

**IN THE SUPREME COURT OF FLORIDA**

**Case No. SC04-942**

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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: ADDITIONAL HOMESTEAD  
TAX EXEMPTION**

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**INITIAL BRIEF OF OPPONENT  
FLORIDIANS FOR RESPONSIBLE TAX REFORM**

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## TABLE OF CONTENTS

	Page
Table of Authorities .....	ii
Statement of the Case and Facts .....	1
Summary of the Argument .....	3
Argument .....	4
Standard of Review .....	4
I. THE PROPOSED AMENDMENT’S BALLOT SUMMARY IS FATAALLY FLAWED BECAUSE IT (1) ERRONEOUSLY IMPLIES THAT ALL HOMEOWNERS WOULD RECEIVE THE ADDITIONAL EXEMPTION, (2) FAILS TO INFORM VOTERS THAT LEGISLATIVE ACTION IS REQUIRED BEFORE THE AMENDMENT WOULD BE EFFECTIVE, AND (3) IS AMBIGUOUS AND FAILS TO INFORM VOTERS THAT IT WILL ACTUALLY RESULT IN A PROPERTY TAX INCREASE FOR SOME HOMEOWNERS .....	5
A. <u>The Ballot Summary Fails to Tell Voters The Additional Exemption Would Not Apply to All Homeowners With Homestead Property</u> .....	7
B. <u>The Ballot Summary Fails to Inform Voters That Legislative Action Is Required Before the Amendment Would Be Effective and That The Legislature Must Impose Certain Unspecified Conditions When Implementing The Amendment</u> .....	9
C. <u>The Ballot Summary Fails to Inform Voters That It Will Actually Result In A Property Tax Increase For Some Homeowners And Is Otherwise Ambiguous</u> .....	11

II.	THE PROPOSED AMENDMENT VIOLATES THE SINGLE SUBJECT RULE BECAUSE THE BROAD SWEEP OF THE AMENDMENT SUBSTANTIALLY IMPACTS MORE THAN ONE GOVERNMENTAL FUNCTION AND WILL HAVE UNANNOUNCED COLLATERAL EFFECTS .....	16
A.	<u>The Proposed Amendment Substantially Impacts More Than One Governmental Function</u> .....	19
B.	<u>The Proposed Amendment Will Result in Unannounced Collateral Effects</u> .....	21
	Conclusion .....	25
	Certificate of Service .....	26
	Certificate of Font Compliance .....	26
	Appendix .....	Tab

## TABLE OF AUTHORITIES

Page

### Cases

<i>Advisory Opinion to the Att’y Gen. re Casino Authorization, Taxation and Regulation</i> , 656 So. 2d 466 (Fla. 1995) . . . . .	15
<i>Advisory Op. to the Att’y Gen. Re Fla. Locally Approved Gaming</i> , 656 So. 2d 1259 (Fla. 1995) . . . . .	10, 11
<i>Advisory Op. to the Att’y Gen. Re People’s Prop. Rights Amendments Providing Comp. For Restricting Real Prop. Use May Cover Multiple Subjects</i> , 699 So. 2d 1304 (Fla. 1997) . . . . .	5, 19, 20
<i>Advisory Op. to the Att’y Gen. re Right to Treatment and Rehab.</i> , 818 So. 2d 491 (Fla. 2002) . . . . .	4
<i>Advisory Op. to the Att’y Gen. Re: Stop Early Release of Prisoners</i> , 642 So. 2d 724 (Fla. 1994) . . . . .	6
<i>Advisory Op. to the Att’y Gen. re: Voluntary Universal Pre-Kindergarten Educ.</i> , 824 So. 2d 161 (Fla. 2002) . . . . .	4
<i>Airboat Ass’n of Fla., Inc. v. Fla. Game &amp; Fresh Water Fish Comm’n</i> , 498 So. 2d 629 (Fla. 3d DCA 1986) . . . . .	10
<i>Armstrong v. Harris</i> , 773 So. 2d 7 (Fla. 2000) . . . . .	16
<i>Askew v. Firestone</i> , 421 So. 2d 151 (Fla. 1982) . . . . .	5

*Evans v. Firestone*, 457 So. 2d 1351 (Fla. 1984) . . . . . *Passim*

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

*In re Advisory Op. to Att’y Gen. ex rel. Authorizes Miami Dade and  
Broward County Voters To Approve Slot Machines In Parimutuel  
Facilities*, 29 Fla. L. Weekly S233 (Fla. 2004) . . . . . 4

*In re Advisory Op. to the Att’y Gen. - Restricts Laws Related to  
Discrimination*, 632 So. 2d 1018 (Fla. 1994) . . . . . *Passim*

*In re Advisory Op. to the Att’y Gen. - Save Our Everglades*,  
636 So. 2d 1336 (Fla. 1994) . . . . . *Passim*

*In re Adv. Op. to the Gov.*, 243 So. 2d 573 (Fla. 1971) . . . . . 22

*Law v. Law*, 738 So. 2d 522 (Fla. 4th DCA 1999) . . . . . 15

*Reinish v. Clark*, 765 So. 2d 197 (Fla. 1<sup>st</sup> DCA 2000) . . . . . 8, 15

*St. John Med. Plans, Inc. v. Gutman*, 721 So. 2d 717 (Fla. 1998) . . . . . 9

**Constitutional Provisions**

Art. VII, § 6 . . . . . 1, 7

Art. XI . . . . . 4

Art. XI, § 1 . . . . . 16

Art. XI, § 2 . . . . . 16

Art. XI, § 3 . . . . . 4, 17, 18

Art. XI, § 4 . . . . . 16

Art. XI, § 6 . . . . . 16

**Statutes**

§ 101.161, Fla. Stat . . . . . 23, 25

§ 101.161(1), Fla. Stat . . . . . 4, 5

§ 106.03, Fla. Stat. . . . . 1, 2

**Rules**

Rule 9.210(a)(2), Fla. R. App. P. . . . . 26

## STATEMENT OF THE CASE AND FACTS

The office of the Attorney General received an initiative petition from the Secretary of State seeking to amend the Florida Constitution to increase Florida's constitutional homestead exemption under certain circumstances. App. 1.<sup>1</sup> The initiative petition was filed by Families for Lower Property Taxes (the "Political Committee"), a political committee registered with the Secretary of State under Section 106.03, Florida Statutes.<sup>2</sup> After receiving the petition, the Attorney General petitioned this Court for a written opinion as to the validity of the initiative petition. App. 1. The full text of the proposed amendment provides:

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.

*Id.*

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<sup>1</sup>The attached Appendix will be referenced as "App." followed by the appropriate tab number.

<sup>2</sup><http://www.election.dos.state.fl.us/cgi-bin/ComHtml.exe?account=37953> (last accessed June 18, 2004).

The ballot title for the proposed amendment is “Additional Homestead Tax Exemption.” The summary for the proposed amendment states:

This amendment provides property tax relief to Florida home owners by increasing the homestead exemption on property assessments by an additional \$25,000.

*Id.*

This Court issued an order inviting interested parties to file briefs in the case by 3:00 p.m., June 18, 2004. App. 2.

This brief is filed by Floridians for Responsible Tax Reform in opposition to the proposed amendment. Floridians for Responsible Tax Reform is a political committee registered with the Secretary of State under Section 106.03. It is a broad-based coalition of individuals, associations, community and civic groups, including the Florida Professional Firefighters Association, the Florida Home Builders Association, the Florida Association of Realtors, the Florida Farm Bureau Federation, the Florida Apartment Association, the Chamber of the Palm Beaches, the Florida Police Benevolent Association, the Economic Council of the Palm Beaches, and the AeA Florida Council. Its mission is (1) to support fair and equitable tax reform for the purpose of promoting economic growth and prosperity for the citizens of Florida; and (2) to oppose tax reforms that would restrict economic development, cause harm to markets, unfairly shift tax burden from one group to another, or drastically reduce the



quality of government services.

## **SUMMARY OF ARGUMENT**

A ballot summary for a proposed constitutional amendment must clearly and unambiguously inform voters of the amendment's contents. The ballot summary at issue fails that test. The summary is grossly misleading and fails to give voters all of the information they need to make an informed decision about the proposed amendment.

The ballot summary leaves voters with the erroneous impression that all homeowners currently receiving the homestead exemption will receive the additional exemption. In fact, only a limited category of homeowners currently eligible for the homestead exemption would be eligible for the additional exemption, and, in many instances, enactment of the amendment actually will result in higher property taxes for Florida homeowners.

Further, the ballot summary fails to inform voters that the proposed amendment is not self-executing and requires legislative action before it could become effective. It also contains no language informing the voter that the homestead exemption will be subject to unspecified conditions established by the Legislature.

In addition, the proposed amendment itself is fatally flawed because it violates the single-subject limitations imposed by the Florida Constitution on initiative petition

proposals. A proposed initiative amendment can impact no more than one governmental function and can have no detrimental collateral effects not readily apparent to voters. The proposed amendment violates both of those requirements. The devastating loss of revenue the amendment will cause will impact multiple government functions and will increase taxation for many homeowners and businesses.

This Court should invalidate the proposed amendment.

## **ARGUMENT**

### **Standard of Review.**

This Court's review of the validity of a proposed initiative petition amendment to the Florida Constitution involves two issues: (1) whether the ballot title and summary violate the clarity requirements of Section 101.161(1), Florida Statutes (2003); and (2) whether the proposed amendment satisfies the single-subject limitation of Article XI, Section 3 of the Florida Constitution. *In re Advisory Op. to Att'y Gen. ex rel. Authorizes Miami Dade and Broward County Voters To Approve Slot Machines In Parimutuel Facilities*, 29 Fla. L. Weekly S233 (Fla. 2004); *Advisory Op. to the Att'y Gen. re: Voluntary Universal Pre-Kindergarten Educ.*, 824 So. 2d 161, 164 (Fla. 2002); *Advisory Op. to the Att'y Gen. re Right to Treatment and Rehab.*, 818 So. 2d 491, 494 (Fla. 2002).

**I. THE PROPOSED AMENDMENT’S BALLOT SUMMARY IS FATAALLY FLAWED BECAUSE IT (1) ERRONEOUSLY IMPLIES THAT ALL HOMEOWNERS WOULD RECEIVE THE ADDITIONAL EXEMPTION, (2) FAILS TO INFORM VOTERS THAT LEGISLATIVE ACTION IS REQUIRED BEFORE THE AMENDMENT WOULD BE EFFECTIVE, AND (3) IS AMBIGUOUS AND FAILS TO INFORM VOTERS THAT IT WILL ACTUALLY RESULT IN A PROPERTY TAX INCREASE FOR SOME HOMEOWNERS.**

The actual text of a proposed constitutional amendment does not appear on the ballot. Because of that, Section 101.161(1) requires the sponsor of an amendment to prepare a ballot summary that contains the “substance [of the amendment] ... in clear and unambiguous language” and that serves as an “explanatory statement ... of the chief purpose of the measure.” (Emphasis added.) This requirement insures that the ballot summary will not mislead voters as to the proposed amendment’s purpose and will give voters sufficient notice of the contents of the amendment to allow voters to cast an intelligent and informed vote. *Advisory Op. to the Att’y Gen. Re People’s Prop. Rights Amendments Providing Comp. For Restricting Real Prop. Use May Cover Multiple Subjects*, 699 So. 2d 1304, 1307 (Fla. 1997); *In re Advisory Op. to the Att’y Gen. - Save Our Everglades*, 636 So. 2d 1336, 1341 (Fla. 1994); *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982).

Voters must be able to derive all of the information they need about the proposed amendment from their inspection of the ballot summary. *Askew*, 421 So.

2d at 156 (Boyd, J., concurring) (“The law requires that before voting a citizen must be able to learn from the proposed question and explanation what the anticipated results will be.”). The summary must provide voters with fair notice of the “true meaning, and ramifications, of an amendment.” *Id.* (Maj. Op.); *In re Advisory Op. to the Att’y Gen. - Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1020 (Fla. 1994). Voters cannot be asked to vote on a proposal that appears to do one thing, but that will actually result “in other consequences that may not be readily apparent or desirable to the voters.” *Restricts Laws Related to Discrimination*, 632 So. 2d at 1023 (Kogan, J., concurring).

Moreover, the ballot summary must accurately reflect the contents of the amendment itself. *Advisory Op. to the Att’y Gen. Re: Stop Early Release of Prisoners*, 642 So. 2d 724, 726 (Fla. 1994) (summary stated that amendment would “ensure” that state prisoners serve at least 85% of their sentence, while text made clear that this would not be true in cases of pardon and clemency); *Save Our Everglades*, 636 So. 2d at 1341 (amendment text indicated that sugar industry would bear full cost of Everglades clean up, while summary stated that sugar industry would only “help” pay for the clean up).

The proposed amendment wholly fails to satisfy these legal obligations regarding the construction of the ballot summary. The Political Committee sponsoring the

proposed amendment devised the following ballot title and summary for its initiative petition:

TITLE: ADDITIONAL HOMESTEAD TAX EXEMPTION

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.) This ballot summary is inaccurate and misleading because it fails to clearly and accurately reflect the proposed amendment's true ramifications.

**A. The Ballot Summary Fails to Tell Voters The Additional Exemption Would Not Apply to All Homeowners With Homestead Property.**

The summary inaccurately implies that the proposed amendment will provide property tax relief to all Florida homeowners with homestead property. At most, it provides property tax relief to some homeowners with homestead property.

Florida's homestead exemption is contained in Article VII, Section 6, of the Florida Constitution. Section 6(a) provides:

Every 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, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of five thousand dollars, upon establishment of right thereto in the manner prescribed by law.

(Emphasis added). Sections (c) and (d) further provide:

(c) By general law and subject to conditions specified therein, the

exemption shall be increased to a total of twenty-five thousand dollars of the assessed value of the real estate for each school district levy. By general law and subject to conditions specified therein, the exemption for all other levies may be increased up to an amount not exceeding ten thousand dollars of the assessed value of the real estate if the owner has attained age sixty-five or is totally and permanently disabled and if the owner is not entitled to the exemption provided in subsection (d).

(d) By general law and subject to conditions specified therein, the exemption shall be increased to a total of the following amounts of assessed value of real estate for each levy other than those of school districts: . . . twenty-five thousand dollars with respect to assessments for 1982 and each year thereafter.

(Emphasis added.) Under these provisions, a homeowner may claim one homestead exemption on either (1) the permanent residence of the owner or (2) the permanent residence of another legally or naturally dependent upon the owner. *Reinish v. Clark*, 765 So. 2d 197, 205 (Fla. 1<sup>st</sup> DCA 2000) (emphasis added) (even a non-Florida resident can claim a homestead exemption where the property is the permanent residence of another legally or naturally dependent on the non-resident).

Contrary to the existing homestead exemption provisions, the proposed amendment specifically limits application of the additional homestead exemption to the permanent residence of the owner. The proposed amendment states that the homestead exemption 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.” The proposed amendment wholly eliminates any reference to “another legally or naturally dependent

upon the owner.” Thus, homeowners who currently claim the homestead exemption for properties in which one of their dependents resides (but they themselves do not) are not eligible for the additional exemption under the proposed amendment. By implying that all homeowners with homestead property will receive the additional homestead exemption, the ballot summary grossly misleads voters as to the true impact of the proposed amendment.

**B. The Ballot Summary Fails to Inform Voters That Legislative Action Is Required Before the Amendment Would Be Effective and That The Legislature Must Impose Certain Unspecified Conditions When Implementing The Amendment.**

The ballot summary fails to inform voters that the proposed amendment is not self-executing and requires legislative action before it could become effective. The test for determining whether a constitutional provision is self-executing is whether the provision “lays down a sufficient rule by means of which the right or purpose which it gives or is intended to accomplish may be determined, enjoyed, or protected without the aid of legislative enactment.” *St. John Med. Plans, Inc. v. Gutman*, 721 So. 2d 717, 719 (Fla. 1998), *quoting Gray v. Bryant*, 125 So. 2d 846, 851 (Fla. 1960) (emphasis added). When a constitutional provision plainly and unambiguously evinces a need for implementing legislation and fails to provide any procedural guidelines, the provision is not self-executing. *See, e.g., Gutman*, 721 So. 2d at 719 (language in

provision stating “the manner of recovery and additional damages *may be provided by law*” clearly established the need for implementing legislation; thus, provision was not self-executing) (emphasis in original); *Airboat Ass’n of Fla., Inc. v. Fla. Game & Fresh Water Fish Comm’n*, 498 So. 2d 629, 631 (Fla. 3d DCA 1986) (provision stating that district courts of appeal shall have the power of direct review of administrative action “as prescribed by general law” is not self-executing) (emphasis added).

The actual text of the proposed amendment at issue begins: “By general law and subject to conditions specified therein, . . .” The phrase “by general law” plainly and unambiguously evinces a need for implementing legislation. The phrase “subject to conditions specified therein” plainly and unambiguously sets out a requirement that the legislature establish conditions for how the amendment would be implemented. Because the proposed amendment, on its face, requires the enactment of general law before taking effect and requires conditions to be established for its implementation, the provision is not self-executing.

When a proposed amendment’s ballot summary fails to include language that clearly informs voters that legislative action, including enactment of conditions, is required before the amendment becomes effective, the summary is misleading. In *Advisory Op. to the Att’y Gen. Re Fla. Locally Approved Gaming*, 656 So. 2d 1259



(Fla. 1995), this Court evaluated a ballot summary regarding a proposed initiative to amend the Florida Constitution to allow casino gambling. Like the proposed amendment at issue, the proposed amendment in *Approved Gaming* was not self-executing because it explicitly required the Legislature to enact general law concerning procedures governing its implementation, i.e., the licensing, regulation, and taxation of casinos. This Court concluded that the ballot summary was not misleading in that case because it contained language clearly informing the voter that the amendment was not self-executing. The summary clearly stated that, under the amendment, gaming would be licensed, regulated, and taxed by legislative enactment. *Id.* at 1263.

Contrary to the ballot summary in *Approved Gaming*, the ballot summary in this case contains no language whatsoever informing the voter that the proposed amendment is not self-executing. The summary contains no language informing the voter that, under the amendment, the homestead exemption must be implemented by general law and governed by conditions established by the Legislature. Further, it does not give any indication as to what those conditions might be.

**C. The Ballot Summary Fails to Inform Voters That It Will Actually Result In A Property Tax Increase For Some Homeowners And Is Otherwise Ambiguous.**

The proposed amendment misleads voters by implying it will result in lower property taxes for Florida homeowners. This is not true. The ballot summary states

that the “amendment provides property tax relief to Florida home owners . . . .” The ballot summary ignores the fact that many local governmental entities can, and most certainly will, raise their millage rates to offset revenue lost as a result of the amendment’s passage. For many Florida homeowners, the resulting property tax increase will be greater than the tax savings resulting from the additional \$25,000 exemption.

The following table illustrates this. This example assumes that a local government, the City of Deltona, Florida, located in Volusia County, will raise millage rates by an amount that will produce the same property tax revenue it received before the amendment went into effect.

**Break-even Point At Which Additional \$25,000 Actually Costs Additional Money  
For Homesteaded Properties In Deltona**

<b>Assessed Value</b>	<b>Taxable 25K Hx</b>	<b>Taxes 25k Hx</b>	<b>Taxable 50K Hx</b>	<b>Taxes 50K Hx</b>	<b>Decrease/ Increase</b>	<b>Monthly Change</b>
50,000	25,000	500	0	0	-500	-42
100,000	75,000	1,500	50,000	1,175	-325	-27
150,000	125,000	2,499	100,000	2,350	-150	-12
193,000	168,000	3,359	143,000	3,360	1	0
200,000	175,000	3,499	150,000	3,524	25	2
250,000	225,000	4,499	200,000	4,699	200	17
300,000	275,000	5,499	250,000	5,874	375	31
350,000	325,000	6,498	300,000	7,049	550	46
353,000	328,000	6,558	303,000	7,119	561	47
400,000	375,000	7,498	350,000	8,223	725	60
450,000	425,000	8,498	400,000	9,398	900	75
500,000	475,000	9,498	450,000	10,573	1,075	90
550,000	525,000	10,497	500,000	11,748	1,250	104
600,000	575,000	11,497	550,000	12,922	1,425	119
650,000	625,000	12,497	600,000	14,097	1,600	133
700,000	675,000	13,497	650,000	15,272	1,775	148
750,000	725,000	14,496	700,000	16,447	1,950	163
800,000	775,000	15,496	750,000	17,621	2,125	177
850,000	825,000	16,496	800,000	18,796	2,300	192
900,000	875,000	17,496	850,000	19,971	2,475	206
950,000	925,000	18,496	900,000	21,146	2,650	221
1,000,000	975,000	19,495	950,000	22,321	2,825	235
1,050,000	1,025,000	20,495	1,000,000	23,495	3,000	250
1,100,000	1,075,000	21,495	1,050,000	24,670	3,175	265

Source: This chart was produced by the Volusia County Property Appraiser's office, Hon. Morgan Gilreath, Jr., Property Appraiser. Information provided herein was compiled for property assessment information contained in the 2003 Volusia County tax roll.

As illustrated by the chart, for homestead properties in Deltona, Florida, if millage rates are increased to obtain the same revenue as before passage of the amendment, passage of the amendment will result in higher property taxes for homes assessed at a value of \$193,000 or above. Those homeowners may receive an additional \$25,000 exemption under the amendment, but the tax increase on the value

of their home above the amount of the new exemption will actually cause them to pay more taxes than they pay now.

Deltona is but one taxing district within Volusia County. Each separate taxing district has a different break-even point, depending on the percentage of the taxable value of homesteaded properties compared to total taxable value within the taxing jurisdiction. The greater the number of homesteaded properties, the lower the breakeven point. The following chart depicts these breakeven points for the various governmental entities located in Volusia County.

<b>Taxing Authority</b>	<b>Break-even Point</b>
Daytona Beach	353,000
DeBary	252,000
DeLand	258,000
Deltona	193,000
Edgewater	195,000
Lake Helen	218,000
New Smyrna Beach	284,000
Orange City	265,000
Ormond Beach	265,000
Ponce Inlet	300,000
Port Orange	240,000
Unincorp. W. Volusia	277,500

**Source: Volusia County Property Appraiser's Office.  
Hon. Morgan Gilreath, Jr., County Property Appraiser.**

Volusia County is just one example. Similar effects will occur in other counties that have not yet imposed the maximum millage rate permitted under the Florida Constitution. The information presented above demonstrates that the application of an additional \$25,000 exemption to all homestead property in Florida will not result in property tax relief to many Florida homeowners. This is directly contrary to language

in the ballot summary, which specifically states that the amendment provides “property tax relief to Florida home owners.”

Further, the ballot summary is misleading and ambiguous because it can be interpreted as providing property tax relief to all Florida homeowners. Many Floridians own homes that do not qualify as homestead property (e.g., rental property and vacation or second homes). *Reinish*, 765 So. 2d at 205 (“only one homestead exemption is allowed, irrespective of how many other residences the person owns”); *Law v. Law*, 738 So. 2d 522, 525 (Fla. 4th DCA 1999) (a married couple in an intact marriage who own two homes can only claim one home as their homestead).

The ballot summary suffers from a defect similar to the summary reviewed by the Court in *Advisory Opinion to the Att’y Gen. re Casino Authorization, Taxation and Regulation*, 656 So. 2d 466 (Fla. 1995). In that case, the ballot summary indicated that the proposed amendment would allow local voter approval of casino gambling in “hotels.” The Court held that the summary was defective because the public would ascribe a meaning to “hotel” that was far narrower than the actual text of amendment, which would have allowed local voter approval of casino gambling in “transient lodging establishments,” including motels, condominium resorts, and bed and breakfast inns. *Id.* at 468-69. In this case, the public may ascribe a meaning to “home owner” that is far broader than the actual text of the amendment, which states that the exemption is

granted only to “any person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner.”

Under the law, a ballot summary for a constitutional amendment cannot “hide the ball.” *Armstrong v. Harris*, 773 So. 2d 7, 16 (Fla. 2000). The ballot summary at issue, however, does just that. The ballot summary contains material omissions and ambiguities. The proposed amendment should be invalidated because Florida voters cannot comprehend its true meaning or impact based on the inaccurate and misleading language in the ballot summary.

**II. THE PROPOSED AMENDMENT VIOLATES THE SINGLE SUBJECT RULE BECAUSE THE BROAD SWEEP OF THE AMENDMENT SUBSTANTIALLY IMPACTS MORE THAN ONE GOVERNMENTAL FUNCTION AND WILL HAVE UNANNOUNCED COLLATERAL EFFECTS.**

Article XI of the Florida Constitution provides five methods by which proposed constitutional amendments or revisions may be placed before Florida voters for their consideration. Four of these five methods involve a legislative or quasi-legislative process in which proposed amendments or revisions are drafted, debated, and refined and in which the interests of Florida’s citizens are represented by elected officials or their designees. *See* Art. XI, §§ 1, 2, 4, & 6. Through public hearing and comment procedures, these four processes also provide an opportunity for citizens to directly participate in the shaping of a constitutional amendment or revision. *Restricts Laws*

*Related to Discrimination*, 632 So. 2d at 1022 (Fla. 1994) (Kogan, J., concurring). The refining processes inherent in these four constitutional amendment procedures help insure that a proposed amendment is precisely crafted, so as to avoid unintended collateral effects on other aspects of Florida government and law, and to harmonize any proposed amendment both within the context of the rest of the Florida Constitution and within the broader context of our federal system. *Id.* at 1022.

The fifth method of constitutional amendment is through the initiative petition, which is the method at issue in this case. Art. XI, § 3. Initiative proposals are not subject to the mechanisms of debate and refinement that are all integral parts of the other constitutional amendment processes. *Evans v. Firestone*, 457 So. 2d 1351, 1357 (Fla. 1984) (Overton, J., concurring); *Fine v. Firestone*, 448 So. 2d 984, 988-89 (Fla. 1984). An interest group or individual merely develops its own idea for a constitutional amendment; raises funds; drafts the amendment and initiative petition; and seeks to collect a sufficient number of voter signatures to place the amendment on the ballot.

Because the initiative process lacks public representation in the drafting of the amendment, and because the formulation of the amendment is not subject to public testimony, debate, and balancing of competing values, the framers of Florida's Constitution intended the initiative process to be the most restrictive and most difficult method of amending the Constitution. *Evans*, 457 So. 2d at 1358 (Fla. 1984)

(McDonald, J. concurring); *Fine*, 448 So. 2d at 994 (McDonald, J., concurring). Thus, an initiative amendment is subject to a unique constitutional rule of restraint: The amendment or revision “shall embrace but one subject and matter directly connected therewith.” Art. XI, § 3, Fla. Const. (“the single-subject rule”).

Absent the single-subject requirement, courts would be left to deal with the unanticipated collateral effects of an adopted amendment without the traditional aids to judicial construction (such as legislative history and intent) necessary for this purpose. *Fine*, 448 So. 2d at 989. For this reason, this Court requires strict compliance with the single-subject rule. *Id.* “If drafters of an initiative petition ... choose to violate the one-subject requirement, this Court has no alternative but to strike it from the ballot.” *Evans*, 457 So. 2d at 1359 (Ehrlich, J., concurring).

In determining whether an initiative violates the single-subject rule, this Court considers four principal factors: (a) whether the amendment performs or substantially affects multiple, distinct functions of government, as opposed to only a single function; (b) whether the broad sweep of the amendment will result in unannounced collateral effects that might impact a voter’s consideration of the amendment; (c) whether the initiative actually asks voters multiple questions, instead of just one; and (d) whether the proposed amendment would substantially affect other sections of the Constitution. *See, e.g., Save Our Everglades*, 636 So. 2d at 1336 (Court must determine whether



amendment performs or substantially affects multiple, distinct functions of government); *Restricts Laws Related to Discrimination*, 632 So. 2d at 1022-23 (Kogan, J., concurring), *cited with approval in Advisory Op. to Atty. Gen. ex rel. Amd. to Bar Gov't From Treating People Differently Based on Race in Public Education*, 778 So. 2d 888, 895 (Fla. 2000) (Court must examine whether the breadth of a proposed amendment will result in unanticipated collateral effects that would materially impact a voter's decision on whether to vote for or against the amendment); *Fine*, 448 So. 2d at 995 (McDonald, J., concurring) (existence of hidden effects amounts to de facto logrolling because voters cannot know what they are voting on).

At a minimum, the proposed amendment violates at least two of these factors. The proposed amendment substantially impacts more than one governmental function and will result in unannounced collateral effects.

**A. The Proposed Amendment Substantially Impacts More Than One Governmental Function.**

When a proposed amendment changes more than one governmental function, it violates the single-subject limitations placed on proposed initiative petition amendments. *Advisory Op. to Att'y Gen. re: People's Property Rights Amd. Providing Comp. for Restricting Real Prop. Use May Cover Multiple Subjects*, 699 So. 2d 1304, 1307 n.1 (Fla. 1997); *Evans*, 457 So. 2d at 1354. In *People's Property Rights*, this Court struck

three proposed amendments, one of which sought to require voter approval of new taxes. This Court stated that the initiative, which on its face merely placed limitations on when new taxes could be implemented, substantially affected several branches of government. This Court concluded that requiring voter approval of new taxes would impact the Executive branch because of its role in supervising the operation of the Florida public school system, would impact the Legislative branch because of its role in developing school budgets and funding of those budgets, and would impact school districts because of their role in levying ad valorem taxes. *People's Prop. Rights*, 699 So. 2d at 1310.

Like the initiative in *People's Property Rights*, the proposed amendment at issue should be invalidated because it too will substantially impact multiple governmental entities including county governments, school districts, and the Legislature. The loss of revenue caused by the proposed amendment would cause those entities to raise millage rates where possible, cut services, and alter budgeting and enforcement processes. Many local governmental entities already are at or very near their millage limit. If those entities cannot increase their millages to offset the difference in funding, the Legislature may be forced to allocate more funds to those entities or those entities will be forced to decrease the services currently being provided.

**B. The Proposed Amendment Will Result in Unannounced Collateral Effects.**

The proposed amendment further violates the single-subject rule because it creates a variety of collateral effects that are not readily apparent to voters, which, if known, would materially impact a voter's decision on whether to support the proposed amendment. The existence of such hidden effects amounts to de facto logrolling because voters cannot know what they are voting on. *Fine*, 448 So. 2d at 995 (McDonald, J. concurring). Voters cannot be asked to vote on a proposal that appears to do only one thing, but in reality results in other consequences that may not be readily apparent or desirable. *Restricts Laws Related to Discrimination*, 632 So. 2d at 1023 (Kogan, J., concurring).

At first glance, the amendment might have significant appeal because it implies that Florida homeowners would pay less property tax. Even voters that do not currently own a home presumably hope to own one in the future and might thus support the proposed amendment. The initial reaction of many of these same voters, however, likely would change if they understood the negative ramifications and collateral effects of the proposed amendment.

First, as already discussed, many home owners actually will pay increased taxes. Second, passage of the proposed amendment will result in a tremendous loss of revenue to Florida local governments and could even bankrupt some rural counties.

The St. Petersburg Times reports that there is an anticipated \$58.8-million loss in revenues in Hillsborough County, which amount is equivalent to the county's entire parks and recreation budget, and the Pinellas County system could lose \$20 million a year. "Officials Fear New Property Tax Chop," St. Petersburg Times, Joni James, Page 1B, May 30, 2004. App. 3.<sup>3</sup> Palm Beach County is slated to lose about \$35 million in revenue. "Double homestead exemption - or double trouble?", Boca Raton News, Dale M. King, June 2, 2004. App. 4. The Boca Raton City Council has stated that the city would suffer a \$1.6 million revenue setback. *Id.* Delray Beach could suffer a setback of \$3 to \$4 million a year. *Id.*

Governor Bush, voicing concern about the proposed amendment, stated that the impact would be a two-billion-dollar loss in revenues. "Officials Fear New Property Tax Chop," St. Petersburg Times, Joni James, Page 1B, May 30, 2004. App. 3. If the amendment passes, counties, school boards, and other governmental entities dependent on property tax dollars to provide public services will have only two options: (1) raise revenue through other tax sources; or (2) reduce or eliminate current services.

Many local governments will be forced to recover the loss of revenue by increasing property tax (millage) rates, but some will be unable to make up the deficits

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<sup>3</sup>This Court has previously reviewed newspaper articles when acting its advisory capacity where there is no record for the Court to review. *See, e.g., In re Adv. Op. to the Gov.*, 243 So. 2d 573, 578 (Fla. 1971).

in this manner. Fifteen Florida counties currently tax property at 10 mills, the maximum rate permitted by law. Thirteen additional counties tax property at a rate just under 10 mills, and it is projected that they will not be able to increase millage rates enough to make up for the loss of revenue caused by passage of the proposed amendment.<sup>4</sup>

Although amendments must now contain a financial impact statement pursuant to Section 101.161, such a statement would only inform voters of a loss of revenue; it would not inform voters that many counties will have the option to recoup the lost revenue through alternative sources. This would result in a significant shift in the tax burden to commercial properties, which would have a devastating impact on businesses and citizens alike. As just one example, increased taxes on nonresidential property and apartment buildings would be passed along to customers in the form of higher prices and to renters in the form of higher rents. Alternatively, some local governments already at maximum millage rates may make up the deficit by increasing utility bills or by asking the Legislature to increase sales tax.

Second, for those counties that cannot raise funds through alternative sources, services and programs will be cut or significantly reduced. Hardest hit will be the

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<sup>4</sup>Data obtained at the following state Internet website: <http://sun6.dms.state.fl.us/dor/property/03FLpropdata.pdf> (Florida Property Valuations & Tax Data, December 2003, State of Fla. Department of Revenue) (last accessed June 18, 2004).

fifteen small counties already at maximum millage rates. Because of low property values, these counties already are forced to tax property at 10 mills, the maximum rate permitted by law, in order to collect sufficient revenue to fund essential government services. According to 2000 Census information, in many of these counties the average home is assessed at less than \$70,000 and a substantial percentage of the homes are assessed at under \$50,000.<sup>5</sup>

Because of the low property values in these counties and because many have already reached their millage cap, an additional homestead exemption of \$25,000 would cause a significant loss of the counties' revenue. Some of these counties may be unable to raise additional revenue through alternative sources. Accordingly, there is a high likelihood that the funding of services and programs will be cut.

Further, funding likely would be cut for the counties' schools, which, in some instances, already are considered low-performing and are in dire need of additional funds. On both the math and the reading section of the 2004 FCAT, many of the fifteen counties with a 2003 operating millage of 10 ranked at the bottom of Florida counties for percentage of 10th graders passing the FCAT. For example, Gadsden County ranked 67th (of 67) in both math and reading; Madison County ranked 66th in

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<sup>5</sup> U.S. Census Bureau, Census 2000, Summary file 3. Available at [www.census.gov/press-release/www/2002/sumfile2.html](http://www.census.gov/press-release/www/2002/sumfile2.html).

math and 63rd in reading; Jefferson County ranked 65th in math and 64th in reading; Hamilton County ranked 61st in math and reading; and Liberty County ranked 59th in math and 62nd in reading.<sup>6</sup> Reducing property tax revenues will make it virtually impossible to raise these low scores.

Any one of these and other collateral effects, if known, could reasonably cause many voters who might otherwise support the amendment to vote against it. As such, the proposed amendment violates the single-subject rule and must be rejected.

### **CONCLUSION**

As explained above, the proposed amendment violates both the ballot summary requirements of Section 101.161 and the single-subject limitations imposed by the Florida Constitution. This Court should invalidate the proposed amendment.

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<sup>6</sup>Data obtained from Florida Department of Education's Internet Website: <http://fcat.fldoe.org/search/default.asp> (last accessed June 17, 2004).

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Hand Delivery or Federal Express to the Honorable Jeb Bush, Executive Office of the Governor, The Capitol, Tallahassee, Florida 32399-0001, the Honorable Glenda Hood, Office of the Secretary of State, 500 So. Bronough Street, Tallahassee, Florida 32399, the Honorable Charlie J. Crist, Jr., Office of the Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399, Jeffrey Saull, 5730 Corporate Way, Suite 214, West Palm Beach, Florida 33407-9969, the Honorable James E. King, 9485 Regency Square Blvd., Suite 108, Jacksonville, Florida 32225-8145 and the Honorable Johnnie Byrd, 121 North Collins Street, Suite 202, Plant City, Florida 33566-3311 this 18<sup>th</sup> day of June, 2004.

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Katherine E. Giddings

**CERTIFICATE OF FONT COMPLIANCE**

I HEREBY CERTIFY that the font used in this brief is the Times New Roman 14-point font and that the brief complies with the font requirements of Rule 9.210(a)(2).

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Katherine E. Giddings