certainly, both proposals provide exemptions to the single subject requirement; otherwise, the two amendments are dissimilar.

As discussed in the Department/Association/League Initial Brief, the broad sweep of the People's Property Rights amendment covers a great deal more ground than the singular issue presented in Tax Limitation I. The revenue exemption dealt solely with revenue limitation, Tax Limitation I, 644 So. 2d, at 644, but the People's Property Rights amendment has multiple matters connected with it. See, Argument I of Department/Association/League Initial Brief. The revenue exception in Tax Limitation I did not violate the single subject rule precisely because it was limited in scope, did not log-roll other provisions, and did not cause a wholesale rearrangement of governmental functions. The People's Property Rights proposal affects numerous functions of

all levels of government, and cannot survive the limitations of the single subject rule.

Further, the People's Property Rights amendment is interlocked with the companion Property Rights amendment (Case No. 88,698), which can only remain on the ballot as a "daisy chain" with the People's Property Rights initiative. See, Argument II of Department/Association/League Initial Brief.

The logical extension of the sponsors' argument is that any proposal to provide an exemption to the single subject requirement is permissible. The purpose of the single subject rule belies the argument that the exceptions can "swallow" the rule without further inquiry.

The single-subject requirement in the proviso language of this section is a rule of restraint. It was placed in the constitution by the people to allow the citizens, by initiative petition, to propose and vote on singular changes in the functions of our governmental structure.

* * *

It is apparent that the authors of article XI realized that the initiative method did not provide a filtering legislative process for the drafting of any specific proposed constitutional amendment or revision. The legislative, revision commission, and constitutional convention processes of sections 1, 2 and 4 all afford an opportunity for public hearing and debate not only on the proposal itself but also in the drafting of any constitutional proposal. That opportunity for input in the drafting of a proposal is not present under the initiative process and this is one of the reasons the initiative process is restricted

to single-subject changes in the state constitution. The single-subject requirement in article XI, section 3, mandates that the electorate's attention be directed to a change regarding one specific subject of government to protect against multiple precipitous changes in our state constitution.

Fine v. Firestone, 448 So. 2d 984, 988 (Fla. 1984).

II. THE "PEOPLE'S PROPERTY RIGHTS" BALLOT TITLE AND SUMMARY ARE AMBIGUOUS AND MISLEADING

The Tax Cap Committee asserts in its Initial Brief that the ballot title and summary of the Peoples Property Rights - Multiple Subjects initiative properly advise the electorate of the chief purpose of the measure and its ramifications. However, the sponsors gloss over the misleading aspects of the ballot title and summary.

A. THE USE OF THE TERM "OWNER" IN THE BALLOT SUMMARY IS VAGUE, AND WHEN CONSIDERED TOGETHER WITH THE BALLOT TITLE, IS MISLEADING

The sponsors contend that voters confronted with the term "owner" will know that the term includes various entities such as corporations and partnerships. Although the sponsors assert that "this Court can be confident that the voting public understands the concept," Tax Cap Initial Brief, at 8, this Court rejected that premise in Advisory Opinion to the Attorney General Re Tax Limitation, 644 So. 2d 486, 495 (Fla. 1994).

The sponsors also ignore the effect of the ballot title, which refers to "People's Property Rights." The ballot title and summary must be read together, and not in isolation. Advisory Opinion to the Attorney General Re Tax Limitation, 673 So. 2d 864, 868 (Fla. 1996), citing Advisory Opinion to the Attorney

General Re: Limited Casinos, 644 So. 2d 71, 75 (Fla. 1994). The sponsors profess that the term "owner" includes non-living legal entities such as corporations and partnerships. Tax Cap Initial Brief, at 8. However, the ballot title's reference to "People's Property Rights" would lead a reasonable voter to believe that only living persons will receive the benefits of the initiative.

The inherent ambiguity of the term "owner" recognized by this Court in Tax Limitation I, 644 So. 2d at 495, and reinforced by the reference to "People" in the ballot title, renders the ballot title and summary misleading.

B. THE CONCEPT OF LIMITING GOVERNMENTAL USE
RESTRICTIONS TO "COMMON LAW NUISANCES" IS NOT
READILY UNDERSTANDABLE

As described in Argument II of the Department/League/Association Initial Brief, the People's Property Rights initiative interlocks with the Property Rights amendment which is the subject of Case No. 88,698. The Tax Cap Initial Briefs in both cases include similar discussions of the "common law nuisance" issue. The Department/League/Association response to the Tax Cap Committee appears in the Department/League/Association Answer Brief in Case No. 88,698, and for judicial economy will not be duplicated here.

C. THE PHRASE "WHICH IN FAIRNESS SHOULD BE BORNE BY THE PUBLIC" IS AMBIGUOUS AND MISLEADING

The sponsors set up a straw man by suggesting that the Attorney General asserts that "a voter might believe a future compensation claim . . . would be up to him or her to decide." Tax Cap Initial Brief, at 11. The Attorney General's real objection is:

[T]he summary of the initiative petition refers to "loss[es] in fair market value, which in fairness should be borne by the public" without providing a standard to determine when, "in fairness," a governmental entity may be burdened for its actions. Thus, the voter is not adequately informed of when the government may be liable for payment of compensation. Rather it is left to the subjective understanding of each voter as to what he may feel is a standard of fairness.

Attorney General's Request for Opinion, August 14, 1996, at 5. The voter will have to rely upon this subjective understanding when voting on the People's Property Rights amendment, because the ballot title and summary provide no further guidance for determining when "in fairness" a governmental entity must provide compensation.

Even the voter who examines the cases cited in the Tax Cap Initial Brief, at page 11, will have no better conception of "fairness" as used in the ballot summary. "Fairness" as used in Armstrong v. U.S., 364 U.S. 40, 80 U.S. 1563, 4 L.Ed. 2d 1554

(1960); Nolan v. California Coastal Commission, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed. 2d 677 (1987); and Joint Ventures v. Dept. of Transportation, 563 So. 2d 622 (Fla. 1990), which the sponsors call a "well recognized, judicially created standard," applies to traditional "takings" analysis. Since the sponsors seek to replace traditional constitutional takings law with their new Property Rights initiative, the electorate could only be misled by relying upon the description of "fairness" in Armstrong, Nolan, and Joint Ventures. Even in the context of traditional takings cases, the courts have recognized that determining "fairness" is a not a simple task.

This case and many others reveal the difficulty of trying to draw the line between what destructions of property by lawful governmental actions are compensable "takings" and what destructions are "consequential" and therefore not compensable.

Armstrong, 364 U.S. at 48, 80 U.S. at 1568, 4 L.Ed. 2d 1554.

Far from providing a general rule to be applied, as the sponsors contend, the "fairness" described in Armstrong, Nolan, and Joint Ventures is a general description of the rationale for existing takings law.

One of the principal purposes of the Takings Clause is "to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.

Dolan v. City of Tigard, 114 S.Ct. 2309, 2316, 129 L.Ed. 2d 304 (1994), citing Armstrong v. United States, 364 U.S. 40, 49, 80 S.Ct. 1563, 1569, 4 L.Ed.2d 1554 (1960).

The cases cited by the sponsors provide no guidance as to the meaning of "fairness" in the ballot title and summary. The voter is left with his or her own concept of fairness. The summary may proclaim that all losses in fair market value of real property attributable to government restriction will be reimbursed, or it may state that compensation will be available only in those rare circumstances in which the loss should "in fairness" be passed on to the public.

The vague and ambiguous reference to "fairness" is misleading.

CONCLUSION

For the reasons stated in this brief and in the initial brief, the Department of Community Affairs, the Florida League of Cities, Inc., and the Florida Association of Counties, Inc., urge the Court to issue an opinion striking this initiative from the ballot as violative of applicable constitutional and statutory requirements.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this brief has been furnished by U.S. Mail to the parties listed below on this 6 day of November, 1996.

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