

IN THE SUPREME COURT OF FLORIDA

Case Number: SC04-942

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On Request from the Attorney General
for an Advisory Opinion as to the
Validity of an Initiative Petition

=====
ADVISORY OPINION TO THE ATTORNEY GENERAL

RE: ADDITIONAL HOMESTEAD TAX EXEMPTION

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**BRIEF OF INTERESTED PARTY
FLORIDA LEAGUE OF CITIES**

IN OPPOSITION TO THE INITIATIVE

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STATEMENT OF THE CASE

Pursuant to Article IV, section 10, Florida Constitution, and section 16.061(1), Florida Statutes, the Attorney General has requested the Court's opinion on the validity of a constitutional amendment proposed through the initiative process. The Title, Ballot Summary, and Full Text of the proposed amendment are as follows:

Ballot Title: Additional Homestead Tax Exemption

Ballot Summary: This amendment *provides property tax relief* to Florida home owners by increasing the homestead exemption on property assessments by an additional \$25,000. (Emphasis added).

FULL TEXT OF PROPOSED AMENDMENT:

BE IT ENACTED BY THE PEOPLE OF FLORIDA THAT:

ARTICLE VII Section 6 of the Florida Constitution is hereby amended to add the following paragraph (g).

(g) *By general law and subject to conditions specified therein*, effective for assessments for 2005 and each year thereafter, an additional homestead exemption of twenty-five thousand dollars shall be granted to any person who has the legal or equitable title to real estate and maintains thereon the *permanent residence of the owner*. (Emphasis added).

By order dated June 10, 2004, the Court authorized interested parties to simultaneously file both initial and answer briefs on or before 3:00 p.m. on June 18, 2004.

STATEMENT OF INTEREST

The Florida League of Cities, Inc., (“League”) is a voluntary organization whose members are municipalities and other units of local government rendering municipal services in the State of Florida. The League’s membership presently numbers some 405 municipalities and 5 charter counties. Under its charter, the purpose of the League is to work for the general improvement of municipal government and its efficient administration, and to represent its members before the legislative, executive and judicial branches of government on various issues pertaining to the welfare of its members.

The proceeding is of utmost interest and concern to the membership of the League as the issues presented directly impact the orderly and efficient administration of municipal operations. Specifically, the proposed amendment would provide a \$25,000 increase in the homestead exemption applicable to local property tax. The local property tax is one of the few tax sources in Florida available to members of the League for purposes of funding municipal services and infrastructure. Preliminary estimates of the Department of Revenue indicate that municipalities statewide could lose over \$200 million in tax revenues as a result of the increased exemption.¹

¹ See, Appendix Tab “A” which provides a preliminary analysis prepared by the Department of Revenue for the Financial Impact Estimating Conference. The total estimated revenue loss for municipalities is provided on the last page of the document

Moreover, the Department's preliminary analysis shows that at least 14 municipalities would not be able to fully offset the projected revenue loss because they would have to raise their millage rates above the 10 mill constitutional maximum to do so. *See*, Appendix Tab A, p.2, under the heading "New Millage."

Thus, the proposed amendment would impact the taxing authority of the League's members and could significantly impact their ability to generate revenues required to fund municipal operations and services.

under the heading "Decrease in Municipal Tax Revenues."

SUMMARY OF ARGUMENT

Section 101.161(1), Florida Statutes, requires the substance of a proposed constitutional amendment to be printed on the ballot in “clear and unambiguous language.” The statute’s purpose is to provide fair notice of the content of the proposed amendment so that the voter will not be misled and can cast an intelligent and informed ballot. The ballot title and summary must advise voters of the true meaning and ramifications of an amendment. Moreover, the title and summary must be accurate, informative, objective, and free from political rhetoric.

The ballot summary at issue does not satisfy these substantive standards because it includes political rhetoric, rather than an accurate and informative synopsis of the proposed amendment’s meaning and effect. It misleads voters by suggesting that *all* Florida home owners would receive “tax relief;” whereas the proposed amendment replaces the words “tax relief” with more docile and accurate language. By including a subjective evaluation of potential “tax relief,” the ballot summary runs afoul of the Court’s admonition that a ballot summary should tell the voter the effect of the amendment and no more.

The ballot summary would mislead the voter to believe that the proposed amendment would provide “tax relief” to *all* Florida home owners when that is clearly not the case. By its terms, the proposed amendment excludes from its scope an entire

class of persons who currently receive the homestead exemption, and it could cause other home owners to pay the same or even higher property taxes. Thus, the voters are not able to comprehend the sweep of the proposal from a fair notification that the proposition is less expansive than it appears to be.

The ballot summary also fails to inform the voter that the proposed amendment requires legislative implementation and allows the Legislature to impose conditions on it, without delineating or prescribing the Legislature's power. As a result, the voters are not informed enough to raise important questions regarding the Legislature's power to limit the scope of the proposed homestead exemption increase. For that reason, the ballot summary violates the "clear and unambiguous" requirement and the Court's admonition that ballot summaries provide fair notice of the content of the proposed amendment so that the voter can cast an intelligent and informed ballot.

These inaccuracies and omissions render the proposed amendment fatally defective. Accordingly, the Court should order it stricken from the ballot.

ARGUMENT

I. THE PROPOSED AMENDMENT MUST BE STRICKEN BECAUSE THE BALLOT SUMMARY RELIES UPON POLITICAL RHETORIC RATHER THAN A CLEAR AND UNAMBIGUOUS STATEMENT OF THE PROPOSAL'S EFFECT.

Section 101.161(1), Florida Statutes, requires that the substance of proposed constitutional amendment “be printed in clear and unambiguous language on the ballot[.]” To comply with this statute, the ballot title and summary for a proposed amendment must “state in clear and unambiguous language the chief purpose of the measure,” *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982), and must “assure that the electorate is advised of the true meaning, and ramifications, of an amendment.” *Id.* at 156. Moreover, the title and summary must be “objective and free from political rhetoric.” *Advisory Opinion to the Att’y Gen. re Tax Limitation*, 644 So. 2d 486, 490 (Fla. 1994) (citations omitted).

The ballot summary at issue does not satisfy these standards. As discussed below, its blanket statement that “the amendment provides tax relief to Florida home owners” reflects political rhetoric, rather than “an accurate and informative synopsis of the meaning and effect of the proposed amendment.” *In re Advisory Opinion - Save Our Everglades*, 636 So.2d 1336, 1342 (Fla.1994). Accordingly, the proposed amendment must fail.

A. By emphasizing the emotional appeal of “tax relief,” the ballot summary offers political rhetoric rather than an accurate description of the proposed amendment .

The ballot summary unqualifiedly promises the voter “tax relief,” an electioneering slogan which the amendment itself cannot deliver. For this reason, the ballot summary is clearly and conclusively defective and the proposal must be stricken from the ballot. *Askew*, 421 So. 2d at 154.

It is difficult to fathom an initiative petition that would be easier to clearly and unambiguously describe than this one. The voters must be told only that the amendment *requires the Legislature to increase the existing homestead exemption by \$25,000 for any person who maintains his or her permanent residence on the property, and allows the Legislature to impose conditions on the grant of the increased exemption.* This can easily be said in 38 words and without violating Florida’s “‘truth in packaging’ law for the ballot.” *Armstrong v. Harris*, 773 So. 2d 7, 13 (Fla. 2000).

Rather than providing a true description of the proposed amendment, the ballot summary at issue offers political rhetoric and emotional appeal. It misleads voters by suggesting that *all* Florida home owners would receive “tax relief.” In contrast, the proposed amendment replaces the words “tax relief” with more accurate and docile language. This is the same type of sleight-of-hand that the Court condemned in *Save*

Our Everglades. As this Court has emphasized in *Evans v. Firestone*, 457 So. 2d 1351, 1355 (Fla. 1984), a ballot summary “should tell the voter the legal effect of the amendment and no more;” it is no place for a “subjective evaluation of special impact.” Yet this ballot summary includes its own, incorrect evaluation of the amendment’s impact to taxpayers.

The appropriate vehicle to officially inform the voter of the “the range of potential impacts” resulting from the amendment is the Financial Impact Statement to be prepared by the Revenue Estimating Conference under Article XI, section 4(b), Florida Constitution, and section 100.371(6), Florida Statutes, as amended by Chapter 2004-43, section 3, Laws of Florida; not the ballot summary. And, as this Court repeatedly has admonished, “[t]he political motivation behind a given change must be propounded outside the voting booth.” *Evans*, 457 So. 2d at 1355(addressing ballot summary’s statement that a proposed amendment would avoid “unnecessary costs”).² Here the ballot summary engages in such politicking by offering a promise of “tax relief” which, as discussed below, the amendment itself

² The political motivation for the proposed amendment is clearly set forth on the proponents’ website, www.mypropertytaxcut.com, which promises Floridians a \$500 property tax cut, and invites visitors to “click here for tax savings.” It is one thing to mislead taxpayers through a website; it is quite another to do so through a ballot summary in the voting booth.

does not fulfill. It is, therefore, fatally defective under *Save Our Everglades* and *Evans v. Firestone*.

B. The ballot summary incorrectly leads an average voter to believe that all persons currently eligible for the homestead exemption will receive an increase.

By stating, without qualification, that the proposed amendment would “provide tax relief to Florida home owners by increasing the homestead exemption,” the ballot summary wrongly implies that *all* persons who currently receive the exemption will be granted an increase. That is simply not so. Under Article VII, Section 6(a), which the proposed amendment would not affect, the homestead exemption applies to “any person who has the legal or equitable title to real estate and *maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner*[.]” Art. VII, § 6(a), Fla. Const. (emphasis added). By comparison, the text of the proposed amendment would grant an increase only to “any person who has the legal or equitable title to real estate and *maintains thereon the permanent residence of the owner.*” The amendment simply omits the clause referring to homes in which natural or legal dependents of the owner reside.

As demonstrated by Section 196.031(1), Florida Statutes, and Rule 12D-7.007(4), Florida Administrative Code, the clause omitted from the proposed amendment is not superfluous. The Rule describes how dependents must demonstrate

entitlement to the homestead exemption when they reside on property owned by the person upon whom they are dependent. The practical import of this language is further evidenced in Attorney General Opinion 82-027 (1982), which articulates guidance for determining when a non-resident parent may be entitled to claim a homestead exemption on property occupied by a naturally-dependent adult student who establishes residence in Florida. The omission of this language from the proposed amendment is not insignificant. It will result in denial of the increased homestead exemption to persons with dependent college students, former or separated spouses, or dependent elderly relatives residing on property which is not owner-occupied but which currently receives the current \$25,000 exemption. The ballot summary fails to inform the voter of this. While it is true that the ballot title and summary need not spell out every detail, entitlement to an increased homestead exemption is the chief and *only purpose* of the proposed amendment. Thus it is imperative to alert voters that not every Florida home owner currently receiving the exemption will be entitled to receive that increase.

This Court has recognized that a “ballot summary may be defective if it omits material facts necessary to make the summary not misleading.” *Advisory Opinion to the Att’y Gen. Re Term Limits Pledge*, 718 So. 2d 798, 803 (Fla. 1998) (quoting *Advisory Opinion to the Att’y Gen. – Limited Political Terms*, 592 So. 2d 225, 228

(Fla. 1991); *see also*, *Askew*, 421 So. 2d at 158 (Ehrlich, J., concurring). That is the case here. Because the ballot summary fails to describe the true scope of those eligible for the proposed homestead exemption increase, the voters are not “able to comprehend the sweep of [the] proposal from a fair notification in the proposition itself that is neither less nor more extensive than it appears to be.” *Askew*, 421 So. 2d at 155 (quoting *Smathers v. Smith*, 338 So. 2d 825, 829 (Fla. 1976)). The proposed amendment is, therefore, fatally defective.

C. The Ballot Summary “flies under false colors” by incorrectly suggesting that an increase in the homestead exemption will necessarily provide “tax relief.”

Even persons who maintain their own residences on exempt property would not necessarily receive the “tax relief” promised in the ballot summary. That is because a property owner’s tax bill is a function of two factors: the taxable value of the property and the millage rate adopted by the taxing authority to fund its budgetary needs. *See*, Steve Pajcic, et al., *Truth or Consequences: Florida Opts for Truth in Millage in Response to the Proposition 13 Syndrome*, 8 Fla. St. U. L. Rev. 593, 618 (1980). A final tax bill is determined by multiplying the taxable value of the property by the millage rate. Because the homestead exemption only affects one side of this mathematical equation – the taxable value – an increased exemption may not provide a taxpayer any relief whatsoever.

Florida citizens rightly demand police and fire protection, adequate schools, roads, infrastructure, and a multitude of services designed to protect the community's health, safety and welfare. Nothing in the proposed amendment signals to the voters that they are electing to trade a reduced level of infrastructure and services in exchange for an increased homestead exemption. Therefore, taxing authorities could very well respond to the proposed amendment by increasing their millage rates to offset the decrease in tax revenues that would otherwise occur as a result of the increased homestead exemption.³ Indeed, to avoid problems with general obligation bonds funded with *ad valorem* taxes, it may be essential for some jurisdictions to increase certain millage rates.

Depending upon the extent of any such millage rate increases, and the taxable value of the homestead, a property owner's tax bill actually could be higher despite the increased homestead exemption. This point is illustrated by a simple example. Assume a jurisdiction with two homes in the tax base. Home A is valued at \$50,000

³ For example, the taxing authorities could simply adopt the "rolled-back rate" that they are statutorily required to calculate each year pursuant to section 200.065(1), Florida Statutes (2003). The "rolled-back rate" reflects the millage rate necessary to provide the same *ad valorem* tax revenues levied in the prior year, after excluding increases in the taxable rate base due to additional construction and increased value of improvements. By statute, it automatically accounts for any decrease in projected revenues attributable to an increase in the homestead exemption and a corresponding decrease in taxable value.

and Home B is valued at \$250,000. Today, both are entitled to the \$25,000 homestead exemption, making Home A's taxable value \$25,000, and Home B's taxable value \$225,000. Assuming a total millage rate of 20 mills,⁴ Taxpayer A's total bill would be \$500 (i.e., $25 \times 20 = \$500$), and Taxpayer B's total bill would be \$4,500 (i.e., $225 \times 20 = \$4,500$). The taxing jurisdictions receive \$5,000 in total taxes on the two homes. With the proposed \$25,000 increase in the homestead exemption, Home A's taxable value becomes \$0, and Home B's taxable value becomes \$200,000. If, however, the local taxing authority chooses to increase the total millage rate to offset projected revenue decreases to continue funding existing levels of infrastructure and services, it would need to set the new tax rate at 25 mills to generate the same \$5,000 in taxes. Under those circumstances, Taxpayer A would pay nothing. Taxpayer B would pay the entire \$5,000 (i.e., $200 \times 25 = 5,000$). Both Taxpayer A and Taxpayer B were promised "tax relief," but only Taxpayer A would receive it.

The extent of the need to increase millage rates to offset revenue reductions resulting from the proposed amendment would depend upon the local government's mix of homestead and non-homestead properties, and the relative taxable values in the

⁴ In Fiscal Year 2003-04, total millage rates (including counties, school boards, and municipalities) averaged 20.24 mills in Florida. *See* 2004 FLORIDA TAX HANDBOOK, at 140 (Relevant excerpts provided in Appendix Tab B). A mill can be expressed as \$1 of tax per every \$1,000 of taxable value.

jurisdiction in question. For example, the potential need to increase millage rates would be greater in smaller jurisdictions with lower-valued housing, more low-valued agricultural property, and less taxable commercial and industrial property.⁵

With limited revenue sources available to local governments, some increases in millage rates likely would occur if the proposed amendment is approved by the Court and, ultimately, by the voters. Indeed, the Department of Revenue's preliminary estimates suggest that over \$500 million would need to be shifted back onto homesteads through millage rate increases to make up the projected revenue losses attributable to the proposed increased exemption. *See*, Appendix Tab C under the heading "Shift Back Onto Homesteads." However, the Court need not attempt to divine whether or to what extent increased millage rates will occur. The fact that the proposed amendment leaves open this possibility plainly shows the ballot summary to be inaccurate. *See Advisory Opinion to the Att'y Gen. re Stop Early Release of Prisoners*, 642 So. 2d 724, 727 (Fla. 1994).

⁵ It should be noted that some jurisdictions are at or close to the constitutional 10 mill cap under Article VII, section 9(b), and therefore would not have the option of increasing their millage rates to recoup lost revenues. *See* Florida Dep't of Revenue, *Florida Property Valuations & Tax Data* (Dec. 2003) (heading entitled "County Gov. Operating" in spreadsheet entitled "2003 Millage by County" in Part III of report) (Copy provided in Appendix Tab D; also available on-line at <http://www.myflorida.com/dor/property/03FLpropdata.pdf>).

This initiative does not guarantee tax relief to individual voters anymore than the *Stop Early Release* initiative ensured that prisoners would serve 85% of their sentences. “A proposed amendment cannot fly under false colors; this one does.” *Askew*, 421 So. 2d at 156. For this reason, the Court must reject the proposed amendment as it did in *Stop Early Release* .

D. The Ballot Summary “hides the ball” by failing to inform the voters that the proposed amendment requires legislative implementation and allows the Legislature to impose conditions on it.

“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.” *Advisory Opinion to the Att’y Gen. re Limited Casinos*, 644 So. 2d 71, 75 (Fla. 1994). The express terms of this proposed amendment require it to be implemented “[b]y general law” and make it “subject to conditions specified therein[.]” Yet the ballot summary fails to inform the voter that the proposed increase is contingent upon and subject to legislative action. It therefore misleads the voter by suggesting that the increased exemption would be automatic despite the need for legislative implementation. *See Advisory Opinion to the Att’y Gen. re Right to Treatment and Rehab. for Non-Violent Drug Offenses*, 818 So. 2d 491, 498 (Fla. 2002) (“The sponsors reasonably may have determined that it would

have been misleading to fail to mention the legislative implementation provision – *and they would have been correct.*”) (emphasis added); *see also, Term Limits Pledge*, 718 So. 2d at 803 (Fla. 1998) (rejecting ballot summary that failed to inform voters of the extent of powers the proposed amendment would confer upon the Secretary of State).

The ballot summary’s failure to inform the voter of the Legislature’s role is particularly significant in this instance because the proposed amendment does not clearly delineate or prescribe the Legislature’s power to “condition” the proposed increase. Thus voters are not informed enough to raise important questions regarding the Legislature’s power to limit the scope of the proposed homestead exemption increase. For example, the voters would have no reason to inquire whether the Legislature could preclude applicability of the proposed exemption increase:

- to levies used to fund general obligation bonds;
- to levies used to fund school construction and to implement the class size amendment;
- to levies imposed in jurisdictions that have already reached their constitutional millage caps, and therefore cannot raise their millage rates to offset revenue decreases attributable to the proposed amendment;
- to levies imposed in smaller jurisdictions that cannot absorb revenue decreases attributable to the proposed amendment because their tax base is too low;

- to levies imposed on persons with incomes above a certain threshold; or
- to levies imposed on persons who own properties with fair market values above a certain threshold.

The text of the amendment does not answer these and other important questions, and the ballot summary fails to put voters on notice that any such ambiguities exist. For that reason, the ballot summary runs afoul of the "clear and unambiguous" requirement in *Smith v. American Airlines, Inc.*, 606 So. 2d 618 (Fla. 1992), and the Court's admonition that ballot summaries "provide fair notice of the content of the proposed amendment so that the voter . . . can cast an intelligent and informed ballot." *Advisory Opinion to the Att'y Gen. – Fee on Everglades Sugar Production*, 681 So. 2d 1124, 1127 (Fla. 1996). In other words, the ballot summary "hides the ball" from the voters. *Armstrong v. Harris*, 773 So. 2d at 21. Accordingly, the proposed amendment must fail.

CONCLUSION

The ballot summary at issue includes political rhetoric, rather than an accurate and informative synopsis of the proposed amendment's meaning and effect. It misleads the voter into believing that the proposed amendment would provide "tax relief" to *all* Florida home owners when that is demonstrably not so. The ballot summary fails to inform the voter that the proposed amendment requires legislative

implementation and allows the Legislature to impose conditions, without delineating or prescribing the scope of the Legislature's power. These inaccuracies and omissions render the proposed amendment fatally defective. For these reasons, Florida League of Cities respectfully requests that the Court order the proposed amendment stricken from the ballot.

Respectfully submitted, this 18th day of June, 2004.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this brief was provided by hand-delivery(*) or U.S. mail (**) on this 18th day of June, 2004, to:

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I further certify that this brief is presented in 14-point Times New Roman and complies with the front requirements of Rule 9.210.

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**APPENDIX
TO BRIEF OF INTERESTED PARTY
FLORIDA LEAGUE OF CITIES**

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