

IN THE SUPREME COURT OF FLORIDA  
CASE NO. SC05-1564

ADVISORY OPINION TO THE  
ATTORNEY GENERAL

RE: EXTENDING EXISTING SALES TAX  
TO NON-TAXED SERVICES WHERE  
EXCLUSION FAILS TO SERVE  
PUBLIC PURPOSE

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**SUPPLEMENTAL REPLY BRIEF OF THE SPONSOR  
FLORIDIANS AGAINST INEQUITIES IN RATES**

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## SUMMARY OF THE ARGUMENT

Certain issues arising from the placement of the proposed amendment on the 2008 general election ballot are collateral to the limited jurisdiction of the Court in these special proceedings. The decision in Advisory Opinion to the Attorney General Re: Florida Locally Approved Gaming, 656 So. 2d 1259 (Fla. 1995) (hereinafter "FLAG Amendment") does not expand such limited jurisdiction to include the date-specific issue in these proceedings. In FLAG Amendment, the Attorney General had raised the lack of the requisite signatures in his petition and the Governor had requested an advisory opinion on the date-certain issue in his brief under his constitutional power provided in Section 1, Article IV, Florida Constitution.

### ARGUMENT IN BRIEF

#### **I. THE JURISDICTION OF THE COURT TO RENDER AN ADVISORY OPINION UNDER ARTICLE V, SECTION 3(10), FLORIDA CONSTITUTION, IS LIMITED BY THE SCOPE OF THE REQUEST BY THE ATTORNEY GENERAL SUBMITTED UNDER ARTICLE IV, SECTION 10, FLORIDA CONSTITUTION, AS DIRECTED BY GENERAL LAW.**

The Parties in Opposition argue that the only "reasonable reading" of FLAG Amendment decision is "that the date-specific issue is directly relevant to the Court's jurisdiction." Opposition Brief, pg. 3. Based on this "reasonable reading," the Parties in Opposition assert that the FAIR argument in its Supplemental Amicus Brief is "meritless". Opposition Brief, pg. 3. The Sponsor asserts two points in reply.

First, the Attorney General in FLAG Amendment included in his petition framing the scope of his request for an advisory opinion the failure of FLAG to obtain the requisite number of verified signatures for placement on the November 1994 ballot.

Second, the Governor independently has the power under Section 1, Article IV, Florida Constitution, to "request in writing the opinion of the justices of the supreme court as to their interpretation of any portion of this constitution upon any question affecting the governor's executive power and duties." In FLAG Amendment, the Governor made such request in his Brief in Opposition. 656 So. 2d at 1261. Because the issue was raised by the governor and not by interested parties, the fact that the court addressed the governor's inquiry does not mean that the court expanded its scope of review for initiative petitions where the governor did not participate.

As to the effect of the date-certain language on the ballot title and summary the Court in FLAG Amendment held:

The fact that the Legislature will not be able to exercise that authority by the specific date noted in the proposed amendment does not, in our view, void the amendment. We conclude that, because the summary includes language that clearly informs the voter that gaming will be licensed, regulated, and taxed by legislative enactment, the summary is not misleading on this issue.

656 So. 2nd 1261.

Likewise, the fact that the Legislature would not be able to perform its mandated review of non-taxed services by the dates certain provided in the proposed amendment does not render the ballot title and summary misleading. The summary includes language

that clearly informs the reader that the primary purpose of the initiative is to direct the Legislature to conduct a review of all non-taxed services and make specific determinations as to whether the sales tax exclusion advances or provides a public purpose.

In addition to its consideration of the single-subject requirement and whether the ballot title and summary was misleading, the Court in response to the request of the Governor for an advisory opinion on the date-certain impossibly held the following in a separate part of the opinion in FLAG Amendment designated as "Deadline for Legislative Implementation."

We find that, in the instant case, this deadline for legislative action does not void the proposal because we conclude that it does not affect the substantive provisions of the proposed amendment requiring the Legislature to implement the proposal. The intent is clear that the Legislature must act within a reasonable time. If the Legislature does not act there is a remedy. See *Dade County Classroom Teachers Ass'n v. Legislature*, 269 So. 2d 684 (Fla. 1972). We find that, if adopted, this proposed amendment requires the Legislature to implement this provision within a reasonable time after its adoption.

656 So. 2d at 1264.

The constitutional right of the Governor to expand the scope of an advisory opinion on an initiative does not alter the limited jurisdiction of the Court to render an advisory opinion on an initiative on the issues framed by the Attorney General in these special proceedings. Nothing in FLAG Amendment alters the limited jurisdiction of the Court in these special proceedings. While the holding of the Court in FLAG Amendment may assist FAIR in any collateral proceeding, it does not elevate the status of the Parties

in Opposition in their attempt to expand the limited jurisdiction and scope of review of the Court in these special proceedings.

### **CONCLUSION**

The date-certain issue raised by the Parties in Opposition are collateral issues beyond the jurisdiction of the Court in these special proceedings. As acknowledged by the Parties in Opposition, the constitutional requirement for receiving an advisory opinion on the technical requirements of the initiative and fundamental fairness demand that an advisory opinion be issued.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and accurate copy of the foregoing supplemental brief has been furnished by United States Mail with adequate postage to the Office of the Attorney General, The Capitol, Tallahassee, Florida 32399; Cynthia S. Tunnicliff and Howard E. Adams, Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., Post Office Box 10095, Tallahassee, Florida 32302; and Victoria L. Weber, Dan R. Stengle and David L. Powell, Hopping Green & Sams, P.A., Post Office Box 6526, Tallahassee, Florida 32314, this \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
David G. Tucker



## **CERTIFICATE OF FONT**

**I HEREBY CERTIFY** that this brief is presented in Times New Roman font, 14 point type, a font that is proportionately spaced as required by the Florida Rules of Appellate Procedure.

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David G. Tucker

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