

IN THE SUPREME COURT OF FLORIDA
Case No. SC04-942

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: ADDITIONAL HOMESTEAD TAX EXEMPTION

**INITIAL BRIEF OF
FLORIDA SCHOOL BOARDS ASSOCIATION and
FLORIDA ASSOCIATION OF
DISTRICT SCHOOL SUPERINTENDENTS**

IN OPPOSITION TO THE INITIATIVE

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THE PROPOSED INITIATIVE

BALLOT TITLE: Additional Homestead Tax Exemption

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

FULL TEXT OF THE PROPOSED AMENDMENT:

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.

STATEMENT OF THE CASE

This matter comes before the Court upon a request for opinion submitted by the Attorney General on June 7, 2004, in accordance with the provisions of Article IV, Section 10, Florida Constitution, and Section 16.061, Florida Statutes. This Brief is submitted by opponents, Florida School Boards Association and Florida Association of District School Superintendents, in response to this Court's Order of June 10, 2004, accepting jurisdiction and inviting interested parties to submit briefs.

The Florida School Boards Association, Inc. (FSBA) is a nonprofit corporation representing all school board members in Florida. FSBA has been the collective voice for Florida school districts since 1930 and is closely affiliated with other educational and community agencies to work toward improvement of education in Florida. The mission of the Florida School Boards Association is to support and assist school boards in shaping and improving education in Florida by impacting legislation and providing proactive leadership and training through a network of services and information.

The Florida Association of District School Superintendents represents Florida's 67 district school superintendents. The association represents the

interests of school superintendents by the support of and advocacy for the provision of a high quality education to each student in Florida's public schools. The association is also a professional association, providing training and technical assistance to district school superintendents, district level leaders and support staff. Both of these associations have a strong interest in ensuring that an adequate and uniform education is available to all children in Florida.

This Court's review addresses whether the proposed initiative amendment meets the Article XI, Section 3,¹ and ballot title and summary² standards. *See*

¹ Article XI, Section 3, Florida Constitution provides:

Section 3. Initiative – 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.*

Emphasis added.

² Section 101.161(1), Florida Statutes (2003) provides:
101.161 **Referenda; ballots.**-- (1) Whenever a constitutional amendment or other public measure is submitted to the vote of the people, *the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot* after the list of candidates, followed by the word "yes" and also by the word "no," and shall be styled in such a manner that a "yes" vote will indicate approval of the proposal and a "no" vote will indicate rejection. The wording of the substance of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the joint resolution, constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. Except for amendments and ballot language proposed by joint resolution, *the substance*

Advisory Opinion to the Atty. Gen'l, re Amendment to Bar Government from Treating People Differently Based on Race in Public Education, 778 So. 2d 888, 890 (Fla. 2000); *Advisory Opinion to the Atty. Gen'l re Prohibiting Public Funding of Political Candidates' Campaigns*, 693 So. 2d 972, 974 (Fla. 1997).

Although this Court does not consider the merits of a potential amendment, it must carefully look at the text of the proposed amendment to consider its operative effect. *See Treating People Differently Based on Race*, 778 So. 2d at 891.

“[W]here the record shows the constitutional single-subject requirement has been violated or the record establishes that the ballot language would clearly mislead the public concerning material elements of the proposed amendment and its effects on the present constitution,” this Court must exercise its power to protect the Constitution and the people. *Advisory Opinion to the Attorney General - Tax Limitation*, 644 So. 2d 486, 489 (Fla. 1994) (“*Tax Limitation I*”).

of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. In addition, the ballot shall include a separate fiscal impact statement concerning the measure prepared by the Revenue Estimating Conference in accordance with s. 100.371(6) or s. 100.381. The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

Emphasis added.

SUMMARY OF ARGUMENT

The threshold tests for Additional Homestead Tax Exemption initiative are the single subject test and the requirement that the summary and title accurately inform the voters. Proponents suggest they are immune from the single subject test based on the language of Article XI, Section 3 that allows multiple subjects where an initiative “limit[s] the power of government to raise revenue.”

That limited exemption from the single subject test is inapplicable here for two reasons. First, this proposal does not actually limit the power of government to raise revenue. It changes the amount of taxable property, but government may still raise property taxes, as well as other taxes, on any individual and resultant tax burdens are not necessarily and indeed may not, in actuality, be lower. Secondly, the single subject exemption does not apply where a proposal reaches beyond the subject of limiting revenue-raising powers. In the instant case the proposal has multiple and drastic effects beyond revenue. For example, the proposed amendment will have substantial effects on the following constitutional provisions, and their accompanying levels or functions of government:

- Article IX, §§ 1, 2, 4 & 5 - a direct effect on the uniform system of free public schools, and its supervisory structure at both the state and local levels;
- Article VIII, §§ 1 & 2 - the home rule power of counties and cities;

- Article VII, § 9 - the local government tax and budget powers;
- Article VII, § 12 - substantial effects on the Full Faith and Credit of local governments and school districts for bonding purposes; and
- Article III, §§ 12 & 19 - the appropriation and budget powers of the Legislature.

The same facts that compel application of the single subject test for this amendment also demonstrate that the proposal violates directly the test. The proposal has a substantial effect on and performs multiple functions of state government. It also, has a substantial effect at multiple levels of government including the legislative branch, and local governments, specifically counties, municipalities, and local school boards.

The doubling of the homestead exemption has a broad effect on Florida state and local government, thereby violating the single subject test. The proposal further violates the test by having a substantial effect on the above identified sections of the Constitution without disclosing any impact to voters.

This failure to disclose the multiple and severe collateral impacts is also at the core of the proposed Additional Homestead Tax Exemption amendment's violation of the second major part of the test for initiatives. The failure to disclose impacts on education, appropriations and local governments misleads voters. Half

truths do not disclose the multiple dramatic impacts which voters must understand in order to “make an informed decision about changing their constitution.”

There is a further serious flaw in the title and summary. The statement that the proposal will result in “tax relief” is political rhetoric of the kind this Court has not tolerated. *See Advisory Opinion to the Atty. Gen’l - Save Our Everglades Trust Fund*, 636 So. 2d 1336, 1341 (Fla. 1994).

In sum, this proposal has a precipitous and calamitous effect on multiple levels of state government that violates the single subject rules and misleads voters about the immediately foreseeable effects of the proposal in violation of the summary and title requirements of Section 101.161, Florida Statutes. Both the proposed Additional Homestead Tax Exemption amendment, and its title and summary, are clearly and conclusively defective and must be stricken from the ballot.

ARGUMENT

I. THE PROPOSED ADDITIONAL HOMESTEAD TAX EXEMPTION AMENDMENT MUST MEET THE SINGLE SUBJECT TEST BECAUSE THE PROPOSAL DOES NOT LIMIT “THE POWER OF GOVERNMENT TO RAISE REVENUE.”

Article XI, Section 3, as amended in 1994, provides for a limited exemption from the coverage of the Single Subject requirement for those initiative proposals “limiting the power of government to raise revenue.” A review of the instant proposal shows that this exemption should not apply to the proposed Additional Homestead Tax Exemption amendment. The text of the proposal compels the Legislature to mandate that property appraisers to raise homestead exemptions by \$25,000 in determining the taxable value of real property. However, property appraisers do not have the power to tax or raise revenue - they only have the power to appraise property values and determine the assessment of taxable property in a jurisdiction. As this Court has said, the “amount of money paid on a taxable property or the rate at which the property is being taxed” are two different things. *See Advisory Opinion to the Attorney General re People’s Property Rights Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects*, 699 So. 2d 1304, 1311 (Fla. 1997) (invalidating another initiative which sought to take advantage of the revenue limits exception).

Likewise, an amendment dealing solely with the creation or expansion of an exemption does not in itself limit the *power* of government to raise revenue, even though it may result in reduced revenue.³ While reduced revenue based on increased exemptions is a possible result, the text does not limit the power of governmental agencies to tax and raise revenue. No revenue raising power of any level of state government is identified or limited by the proposal.

II. EVEN IF THE ADDITIONAL HOMESTEAD EXEMPTION AMENDMENT WERE INTERPRETED TO LIMIT THE POWER TO RAISE REVENUE, THE PROPOSAL VIOLATES THIS COURT’S LIMITATION THAT SUCH PROPOSALS DEAL ONLY WITH RESTRICTIONS ON REVENUE AND NO OTHER SUBJECTS.

The limited exemption to Article XI, Section 3 has been defined and explained by two cases. The first, *Tax Limitation I*, discussed the Revenue Limits proposal which created the exemption. In *Tax Limitation I*, this Court noted that, “This proposed constitutional amendment would eliminate the single-subject requirement of article XI, section 3, for initiatives that deal *solely* with limiting ‘the power of government to raise revenue.’ The single subject requirement would

³ Even this possible effect is due, not to the proposed amendment, but to the existing Article VII, Section 9(b), Florida Constitution, which caps millage for local governments, school districts and water management districts.

remain for all other types of initiative petitions *and for petitions that combine revenue limitation and other subjects.*” *Id.* at 496 (emphasis added).

In a subsequent case, this Court amplified its discussion of the new exemption. *See People’s Property Rights*, 699 So. 2d 1304 (Fla. 1997). In *People’s Property Rights*, considering an amendment which purported to require voter approval for all new taxes, the Court explained the narrowness of the exemption from the single subject requirement:

If the initiative combines revenue limitation and other subjects, then it must comply with the single subject requirement. *The exception does not authorize revenue-limitation initiatives which substantially change the powers of functions of more than a single level or branch of government.* Rather, we construe the exception to only remove the single-subject requirement for initiatives which involve methods of revenue-raising.

699 So. 2d at 1310 (citations omitted) (emphasis added). The proposal before this Court is a perfect example of an initiative that will “substantially change the powers or functions of more than a single branch of government.” *Id.* Indeed, the impacts of this proposal on local and state government will be “cataclysmic.”

In *People’s Property Rights*, the Court found a significant impact on the home rule power of local governments provided by Article VIII. 699 So. 2d at 1310 (citing *Harris v. City of Sarasota*, 132 Fla. 568, 576, 181 So. 366, 369 (1938)). It would seem that the impact here would be equally or more severe,

affecting the millage and budgeting of counties, municipalities, school boards and special districts. This Court likewise found a substantial effect on public education in *People's Property Rights. Id.* (explaining that that impact was spread throughout the legislative and executive branches, as well as on the local level). As will be discussed *infra*, the effects of the instant proposal on education will be far more substantial.

A. The Proposed Additional Homestead Tax Exemption Amendment Will Substantially Affect Multiple Levels of Government.

This Court has held initiatives invalid under the single subject requirement of Article XI, Section 3 when they were found to have a substantial effect on the operation of multiple levels or branches of Florida government. *See, e.g., People's Property Rights*, 699 So. 2d at 1308 (finding impacts on special districts and local governments, as well as on the executive branch).

In *Tax Limitation I*, the Court invalidated the proposed tax limitation initiative because it affected not only legislative and executive functions, but also had “a very distinct and substantial [e]ffect on each local governmental entity,” which is certainly the situation here. 644 So. 2d at 494-95. Likewise, in *Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination*, 632 So. 2d 1018 (Fla. 1994), this Court invalidated an initiative which would have

encroached not only on the legislative branch, but also on the home rule powers of local governments. 632 So. 2d at 1020.

In addition to effects on different branches of government, the proposed Additional Homestead Tax Exemption amendment also has substantial effects on different levels of government. As with *People's Property Rights*, it will substantially affect the home rule power of local governments, both counties and municipalities, by severely altering their budgeting and operations. See 699 So. 2d at 1310. However, the proposed amendment's impacts on public education will be even more severe, and distributed among all levels of Florida government due to the shared responsibilities for education funding.

- 1) The proposed amendment undermines both state and local efforts to make adequate provision for public schools.

Under Article IX, Florida Constitution, education is a shared state and local responsibility. Article IX, Section 1 gives the Legislature ultimate responsibility to make "adequate provision for a uniform, efficient, safe, secure, and high quality system of free public schools." Article IX, Section 2 establishes the State Board of Education in the executive branch as the ultimate supervisor of the school system. Article IX, Section 4 provides for local school districts run by local elected boards. The boards "shall operate, control and supervise all free public

schools within the school district and determine the rate of school district taxes within the limits [set by the Constitution].” Art. IX, § 4(b), Fla. Const. Anything which substantially effects public education in Florida must take into account the responsibilities of these three entities with constitutional responsibilities for free public education. This is especially so with regard to anything which affects education finance.

Public education was once funded chiefly through local ad valorem taxes, and this remains an important source of education funds. However, since the establishment of the Florida Education Finance Program in 1973, education has been financed both by state and local funds.

Each year the percentage of funding by state and school boards is set by the Legislature. *See* § 1011.71, Fla. Stat. The local component is made up of “required local effort,” determined by the Legislature, and additional discretionary ad valorem tax levies.⁴ In 1999-2000, local sources contributed an average of 40.76% of the funds spent on public education. *See Florida Statistical Abstract 2002*, Table 20.63 (Univ. of Fla., Bureau of Econ. & Bus. Research, 2003). In 2000-01, this local contribution averaged 41.03%. *See 2002-2003 Funding for*

⁴ Discretionary levies may include levies of up to 2.0 mills for capital outlay and maintenance and 0.51 mills for current operations (with an additional supplementary 0.25 mills). *See* § 1011.71(2), Fla. Stat.

Florida School Districts, Statistical Report (Fla. Dept. of Educ., 2002), at 2, available online at: <http://www.firn.edu/doe/bin00042/pdf/fefpdist.pdf>. The level of local contributions ranged from a low of 13.1% in Washington County to a high of 72.76% for Martin County. See *Florida Statistical Abstract 2002*, at Table 20.63; see also *2002-03FEFP Final Calculation* (Fla. Dept. of Educ., 2003), at 41, available online at: <http://info.fldoe.org/dscgi/ds.py/Get/File-1634/04-21a.pdf> (included as Appendix A).

- 2) The proposal also endangers the uniform system of free public schools, as well as the adequacy of that system.

Under Article IX, Section 1, the public education system must meet certain criteria: it must be “uniform,” and it must also be “adequate.” This Court, recognizing the comparative success of the Florida Education Finance Program in equalizing education funding throughout the state, has traditionally interpreted uniformity rather narrowly. In *School Board of Escambia County v. State*, 353 So. 2d 834, 838 (Fla. 1977), this Court held that, “by definition . . . a uniform system results when the constituent parts, although unequal in number, operate subject to a common plan or serve a common purpose.” In that case, the Court found that minor variations in local millage devoted to education did not affect the “uniform system” requirement of Article IX, Section 1. In more recent cases, the Court has

reemphasized that minor differences in local contribution do not disturb the required uniformity of the system. *See, e.g., St. Johns County v. Northeast Fla. Builders*, 583 So. 2d 635 (Fla. 1991); *Department of Educ. v. Glasser*, 622 So. 2d 944 (Fla. 1993). Concurring in *Glasser*, Justice Kogan explained the boundaries of the uniform system requirement:

Florida law now is clear that the uniformity clause will not be construed as tightly restrictive, but merely as establishing a larger framework in which a broad degree of variation is possible. . . . [V]ariance from county to county is permissible so long as no district suffers a disadvantage in the basic educational opportunities available to its students, as compared to the basic educational opportunities available to students of other Florida districts.

622 So. 2d at 950 (Kogan, J., concurring). The proposed Additional Homestead Tax Exemption amendment reduces or eliminates the ability of school districts to contribute local resources to public education, which is a substantial change that directly implicates the uniformity requirement of Article IX, Section 1.

Even more significant than possible effects of the proposal on the uniformity clause, are likely impacts on the adequacy of the public education system. Article IX, Section 1 not only requires a uniform system, it also requires that it be adequate. Although this Court, in *Coalition for Adequacy & Fairness in School Funding, Inc. v. Chiles*, 680 So. 2d 400 (Fla. 1996), found that adequacy then had no justiciable standards, these standards have since been added and

clarified by a series of constitutional changes. The definition of adequacy in Article IX, Section 1 has been expanded, first by the Constitution Revision Commission, in 1998, which added the defining terms “efficient, safe, secure, and high quality . . . that allows students to obtain a high quality education.” Again, in 2002, two successful initiative amendments provided further definition to the “high quality” aspect of adequacy. *See Advisory Opinion to the Atty. Gen’l re Florida’s Amendment to Reduce Class Size*, 816 So. 2d 580 (Fla. 2002) (adding specific class size requirements and a phase-in period to Article IX, Section 1); *Advisory Opinion to the Atty. Gen’l re: Voluntary Universal Pre-Kindergarten Educ.*, 824 So. 2d 161 (Fla. 2002) (adding subsections (b) and ©) to Article IX, Section 1).

An amendment which results in an immediate disruption of the 40% of funding coming to public education must necessarily substantially affect the adequacy of the public education system. This Court recognized a similar danger with regard to the Voter Approval of New Taxes initiative in *People’s Property Rights*. *See* 699 So. 2d at 1310. This substantial effect is especially likely given the significant mandate to the State to fund the two 2002 Class Size and Pre-Kindergarten Education amendments. The proposed Additional Homestead Tax Exemption amendment also mandates immediate implementation, and is drafted to

be “effective for assessments for 2005.” Unlike other amendments which this Court has upheld, such as Class Size or the Monorail, there is thus no transition period provided, during which the Legislature can adjust and mitigate likely harmful or disruptive impacts. *Cf. Reduce Class Size*, 816 So. 2d at 581 (8-year transition period); *Advisory Opinion to the Atty. Gen’l re Fla. Transp. Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation Sys.*, 769 So. 2d 367, 368 (Fla. 2000) (3-year transition and implementation period).

Other successful amendments have mitigated their impact on government functions, often by use of a transition or phase-in period. For example, Article VII, Section 6, Florida Constitution, was amended by a legislative amendment adopted in 1980 which provided for a three-year phase-in raising the homestead exemption from \$15,000 in 1980 to \$25,000 in 1982 and thereafter. *See Art. VII, § 6(d), Fla. Const.*; *see Osterndorf v. Turner*, 426 So. 2d 539 (Fla. 1982) (explaining the new amendment). A successful initiative amendment, adopted in 1992, limited the only **increase** in assessed value of homestead property to a maximum of 3% annually, irrespective of just valuation. *See In re Advisory Opinion to the Atty. Gen’l - Homestead Valuation Limitation*, 581 So. 2d 586, 587 (Fla. 1991) (upholding the initiative proposal); *Florida League of Cities v. Smith*, 607 So. 2d 397, 401 (Fla. 1992) (rejecting a subsequent challenge to the initiative

proposal's ballot summary). The Homestead Valuation Limitation amendment did not reduce any current revenues. Thus its impact was not "substantial."

Here, the impacts of the proposed amendment will be felt immediately and severely across all levels of Florida government. These are definite, foreseeable - yet undisclosed impacts to the constitutionally-established system of public education in Florida. The proposed Additional Homestead Tax Exemption will work a "calamitous" and "precipitous" change in many levels of state government,⁵ especially with regard to the system of free public schools.

B. The Proposed Additional Homestead Tax Exemption Amendment has a Substantial Effect on the Functions of Multiple Branches of State Government.

A proposed constitutional amendment may not perform, alter or substantially affect multiple, distinct functions of government. *See Advisory Opinion to the Atty. Gen' l re Right to Treatment & Rehabilitation for Non-Violent*

⁵ The issue of whether a proposal will work a "calamitous" or "precipitous" change in state government has been consistently considered by this Court since *Save Our Everglades*. 636 So. 2d at 1339 ("This single-subject provision is a rule of restraint designed to insulate Florida's organic law from precipitous and cataclysmic change."); *cf. Treating People Differently*, 778 So. 2d at 891; *Pre-Kindergarten Educ.*, 824 So. 2d at 164. *Webster's Collegiate Dictionary* defines "calamitous" as "being, causing, or accompanied by calamity." It likewise defines "precipitous" as "very steep, perpendicular." *Merriam Webster's Collegiate Dictionary* (10th ed., 1993). This proposal will cause widespread calamitous change, and because of its lack of transition, it will do this precipitously.

Drug Offenses, 818 So. 2d 491, 496 (Fla. 2002); *Save Our Everglades Trust Fund*, 636 So. 2d at 1340; *Restricts Laws Related to Discrimination*, 632 So. 2d at 1020; *Evans v. Firestone*, 457 So. 2d 1351, 1354 (Fla. 1984) (when an amendment “changes more than one government function, it is clearly multi-subject”); *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984). An initiative which “affects several branches of government will not automatically fail; rather, it is when a proposal substantially alters or performs the functions of multiple branches that it violates the single-subject test.” *Treating People Differently Based on Race*, 778 So. 2d at 892 (quoting *Advisory Opinion to the Atty. Gen’l re Fish & Wildlife Conservation Comm’n*, 705 So. 2d 1351, 1353-54 (Fla. 1998)). The proposed Additional Homestead Tax Exemption amendment has multiple substantial impacts on various governmental functions.

- 1) There will be an immediate and substantial effect on legislative functions.

First, the proposal substantially affects the authority of the Legislature both to appropriate and to make “adequate provision for the system of free public schools.” Art. IX, § 1, Fla. Const. This effect is substantial because the proposal will operate, in all of Florida’s 67 counties, to reduce funds available to public schools by lowering the tax base. *See* Appendix B (detailing the estimated impact

of proposed Additional Homestead Tax Exemption amendment on school districts). As a consequence, the Legislature must, as a result of the State's own constitutional mandate under Article IX, Section 1, provide for a "uniform system" of public education.

The Legislature appropriates under a formula which sets local effort in funding and considers state funding needs. *See supra*. Any deficit created by a local shortfall is an inevitable impact requiring state action in order to meet the constitutional mandate for public education. Consequently, this proposal substantially affects the most basic of legislative functions - the appropriations of state funds and the Legislature's role in the budget process under Article III. It directly shifts a major component of funding public education from local school boards to the State. And, interestingly, the impact of the proposal may well require an **increase** in state taxes.⁶

⁶ The Legislature, under the Florida Education Finance Program, distributes state money consistent with its constitutional duty to maintain a uniform system of free public schools under Article IX, Section 1. *See* § 1011.62, Fla. Stat. The Legislature also directs local school boards to meet a "required local effort" in property taxes. § 1011.71, Fla. Stat. The Legislature either sets that level every year or the level is set by Section 1011.71. *Id.*

- 2) The proposed amendment will have substantial effects on the judicial branch.

Local governments provide funding for part of court operations. Revision 7, adopted in 1998, reduced the amount of Article V funding for the judicial system was attributable to counties. The Legislature has since implemented Revision 7, altering the funding balance between the state, counties and users of the courts. *See* Ch. 2003-402, Laws of Fla. Nevertheless, counties remain responsible for providing funding for the following aspects of the court system: facilities, security, the existing criminal justice information system, communications and other local requirements. *See id.* (codified at § 29.008, Fla. Stat. (effective July 1, 2004)). The proposed Additional Homestead Tax Limitation amendment, by reducing the amount of taxable property within counties, will have an immediate and substantial impact on the operation of the judicial branch by depriving it of necessary resources and disturbing the balance struck by Revision 7.

C. The Additional Homestead Tax Exemption Proposal Violates the Single Subject Requirement Because it Has Substantial, Undisclosed Impacts on Several Provisions of the Florida Constitution.

The proposed amendment also causes substantial impact on multiple sections of the Constitution. *See Tax Limitation I*, 644 So. 2d at 490; *Restricts*

Laws Related to Discrimination, 632 So. 2d at 1019; *Fine*, 448 So. 2d at 989-90.

An initiative will not be removed just because there is some “possibility that an amendment might interact with other parts of the Florida Constitution.” *Advisory Opinion to the Atty. Gen’l re Term Limits Pledge*, 718 So. 2d 798, 802 (Fla. 1998).

The test is whether there are multiple parts of the constitution which are substantially affected by the proposed initiative amendment, in order both to inform the public of the proposed changes and to avoid ambiguity as to the effects.

Tax Limitation I, 644 So. 2d at 490; *Fine*, 448 So. 2d at 989.

The proposed Additional Homestead Tax Exemption amendment identifies no sections of the Constitution which it may affect or modify.⁷ However, the amendment would substantially affect several distinct sections of the Constitution. By its very subject, the proposal modified Article VII, Section 6, Florida Constitution, which establishes the current homestead tax exemption. The amendment itself identifies that it seeks to amend this section of the Constitution. It would likewise affect Article VII, Section 4, providing for the assessment of real property for ad valorem tax purposes.

⁷ In this regard, the instant proposal contrasts unfavorably with the Voter Approval of New Taxes initiative, which this Court invalidated in *People’s Property Rights*. See 699 So. 2d at 1309 (identifying that the amendment substantially affected “Article VII Section 1(a), 1(b), 2, 5, 7 and 9”).

Other sections of the Florida Constitution are also substantially affected by this proposed amendment. For instance, Article VII, Section 9 gives local governments and school boards the power to levy ad valorem taxes, and allows the Legislature to authorize special districts to levy such taxes. This section also establishes millage caps. *See* Art. VII, § 9(b), Fla. Const. (capping millage at 10 mills for county, municipal and school boards). These sections of the Florida Constitution are substantially affected by this proposal, which will have a severe impact on the taxing and budgeting powers of local governments and school boards.

The immediate disturbance of local government and school board taxing and budgetary powers will also have foreseeable impact on the ability of local governments and school boards to borrow money, and likely on the ability of local governments and school boards to service outstanding bonds even where voters have pledged the full faith and credit of the governing entity. Under the authority of Article VII, Section 12, local government bodies issue both revenue bonds and general obligation bonds.⁸ A simple illustration will make clear the likely harm

⁸ The validity of bond issues is challenged by the State, and appealed under Article V, Section 3(b)(2), Florida Constitution, to this Court for a ruling on: 1) “if the public body has the authority to issue the bonds; 2) determining if the purpose of the obligation is legal; and 3) ensuring that the bond issuance complies with the requirements of law.” *Rowe v. St. Johns County*, 668 So. 2d

that this amendment will cause: Article VII, Section 12(a) allows local governments and school boards to be authorized by general law to issue obligation bonds for capital improvement purposes. The Legislature has provided for school boards to levy up to 2.0 mills to pay for capital improvement purposes. *See* §§ 1011.71(2) & 1013.64(3)(b), Fla. Stat. Currently, 57 of Florida’s 67 school districts levy their full 2.0 mills for capital improvement purposes. *See* Appendix A. These school districts do not have any leeway in the event that this proposed amendment drastically reduces the amount of taxable property within their jurisdiction. The result will be that the school districts cannot pay these obligation bonds, thus endangering their full faith and credit. *Cf. Advisory Opinion to the Atty. Gen’l re Requirement for Adequate Public Educ. Funding*, 703 So. 2d 446, 449 (Fla. 1997) (noting that an initiative proposal which sought to fix education appropriations at the state level “would substantially alter the operation of the various requirements for finance and taxation in article VII in respect to bonded indebtedness”).

196, 198 (Fla. 1996); *see generally* Joseph W. Little, *The Historical Development of Constitutional Restraints on the Power of Florida Governmental Bodies to Borrow Money*, 20 STETSON L. REV. 647, 660-65 (1991). A constitutional amendment which affects the validity of local obligation bonds would also impact this Court’s decisions affirming such bonds, and would undercut the trust placed in this Court’s judgments.

The substantial effect of the proposed amendment on the uniformity and adequacy of the system of free public schools, provided for by Article IX, Section 1, has been discussed *supra*. This amendment has similarly substantial effects on other portions of the education article, including Article IX, Section 2 (State Board of Education, which supervises education on the state level) and Article IX, Section 4 (school districts and elected school boards). These effects are similar in nature and extent to those which caused this Court to invalidate the Voter Approval of New Taxes initiative. *See People's Property Rights*, 699 So. 2d at 1310.

Again, as was the case in *People's Property Rights*, the proposed amendment will substantially affect the home rule powers of local governments, established in Article VIII, Sections 1 and 2, Florida Constitution. *Cf.* 699 So. 2d at 1310.

The proposed Additional Homestead Tax Limitation amendment, by reducing the amount of taxable property within counties, will have an immediate and substantial impact on the operation of the judicial branch provided for in Article V, Section 14, Florida Constitution.

Because of the impacts of this amendment on the adequacy and uniformity of the public school system, there will also be a substantial impact on the state

budget process and the appropriation power of the Legislature under Article III, Sections 12 and 19, Florida Constitution. There may be a choice, in the case of small counties whose property base is sharply reduced by this amendment: either the amendment will substantially affect Article IX funding for education, or the Legislature will be compelled to act to support the school district, thus substantially affecting Article III.

Finally, this initiative proposal will also impact the taxable value of property for water management districts, set under Article VII, Section 9(b). It will very likely impact the ability of water management districts to fulfill their vital role in respect to the “abatement of . . . water pollution . . . and for the conservation and protection of natural resources. Art. II, § 7(a), Fla. Const.

The listed impacts of the proposal on the Florida Constitution do not involve a situation where an amendment merely “interact[s] with other parts of the [Constitution]. *Advisory Opinion to the Atty. Gen’l re Fee on the Everglades Sugar Prod.*, 681 So. 2d 1124, 1128 (Fla. 1996). Instead, this amendment will substantially alter these provisions, as well as the functions established by the listed provisions of the Constitution. None of these substantial impacts on multiple provisions of the Florida Constitution by the proposed Additional Homestead Tax Exemption is disclosed. The failure to reveal these impacts on the

Florida Constitution is grounds for this Court to remove the proposal from the ballot.

III. THE ADDITIONAL HOMESTEAD TAX EXEMPTION PROPOSAL MISLEADS VOTERS BECAUSE THE BALLOT SUMMARY FAILS TO EXPLAIN THE BROAD IMPACT ON STATE AND LOCAL GOVERNMENT, EDUCATION FUNDING AND MULTIPLE SECTIONS OF THE CONSTITUTION.

Section 101.161, Florida Statutes, requires that the ballot title and summary provide the “substance of [the] amendment . . . in clear and unambiguous language.” The title and summary of the proposed Additional Homestead Tax Exemption amendment are clearly defective under the statutory standard. The summary misleads the voters, and does not advise them of some of the most serious, foreseeable results of adopting the proposal including the impact on numerous sections of the constitution, substantial impacts on state and local education , and substantial impact on local government.

The purpose of the Court's review of a proposed measure’s ballot title and summary is to insure “that the electorate is advised of the true meaning, and ramifications, of an amendment.” *Tax Limitation I*, 644 So. 2d at 490; *Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982). A voter ““must be able to comprehend the sweep of each proposal from a fair notification in the proposition itself that it

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)). This Court has stated that it will not approve a ballot summary containing “an ambiguity that will in all probability confuse the voters who are responsible for deciding whether the amendment should be included in the state constitution.” *Restricts Laws Related to Discrimination*, 632 So. 2d at 1021 (rejecting a summary that implied that it covered existing laws when it really only covered future laws).

The Court requires that the summary and ballot title of a proposed initiative amendment be: (1) “accurate and informative” *Smith v. American Airlines*, 606 So. 2d 618, 621 (Fla. 1992); and (2) “objective and free from political rhetoric.” *Tax Limitation I*, 644 So. 2d at 490; *cf. Save Our Everglades*, 636 So. 2d at 1341; *Evans*, 457 So. 2d at 1355. The Court, however, recognizing the 75-word limit imposed by Section 101.161, does not require a ballot title and summary to detail every possible aspect of the proposed initiative. *See Advisory Opinion to the Atty. Gen’l Re Protect People from the Hazards of Second-Hand Smoke by Prohibiting Workplace Smoking*, 814 So. 2d 415, 419 (Fla. 2002); *Grose v. Firestone*, 422 So. 2d 303, 305 (Fla. 1982). The Court also recognizes that the voters “must be presumed to have a certain amount of common sense and knowledge” when reading the petition. *Advisory Opinion to the Atty. Gen’l re Tax Limitation*, 673

So. 2d 864, 868 (Fla. 1996) (*Tax Limitation II*) (voters, by learning and experience, would understand the general rule that a simple majority prevails).

Yet the ballot summary and title must tell voters enough about the amendment proposal so that the voters can cast an intelligent vote. Likewise, a summary which cannot accurately describe the amendment's "legal effect," *Evans*, 457 So. 2d at 1355, or its "true meanings and ramifications," *Askew*, 421 So. 2d at 156, is clearly and conclusively defective. In this case, the proposal's title and summary facially fail to so describe the amendment to voters, and this Court's several individual tests for ballot title and summary demonstrate further that the proposed Additional Homestead Tax Exemption amendment is fatally flawed.

A. The Summary Fails to Disclose the Immediate and Foreseeable Impact this Amendment will have on the System of Free Public Schools and Local Government.

In *Advisory Opinion to the Attorney General re Fish & Wildlife Conservation Commission*, 705 So. 2d 1351 (Fla. 1998), this Court addressed an initiative which sought to combine the constitutional Game and Fresh Water Fish Commission with the statutory Marine Fisheries Commission. The Court invalidated the initiative because its ballot summary failed to explain key aspects

of the provision to voters.⁹ A central flaw of the instant proposal is its failure to disclose its substantial impact on public schools and local government. “The problem ‘lies not with what the summary says, but, rather with what it does not say.’” *Id.* at 1355 (quoting *Askew*, 421 So. 2d at 156); *cf. Advisory Opinion to the Atty. Gen’l - Limited Political Terms in Certain Elective Offices*, 592 So. 2d 225, 228 (Fla. 1991) (“A ballot summary may be defective if it omits material facts necessary to make the summary not misleading.”).

Again, in *Armstrong v. Harris*, 773 So. 2d 7 (Fla. 2000), this Court considered the summary of a legislatively-proposed constitutional amendment that sought to conform the standard for cruel and unusual punishment in the Florida Constitution with the federal standard. This Court invalidated the amendment because the ballot summary, in stating its chief purpose of “preserving the death penalty,” failed to explain that the method chosen by the Legislature was to nullify Florida’s independent Cruel or Unusual Punishment Clause under Article I, Section 17. *Id.* at 18 (noting that the amendment also applied, not only to the death penalty, but to all criminal cases). As this Court said, “[t]he main effect of

⁹ In that case, the summary failed to explain that it would operate to deprive the Legislature of its previous oversight in the area of marine fisheries. *Id.*

the amendment is *not* stated anywhere on the ballot.” *Id.*¹⁰

Here, no mention is made in the ballot title or summary of the potentially serious disruption to public education in Florida if local funding to education is reduced or, in counties with lower amounts of taxable real property, almost eliminated. Voters are never given vital and important information about the real implications of what they are voting on. As Justice Kogan wrote in *Restricts Laws Related to Discrimination*,

These possible collateral effects . . . are not mentioned in the ballot summary, even in a general sense. This initiative . . . reflects draftsmanship that has not adequately considered all the collateral effects, which could seriously disrupt other important aspects of Florida government and law. Voters relying on the initiative’s text and the ballot summary clearly would be misled in this sense.

632 So. 2d at 1022 (Kogan, J., concurring); *cf. Florida League of Cities v. Smith*, 607 So. 2d at 399 (invalidating an initiative because of its undisclosed collateral effects). Voters cannot know from the summary what will likely happen to local education funding, and they will be surprised at the effect.

¹⁰ The Legislature subsequently re-submitted this amendment, under altered summary rules for legislative proposals, and the amendment was re-adopted by Florida voters in the November 2002 election. *See generally Sancho v. Smith*, 830 So. 2d 856 (1st DCA), *review denied*, 828 So. 2d 389 (Fla. 2002) (allowing the second summary to appear on the 2002 ballot). The changes to Section 101.161 that allowed the expanded summary upheld in *Sancho* do not apply to initiative proposals.

The nature of these significant collateral effects is clear when one examines how the amendment will affect local and state education funding. Consider the undisclosed but certain impacts on the school districts of two Florida counties, one large and one small.¹¹ Broward County, a large county, had \$91.48 billion certified value on the tax roll as of July 2002. The proposed amendment will cost the school district an estimated \$84.1 million, in lost tax revenues. Of this, \$64.4 million - the equivalent of 1,527 full-time teacher positions - will be lost from total operating fund millage (i.e. "Required Local Effort" plus all discretionary millage), while \$19.7 million will be taken from Capital Improvement millage.

The Broward County School District will face an immediate problem with regard to the \$19.7 million lost from Capital Improvement millage because Broward County is currently levying the maximum permitted 2.00 mills, and has bonded approximately \$52.7 million in obligation bonds relying on the Capital Improvement millage. There is thus no buffer, and there will be an immediate danger to ongoing capital improvements, as well as to the credit rating as debt becomes unpayable.

¹¹ Figures used in these examples come from information supplied by the Department of Education and the Department of Revenue, with impacts estimated by the Florida School Boards Association. *See* Appendices A (millage information for all school districts) and B (estimated financial impacts on all school districts).

For an examination of the proposal's impact on a smaller county, consider Bradford County, which had \$530.9 million on the tax roll as of July 2002. The proposed amendment, removing some \$104.6 million in homestead property from the tax roll, will cost the school district an estimated \$915,000, of which \$706,000 is taken from total operating fund millage and \$209,000 from capital improvement millage. Bradford County is also levying the maximum 2.00 mills for Capital Improvements, and the school board would face similar problems as Broward County in dealing with the loss of \$209,000.

The effect of increasing the exemption will affect every county statewide in the amounts identified in Appendix B. *See Appendix B* (showing that an estimated total of approximately \$803 million will be lost to education funding statewide). The only option for the Legislature other than allowing these cuts to take effect statewide would be to raise revenue either by increasing the required local effort (resulting in an increase in local property taxes) or appropriating more state tax revenues (with the possibility of an increase in state sales tax). None of these substantial effects are disclosed.

No matter what the decision, there is either a substantial undisclosed impact on public schools statewide or a substantial impact on local and state taxes. Either way, the failure to disclose these impacts makes the proposal extraordinarily

misleading. Voters considering the proposal cannot know these likely effects from the title or summary, where they are promised only “tax relief.” The proposal’s title and summary are thus fatally flawed.

B. The Proposed Amendment Engages in Impermissible Sloganeering by Claiming to Provide “Property Tax Relief to Florida Homeowners.”

Tax relief of any kind is, of course, a popular phrase, and this would assuredly apply to property taxes also. However, in considering proposed amendments to the Florida Constitution, this court has disallowed such political statements in *Save Our Everglades* and other cases, because the purpose of the summary and title is to accurately express the chief purpose in understandable terms and not to attempt to sell the proposal or lobby voters. *See* 636 So. 2d at 1341.

In this case the violation of the title and summary requirements are more severe because the summary claims to deliver lower property taxes when in many cases that will not occur. If a county, city or school board has millage authority available, they may well raise millage rates and offset the decrease in valuation in the homestead exemption. There is no question that they have the *power* to do so. Therefore, the summary “flies under false colors” and attempts to seduce voters to approve something they may not ultimately receive. This superfluous editorial

comment is out of place in a ballot summary, which should restrict itself to explaining the purpose and effect of the proposal. *Cf. Evans*, 457 So. 2d at 1355 (use of term “thus avoiding unnecessary costs” in summary was an impermissible editorial comment).

· This Court has specifically pointed out that the “amount of money paid on a taxable property or the rate at which the property is being taxed” are two different things. *See People’s Property Rights*, 699 So. 2d at 1311 (finding that confusing the two items in a ballot summary made the summary fatally misleading to voters). The proposed Additional Homestead Tax Exemption amendment likewise affects only the valuation of property and not necessarily “the amount of money paid” by taxpayers. That important fact is not disclosed to voters in the title and summary - even though it sells itself as providing “tax relief,” when in fact it only affects the rate of assessment. Such lobbying is improper in a ballot summary, and is itself ample cause to invalidate the proposal.

CONCLUSION

For these reasons, both the proposed Additional Homestead Tax Exemption amendment and its ballot title and summary fail to meet the constitutional and statutory standards for initiative amendments. Both proposal and the title and summary are clearly and conclusively defective and should be invalidated by this Court.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 18th day of June, 2004, to The Honorable CHARLES J. CRIST, Office of the Attorney General, The Capitol, Tallahassee, Florida 32399-1050; The Honorable JEB BUSH, Office of the Governor, PL 05 The Capitol, Tallahassee, Florida 32399-0001; The Honorable GLENDA E. HOOD, Office of the Secretary of State, R.A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399-0250; The Honorable JAMES E. KING, JR., The Florida Senate, The Capitol, Suite 409, Tallahassee, Florida 32399-1100; The Honorable JOHNNIE BYRD, The Florida House of Representatives, The Capitol, Suite 420, Tallahassee, Florida 32399-1300; and Mr. JEFFREY SAULL, Families for Lower Property Taxes, 5730 Corporate Way, Suite 214, West Palm Beach, Florida 33407.

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CERTIFICATE OF TYPEFACE COMPLIANCE

I HEREBY CERTIFY that the type style utilized in this brief is 14-point Times
New Roman, proportionately spaced, in accordance with Rule 9.210(a)(2), FLA. R.
APP. P.

Attorney

APPENDIX

APPENDIX A: 2002-03 FEFP FINAL CALCULATION,
ACTUAL NONVOTED MILLAGE RATES A-1

APPENDIX B: ESTIMATED IMPACT OF ADDITIONAL
HOMESTEAD TAX EXEMPTION ON SCHOOL DISTRICTS B-1

APPENDIX A

2002-03 FEFP Final Calculation
(Fla. Dept. of Educ., 2003), at 41
(Actual Nonvoted Millage Rates),
available online at:

<http://info.fldoe.org/dscgi/ds.py/Get/File-1634/04-21a.pdf>

APPENDIX B

“Impact of Additional \$25,000 Homestead Exemption
on School Districts”

Estimated by Florida School Boards Association,
relying on 2002-03 data supplied by Florida Department of Revenue
and local school districts.