

IN THE SUPREME COURT
STATE OF FLORIDA

Case No. SC04-942

IN RE: ADVISORY OPINION
TO THE ATTORNEY GENERAL
RE: ADDITIONAL HOMESTEAD TAX EXEMPTION

**INITIAL BRIEF
OF THE SPONSOR
FAMILIES FOR LOWER PROPERTY TAXES, INC.**

Filed in Support of the Initiative Petition

ORIGINAL PROCEEDING

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INTRODUCTION

Families for Lower Property Taxes, Inc. (“Families for Lower Property Taxes”), has formulated and sponsored an initiative petition entitled “Additional Homestead Tax Exemption,” which seeks to amend Article VII, section 6 of the Florida Constitution to authorize an increase in the homestead exemption on property assessments by an additional \$25,000 (“the Proposed Amendment”). The Florida Attorney General has requested the Court’s advisory opinion on the validity of the Proposed Amendment under Article XI, section 3 of the Florida Constitution, and the issue of ballot title and summary under section 101.161, Florida Statutes (2003).

STATEMENT OF THE CASE AND FACTS

Families for Lower Property Taxes is a political committee registered under the Florida Election Code¹ that is the principal sponsor of a petition to amend the Florida Constitution by authorizing an additional homestead exemption of \$25,000. A copy of the petition, containing the full text of the Proposed Amendment with its ballot title and summary, is attached to this brief as Appendix 1 (A:1).

On May 11, the Attorney General received this initiative petition from the Secretary of State and, on June 4, the Attorney General wrote to the Court transmitting the Proposed Amendment for an advisory opinion, identifying the subjects to be addressed by the Court pursuant to the Constitution, and taking no position on the validity of the Proposed Amendment. (A:2).

¹ See § 106.03, Fla. Stat. (2003).

By order dated June 10, the Court set June 18, by 3:00 p.m., as the due date for the simultaneous filing of initial and answer briefs by interested parties. The Court has set June 29, for oral argument. This initial brief is filed in support of the Proposed Amendment by Families for Lower Property Taxes.

SUMMARY OF ARGUMENT

The Proposed Amendment is a straight-forward augmentation to the amount of the homestead exemption that is presently established by the Florida Constitution and implemented by statute. The Proposed Amendment does not violate the single subject requirement of Article XI, section 3 of the Florida Constitution. In any event, the Florida Constitution has been amended to eliminate the single subject requirement for ballot proposals such as this, “limiting the power of government to raise revenue.”

The ballot title and summary of the Proposed Amendment are clear and precise. They fairly and unambiguously disclose the chief purpose of the amendment as increasing the homestead exemption for Florida homeowners.

ARGUMENT

Pursuant to Article V, section 3(b)(10) of the Florida Constitution and section 101.161(1), Florida Statutes (2003), the Court determines in an advisory opinion proceeding only if a proposed initiative petition complies with the single-subject requirement of the Constitution and the ballot title and summary requirements of section 101.161(1). *See, e.g., Advisory Op. to the Att’y Gen. - Limited Political Terms in Certain Elective Offices*, 592 So. 2d 225, 228 (Fla. 1991) (“*Limited Political Terms*”). In evaluating those issues, the Court has established guidelines by which it approaches and reviews initiative petitions.

I. Principles guiding the Court’s review.

The Court has mandated great deference to voters in exercising the right to amend their own organic law.

The Court must act with extreme care, caution and restraint before it removes a constitutional amendment from the vote of the people

In re Advisory Op. to the Att’y Gen. ex rel. Authorizes Miami-Dade and Broward County Voters to Approve Slot Machines in Parimutuel Facilities, ___ So. 2d ___, 2004 WL 1064930 at *2 (Fla. May 13, 2004) (“*Slot Machines*”) (quoting *Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982)). Indeed, there is “a strong public policy against courts interfering in the democratic processes of elections.” *Florida League of Cities v. Smith*, 607 So. 2d 397, 400 (Fla. 1992) (citing *Askew*, 421 So. 2d at 154). The Court has further mandated this deference by holding that the disapproval of a proposal requires that it be shown to be “clearly and conclusively

defective.” *E.g.*, *Slot Machines*, at *2; *Evans v. Firestone*, 457 So. 2d 1351, 1353 (Fla. 1984).

The Court has consistently held that it will not consider the merits or wisdom of a proposed amendment. *E.g.*, *Slot Machines*, at *4; *Advisory Op. to the Att’y Gen. re Right of Citizens to Choose Health Care Providers*, 705 So. 2d 563, 565 (Fla. 1998).

II. The Proposed Amendment embraces only one subject and matters directly connected.

The text of the Proposed Amendment provides that Article VII, section 6 of the Florida Constitution, entitled “Homestead exemptions,” will be amended to add a new paragraph (g) to read:

(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 and equitable title to real estate and maintains thereon the permanent residence of the owner.

The one-subject requirement of the Constitution compels a “logical and natural oneness of purpose” for any constitutional amendment proposed by initiative. *In Re Advisory Op. to the Att’y Gen. – Homestead Valuation Limitation*, 581 So. 2d 586, 587 (Fla. 1991) (“*Homestead Valuation*”) (quoting *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984)).

To meet that oneness of purpose, the Court has applied the functional test articulated in *Fine* to consider whether a proposed amendment affects more than one function of government, affects unnamed other provisions of the Constitution,

or alters or performs the functions of different branches of the government. *In re Advisory Op. to the Att’y Gen. – Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1020 (Fla. 1994) (“*Restricts Discrimination*”).

No such concerns are evident here. To begin with, the placement of this provision in Article VII is obviously appropriate. The Proposed Amendment embraces a singular focus consistent with the present constitutional provision establishing homestead exemptions, does not interfere with any other provision of the Constitution, and does not alter or perform the functions of different branches of the government. The amendment simply affords an additional amount of homestead exemption for Florida homeowners.

Nor does the Proposed Amendment involve prohibited “logrolling,” by which voters are forced to accept an undesired change in the Constitution, of a wholly different character, as the price of casting their votes for an additional homestead exemption. Or, put in more familiar terms, the Proposed Amendment does not carry “dissimilar provisions [designed] to attract support of diverse groups to assure its passage.” *Fine*, 448 So. 2d at 988. Voters desirous of authorizing an additional homestead exemption for homeowners can vote to do so without having to accept an undesired change in the Constitution, simultaneously injected as an incentive for some special constituency.

The Proposed Amendment does require implementation by the legislature by “general law and subject to conditions specified therein.” That presents no basis for denying the proposal a place on the ballot. This is the same language by which present homestead exemptions are accorded in the Constitution. *See* Art. VII, §§

6(c), (d) and (e), Fla. Const. The fact that legislative implementation is required has been held by the Court not to constitute a basis on which to withhold approval of an initiative provision. *Slot Machines*, at *3. The remaining text in the Proposed Amendment is equally clear, unambiguous, and consistent with the language in the Constitution by which other homestead exemptions have been provided and have been made prospectively applicable to post-adoption assessments.

The Court will note that the general grant of homestead exemptions expressed in section 6(a) of Article VII is provided to real estate title owners who maintain a permanent residence on their property, and to owners' legal and natural dependents. The Proposed Amendment provides an additional homestead exemption only to the former class of real estate owners – those who maintain their permanent residence on that property. This does not, however, impair the one-subject requirement of the Constitution.

The Constitution contains other provisions which increase or extend an additional homestead exemption to a limited category of homeowners. Section 6(c) of Article VII authorizes an increased exemption for school district levies for homeowners who have attained age 65 or are totally and permanently disabled, and section 6(f) of Article VII authorizes additional exemption for homeowners who have attained age 65 years and have a household income no greater than \$20,000 with a cost of living adjustment. All of these exemptions, as well as the Proposed Amendment, are in furtherance of the purpose for which the voters of Florida have adopted homestead exemptions, namely:

As a matter of public policy, the purpose of the homestead exemption is to promote the stability and welfare of the state by securing to the householder a home, so that the homeowner and his or her heirs may live beyond the reach of financial misfortune and the demands of creditors who have given credit under such law.

Snyder v. Davis, 699 So. 2d 999, 1002 (Fla. 1997) (quoting *Public Health Trust of Dade County v. Lopez*, 531 So. 2d 946, 948 (Fla. 1988)).

Were it necessary to do so, which it is not, one could compare the oneness of purpose and functional unity of the Proposed Amendment with the more complex and intricate initiative petition affecting homestead exemptions that the Court previously approved in *Homestead Valuation*. There, the Court considered and approved an eight-paragraph initiative petition designed to modify the manner in which homestead exemptions are valued, yet held that the proposal met the one subject requirement:

It deals with the sole subject of the limitation of increases in valuations of homestead property. The remaining provisions, which provide the details of the scope and implementation of that limitation, are logically connected to the subject of the amendment.

Homestead Valuation, 581 So. 2d at 587-88.

In sum, it cannot be said that the Proposed Amendment is “clearly and conclusively defective” for failing to meet the one subject requirement of the Constitution. The Proposed Amendment is, in fact, clear and concise.

Even were the Court inclined to address the one subject requirement, it need not be addressed with respect to the Proposed Amendment, because the Florida Constitution was amended to eliminate that concern when a proposal is one

“limiting the power of government to raise revenue.” *See* Art. XI, § 3, Fla. Const. As an amendment cast exclusively in a manner that reduces the base from which the property tax is determined, the Proposed Amendment is exempt from the one-subject requirement. *See Advisory Op. to Att’y Gen. re Tax Limitation*, 673 So. 2d 864 (Fla. 1996) (recognizing amendment changing constitutional requirement for revenue limiting provisions).

III. The ballot title and summary meet the requirements of law.

Section 101.161(1), Florida Statutes (2003), provides that a ballot title “shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.” The title which will appear on the ballot for this proposal is: “Re: Additional Homestead Tax Exemption.” This title comfortably meets both the 15-word limitation for a ballot title and the requirement for a description which sets out the manner in which the proposal is commonly referenced.

The ballot title is considered in conjunction with the ballot summary which accompanies the title into the voting booth, so that the two are considered as a unified whole. As the Court stated in *Askew*:

The purpose of section 101.161 is to assure that the electorate is advised of the true meaning, and ramifications, of an amendment The burden of informing the public should not fall only on the press and opponents of the measure – the ballot title *and* summary must do this.

421 So. 2d at 156 (emphasis added).

Section 101.161(1), Florida Statutes (2003), provides that a ballot summary “shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure.” The Court’s test for a ballot summary requires “that the voter will not be misled as to the purpose of a proposed amendment, and can cast an intelligent and informed ballot.” *Advisory Op. to Att’y Gen. re Term Limits Pledge*, 718 So. 2d 798, 803 (Fla. 1998) (“*Term Limits Pledge*”). Put another way, the Court has held that a ballot summary should provide fair notice of the meaning and effect of the proposed amendment. *Restricts Discrimination*, 632 So. 2d at 1021.

The ballot 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.

This summary succinctly uses only 21 words, meeting the 75-word limitation of section 101.161(1).

The ballot summary of the Proposed Amendment meets the Court’s content and information guidelines as well, by adeptly explaining the chief purpose of the proposal to provide tax relief in the form of an additional homestead exemption. Admittedly, it does not state whether all or some residential property owners are to be given tax relief, but there is no requirement that it do so. A summary need not recite in detail every feature and aspect of the proposed amendment. *E.g., Limited Political Terms*, 592 So. 2d at 228; *Carroll v. Firestone*, 497 So. 2d 1204, 1206

(Fla. 1986); *Grose v. Firestone*, 422 So. 2d 303, 305 (Fla. 1982) (“Inclusion of all possible effects . . . is not required in the ballot summary.”).

This ballot summary is both accurate and informative. That it does not refer to the fact that the additional homestead exemption does not extend to a home where the home owner does not reside, but only where a dependent resides, is insignificant.² Unlike other summaries that have been found wanting, no *alteration* of existing law is left unexpressed or *affirmative ramifications* for existing law left unidentified by this summary.³ Rather, an element of the preexisting constitutional status quo is left undisturbed by the Proposed Amendment, and while that fact is not affirmatively recognized by the summary, that is hardly a circumstance which would mislead voters or impose untoward consequences upon them from a vote favorable to the Proposed Amendment. This

² Certainly, use of the phrase “home owner” is a common way of referring to persons who both own and live in a particular residence. As certainly, a ballot summary does not have to detail or repeat the particulars of the proposal to be satisfactory.

³ Summaries that fail to convey significant changes in existing constitutional powers have not secured the Court’s approval. *See Term Limits Pledge*, 718 So. 2d at 803-04 (summary must reveal that amendment alters existing constitutional powers of the Secretary of State); *Restricts Discrimination*, 632 So. 2d at 1021 (summary did not disclose that proposed amendment “would curtail the authority of government entities”); *Smith v. American Airlines, Inc.*, 606 So. 2d 618, 621 (Fla. 1992) (summary failed to reveal that leases signed after certain date would be taxed at a different, greatly increased rate). *See also Armstrong v. Harris*, 773 So. 2d 7 (Fla. 2000), *cert. denied*, 532 U.S. 958 (2001) (summary did not disclose that proposed amendment would eliminate existing constitutional right).

summary is of the kind the Court has approved in other circumstances passing initiatives on to the electorate:

the failure to indicate the current lack of term limits [is not] misleading. This is not a situation in which the ballot summary conceals a conflict with an existing provision. There is no existing constitutional provision imposing a different limitation on terms of office.

Limited Political Terms, 592 So. 2d at 228. See also *In re Advisory Op. to the Att’y Gen. re Florida’s Amendment to Reduce Class Size*, 816 So. 2d 580, 585 (Fla. 2002) (title and ballot not defective “because they fail to inform voters that an exception to the Legislature’s mandate to fund smaller classroom sizes exists [for certain] classes”).

The ballot summary should declare the chief purpose of the measure, so as to “give the voter fair notice of the decision” to be made. *Askew*, 421 So. 2d at 155. This summary conveys the core constitutional change that is found in the Proposed Amendment, *without* flying under false colors.

On more than one occasion the Court has pointed out that a ballot summary is not a voter’s exclusive source of information as to how the Constitution is proposed to be amended. See, e.g., *Smith v. American Airlines, Inc.*, 606 So. 2d 618, 621 (Fla. 1992). A summary must communicate the proposal’s “chief purpose,” thereafter “voters are generally required to do their homework and educate themselves about the details of a proposal and about the pros and cons of adopting the proposal.” *Id.* at 621. A ballot summary is not misleading if it presents the basic information, but leaves out collateral information, consequences,

or ramifications of the proposed amendment. *Slot Machines*, at *5; *Advisory Op. to the Att’y Gen. re Prohibiting Pub. Funding of Political Candidates’ Campaigns*, 693 So. 2d 972, 975 (Fla. 1997).

Nor is the ballot summary misleading in its characterization of an additional homestead exemption as “property tax relief.” This *is* the “chief purpose” of the proposal, and voters are informed of that purpose in a clear, accurate and unambiguous manner. *Slot Machines*, at *10 (quoting, *Askew*, 421 So. 2d at 154-55). Characterization that is not misleading is no vice. *Advisory Op. to Att’y Gen. – Fee on Everglades Sugar Prod.*, 681 So. 2d 1124, 1128-29 (Fla. 1996); *In re Advisory Op. to Att’y Gen. – Save Our Everglades*, 636 So. 2d 1336, 1340 (Fla. 1994).⁴

In sum, the core concepts of the Proposed Amendment are spelled out without any omission which would mislead voters as to the proposal’s chief purpose. *E.g.*, *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). This ballot summary is not “clearly and conclusively defective.” *Florida League of Cities*, 607 So. 2d at 399.

⁴ “Perfection is not required, and common sense suggests that no matter how the ballot language is worded there will always be those who fear the wording itself favors passage or defeat.” *Kainen v. Harris*, 769 So. 2d 1029, 1033 (Fla. 2000) (Anstead, J., concurring).

CONCLUSION

The Court is respectfully requested to approve the Proposed Amendment for placement on the ballot by holding that it meets the one subject requirement of the Constitution and the ballot title and summary requirements of section 101.161(1).

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I hereby certify that a true and correct copy of this initial brief was hand-delivered on July 18, 2004 to:

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I hereby certify that this brief was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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