

Voter Approval Required for New Taxes

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 seeking to amend the State Constitution to require voter approval of new state, local, or other taxes imposed by a taxing entity. The full text of the proposed amendment provides:

"Add this subsection to Article VII, Section 1, to be effective on the day following voter approval, notwithstanding its substantial affect on Article VII Sections 1(a), 1(b), 2, 5, 7, and 9.

() VOTER APPROVAL REQUIRED FOR NEW TAXES. No new taxes may be imposed except upon approval in a vote of the electors of the state, local, or other taxing entity seeking to impose the tax.

1. DEFINITION OF NEW TAX. The term new tax, for this subsection, includes the initiation of a new tax, the increase in the tax rate of any tax, or the removal of any exemption to any tax.

2. EMERGENCY TAXES. This subsection shall not apply to taxes enacted, for an effective period not to exceed 12 months, by a three-fourths vote of the governing body of a state, local, or other taxing entity after the governing body has made a finding of fact that failure to levy the tax will pose an imminent and particularly described threat to the health or safety of the public."

The ballot title for the proposed amendment is "VOTER APPROVAL REQUIRED FOR NEW TAXES." The summary for the proposed amendment is:

"Requires voter approval of new state, local or other taxes. New taxes include initiation of new taxes, increases in tax rates and eliminating tax exemptions. Allows emergency tax increases, lasting up to 12 months, if approved by three-fourths of a taxing entity's governing body. Substantially affects Article VII Sections 1(a), 1(b), 2, 5, 7 and 9. Effective on 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."

In light of the exemption from the single-subject requirement in Article XI, Section 3, Florida Constitution, for constitutional revisions or amendments limiting the power of government to raise revenue, it does not appear that the proposed initiative petition entitled "Voter Approval Required for New Taxes," would be subject to single-subject limitations.

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).

In a substantially similar case decided in 1994, *Advisory Opinion to the Attorney General Re: Tax Limitation*, 644 So. 2d 486, 494 (Fla. 1994), this Court held that the ballot title and summary to the "Voter Approval of New Taxes" amendment were misleading because they did not

adequately inform the voter of the present constitutional limitation on local taxation. The Court stated:

"It is misleading in this instance because it implies that there is presently no cap or limitation on taxes in the constitution at the present time when, in fact, there is such a limitation for local governmental entities in article VII, section 9, and the inheritance and income tax in article VII, section 5(b)."

While the ballot title and summary of "Voter Approval Required for New Taxes" inform the voter that they affect Article VII, Section 9, of the Florida Constitution, they do not advise the voter, as pointed out in *Advisory Opinion to the Attorney General Re: Tax Limitation*, that this proposed amendment will eliminate the current constitutional cap of 10 mills without voter approval.

Thus, this Court may wish to consider whether the ballot title and summary of "Voter Approval Required for New Taxes" properly advise the voter of the effect of the proposed amendment such that he may intelligently cast a ballot.

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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