

Property Rights

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 "Property Rights: Compensation for Unfair Value Loss Caused by Governmental Use Restrictions on Real Property." This initiative seeks to amend the State Constitution to require compensation for a loss in fair market value caused by government restrictions on the use of private real property.

The full text of the proposed amendment provides:

"Add this new section to Article X, to be effective on the day following voter approval, notwithstanding its substantial affect on constitutional provisions, including Article II Section 7.

SECTION () - PROPERTY RIGHTS: COMPENSATION FOR UNFAIR VALUE LOSS CAUSED BY GOVERNMENTAL USE RESTRICTIONS ON REAL PROPERTY.

When any action or regulation by the state, its agencies or political subdivisions restricts the use (other than nuisances at common law) of part or all of private real property causing a loss in the fair market value of the affected real property for the public good, which in fairness should be borne by the public as a whole, full compensation shall be paid to the owner thereof.

All issues shall be determined by jury trial in circuit court without prior resort to administrative remedies.

This provision shall apply to actions taken and regulations enacted after the effective date of this amendment as well as to applications after the effective date of this amendment of regulations enacted on or before the effective date of this amendment without abrogating any other remedy lawfully available."

The ballot title for the proposed amendment is "PROPERTY RIGHTS: COMPENSATION FOR UNFAIR VALUE LOSS CAUSED BY GOVERNMENTAL USE RESTRICTIONS ON REAL PROPERTY." The summary for the proposed amendment provides:

"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, full compensation shall be paid to the owner.

All issues tried by jury without prior resort to administrative remedies.

Substantially affects constitutional provisions including Article II, Section 7.

Effective day after voter approval for new actions or regulations and, following effective date, new applications of existing regulations."

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 *Advisory Opinion to the Attorney General re: Tax Limitation*, 644 So. 2d 486, 494 (Fla. 1994), this Court held that a "Property Rights" initiative which required compensation be paid to the owner of private property for damages sustained for any exercise of the police power by government, violated the single subject requirement because it "substantially alters the functions of multiple branches of government." The Court stated:

"[T]his initiative not only substantially alters the functions of the executive and legislative branches of state government, it also has a very distinct and substantial affect on each local governmental entity. The ability to enact zoning laws, to require development plans, to have comprehensive plans for a community, to have uniform ingress and egress along major thoroughfares, to protect the public from diseased animals or diseased plants, to control and manage water rights, and to control or manage storm-water drainage and flood waters, all would be substantially affected by this provision. . . . We also note that the initiative transfers all administrative remedies for police power actions that damage private property interests from the executive branch to the judicial branch. Given this substantial effect on the executive, legislative, and local branches of government, we find that the 'Property Rights' initiative violates the single-subject requirement."

644 So. 2d at 494-495.

Similarly, this proposal substantially affects the executive, legislative, and local branches of government. Moreover, the earlier property rights amendment contained an exception for the administration and enforcement of criminal laws, an exception which is not contained in the present initiative. The proposed amendment, therefore, would appear to be more comprehensive in its effect on state and local governmental actions.

Accordingly, the proposed amendment, under this Court's rationale in *Advisory Opinion to the Attorney General re: Tax Limitation, supra*, would appear to be violative of the single-subject requirement of 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).

This Court in *Advisory Opinion to the Attorney General Re: Tax Limitation, supra*, held that the title and summary of the previous property rights amendment did "not properly advise the voters, and . . . [was] not accurate and informative." 644 So. 2d at 495. The Court held that the summary, which stated that the amendment entitled an owner to full compensation when government action damages the value of the owners private property, "would result in a major change in the function of government because it would require all entities of government to provide compensation from tax revenue to owners or businesses for damages allegedly caused to their property by the government's exercise of its police powers. Because most true police power actions of government are not now compensable, the fiscal impact of this proposal would be substantial. . . . The ballot title and summary are devoid of any mention of these consequences."

Id. Similarly, the ballot title and summary of the initiative now under consideration by this Court lack any mention of the significant consequences of the initiative.

In addition, the summary fails to apprise the voter of the specific provisions of the Constitution affected by the proposed amendment. *Advisory Opinion to the Attorney General re: Tax Limitation, supra, citing, Fine v. Firestone*, 448 So. 2d 984 (Fla. 1984). While the summary states that the proposed amendment affects "constitutional provisions including Article II Section 7," the use of the term "including" implies that more than one constitutional provision is affected; however, no specific identification of these constitutional provisions is contained in the ballot title and summary or in the text of the amendment.

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, Nuisance*, 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 "a loss in fair market value, which in fairness should be borne by the public" without providing a standard to determine when it may be "in fairness" to burden a governmental entity 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 or she may feel is a standard of fairness.

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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Mr. David Biddulph, Chairman
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