

**IN THE SUPREME COURT OF FLORIDA**

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Case No.: SC08-1569

L.T. No.: 1D08-4077

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DEPARTMENT OF STATE OF  
THE STATE OF FLORIDA; and  
VOTE YES ON 5 FOR  
PROPERTY TAX RELIEF, INC.,

Petitioners,

vs.

BEVERLY SLOUGH, ET AL.,

Respondents.

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**JOINT REPLY BRIEF OF PETITIONERS,  
DEPARTMENT OF STATE OF THE STATE OF FLORIDA and  
VOTE YES ON 5 FOR PROPERTY TAX RELIEF, INC.**

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## ARGUMENT

### **I. THE BALLOT TITLE AND SUMMARY INFORMS THE VOTER OF THE CHIEF PURPOSE OF THE AMENDMENT AND IS NOT MISLEADING.**

In neither the text of Amendment 5 nor its ballot title or summary, whether read in isolation or together, is there any suggestion or inference that the proposal before the voter provides a continuing revenue "trade-off" (utilizing the words of Appellees). Amendment 5 instructs the Legislature to replace the elimination of school property taxes with state revenues. The amount of state revenues to be generated by the Legislature is required to be equivalent to the amount of school property taxes eliminated. The instruction to replace the loss of required school property taxes through the exercise of legislative options is crystal clear in the ballot summary:

Replacing state required school property taxes with state revenues generating an equivalent hold harmless amount for schools through one or more of the following options: repealing sales tax exemptions not specifically excluded; increasing sales tax rate up to one percentage point; spending reductions; other revenue options created by the legislature. . . .

(R. at 117).<sup>1</sup> The replacement of an equivalent hold harmless amount of state revenue by the Legislature can occur only one time -- in the state fiscal year in

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<sup>1</sup>At the time Petitioners filed their Joint Initial Brief, the Record on Appeal had not been filed and provided to the parties; therefore, citations in the Initial Brief referenced the Appendices. Since that time the Record on Appeal has been

which the required school property taxes are eliminated. Under Amendment 5 this occurs in state fiscal year 2010-2011. Once the state required school property taxes are replaced, the Legislature is prohibited from requiring school districts to levy an ad valorem tax as a required local effort for participation in the Florida Education Finance Program (hereafter "FEFP"). In other words, the required school property taxes have been eliminated in all future state fiscal years.

In the year of replacement, state fiscal year 2010-2011, education funding is held harmless by the instruction of the people in Amendment 5 to the Legislature to replace the revenue impact of the loss of the required local effort in ad valorem taxes by the exercise of one or more of the enumerated options. There is no need in the context of Amendment 5 to refer to subsequent state fiscal years beyond the single year that education funding is held harmless by the legislative generation of an equivalent hold harmless amount of state revenue to replace the school property taxes constitutionally eliminated. Amendment 5 clearly provides in the new Section 19(b)(2) of Article VII the mechanism to constitutionally ensure that the people's instruction to the Legislature to generate an equivalent hold harmless amount is achieved:

[(b)](2) In implementing this section, the amount appropriated and set in the General Appropriations Act in

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received by Petitioners and citations in this Reply Brief appropriately refer to the record. Citations to the Record on Appeal are referenced as: (R. at (page number)). For example, (R. at 110) would be a record cite to page 110.

the 2010-2011 fiscal year shall not be less than the amount appropriated and set in the 2008-2009 fiscal year for the funding of public schools under the Florida Education Finance Program, as increased by the average historical growth for such amounts during state fiscal years 2006-2007 and 2007-2008, which appropriated and set amount shall be referred to as the "education hold harmless amount."

(R. at 115).

In spite of this clear instruction, Appellees assert that Amendment 5 "would radically change school funding by eliminating the required local effort, prohibiting the Legislature from replacing it with a successor program, and cutting in half the millage available for local governments to fund most school purposes."<sup>2</sup>

Answer Brief, p. 7. As discussed in the Joint Initial Brief of the Petitioners the change affected by Amendment 5, whether deemed radical or not, is clearly stated

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<sup>2</sup>The reduction of school purpose millage from ten mills to five mills is consistent with the chief purpose of Amendment 5 to replace school property taxes as a condition for the participation in the FEFP by an equivalent amount of state revenues. Currently, the maximum millage that school districts can levy for capital purposes and payment of lease purchase obligations is two mills. All other ad valorem millage for school purposes is required to be approved by the electors. The new Section 19(b)(3) of Article VII proposed in Amendment 5 is clear that such additional capital outlay and voter approved millage is not replaced or eliminated in the proposal. A quick reference to the chart in Appendix B of the Initial Brief demonstrates that the constitutional millage reduction from ten mills to five mills for school purposes in Amendment 5 was designed to reach only the school purpose millage capacity currently levied for the required local effort for participation in the FEFP. The remaining constitutional capacity of five mills is sufficient under the current public school funding scheme to satisfy public school purposes after the elimination of the required local effort millage currently imposed by the Legislature.

in the ballot title and summary. The Amendment leaves the current funding mechanism for public school education, the FEFP, in place, simply requiring that the funding *source* for the FEFP be altered to use only state funds, as opposed to the combination of state funds and local ad valorem tax revenues currently in place. This is the chief purpose of Amendment 5 grounded in both the "hold harmless" provision and the constitutional reduction in school district millage. The legislative discretion to determine the total amount, as opposed to the source, of funds appropriated to the FEFP remains intact, with the exception of the 2010-2011 state fiscal year, and is consistent with the current education funding scheme.

Local property tax revenues are currently a funding source for the state education budget under the FEFP, which the Legislature can currently, in the absence of Amendment 5, continue or discontinue to use at its discretion. The amount of local revenues utilized as part of that funding formula is likewise subject to the discretion of the Legislature on an annual basis. There is no state constitutional requirement that such revenues be used to fund the state educational budget. Thus, Amendment 5 is not "flying under false colors" "by giv[ing] the appearance of creating new rights or protections, when the actual effect is to reduce or eliminate protections already in existence." *Traylor v. State*, 596 So. 2d 957, 962-963 (Fla. 1992); *see also Armstrong v. Harris*, 773 So. 2d 7, 17-18 (Fla. 2000).



Nor does Amendment 5 “hide the ball.” The main purpose of the amendment is simple, clearcut and beyond dispute: Amendment 5 requires the Legislature replace the elimination of local property tax revenues with state revenues in the state education budget. This purpose, as well as the means to accomplish it, is clearly set forth in the ballot title and summary.

**II. THE TRIAL COURT ERRED IN HOLDING THAT THE BALLOT TITLE AND SUMMARY ARE MISLEADING ON THE BASIS THAT THE TITLE DOES NOT ENCOMPASS ALL PROVISIONS CONTAINED IN THE SUMMARY AND THE PROPOSED AMENDMENT.**

Appellees concur that "legislative bill titles are distinguishable from constitutional amendment titles." Answer Brief, p. 14. Thus, cases dealing with legislative bill titles provide no guidance in the issues before the Court in this cause.

Appellees then argue that "the principle enumerated in the legislative cases applies with equal logic" to constitutional amendment titles. Answer Brief, p. 14. Apparently, the principle gleaned from legislative cases by Appellees is twofold: (1) "a general enough title might need more specifics, but it puts the voter on notice to read further"; and (2) "[a] restrictive title that leaves out material changes can mislead a voter into not reading further." Answer Brief, p. 14. This asserted "principle" elevates the function and purpose of the ballot title to a place foreign to

the statutory direction as to ballot notice content and all prior judicial precedent construing a ballot title and summary.

Section 101.161(1), Florida Statutes, characterized the purpose and function of the ballot title as a "caption . . . by which the measure is commonly referred to or spoken of." *Id.* The title, as a caption, focuses the voter on the proposed amendment in the clamor of public debate. A voter is focused by a caption that identifies a proposal by the manner in which it was commonly referred to or spoken of in the public discourse.

In contrast, the summary, in the words of section 101.161(1), Florida Statutes, provides the "explanatory statement . . . of the chief purpose of the measure." Thus, the interrelation between the title as a caption and the summary as the explanatory statement is precisely why all prior precedent has held that "section 101.161(1) *has always been interpreted* to mean that the ballot title and summary must be read together in determining if the ballot information properly informs the voter." *Advisory Op. to the Att'y Gen re: People's Property Rights Amendment*, 699 So. 2d 1304, 1309 (Fla. 1997) (citing *Advisory Op. to the Att'y Gen re: Limited Casinos*, 644 So. 2d 71, 75 (Fla. 1994) (emphasis added)). *See also Advisory Op. to the Att'y General re Voluntary Universal Pre-Kindergarten Educ.*, 824 So. 2d 161, 166 (Fla. 2002) (the ballot title and summary "may not be read in isolation,

but must be read together in determining whether the ballot information properly informs the voters").<sup>3</sup>

Apparently, Appellees would be satisfied with a specific ballot title that stated "Proposal Relating to School Funding, Millage Restrictions, Legislative Enactments, and Assessment Increases" or a general title that states "Proposal Relating to School Funding and Ad Valorem Taxes." Such hypothetical general titles are similar to the ballot title of "Finance and Taxation" prepared by the 1978 Constitutional Revision Commission which is touted on page 15 in the Answer Brief as a ballot title that is "simple and accurate." Answer Brief, p. 16. The obvious response is that neither of these hypothetical ballot titles would address the statutory requirement of a ballot title. The proposal before the Court in this cause is commonly referred to and spoken of as "Eliminating State Required School Property Tax and Replacing with Equivalent State Revenues to Fund Education."

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<sup>3</sup>This Court has recognized the significance of the increased opportunity for review and debate during the proposal and drafting processes as a filtering mechanism of a proposed amendment placed on the ballot by the Legislature and constitutional commissions, such as the Taxation and Budget Reform Commission. This opportunity for review and debate by experienced lawmakers and members of the public is the basis for the exception to the single subject requirement for entities such as the Commission. *See Fine v. Firestone*, 448 So. 2d 984, 988 (Fla. 1984); *Advisory Op. to the Att'y Gen. Re: Fish and Wildlife Conservation Comm'n*, 705 So. 2d 1351 (Fla. 1998). Amendment 5's journey through the Commission, and its review by people with significant experience in legislative drafting, ensures that the ballot title and summary accurately reflect the provisions contained within the Amendment itself.

The ballot summary that follows provides the explanatory statement of the chief purpose of the proposed amendment and material constitutional changes.

Dissecting the ballot summary to Amendment 5 and relating it to the last three of the five material changes to Amendment 5 that are highlighted on page 1 of the Answer Brief renders the obvious conclusion that the ballot title and summary language is clear and unambiguous.<sup>4</sup>

3. Require that laws creating sales tax exemptions contain a single subject of a single exemption and legislative findings that the exemption advances or serves one of several listed public purposes;

"Limiting subject matter of laws granting future exemptions." (R. at 117).

4. Reduce the maximum millage that local government can levy for all school purposes from 10 mills to 5 mills;

"Lowering property tax millage rates for schools." (R. at 117).

5. Reduce the annual maximum increase in real property assessments for all levies other than school district levies from 10% to 5%.

"Limiting annual increase in the amount of non-homestead real property." (R. at 117).

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<sup>4</sup>In their argument to Point II in the Answer Brief, Appellees argue that the voters are not informed of three material changes that would be affected by Amendment 5 although the heading to Point II only references two material changes.

The 1978 Constitution Revision Commission did not have a statutory 75 word limit on its ballot summary as an explanatory statement of the chief purpose of the amendment. The 75 word limitation for the ballot summary and the 15 word limitation for the title in section 101.161, Florida Statutes, were not adopted until the 1980 Legislative Session. *See* Ch. 80-304, Laws of Fla. The Commission was faced with a 75 word limitation in drafting the ballot title and summary for Amendment 5. The 254 word ballot summary touted by the Appellees on page 15 of the Answer Brief had the ballot title of "Finance and Tax." As argued previously, such ballot title would not meet the current statutory requirement of a caption by which the measure is commonly referred to or spoken of.

To argue that somehow the eye of the voter will stop at the ballot title and not read the ballot summary and thus be misled by a caption not containing all material changes in a proposal turns the statutory direction of ballot preparation on its head and demeans the intelligence and diligence of the voter. Legislative bill titles are, like ballot summaries, an explanatory statement of the chief purpose of the proposed legislation. The phrase "legislative bill title" is not comparable in meaning to the statutory phrase "ballot title." The legislative bill title is the functional equivalent of the ballot summary as an analogous explanatory statement. There is no comparable requirement that a legislative ballot contain a caption by which the legislative bill is commonly referred to or spoken of. When the

Legislature wants to incorporate a title comparable to the statutory direction for a ballot title, it does so in the body of the law.<sup>5</sup>

Section 101.161(1), Florida Statutes, was obviously written to eliminate the mind numbing complexity of title summaries like those touted by Appellees on page 15 of their Answer Brief. Such detailed ballot summaries are akin to legislative bill titles not bound by any word limitation. In contrast, the statutory guideline directing the drafting by the Commission was a caption of not exceeding 15 words by which the proposal is commonly referred to or spoken of and a ballot summary and containing the substance of the amendment in the form of an explanatory statement of its chief purpose not exceeding 75 words. In recognizing that a ballot title and summary are "not required to explain every detail or ramification of a proposed amendment," this Court has previously approved ballot titles and summaries that satisfied the statutory criteria in section 101.161, Florida Statutes, despite the fact that the title did not reference every provision and the summary did not explain all potential outcomes with the detail the Respondents seek to require. *See Advisory Op. to the Atty Gen. Re: Patient's Right to Know About Adverse Medical Incidents*, 880 So. 2d 617 (Fla. 2004) (holding that citizen

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<sup>5</sup>See § 163.3162(1), Fla. Stat. (incorporating a short title "Agricultural Lands and Practice Act"); *see also* § 163.3161, Fla. Stat. (utilizing the following short title "Local Government Comprehensive Planning and Land Development Regulation Act").

initiative satisfied single subject requirement and that ballot title and summary were not misleading); *Advisory Op. to the Atty Gen. Re: Public Protection from Repeated Medical Malpractice*, 880 So. 2d 667 (Fla. 2004) (ballot title and summary are not required to provide an "exhaustive explanation of the interpretation and future possible effects" of a proposed amendment); *Advisory Op. to the Att'y Gen. Re: Florida's Amendment to Reduce Class Size*, 816 So. 2d 850 (Fla. 2002) (ballot title and summary were not misleading even though summary did not include all possible effects).

The ballot title and summary, when read together, provide an explanatory statement of the chief purpose of Amendment 5 that is in clear and unambiguous language and are not misleading.

## CONCLUSION

The ballot title and summary of Amendment 5 sets out the chief purpose of the proposal, provides fair notice to the voters of his or her decision and is not misleading, and thus satisfies all statutory and constitutional requirements.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to LOUIS F. HUBENER, ESQ., Chief Deputy Solicitor General, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; and BARRY RICHARD, ESQ., Greenberg Traurig, 101 East College Avenue, Tallahassee, Florida 32301, this 27th day of August, 2008.

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**CERTIFICATE OF FONT SIZE COMPLIANCE**

I HEREBY CERTIFY that the foregoing brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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