

**IN THE SUPREME COURT
STATE OF FLORIDA**

ANDY FORD, ET AL.)
) Case No:SC08-1529
)
 Petitioners,) L.T. No(s) 2008- CA-1905, 1D08-3934
)
 vs.)
)
 KURT BROWNING, ETC., ET AL.,)
)
 Respondents)
 _____)

**ANSWER BRIEF OF TAXATION AND BUDGET REFORM
COMMISSION CHAIR ALLAN BENSE AND OTHER MEMBERS,
INTERVENOR RESPONDENTS
ON APPEAL FROM THE CIRCUIT COURT OF SECOND JUDICIAL CIRCUIT**

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Intervenors' Statement of the Case

Intervenors, the Honorable Chair Allan Bense; William (Greg) Gregory Turbeville; Patricia Levesque; Richard Corcoran; Susan Story; Mike Hogan; Nancy J. Riley; Kenneth (Ken) Wilkinson, are all members of the current Taxation and Budget Reform Commission (TBRC). As members of the TBRC they collectively exercised their constitutional authority to place these two proposed constitutional amendments, among others, upon the ballot. These members intervened out of a continuing obligation and duty to ensure that the TBRC's once in a generation labor was not in vain, and that Floridians, whether proponents or opponents, will not be denied the opportunity to vote on the proposed amendments.

The TBRC passed, by supermajority vote, both of these proposed amendments no later than April 25, 2008. On June 13, 2008, Petitioners filed an action challenging Proposed Amendments Seven and Nine as being outside of the TBRC's scope of authority, and challenging Proposed Amendment Nine's ballot summary and title as being misleading. On August 4, 2008, the trial court entered a final order determining that both of these proposed amendments were within the constitutional authority of the TBRC, and that Proposed Amendment Nine's ballot summary and title was not misleading. Petitioners then filed the instant appeal on August 8, 2008,

which appeal was certified to this Court for immediate resolution.

Summary of the Argument¹

The TBRC has broad authority to propose constitutional amendments dealing with tax and budget matters. Petitioners' urged interpretation of the TBRC's authority to the contrary contradicts not only the plain text of the Constitution, historical practice and the consistent TBRC interpretation of its scope of authority, but it is a contextually unreasonable interpretation.

The Constitution provides that the TBRC shall, among other things, "examine constitutional limitations on taxation and expenditures at the state and local level." Art. XI, §(6) (d) Fla. Const. The TBRC reviewed these limitations and proposed Amendments Seven and Nine to remove, modify or create constitutional limitations on expenditures at the state and local level. Proposed Amendment Seven removes constitutional limitations on expenditures at the state and local levels, and Proposed Amendment Nine removes a constitutional limitation on educational expenditures and imposes a constitutional limitation on educational expenditures on administrative expenses. Both amendments are within the scope of the TBRC's constitutional authority to propose constitutional amendments dealing with

¹ The TBRC Members adopt the arguments of all Respondents.

tax and budgetary matters.

The ballot summary and title for Proposed Amendment Nine is not misleading. The Petitioners did not even argue in their filing below that the summary was misleading; they argued that the title was misleading, and disagreed that the standard set by this Court was that the ballot title and summary must be read together. (R.-I 43). The ballot title and summary give fair notice of the main purposes of Proposed Amendment Nine and are not by any means clearly and conclusively defective.

This Court should therefore affirm the trial court's ruling and allow the adoption of these proposed amendments to be resolved by the voters at the ballot box.

Standard of Review for Arguments I&II

This Court's review is *de novo*, for this appeal addresses a matter of law. This Court has held that that great deference is due the Legislature when reviewing the constitutionality of its acts. The legal standard has been expressed as

[w]hen a legislative enactment is challenged the court should be liberal in its interpretation; every doubt should be resolved in favor of the constitutionality of the law, and the law should not be held invalid unless clearly unconstitutional beyond a reasonable doubt.

Taylor v. Dorsey, 19 So. 2d 876, 882 (Fla. 1944) (citations omitted). While the TBRC is not the Legislature, it is a constitutionally created deliberative body, and its acts should be afforded at least the same, if not greater deference. No TBRC proposal ever goes before the voters without the approval of the supermajority of its membership. Art. XI, §6 (c) Fla. Const. And, of course, no proposal ever becomes law unless it is supported by at least 60 percent of voters. Art. XI, §5 (e) Fla. Const. Greater deference would be suggested since the TBRC meets only once every 20 years, and has no opportunity to revisit any proposed constitutional amendments, unlike the Legislature. See, Smith v. American Airlines, 606 So. 2d 618, 621 (Fla. 1992) (noting reluctance to remove a TBRC-proposed amendment “from a vote of the public,” even when the TBRC met every ten years).

Deference is also given to a contemporaneous agency interpretation of a statute (or in this case a constitutional provision) over which the agency has jurisdiction. PW. Ventures , Inc. v. Nichols, 533 So. 2d 281, 283(Fla. 1988) (noting it is well established that contemporaneous construction by an agency charged with interpretation and enforcement is entitled to great weight). See also Stuart v. Laird, 5 U.S. (1 Cranch) 299, 309 (1803) (noting historical meaning and practice regarding constitutional provision can be of great weight).

Argument

I

THE TBRC HAS BROAD AUTHORITY TO PROPOSE CONSTITUTIONAL AMENDMENTS THAT ADDRESS TAXATION AND BUDGETARY MATTERS, INCLUDING THE AUTHORITY TO PROPOSE AMENDMENTS THAT ADDRESS “CONSTITUTIONAL LIMITATIONS ON TAXATION AND EXPENDITURES AT THE STATE AND LOCAL LEVEL,” BASED ON THE LANGUAGE OF ARTICLE XI, § 6. THIS BROAD AUTHORITY IS ALSO IN ACCORD WITH THE TBRC’S HISTORICAL UNDERSTANDING AND PRACTICE

A fair reading of article XI, section 6 of the Florida Constitution establishes that the TBRC has broad authority to propose constitutional amendments dealing with tax and budget matters within the state of Florida. Not only does the plain language of the constitution lead to this conclusion, but history and practice do as well.

A. THE PLAIN LANGUAGE OF
ARTICLE XI, SECTION 6 SUPPORTS A
NATURALLY BROAD INTERPRETATION
OF THE TBRC'S AUTHORITY.

Petitioners note at the beginning of their argument, (IB at 14), that this case is not about the merits of the proposed constitutional amendments, and that is correct, particularly when one of the consequences of the proposed amendments would be to change precedent set by prior judicial cases.² However, for the Petitioners, this case has always been first and foremost about the substance of the proposed amendments. As they stated below in asking the trial court to strike these provisions from the ballot, their interest in having them struck was so that they would not have to spend money on a campaign to defeat these proposals at the ballot box. (R-I 21). The desire to

² See e.g. Justice Powell's concurrence in footnote 2 of Goldwater v. Carter, 100 S. Ct. 533, 536 (1979).

The proposed constitutional amendment at issue in *Coleman* would have overruled decisions of this Court. . . . Thus, judicial review of the legitimacy of a State's ratification would have compelled this Court to oversee the very constitutional process used to reverse Supreme Court decisions. In such circumstances it may be entirely appropriate for the Judicial Branch of Government to step aside. See Scharpf, Judicial Review and The Political Question: A Functional Analysis, 75 Yale L.J. 517, 589 (1966).

defeat the substance of these proposed amendments appears to significantly color the way Petitioners propose to interpret the scope of the TBRC's constitutional authority, and leads to an unnatural and strained reading with unexpected consequences.

Under a natural reading of the TBRC's constitutional authority, it appears to encompass all tax and budgetary matters- hence the title of "Taxation and Budget Reform Commission." When the voters adopted the constitutional amendment that initially established the TBRC, the summary they saw when they voted was

Transfers authority to review matters relating to state and local taxation and the budgetary process from the Constitution Revision Commission to a newly created Taxation and Budget Reform Commission to be established in 1990 and every 10 years thereafter. The new commission will issue a report and it may propose statutory changes to the Legislature, and submit proposed constitutional changes to the voters.³

This summary appears to treat the matters for review as coextensive with the matters to be acted upon. While what the people intended when they voted for a provision is relevant in its interpretation, Plante v. Smathers, 372 So. 2d 933, 936 (Fla.1979), in interpreting a constitutional provision one must first look at the text of the constitutional provision itself and attempt to

³ Ballot Summary at (<http://election.dos.state.fl.us/initiatives/fulltext/pdf/10-51.pdf>). Last visited 8/21/2008.

interpret it in such a way that it is consistent within itself and gives effect to every provision according to its reasonable interpretation. Physicians Healthcare Plans v. Pfeifler, 846 So. 2d 1129, 1134 (Fla. 2003) (noting that "constitutional provisions must be read 'to form [a] congruous whole so as to not render any language superfluous.'" (citation omitted). When the textual interpretation alone is enough; one need look no further unless the provision is ambiguous. Florida Society of Ophthalmology v. Florida Optometric Association, 489 So. 2d 1118, 119 (Fla. 1986).

Looking at the text and context of article XI, section 6, it is difficult to understand how Petitioners have an argument that addressing constitutional limitations on expenditures such as those addressed by Seven and Nine are outside the constitutional purview of the TBRC. This is true under any standard, and is especially true when considering that the TBRC should be shown great deference. This Court has held that great deference is due the Legislature when reviewing the constitutionality of its acts. The legal standard has been expressed as

[w]hen a legislative enactment is challenged the court should be liberal in its interpretation; every doubt should be resolved in favor of the constitutionality of the law, and the law should not be held invalid unless clearly unconstitutional beyond a reasonable doubt.

Taylor v. Dorsey, 19 So. 2d 876, 882 (Fla. 1944) (citations omitted). While the TBRC is not the Legislature, it is a constitutionally created deliberative body, and its acts should be afforded at least the same, if not greater deference.

The Constitution provides:

SECTION 6. Taxation and budget reform commission.--

(a) Beginning in 2007 and each twentieth year thereafter, there shall be established a taxation and budget reform commission composed of the following members:

(1) eleven members selected by the governor, none of whom shall be a member of the legislature at the time of appointment.

(2) seven members selected by the speaker of the house of representatives and seven members selected by the president of the senate, none of whom shall be a member of the legislature at the time of appointment.

(3) four non-voting ex officio members, all of whom shall be members of the legislature at the time of appointment. Two of these members, one of whom shall be a member of the minority party in the house of representatives, shall be selected by the speaker of the house of representatives, and two of these members, one of whom shall be a member of the minority party in the senate, shall be selected by the president of the senate.

(b) Vacancies in the membership of the commission shall be filled in the same manner as the original appointments.

(c) At its initial meeting, the members of the commission shall elect a member who is not a member of the legislature to serve as chair and the commission shall adopt its rules of procedure. Thereafter, the commission shall convene at the call of the chair. An affirmative vote of two thirds of the full commission shall be necessary for any revision of this constitution or any part of it to be proposed by the commission.

(d) **The commission shall examine the state budgetary process**, the revenue needs and expenditure processes of the state, the appropriateness of the tax structure of the state, and governmental productivity and efficiency; review policy as it relates to the ability of state and local government to tax and adequately fund governmental operations and capital facilities required to meet the state's needs during the next twenty year period; determine methods favored by the citizens of the state to fund the needs of the state, including alternative methods for raising sufficient revenues for the needs of the state; determine measures that could be instituted to effectively gather funds from existing tax sources; **examine constitutional limitations on taxation and expenditures at the state and local level**; and review the state's comprehensive planning, budgeting and needs assessment processes to determine whether the resulting information adequately supports a strategic decisionmaking [sic] process.

(e) The commission shall hold public hearings as it deems necessary to carry out its responsibilities under this section. The commission shall issue a report of the results of the review carried out, and propose to the legislature any recommended statutory changes related to the taxation or budgetary laws of the state. Not later than one

hundred eighty days prior to the general election in the second year following the year in which the commission is established, the **commission shall file with the custodian of state records its proposal, if any, of a revision of this constitution or any part of it dealing with taxation or the state budgetary process.** [emphasis added]

Reading this constitutional provision as a unitary whole, there is a natural reading that gives effect and meaning to all of section 6. Subsections (a) and (b) establish the time for the convening of the TBRC and the membership of the TBRC. Subsection (c) sets out what the TBRC shall do at its first organizational meeting and states that it requires a two-thirds vote to put any constitutional provision on the ballot. Subsection (d) discusses matters that are within the purview of the tax and budget reform commission - specific matters the TBRC must examine. While subsection (d) does not say that these are the only matters within the purview of the tax and budget reform commission, it clearly says that these matters must be reviewed and examined. Subsection (e) then deals with what happens after the commission has considered these matters; after all, this is not a “study” commission, but a “reform” commission. Subsection (e) addresses a report, and specifies that the two options for reform are proposed legislative actions and proposed constitutional revisions.

Since one is to look at the constitutional provision in its entirety, it would seem to follow that the scope of the matters the TBRC is to review and examine, at a minimum, is encompassed within the matters that the TBRC is to report on, and for which it is authorized to propose either legislative solutions or constitutional provisions. The only additional requirement for a proposed constitutional amendment is the supermajority vote. There is no indication in the text of article XI, section 6 that anything but a unitary purpose was ever intended for this constitutional provision. No hint can be found that the matters the TBRC is instructed to review and examine in (d) are disconnected from the matters that the TBRC can propose for constitutional amendment, if the members muster the required supermajority vote.

If one looks at (d), there is nothing within (d) that is not reasonably encompassed within the action items in (e) relating to taxation and budgetary process. The terms taxation and budgetary process are generically broad enough to encompass all of the matters referred to in (d), as evinced by the dictionary definition.⁴ And, contrary to Petitioner's allegations, there is no evidence from the text of (e) that the scope of matters that can be proposed

⁴ See e.g., American Heritage Dictionary, 4th Edition (2000), defining tax as a "contribution for the support of a government. . .," and budget as "an itemized summary of estimated or intended expenditures. . ."

to the Legislature is broader than the scope of matters that can be proposed as a constitutional amendment.

Petitioners try to draw a distinction between the use of “budgetary laws” in (e) and the use of the phrase “budgetary process” in the same section. (IB at 19, fn. 4). Yet, in context, there is no indication that the use of the different terms is a reflection of a difference in scope. “Laws” are referred to when discussing proposals made to the Legislature. Since what the Legislature does is pass “laws,” it seems for convenience that (e) refers to “laws.” Of course, it is true that the Legislature also has the ability to propose constitutional amendments by joint resolution. Since the TBRC has its own method of proposing constitutional amendments, it is certainly not as likely to be proposing constitutional amendments to the Legislature.

Yet, Petitioners contend that the use of the term “laws” is an attempt to distinguish between the “broad” suggestions that can be made to the Legislature and the “narrow” proposals that can be proposed for the Constitution. (IB at 19.) The better interpretation is that “budgetary laws” is actually narrower than “budgetary process:” by definition, the modification of existing constitutional provisions is beyond the scope of budgetary laws.

This leads into the next reason why Petitioners’ proposed interpretation of the scope of the TBRC’s authority is not only unreasonable,

but leads to an absurd result. Petitioners note that this case is not about the TBRC's authority to propose constitutional amendments dealing with taxation, which is mostly correct.⁵ (IB at 18). However, the way the TBRC's authority to address taxes is spelled out in the constitution is relevant in analyzing the scope of the TBRC's authority. It has great bearing upon whether the Petitioners' purported interpretation of the TBRC's scope of authority is a reasonable interpretation of the constitutional text.

Within subsection (d), among many other directions, is the direction to the TBRC that they "shall examine constitutional limitations on taxation and expenditures at the state and local level." Art. XI, § 6 (d). This is actually the only provision within section (d) that explicitly references "constitutional" limitations, although constitutional considerations are implicit in some of the other matters to be reviewed. The trial court held that following Petitioner's suggested interpretation of the TBRC's authority would render this provision in (d) "useless" and "superfluous." (R.-IV 681). This was so because the TBRC was tasked to specifically review these exemptions, exemptions that are constitutional in nature. By definition therefore, these are matters that are only able to be addressed

⁵ Respondents would note that the FCC Respondents have made a valid argument that Article 1, section 3 has tax implications.(FCC AB at 39).

constitutionally. It would seem an unnatural process to explicitly require this examination, and then require the TBRC to do nothing but suggest that someone else should resolve these issues.

Petitioners only real response to this is that, although the TBRC cannot propose constitutional amendments to deal with a matter that is by definition constitutional, it can always tell the other actors like the Legislature or the CRC that something needs a constitutional solution.⁶ (IB at 23-24). This result cannot reasonably be what was intended by the voters. The TBRC members, charged with reform, meet once every 20 years and are specifically told to examine constitutional provisions. Yet, after all this, they can do nothing more than any private citizen in his individual capacity, and are limited to reporting problems to others?

This proposed interpretation breaks down even further when the clause in (d) is looked at through the “tax” scope of authority lens. The clause also directs the TBRC to look at constitutional limitations on taxation at the state and local level. Under Petitioner’s logical interpretation, the

⁶ The Petitioners attempt to suggest as a secondary position that even if this language means that the TBRC can propose to change constitutional limitations on expenditures, it doesn’t mean they could propose to change any limitations, but must be limited to “structural or procedural” limitations. (IB at 24). While this gloss is not supported by the language of (d), the proposed amendments deal with categorical and thereby structural limitations.

TBRC is capable of proposing constitutional limitations or modifications of constitutional limitations on state or local taxation. Yet, the TBRC can do nothing about constitutional limitations on state and local expenditures. To have such a different outcome for TBRC when interpreting parallel provisions in the same clause seems patently unreasonable.

And, if this logic is taken to the next level, the real difficulties with this interpretation are highlighted. Suppose that the TBRC proposes a new tax, which Petitioners would appear to concede is within the TBRC's authority. Is the TBRC then limited from proposing how that tax shall be expended, which would be a constitutional limitation on expenditures? For example, could an income tax (purely hypothetical!) be imposed, but only for the benefit of schools? Could the income tax be limited to funding school construction or maybe teacher salaries? Could employees of not-for-profit entities, including religious entities, be exempted from such a tax?

Petitioners' logic would seem to say that such amendments are not permitted, because the amendments deal with constitutional limitations on expenditures. Yet many amendments dealing with taxes specify how tax revenues shall be expended. Such a conclusion would be further contradicted by two of the 1992 amendments cited by the Petitioner as being within the TBRC's authority. (IB. at 32). In both Amendment 4 and

Amendment 6, the TBRC included provisions that clearly affected substantive expenditure of funds. Specifically, Amendment 4 included a separate provision revising article XII, section 9, relaxing the constitutional limitation on state capital outlay funds, and allowing them to be used for "the purpose of maintaining, restoring, or repairing, the existing public educational facilities."⁷ According to Petitioners strained interpretation of (e), this provision, which clearly revises the authority of local school boards in regard to what they could spend capital outlay funds on, would have rendered the entire proposal unconstitutional.

Similarly, in Amendment 6, the TBRC provided that cities and counties could levy a one cents sales tax for the purpose of funding local government services.⁸ Again, this is a constitutional limitation on expenditures. And, in Proposed Amendment Five, proposed by the TBRC for 2008, the TBRC has also specifically included a provision that acts as a constitutional limitation on expenditures, requiring expenditures to be used to hold the public school system harmless.⁹

⁷ (<http://election.dos.state.fl.us/initiatives/fulltext/pdf/12-1.pdf>). Last visited 8/21/2008.

⁸ (<http://election.dos.state.fl.us/initiatives/fulltext/pdf/12-2.pdf>). Last visited 8/21/2008.

⁹ (<http://election.dos.state.fl.us/initiatives/fulltext/pdf/12-6.pdf>). Last visited 8/21/2008.

All three of the above referenced amendments involved revisions to the constitution specifically related to expenditures. The first two have been cited by Petitioners as being within the TBRC's authority and the third is currently the subject of an appeal before this Court, but not on the question of the TBRC's authority under subsection (e).

As is evident from the above discussion, constitutional amendments on taxation are often included with provisions that are constitutional limitations on expenditures. In addressing the expenditure of capital outlay funds, Amendment 4 did precisely what the challenged amendments in this case propose to do. The fact that this provision also dealt with tax issues should be constitutionally irrelevant. A conclusion that the TBRC is barred from proposing constitutional amendments that deal with limitations on state and local expenditures is contradicted by the above examples. Proposing that the TBRC cannot adopt amendments addressing constitutional limitations on state and local expenditures is an absurd interpretation. Constitutional provisions are not to be subjected to absurd interpretations if reasonable interpretations are available. Plante, 372 So. 2d at 936. The better interpretation is that the TBRC can propose constitutional amendments addressing constitutional limitations on both state and local taxation and limitations on expenditures.

B. THE HISTORICAL
UNDERSTANDING OF THE TBRC'S SCOPE
OF AUTHORITY AND THE CONSISTENT
INTERPRETATION OF THIS AUTHORITY
BY THE TBRC SUPPORTS A BROAD
SCOPE OF AUTHORITY ON TAX AND
BUDGET MATTERS.

There is no need to consider the history of the constitutional provision establishing the TBRC. The language of the constitutional provision itself, upon a fair, contextual reading, establishes the scope of the TBRC's authority. The Secretary of State has done a comprehensive review of the TBRC history in his brief, which there is no need to duplicate here. However, to the extent one looks at the history, it is consistent with a broad understanding of the TBRC's authority, and understanding that would encompass the proposed amendments challenged in this action.

When the Legislative proposal to establish the TBRC, HJR 1616 (1988), was discussed on the House floor, it was explained by Representative Simon as giving "jurisdiction over matters pertaining to taxation, budget and governmental expenditures"(R-I-191). It is difficult to be much broader than that. When the first TBRC convened, it adopted a rule that established its primary role and the scope of its ambit.

1.005 - Functions and Duties.¹⁰ The primary role

¹⁰ Note that this rule was unchanged in substance from TBRC 1 to TBRC 2. (R-I-199).

of the Commission shall be to recommend statutory and constitutional changes dealing with taxation and the state budgetary process. "Taxation" means all public revenues and revenue raising laws at every level of government in the state. The "state budgetary process" means the manner in which every level of government in the state expends funds, incurs debt, assesses needs, acquires financial information, and administers its fiscal affairs, and includes the legislative appropriation process and the budgetary practices and principles of all agencies and subdivisions of the state involved in financial planning, determining, implementing, administering, and reviewing governmental programs and services.

This rule references a broad ambit of authority, and was the contemporaneous expression of the scope of the TBRC's authority.

Petitioners now seem to like the definition of budgetary process in this rule, but argue that it would not encompass the proposed amendments. (IB at 29).

Petitioners, however, do not like the portion of this rule that defines the term "state" as not encompassing the entire state but somehow encompassing only the state as opposed to local governmental entities. "State" of course is a term defined most by context. For example, as contrasted with "Federal," "State" has a definite meaning that would encompass all activities within the state. As contrasted with "local," the term may have an entirely different meaning.

Given how dependent "state" is on context for meaning, there is nothing clearly erroneous or contrary to common usage about the TBRC rule establishing authority to review tax and budget matters at the state and every

sub-level within the state. Deference should be given to the TBRC's contemporaneous interpretation of its scope of authority, particularly when the arguments to the contrary lead to absurd results. See Plante at 936.

Finally, seemingly in recognition of the broad scope of the TBRC's authority, we have the history of the CRC requesting that the TBRC's authority be added back to the CRC.¹¹ A Sun-Sentinel editorial at the time of the proposed addition back of authority to the CRC eloquently set out the underlying rationale, and quoted the Florida League of Cities as stating that “[w]hoever is looking at the Constitution is kind of neutered if they can't look at tax and budget issues.”¹²

The constitutional language that established the TBRC can, with a natural reading that gives full force and effect to every provision and without resulting in unreasonable results, be read to establish a broad scope of authority for the TBRC. While there is no need to look beyond the text of the constitution, to the extent that there is any ambiguity, the contemporaneous understanding of the TBRC's authority and the TBRC's history support a broad understanding. Such a broad understanding encompasses the ability to deal, not only with tax policy at the state and

¹¹.([Http://election.dos.state.fl.us/initiatives/initdetail.asp?account=11&sequenm=10](http://election.dos.state.fl.us/initiatives/initdetail.asp?account=11&sequenm=10)) Last visited 8/21/2008.

¹² (R-II 324).

local level, but also with constitutional limitations on state and local expenditures, and therefore Proposed Amendments Seven and Nine.

II

PROPOSED AMENDMENTS SEVEN AND NINE ARE BOTH WITHIN THE TBRC'S CONSTITUTIONAL AUTHORITY TO ACT AS A REFORM COMMISSION AND PROPOSE CONSTITUTIONAL AMENDMENTS THAT ADDRESS CONSTITUTIONAL LIMITATIONS ON EXPENDITURES AT THE STATE AND LOCAL LEVEL.

The TBRC's authority to propose constitutional amendments includes the ability to propose constitutional amendments addressing "constitutional limitations on taxation and expenditures at the state and local level." Any other interpretation is unworkable and leads to absurd results. Petitioners' concern about the TBRC having the ability to address "constitutional limitations on taxation and expenditures at the state and local level," is understandable in that both the proposed amendments Petitioners have challenged address constitutional limitations on expenditures at the state and local level. The other Respondents have addressed this argument in some detail, particularly the Florida Catholic Conference Respondents (FCC AB at 33-44), so there is no need to repeat all of these arguments. However, there are several supporting points that do warrant a brief explanation.

A. PROPOSED AMENDMENT SEVEN ADDRESSES LIMITATIONS ON STATE AND LOCAL BUDGETARY EXPENDITURES, AND

IS WITHIN THE SCOPE OF THE TBRC'S
AUTHORITY.

The text of Proposed Amendment Seven provides:

SECTION 3. Religious freedom.--There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. An individual or entity may not be barred from participating in any public program because of religion. ~~No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.~~

This Court is aware that the existing language in Article I, Section 3 was interpreted by the First District Court of Appeal as a constitutional limitation on expenditures, holding that a scholarship program for the general welfare that allowed both religious and secular entities to participate, was unconstitutional in its entirety because religious entities could receive state funds under the program. Bush v. Holmes, 886 So. 2d 340, 366 (Fla. 1st DCA 2004) aff'd on other grounds, 919 So. 2d 392(Fla 2006). This language had been interpreted as a constitutional limitation on the expenditure of funds by a governmental entity on a general welfare program if religious entities were allowed to participate in the program. Id.

The removal of this language by adopting Proposed Amendment Seven is a direct attempt to change constitutional

limitations on expenditures. There was evidence considered by the TBRC that this language, if not removed, could have a huge negative impact on future budgets, (R-II 309), but the wisdom of this proposal is not a matter that is before the Court.

Petitioners try to draw a distinction between the struck language and the added language, stating that even if the struck language relates to expenditures, the newly added language does not. However, as the Respondent Florida Catholic Conference pointed out in detail in their brief, the added language is directly addressing the same topic as the struck language. (FCC AB at 13). The language that is being struck prohibited programs that allowed religious entities to participate in the program even if it were neutral program of general applicability. The added language explicitly provides that an individual or entity may not be barred from participating in any public program because of religion. In effect, the added language is a constitutional limitation on the Legislature or other governmental entities expending funds on programs that exclude participation by religious persons or entities. This proposed amendment removed the language that allowed religious entities to be discriminated against in governmentally funded programs and affirmatively stated that religious entities may not be discriminated against for participation in

governmentally funded programs. Proposed Amendment Seven, therefore, is all about dealing with constitutional limitations on expenditures, even if it happens to be in the context of constitutional limitations on expenditures because of religious status. As Respondent Florida Catholic Conference has pointed out in greater detail, Petitioners in the past have been heard to urge that programs should not be permitted because it's "all about state money" being sent to the programs. (FCC AB at 15). Proposed Amendment Seven is still all about "the money," in that its about removing the constitutional limitations that allowed discrimination on the basis of religious status when dealing with "the money."

Proposed Amendment Seven deals with changing structural, constitutional, limitations on the expenditure of money when that money is to be expended on programs for the general welfare. If this provision passes, governmental entities will no longer be required or permitted to discriminate against religious entities or individuals when funding programs that are for the general welfare. This Court should therefore affirm the trial court's determination that Proposed Amendment Seven is within the TBRC's constitutional authority.

B. PROPOSED AMENDMENT NINE
ADDRESSES BOTH REMOVING AND

ESTABLISHING CONSTITUTIONAL
LIMITATIONS ON EXPENDITURES, AND
IS WITHIN THE SCOPE OF THE TBRC'S
AUTHORITY.

The text of proposed Amendment Nine provides, in relevant part:

SECTION 1. Public funding of education.--

(a) The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. This duty shall be fulfilled, at a minimum and not exclusively, through adequate Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require. Nothing in this subsection creates an entitlement to a publicly-financed private program.

It next provides that:

SECTION 8. Requiring sixty-five percent of school funding for classroom instruction.--At least sixty-five percent of the school funding received by school districts shall be spent on classroom instruction, rather than on administration. Classroom instruction and administration shall be defined by law. The legislature may also address differences in administrative expenditures by district for necessary services, such as transportation and food services. Funds for capital outlay shall not be included in the calculation required by this section.¹³

¹³ There is another portion of the amendment but it only deals with the effective date of the 65% provision.

This proposed language deals with two main subjects: first, the removal of an existing constitutional limitation on expenditures, and second, the imposition of a constitutional limitation on expenditures.

This Court held in Bush v. Holmes, 919 So. 2d 392,407 (Fla. 2006), that article IX, section 1 was not only a requirement that the Legislature fund a free system of public schools but a constitutional limitation on funding other educational programs. Id. The proposed language modifying article IX, section 1 in Proposed Amendment Nine addresses this holding by specifying that while the Legislature's funding of a system of free public schools is a primary responsibility, it does not limit the ability to fund additional educational programs. Certainly this proposed language can be characterized as nothing but the change of a constitutional limitation on expenditures. The fact that this constitutional limitation on expenditures is in the context of education, does not change the reality that it is still a constitutional limitation on expenditures.

Petitioners argue that even if this deals with the budgetary process, this does not deal with the "State" budgetary process. (IB. at 40). However, article XI, section 6 (d). explicitly talks about reviewing constitutional limitations on state and local expenditures. This language is not narrow, but broadly encompasses matters such as education, in which state and local

expenditures are inextricably intertwined. And, as Petitioners are well aware, all educational funding, whether it originates from state or local sources of taxation, or from federal funds made available to the state, becomes part of the state's legislative budget process.¹⁴ Finally, while Petitioners are not happy with this interpretation, the TBRC's rule clearly contemplates that the budgetary process includes state and local expenditures. Nothing could be clearer from the face of the rule, and there is nothing in the language of the constitutional provision itself that contradicts the terms of this rule.

The proposed language amending article IX, section 1 addresses what has been interpreted to be a constitutional limitation on expenditures. It addresses such a limitation by removing it. The 65 percent portion of the article IX proposal addresses a constitutional limitation on expenditures from the other direction, by proposing a limitation. Petitioners tried to make the case that the 65 percent limitation is not a limitation on the state budgetary process because it is only a limit on local expenditures. (IB at 40,41) Yet, once again, Petitioners chose to ignore the portion of subsection (d) that addresses examining constitutional limitations on state and local expenditures. As has been previously laid out, under a natural reading of

¹⁴ See. e.g., Conference Report on HB 5001, Section 2, 2008 Legislative Session.

this constitutional provision, proposals as to constitutional limitations on state and local expenditures are encompassed within the state budgetary process.

Both portions of Proposed Amendment Nine address significant structural limitations, constitutional limitations, on expenditures at the state and local levels. Addressing constitutional limitations on expenditures in this manner is within the TBRC's authority. The TBRC members would ask this Court to affirm the trial court's order and so hold.

Standard of Review for Argument III

This appeal deals only with matters of law and this Court's review is *de novo*. In the context of the challenge to Proposed Amendment Nine's ballot title and summary, the Petitioners have to prove the ballot title and summary is "clearly and conclusively defective." Advisory Opinion to the Attorney Gen. re: Protect People, Especially Youth, from Addiction, Disease, and Other Health Hazards of Using Tobacco, 926 So. 2d 1186, 1190-1191 (Fla. 2006). Courts must act with "extreme care, caution, and restraint" before removing a constitutional amendment from the vote of the people. Advisory Opinion to the Att'y Gen. re Fla. Marriage Protection Amendment, 926 So. 2d 1229, 1233 (Fla. 2006) (quoting Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982)).

III

THE BALLOT TITLE AND SUMMARY OF PROPOSED AMENDMENT NINE IS LEGALLY SUFFICIENT, FAIRLY COVERS THE MAIN PURPOSES OF THE PROPOSED AMENDMENT, AND IS NOT MISLEADING.

When addressing the legal sufficiency of ballot titles and summaries for constitutional initiatives, this Court's precedent has established that the ballot title and summary, both of which the voters will see when they vote, must be considered together in determining whether the voter has fair knowledge of the substance of the amendment. Advisory Op. to Att'y Gen. re People's Property Rights Amendments, 699 So. 2d 1304, 1309 (Fla. 1997). Based upon that precedent alone, Petitioners' argument as to the ballot title and summary of Proposed Amendment Nine must fail. Neither below, nor on appeal, did Petitioners argue that the ballot summary and title, when considered together, are misleading. (R-I 41, IB at 42). Their only argument is that the ballot title is misleading and that the ballot title cannot be cured by the summary. (IB at 45). While Respondents disagree that the ballot title itself is misleading, since Petitioners have not alleged that the ballot summary and title in combination is misleading, the Court should deny the request to strike Proposed Amendment Nine on the basis of an insufficient ballot summary and title. Respondent, Secretary of State has

elaborated much upon this area, and the TBRC members see no need to repeat that elaboration here.

CONCLUSION

The TBRC Members respectfully request that this Court affirm the trial court and decline Petitioners' request to remove Proposed Amendments Seven and Nine from before the voters.

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing has been furnished by Hand Delivery this 22nd day of August, 2008, to Ronald G. Meyer, Esq. Meyer and Brooks, P.A., 2544 Blainstone Pines Drive, Tallahassee, FL 32302 *Counsel for Petitioners*; and by mail to Scott Makar, Solicitor General, Office of the Attorney General PL-01 the Capitol, Tallahassee, FL 32399, *Counsel for Respondent*; Stephen H. Grimes, Esq., Nathan A Adams, IV, Esq., Holland & Knight, LLP, P.O. Drawer 810, Tallahassee, FL 32302, *Counsel for Respondent Florida Catholic Conference, et al.*

CERTIFICATE OF COMPLIANCE

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

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