

Single Subject inapplicable to property rights amend.

Number: PETITION

Date: August 22, 1996

The Honorable Gerald Kogan
Chief Justice, and
Justices of the Supreme Court
of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

Dear Chief Justice Kogan and Justices:

In accordance with the provisions of Article IV, Section 10, Florida Constitution, and Section 16.061, Florida Statutes, it is my responsibility to petition this Honorable Court for a written opinion as to the validity of an initiative petition circulated pursuant to Article XI, Section 3, Florida Constitution.

On July 26, 1996, the Secretary of State, as required by Section 15.21, Florida Statutes, submitted to this office an initiative petition entitled "People's Property Rights Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects." This initiative seeks to amend the State Constitution to allow multiple-subject amendments that require full compensation be paid to the owner when government restricts the use of private real property causing a loss in fair market value.

The full text of the proposed amendment provides:

"Insert the underlined words in Article XI, Section 3, on the day following voter approval:

INITIATIVE.-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 or those that require full compensation be paid to the owner when government restricts use (except common law nuisances) of private real property causing a loss in fair market value, which in fairness should be borne by the public, shall embrace but one subject and matter directly connected therewith."

The ballot title for the proposed amendment is "PEOPLE'S PROPERTY RIGHTS AMENDMENTS PROVIDING COMPENSATION FOR RESTRICTING REAL PROPERTY USE MAY COVER MULTIPLE SUBJECTS." The summary for the proposed amendment provides:

"This provision would expand the people's rights to initiate constitutional changes by allowing amendments to cover multiple subjects that require full compensation be paid to the owner when government restricts use (excepting common law nuisances) of private real property causing a loss in fair market value, which in fairness should be borne by the public. This amendment

becomes effective the day following voter approval."

CONSTITUTIONAL REQUIREMENTS

Section 16.061, Florida Statutes, requires the Attorney General, within 30 days after receipt of the proposed amendment to the Florida Constitution by citizens' initiative, to petition this Honorable Court for an advisory opinion as to whether the text of the proposed amendment complies with Article XI, Section 3, Florida Constitution.

Article XI, Section 3, 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."

This proposed constitutional amendment would eliminate the single subject requirement of Article XI, Section 3, of the State Constitution for initiatives requiring full compensation to be paid to owners for governmental restrictions on private real property causing a loss in fair market value.

In *Advisory Opinion to the Attorney General re: Tax Limitation*, 644 So. 2d 486, 496 (Fla. 1994), this Court held that an exemption from the single-subject requirement for revisions or amendments limiting revenues did not violate the single subject requirement. The proposed initiative entitled "*People's Property Rights Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects*" seeks to provide a similar exemption for amendments requiring compensation for governmental restrictions on the use of private real property. By doing so it amends only Article XI, Section 3, Florida Constitution.

Thus, this initiative would not appear to violate the single-subject requirement contained in Article XI, Section 3, Florida Constitution.

BALLOT TITLE AND SUMMARY

Section 16.061, Florida Statutes, requires the Attorney General to petition this Honorable Court for an advisory opinion as to whether the proposed ballot title and summary comply with Section 101.161, Florida Statutes.

Section 101.161, Florida Statutes, provides in relevant part:

"Whenever a constitutional amendment . . . is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot 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."

This Court has stated on several occasions "that the ballot [must] be fair and advise the voter sufficiently to enable him intelligently to cast his ballot." *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982), quoting, *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954). While the ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, it need not explain every detail or ramification of the proposed amendment. *Carroll v. Firestone*, 497 So. 2d 1204, 1206 (Fla. 1986); *Advisory Opinion to the Attorney General—Limited Political Terms in Certain Elective Offices*, 592 So. 2d 225, 228 (Fla. 1991).

The proposed initiative petition is entitled "People's Property Rights Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects." The title would appear to reflect the chief purpose of the amendment.

The summary of the initiative petition requires that full compensation be paid to the owner of private real property when the government restricts the use of such property. However, neither the ballot title and summary, nor the text of the initiative itself, define the term "owner" such that it is clear whether corporate entities are intended to be included within the scope of that term.

The summary refers to "common law nuisances" being exempt from the amendment's scope. A "common nuisance" is "one which affects the public in general, and not merely some particular person; a public nuisance." See *Black's Law Dictionary*, p. 962, (5th Ed. 1979) and 66 C.J.S. *Nuisances* ss. 1-2 (1950). However, absent a definition of "common law nuisance" within the summary or text of the amendment, the voter is not advised of what restrictions are compensable under the terms of the amendment.

Further, the summary of the initiative petition refers to "loss[es] in fair market value, which in fairness should be borne by the public," without providing a standard to determine when, "in fairness," a governmental entity may be burdened for its actions. Thus, the voter is not adequately informed of when the government may be liable for payment of compensation. Rather it is left to the subjective understanding of each voter as to what he may feel is a standard of fairness.

The ballot title and summary of this initiative do not inform the voter that the real objective of this amendment is to permit "log-rolling" in the context of property rights compensation issues. As was suggested by this office in its 1994 review of the ballot title and summary for the "Revenue Limits" initiative, this initiative petition would effect a fundamental change in the procedures for amending the constitution by the voters and the ballot summary fails to mention "log-rolling" as a collateral consequence of the amendment.

The process by which voters may directly amend the constitution is limited to a single-subject because "the initiative process [does] not provide any filtering mechanism for public debate and hearings." See, *Citizen Constitutional and Legislative Initiatives and Referendums*, Florida House of Representatives Committee on Governmental Operations, p. 32, November 1985. The integrity of the initiative process depends upon the submission of plain and straightforward proposals to the people rather than a multitude of subjects, commonly known as "log-rolling."

Thus, the voter may be unaware that approval of this amendment would require him to accept or reject the proposition that all property rights compensation amendments may cover multiple

subjects. This would constitute a form of "log-rolling" in that voters would not be able to independently express dissatisfaction with or approval of property rights compensation amendments, but would be compelled with one vote to approve or disapprove property rights amendments affecting multiple subjects.

Thus, the ballot title and summary fail to advise the voter sufficiently to enable him intelligently to cast a vote.

Therefore, I respectfully request this Honorable Court's opinion as to whether the proposed initiative petition complies with the single-subject requirement in Article XI, Section 3, Florida Constitution, and whether the ballot title and summary of the constitutional amendment, proposed by initiative petition, comply with Section 101.161, Florida Statutes.

Respectfully submitted,

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RAB/tgk

cc: The Honorable Sandra Mortham
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