Supreme Court of Florida

Nos. SC08-1153 & SC08-1239

ADVISORY OPINION TO THE ATTORNEY GENERAL RE: 1.35% PROPERTY TAX CAP, UNLESS VOTER APPROVED.

[January 30, 2009]

PER CURIAM.

The Attorney General of Florida has requested this Court's opinion as to the validity of an initiative petition circulated pursuant to article XI, section 3 of the Florida Constitution. We have jurisdiction. See art. IV, § 10, art. V, § 3(b)(10), Fla. Const. For the reasons expressed below, we conclude that the proposed amendment is exempt from the single-subject requirement of article XI, section 3 of the Florida Constitution, but the ballot summary is misleading and does not comply with section 101.161(1), Florida Statutes (2007), and should not be included on the ballot.

I. FACTS

Cut Property Taxes Now, Inc. (CPTN) sponsored an initiative petition to amend the Florida Constitution pursuant to the initiative petition process contained

in article XI, section 3 of the Florida Constitution. The initiative petition seeks to amend the Florida Constitution to establish a 1.35% property tax cap, unless a greater percentage is approved by voters. After the petition was filed with the Secretary of State, the Secretary advised the Attorney General that the initiative petition met the registration, submission, and signature criteria set forth in section 15.21, Florida Statutes (2007). In accordance with the provisions of article IV, section 10 of the Florida Constitution, and section 16.061, Florida Statutes (2007), the Attorney General petitioned this Court for a written opinion as to whether the proposed amendment complies with the single-subject requirement of article XI, section 3 of the Florida Constitution and as to whether the ballot title and summary of the proposed constitutional amendment comply with section 101.161(1), Florida Statutes (2007).

The full text of the proposed amendment reads as follows:

> Article VII, Section 9 of the State Constitution is amended by adding a new Paragraph (c) to read:
>
> ARTICLE VII FINANCE AND TAXATION
> Section 9. Local taxes.—
>
> (c) Notwithstanding any other provision contained in this Constitution, the maximum amount of all ad valorem taxes collected by counties, school districts, municipalities, and special districts on any parcel of real property shall not, when combined, exceed 1.35% of the parcel's highest taxable value. The term "taxable value" refers to the value of real property to which millage rates are applied. The Legislature shall, by general law, provide for the distribution of tax revenues derived from parcels for which the combined ad valorem tax

> levies exceed 1.35% of the parcel's highest taxable value. This subsection does not apply to ad valorem taxes levied for the payment of bonds issued pursuant to Section 12 of this Article or levied for periods not longer than two years when authorized by a vote of the electors.

The ballot title for the proposed amendment is "1.35% property tax cap, unless voter approved." The ballot summary for the proposed amendment states:

> Provides that the property tax on any parcel of real property shall never exceed 1.35% of the highest taxable value of the property. This property tax limit shall apply to all property taxes except property taxes approved by voters. Distribution of revenue from parcels that have reached the 1.35% limit shall be determined by general law. Does not amend Save Our Homes, the Homestead Exemption, or any other exemption.

In accordance with the requirements of section 100.371, Florida Statutes (2007), the Financial Impact Estimating Conference transmitted its financial impact statement (FIS) with respect to the initiative to the Attorney General. The Attorney General also petitioned this Court for an advisory opinion as to whether the FIS complies with the requirements of article XI, section 5, subsection (b) of the Florida Constitution and section 100.371, Florida Statutes (2007).

II. GOVERNING LAW

Article XI, section 3 of the Florida Constitution gives Florida citizens the power to propose a revision or amendment to the constitution through the initiative process. Article IV, section 10 requires the Attorney General to request an opinion of this Court as to the validity of any initiative petition circulated pursuant to

article XI, section 3. In turn, article V, section 3, subsection (b)(10) of the Florida Constitution requires this Court to render that advisory opinion. The Court's inquiry in such cases is limited to two issues: (1) whether the amendment violates the single-subject requirement of article XI, section 3 of the Florida Constitution, and (2) whether the ballot title and summary violate the requirements of section 101.161(1), Florida Statutes (2007). See, e.g., Advisory Op. to Att'y Gen. re Funding of Embryonic Stem Cell Research, 959 So. 2d 195, 197 (Fla. 2007); Advisory Op. to Att'y Gen. re Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans, 902 So. 2d 763, 765 (Fla. 2005).

In addressing these two issues, the Court's inquiry is governed by several general principles. First, the Court will not address the merits or wisdom of the proposed amendment. Id. at 891. Second, "[t]he Court must act with extreme care, caution, and restraint before it removes a constitutional amendment from the vote of the people." Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982). Specifically, where citizen initiatives are concerned, "[the] Court has no authority to inject itself in the process, unless the laws governing the process have been 'clearly and conclusively' violated." Advisory Op. to Att'y Gen. re Right to Treatment & Rehab. for Non-Violent Drug Offenses, 818 So. 2d 491, 498-99 (Fla. 2002); see also Advisory Op. to Att'y Gen. re Treating People Differently Based

on Race in Pub. Educ., 778 So. 2d 888, 891 (Fla. 2000) ("In order for the Court to invalidate a proposed amendment, the record must show that the proposal is clearly and conclusively defective . . . .").

A. Single-Subject Rule

Article XI, section 3 of the Florida Constitution provides in relevant part:

> 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.

Art. XI, § 3, Fla. Const. (emphasis added). The single-subject limitation exists because the citizen initiative process does not afford the same opportunity for public hearing and debate that accompanies the other constitutional proposal and drafting processes. See Advisory Op. to the Att'y Gen. re Fish & Wildlife Conservation Comm'n, 705 So. 2d 1351, 1353 (Fla. 1998). The single-subject provision "is a rule of restraint designed to insulate Florida's organic law from precipitous and cataclysmic change." In re Advisory Op. to Att'y Gen.—Save Our Everglades, 636 So. 2d 1336, 1339 (Fla. 1994). The single-subject rule prevents an amendment from (1) engaging in "logrolling" or (2) "substantially altering or performing the functions of multiple aspects of government." Advisory Op. to Att'y Gen. re Fla. Transp. Initiative for Statewide High Speed Monorail, 769 So. 2d 367, 369 (Fla. 2000).

Exemption

The Florida Constitution exempts from the single-subject requirement a citizen's initiative that limits the power of government to raise revenue. See Art. XI, § 3 Fla. Const.[1] The proponent asserts that the proposed initiative is exempt from the single-subject requirement because it directly limits the power of government to raise revenue. In response, the opponent argues that the proposed initiative is not exempt because it substantially affects multiple branches of government and multiple functions performed by different levels of government. In Advisory Op. to the Att'y Gen. re People's Property Rights Amendments, 699 So. 2d 1304 (Fla. 1997) (People's Property Rights Amendments), this Court addressed an initiative petition to amend the Florida Constitution to require voter approval of all new state, local or other taxes. The proponent contended that this initiative came within the exception to the single-subject requirement because it

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1. In Advisory Op. to Att'y Gen. re Tax Limitation, 644 So. 2d 486 (Fla. 1994) (Tax Limitation I), this Court found the initiative petition that dealt with voter approval of new taxes, with property rights, and with the requirement of a two-thirds vote for new constitutionally imposed state fees or taxes legally deficient because it combined the subjects of taxes and fees. See id. at 491. However, this Court found no violation with an initiative creating an exception to the single-subject requirement for initiatives that deal solely with limiting the power of the government to raise revenue. See id. at 496. This initiative was then placed on the ballot and approved by the voters. Subsequently, this Court found that the initiative petition that it rejected in Tax Limitation I, requiring a two-thirds vote for any constitutionally imposed tax or fee, now fell within this exception. See Advisory Op. to Att'y Gen. re Tax Limitation, 673 So. 2d 864, 866 (Fla. 1996) (Tax Limitation II).

was a proposal to limit the government's ability to raise revenue. This Court noted that in order to meet this exception an initiative's focus must involve only methods of revenue raising. See id. at 1310. Therefore, the Court reasoned the exception would not apply to a revenue-limitation initiative if that initiative also substantially changed the powers or functions of more than a single level or branch of government. See id. This Court found that the initiative in People's Property Rights Amendments affected subjects other than methods of revenue raising. This Court also found that the initiative would have a significant impact on the home-rule powers granted to local government in our constitution. See id. (citing Advisory Op. to Att'y Gen. re Tax Limitation, 644 So. 2d 486, 492-93 (Fla. 1994) (Tax Limitation I); Harris v. City of Sarasota, 181 So. 366, 369 (Fla. 1938)). The Court reasoned that because the initiative impacted several branches of government and several levels of government, the initiative did not fall within the exemption to the single-subject rule and that it violated the single-subject rule. See id.

We conclude that the basic premise articulated in the People's Property Rights Amendments case is faulty, and we, therefore, recede from that decision to the extent that it conflicts with our decision here. The very purpose of the exemption to the single-subject requirement is to allow a citizen's initiative limiting the power of government to raise revenue to embrace more than one

subject. The exemption is an implicit recognition of the fact that an amendment limiting the raising of revenue by any one or more entities will of necessity affect other revenue-raising entities. Such initiatives will also of necessity impact the prior statutes, rules, or other authority from which the revenue-raising entity previously derived its taxing authority, i.e., home-rule charters. Thus, article XI, section 3 provides that an initiative that limits the power of government to raise revenue may embrace more than one subject. In People's Property Rights Amendments, we required these type of initiatives to have what article XI, section 3 does not require—a single subject, and we erroneously applied the single-subject provisions to an initiative limiting the government's revenue-raising power. The caselaw used simply was not applicable because the single-subject analysis was not applicable.

We, therefore, hold that the initiative now before us is exempt from the single-subject requirement because it directly limits the power of government to raise revenue. If we were to conclude otherwise, the exemption would be a nullity because these initiatives placing limitations on the raising of revenue will have an impact on other branches of government.

We recognize that the doctrine of stare decisis "counsels us to follow our precedents unless there has been 'a significant change in circumstances after the adoption of the legal rule, or . . . an error in legal analysis.'" Rotemi Realty, Inc. v.

Act Realty Co., Inc., 911 So. 2d 1181, 1188 (Fla. 2005) (quoting Dorsey v. State, 868 So. 2d 1192, 1199 (Fla. 2003)). In Strand v. Escambia County, 992 So. 2d 150 (Fla. 2008), we declined to recede from precedent because we concluded that the presumption in favor of stare decisis was strong. See id. at 159-60. In declining to recede from precedent, we outlined the factors that must be considered and the questions that must be asked:

> (1) Has the prior decision proved unworkable due to reliance on an impractical legal "fiction"? (2) Can the rule of law announced in the decision be reversed without serious injustice to those who have relied on it and without serious disruption in the stability of the law? And (3) have the factual premises underlying the decision changed so drastically as to leave the decision's central holding without legal justification?

992 So. 2d at 159 (quoting North Fla. Women's Health & Counseling Services, Inc. v. State, 866 So. 2d 612, 637 (Fla. 2003).

This case is distinguished from Strand because the factors that favor adherence to precedent are not present here. There is no long-standing reliance on the property rights decision. The opinion was issued in 1997, some eleven years ago, and has not been relied on for the proposition that a revenue-limiting initiative must still comply with the single-subject requirements. Thus, there will be no serious injustice based on reliance on the prior decision, and there will not be a serious disruption in the stability of the law. In addition we have been presented with evidence that the People's Property Rights Amendments decision is

impractical and unworkable because the exception to the exemption as articulated in that decision would leave no room for operation of the exemption.

Therefore, we recede from that portion of the People's Propery Rights Amendments decision holding that initiatives limiting the government's right to raise revenue must comply with the single-subject requirement of article XI, section 3 of the Florida Constitution. We also hold that the initiative before us is exempt from the single-subject requirement pursuant to article XI, section 3 because it is an initiative that limits the power of government to raise revenue.

B. Ballot Title and Summary

When a constitutional amendment is submitted for vote by the electorate, a title and summary of the amendment must appear on the ballot. Section 101.161(1), Florida Statutes, which sets forth the statutory requirements for the title and summary, is a codification of the accuracy requirement implicit in article XI, section 5 of the Florida Constitution. See Advisory Op. to Att'y Gen. re Referenda Required for Adoption & Amendment of Local Gov't Comprehensive Land Use Plans, 902 So. 2d 763, 770 (Fla. 2005). This accuracy requirement in article XI, section 5 functions as a kind of "truth in packaging" law for the ballot. See Armstrong v. Harris, 773 So. 2d 7, 13 (Fla. 2000).

Section 101.161(1), Florida Statutes (2007), provides in relevant part:

> Whenever a constitutional amendment . . . is submitted to the vote of the people, the substance of such amendment . . . shall be printed in

> clear and unambiguous language on the ballot . . . . The wording of the substance of the amendment . . . shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. . . . 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.) This Court has explained that the basic purpose of this provision is "to provide fair notice of the content of the proposed amendment so that the voter will not be misled as to its purpose, and can cast an intelligent and informed ballot." Advisory Op. to Att'y Gen. re Fee on Everglades Sugar Prod., 681 So. 2d 1124, 1127 (Fla. 1996). While the ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, they need not explain every detail or ramification of the proposed amendment. See Carroll v. Firestone, 497 So. 2d 1204, 1206 (Fla. 1986). However, the ballot must give the voter fair notice of the decision he must make. See Askew v. Firestone, 421 So. 2d 151, 155 (Fla. 1982). We have said that the purpose of section 101.161 is to ensure that voters are advised of the amendment's true meaning. In assessing the ballot title and summary, this Court should ask two questions, "[f]irst . . . whether the 'ballot title and summary . . . fairly inform the voter of the chief purpose of the amendment[,] [and] [s]econd . . . 'whether the language of the title and summary, as written, misleads the public.'" Advisory Op. to Att'y Gen. re Additional Homestead Tax Exemption, 880 So. 2d 646, 651-52 (Fla. 2004) (quoting Right to

Treatment & Rehab., 818 So. 2d at 497; Advisory Op. to Att'y Gen. re Right of Citizens to Choose Health Care Providers, 705 So. 2d 563, 566 (Fla. 1998)).

In this case the ballot title for the proposed amendment is "1.35% property tax cap, unless voter approved." The ballot title in this case complies with the technical requirements of section 101.161(1). The ballot summary states:

> Provides that the property tax on any parcel of real property shall never exceed 1.35% of the highest taxable value of the property. This property tax limit shall apply to all property taxes except property taxes approved by voters. Distribution of revenue from parcels that have reached the 1.35% limit shall be determined by general law. Does not amend Save Our Homes, the Homestead Exemption, or any other exemption.

The opponent asserts that the ballot summary of the proposed amendment is misleading. We agree.

Firstly, the ballot summary provides the following exception to the 1.35% cap on ad valorem taxes: "except property taxes approved by voters." The amendment, however, provides for two exceptions, (1) ad valorem taxes levied for the payment of bonds issued pursuant to article VII, section 12; and (2) ad valorem taxes levied for periods not longer than two years when authorized by a vote of the electors. The ballot summary is misleading in two respects. It states that the property tax limits do not apply to property taxes approved by voters but fails to point out that any property taxes approved by voters cannot extend for longer than two years. The summary also does not refer at all to article VII, section 12, nor

does it tell the voter that voter approval is not required for all taxes levied for the payment of bonds under article VII, section 12(b).[2]

Secondly, the ballot summary is misleading because it provides for legislative distribution of taxes when the revenue from parcels <u>have reached</u> the 1.35% cap; however, the amendment provides for legislative distribution when the revenue from parcels exceed the 1.35% cap. Having reached 1.35% is synonymous with being at the point of that percentage, whereas, exceeds means is more than the percentage. Thus, that portion of the summary that implies that the Legislature is being authorized to distribute tax revenues above 1.35% is inconsistent with the language of the amendment. We have said that "[a] ballot summary may be defective if it omits material facts necessary to make the summary not misleading." <u>Advisory Op. to Atty. Gen. re Ltd. Political Terms in Certain Elective Offices</u>, 592 So. 2d 225, 228 (Fla. 1991) (citing <u>Askew</u>, 421 So.

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2. Article VII, section 12 provides:

> **Section 12. Local bonds.**—Counties, school districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds, certificates of indebtedness or any form of tax anticipation certificates, payable from ad valorem taxation and maturing more than twelve months after issuance only:
>
> (a) to finance or refinance capital projects authorized by law and only when approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation; or
>
> <u>(b) to refund outstanding bonds and interest and redemption premium thereon at a lower net average interest cost rate.</u>

(Emphasis added.)

2d at 158 (Ehrlich, J., concurring)). This summary not only omits material facts, it is also misleading because it differs in material ways from the provisions of the amendment itself.

Lastly, we find the ballot summary misleading because it does not inform the voter of the repeal of an existing Florida constitutional provision, specifically article VII, section 9(b).[3] Article VII, section 9(b) provides for the millages that can be assessed by the various local government units, school districts, water management districts, and other special districts. There is nothing in the summary, or indeed the amendment itself, which would put a voter on notice that this constitutional provision is being repealed. It is of particular significance that the terms "mill" and "millage" that are used in article VII, section 9 do not appear in

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3. Article VII, section 9(b), provides in pertinent part:

> (b) Ad valorem taxes, exclusive of taxes levied for the payment of bonds and taxes levied for periods not longer than two years when authorized by vote of the electors who are the owners of freeholds therein not wholly exempt from taxation, shall not be levied in excess of the following millages upon the assessed value of real estate and tangible personal property: for all county purposes, ten mills; for all municipal purposes, ten mills; for all school purposes, ten mills; for water management purposes for the northwest portion of the state lying west of the line between ranges two and three east, 0.05 mill; for water management purposes for the remaining portions of the state, 1.0 mill; and for all other special districts a millage authorized by law approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation. A county furnishing municipal services may, to the extent authorized by law, levy additional taxes within the limits fixed for municipal purposes.

the ballot summary. In Fine v. Firestone, 448 So. 2d 984, 989 (Fla. 1984), we noted that "an initiative proposal should identify the articles or sections of the constitution substantially affected. This is necessary for the public to be able to comprehend the contemplated changes in the constitution." Id. at 989. We further noted that it is important so that the initiative's effect on other unnamed provisions is not left unresolved and open to various interpretations. See id.; see also Tax Limitation I, 644 So. 2d at 490 n.1 ("Identifying an existing section of the constitution that is affected is also important with regard to the clarity requirement of section 101.161."). The ballot summary in this case does not fairly inform the voters of the substance and effect of this amendment. See Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1992) ("The problem, therefore, lies not with what the summary says, but rather with what it does not say.").

C. Financial Impact Statement

The financial impact statement (FIS) prepared by the Financial Impact Estimating Conference reads as follows:

> The amendment will reduce annual total school, county, municipal and special district property tax revenues by at least $6 billion, or 17%, based on 2007 (non-school) and 2008 (school) tax rates. Legislative implementation will likely produce greater reductions and will determine how each type and unit of local government is affected, but these impacts cannot be determined without legislative action. Local government expenditures will be reduced unless replacement revenues are enacted.

This Court's review of financial impact statements is narrow. We limit our review solely to the issue of whether the statement is clear and unambiguous, consists of no more than seventy-five words, and is limited to addressing the estimated increase or decrease in any revenue or costs to state or local governments. See Advisory Opinion to Attorney Gen. re Funding of Embryonic Stem Cell Research, 959 So. 2d 195, 202 (Fla. 2007). The FIS in this case is seventy-one words. In addition the FIS is clear and unambiguous because it informs the voter in plain language that the amendment will reduce local government expenditures and annual total school, county, municipal, and special district property tax revenues. The FIS also articulates with precision the estimated cost of the amendment. Specifically, the FIS estimates that the amendment will reduce annual total school, county, municipal, and special district property tax revenues by at least $6 billion or 17% based on 2007 and 2008 tax rates. Therefore, the FIS is in accordance with section 100.371(5).

III. CONCLUSION

For the reasons stated, we conclude that the proposed amendment is exempt from the single-subject requirement of article XI, section 3 of the Florida Constitution because it directly limits the power of government to raise revenue, and that the financial impact statement complies with section 100.371, Florida Statutes (2007). However, we find that the ballot summary is misleading and does

not comply with section 101.161(1), Florida Statutes (2007). Accordingly, this proposal should not be included on the ballot.

It is so ordered.

QUINCE, C.J., and WELLS and PARIENTE, JJ., concur.
LEWIS, J., and ANSTEAD, Senior Justice, concur in result only.
CANADY, J., dissents with an opinion, in which POLSTON, J., concurs.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

CANADY, J., dissenting.

I concur in the majority's conclusions that the proposed amendment does not violate the single-subject requirement, that the ballot title is not defective, and that the financial impact statement complies with the statutory requirements. I dissent, however, from the conclusion that the ballot summary is misleading and from the decision to exclude the proposed amendment from the ballot.

As the majority acknowledges, this Court has long recognized that we should not "interfere with the right of the people to vote upon a proposed constitutional amendment absent a showing in the record that the proposal is 'clearly and conclusively defective.'" Weber v. Smathers, 338 So. 2d 819, 821 (Fla. 1976) (quoting Goldner v. Adams, 167 So. 2d 575 (Fla. 1964)). As the majority also acknowledges, "[t]he Court must act with extreme care, caution, and restraint before it removes a constitutional amendment from the vote of the

people." Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982). This highly deferential standard of review and this cautionary injunction should not be treated as empty shibboleths.

Under the clearly-and-conclusively-defective standard of review, there is no basis for concluding that the ballot summary for the proposed amendment is defective. The summary neither fails to "fairly inform the voter of the chief purpose of the amendment" nor "misleads the public" concerning the amendment. Advisory Op. to Att'y. Gen. re Additional Homestead Tax Exemption, 880 So. 2d 646, 651 (Fla. 2004). For the reasons I will explain, none of the grounds relied upon by the majority are persuasive.

The first basis on which the majority concludes that the summary is defective relates to this language in the summary: "except property taxes approved by voters." The majority concludes that this portion of the summary is misleading because it "fails to point out that any property taxes approved by voters cannot extend for longer than two years" and because it "does not refer at all to article VII, section 12 [or] tell the voter that voter approval is not required for all taxes levied for the payment of bonds under article VII, section 12(b)." Majority op. at 12-13. This conclusion does not withstand analysis.

"The seventy-five word limit placed on the ballot summary as required by statute does not lend itself to an explanation of all of a proposed amendment's

details." Advisory Op. to Att'y Gen. re Limited Casinos, 644 So. 2d 71, 75 (Fla. 1994). It is the very nature of a summary that it will not include all of the details of what is being summarized. The details identified by the majority are the very type of details that a summary cannot reasonably be expected to set forth. Here, explaining these ancillary details would expand the summary beyond the seventy-five-word limitation.

The two-year limitation on voter-approved levies exceeding the 1.35% cap is a minor provision within the proposal. A reasonable voter would understand that the approval given for "property taxes approved by voters" would not necessarily be an approval of those taxes in perpetuity. There is nothing misleading about the omission of this detail. See Advisory Op. to Att'y Gen. re Med. Liab. Claimant's Comp. Amendment, 880 So. 2d 675, 679 (Fla. 2004) ("We also note that it is not necessary for the title and summary to explain every detail or ramification of the proposed amendment.").

I cannot accept the notion that the failure to make a specific reference to article VII, section 12—which contains provisions relating to local bonds payable from ad valorem taxation—is of any significance. To how many voters would such a reference have any meaning? The material fact is that an ad valorem tax burden arises under article VII, section 12, only by voter approval. The summary is in no way misleading on this point.

The majority's concern about the provision of article VII, section 12(b), relating to refunding bonds is also unwarranted. The fact is that such bonds may be issued only to refund outstanding bonds "at a lower net average interest cost rate." Art. VII, §12(b), Fla. Const. The issuance of such refunding bonds can only result in a lowering of the burden borne by ad valorem taxpayers for obligations that the voters themselves previously approved. This is the sort of detail that could have no conceivable effect on a voter's decision concerning how to vote on the proposed amendment. The omission of this detail and the other details identified by the majority by no stretch of the imagination renders the summary clearly and conclusively defective.

Next, the majority focuses on the statement in the summary that "[d]istribution of revenue from parcels that have reached the 1.35% limit shall be determined by general law." (Emphasis added.) The majority contends that this statement is inconsistent with the text of the proposed amendment which refers to "the distribution of tax revenues derived from parcels for which combined ad valorem tax levies exceed 1.35% of the parcel's highest taxable value." (Emphasis added.) There is, however, no inconsistency.

This portion of the summary and the corresponding provisions of the proposed amendment address the fact that some parcels of property are subject to aggregate tax assessments that exceed 1.35% of the value of the parcels and that

some method must be employed for adjusting the distribution of the reduced revenues from these parcels—the consequence of the 1.35% tax cap—among the various taxing entities. The reference in the summary to the "[d]istribution of revenue from parcels that have reached the 1.35% limit" can only reasonably be understood as describing the distribution of revenue from parcels that have been subjected to the operation of the 1.35% property tax cap mentioned in the ballot title. The summary, of course, also states that the proposed amendment "[p]rovides that the property tax on any parcel of real property shall never exceed 1.35% of the highest taxable value of the property." The reference in the summary to "[d]istribution of revenue from parcels that have reached the 1.35% limit" must be understood in the context of the preceding statements in the title and summary. When the reference is understood in that context, it is unreasonable to believe that a voter could be misled by the challenged language of the summary.

The majority's contention that the challenged portion of the summary "implies that the Legislature is being authorized to distribute tax revenues <u>above</u> 1.35%" is based on a forced and unreasonable reading of the summary and title. Majority op. at 13 (emphasis added). The text of the summary makes no reference to tax revenues above 1.35% or tax revenues that have reached 1.35%. Instead, the text of the summary refers to "<u>parcels</u> that have reached the 1.35% limit." The summary informs the voters that "revenue from [those] parcels" will be distributed

as "determined by general law." Nothing in the structure of the particular sentence of the summary or in the broader context of the complete summary justifies the implied meaning on which the majority relies. Indeed, the literal meaning and the context both make that implied meaning untenable.[4]

Finally, the majority concludes that the summary is defective because it fails to inform the voters of the repeal of article VII, section 9(b), which establishes millage limitations for the various taxing entities. In support of this conclusion, the majority relies on a statement from Fine v. Firestone, 448 So. 2d 984, 989 (Fla. 1984), that "an initiative proposal should identify the articles or sections of the constitution substantially affected." In Fine, the court ruled that the proposed amendment at issue violated the single-subject requirement. No challenge to the ballot summary was presented. The statement relied on by the majority here referred not to the content of the ballot summary but to the content of the proposed amendment itself. Being unconnected to the Court's holding in Fine that the "proposal contains at least three subjects," the statement is purely dicta. Id. at 992.

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4. It may be that the majority's reading arises from treating the phrase "from parcels" essentially as a parenthetical so that the sentence reads: "Distribution of revenue (from parcels) that have reached the 1.35% limit shall be determined by general law." Aside from the fact that everything in the context precludes such a reading, there is another problem: the reading is ungrammatical, as is quite obvious.

Similarly, the statement cited by the majority from Advisory Op. to Att'y Gen. re Tax Limitation, 644 So. 2d 486, 490 n.1 (Fla. 1994), is dicta.

A ballot summary should not be held clearly and conclusively defective merely because it does not describe an existing provision of the Constitution that will be affected by the proposed amendment. Imposing such a requirement to educate the voters about the constitutional status quo would unduly burden the initiative process. We have recognized that "[t]he voter must be presumed to have a certain amount of common sense and knowledge." Advisory Op. to Att'y Gen. re Tax Limitation, 673 So. 2d 864, 868 (Fla. 1996). We have also stated:

> Under our system of free elections, the voter must acquaint himself with the details of a proposed [ballot measure] together with the pros and cons thereon before he enters the voting booth. If he does not, it is no function of the ballot question to provide him with that needed education.

Advisory Op. to Att'y Gen. re Right to Treatment & Rehabilitation, 818 So. 2d 491, 498 (Fla. 2002) (quoting Metropolitan Dade County v. Shiver, 365 So. 2d 210, 213 (Fla. 3d DCA 1978)). Any reasonably informed voter would understand that the proposed amendment to cap ad valorem taxes would make a substantial change in the constitutional status quo with respect to ad valorem taxes. We should not require that a ballot summary state the obvious. It cannot reasonably be asserted that the summary conceals anything from the voters.

In connection with this point, the majority places particular emphasis on the absence of the terms "mill" and "millage" from the ballot summary. From the absence of those words, the majority apparently believes that the voters will not understand that their tax millage would be affected by the adoption of the proposed amendment. This is not plausible. Surely, any person who understands what the terms "mill" and "millage" mean would understand that the 1.35% property tax cap is equivalent to a property tax cap of 13.5 mills. The use of the technical terms "mill" and "millage" would do absolutely nothing to enhance voter understanding.

In summary, none of the "defects" relied on by the majority are in fact defects. First, the majority challenges nothing more than the absence of ancillary details. Second, the majority reads an implication into the summary without any warrant for doing so. Third, the majority finds fault with the summary's failure to state the obvious.

"Sovereignty resides in the people and the electors have a right to approve or reject a proposed amendment to the organic law of the State, limited only by those instances where there is an entire failure to comply with a plain and essential requirement of [the law]." Pope v. Gray, 104 So. 2d 841, 842 (Fla. 1958). "The right of Floridians to decide whether to accept or reject a change of their own making in their own organic law is paramount." Treatment & Rehabilitation, 818 So. 2d at 498.

Because there is no defect in the ballot summary—much less a defect that is clearly and conclusively established—I dissent from the majority's decision to prevent the people of Florida from voting on this proposed amendment to their Constitution.

POLSTON, J., concurs.

Two Cases:

Original Proceeding – Advisory Opinion – Attorney General

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