Extension of sales tax to non-taxed services amendment

Number: PETITION

Date: November 29, 2005

The Honorable Barbara J. Pariente
Chief Justice, and Justices of
The Supreme Court of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

Dear Chief Justice Pariente and Justices:

In accordance with the provisions of Article IV, section 10, Florida Constitution, and section 16.061, Florida Statutes, it is the responsibility of the Attorney General 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 August 24, 2005, this office received from the Secretary of State an initiative petition seeking to amend the Florida Constitution to extend the existing sales tax to non-taxed services where the exclusion fails to serve a public purpose. The full text of the proposed amendment states:

"BE IT ENACTED BY THE PEOPLE OF FLORIDA THAT:

Article III of the Florida Constitution is hereby amended to add the following as Section 22:

Extension of sales tax to non-taxed services.--

(a) The legislature shall, prior to July 1, 2008, review each service rendered for compensation that is not taxed under the existing sales tax authorized in Chapter 212, Florida Statutes, and shall exempt from future taxation only those services whose exemption is determined to advance or serve a public purpose. Except for the payment of employee salaries and benefits, all services that are not exempted by the legislature shall be subject to the existing sales tax effective January 1, 2009.

(b) To accomplish the public purpose review of each service that is mandated in this section, a single service shall be that rendered by a business, industry or profession with at least the same first four digits in its NAICS code number as described by the North American Industry Classification System code published by the United States Census Bureau, or its successor in function."

The ballot title for the proposed amendment is "Extending existing sales tax to non-taxed services where exclusion fails to serve public purpose." The summary for the proposed amendment states:

"Except for the payment of employee salaries and benefits, all non-taxed services provided for

compensation shall be reviewed by the Legislature to determine whether the exclusion of each service from taxation serves a public purpose. Upon completion of such review, services currently not taxed and which are not exempted from taxation by the Legislature shall be subject to the sales tax on January 1, 2009."

Single Subject

Article XI, section 3, of the Florida Constitution reserves to the citizens of the State of Florida the power to propose a revision or amendment to the Florida Constitution provided that 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. The single-subject provision "is a rule of restraint designed to insulate Florida's organic law from precipitous and cataclysmic change." *Advisory Opinion to the Attorney General--Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994); *Advisory Opinion to the Attorney General--Tax Limitation,* 644 So. 2d 486, 490 (Fla. 1994).

To comply with the single-subject requirement, an initiative must manifest a "logical and natural oneness of purpose." *Fine v. Firestone,* 448 So. 2d 984, 990 (Fla. 1984). This Court stated in *Advisory Opinion to the Attorney General--Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1020 (Fla. 1994), that "[t]o ascertain whether the necessary 'oneness of purpose' exists, we must consider whether the proposal affects separate functions of government and how the proposal affects other provisions of the constitution."

In *Advisory Opinion to the Attorney General–Fairness Initiative Requiring Legislative Determination that Sales Tax Exemptions and Exclusions Serve a Public Purpose*, 880 So. 2d 630 (Fla. 2004), this Court struck down an initiative petition seeking to amend the Florida Constitution to require the Legislature to perform a review of exemptions from and exclusions to the state's sales tax. The Court held that the initiative violated the single subject requirement by requiring the Legislature to periodically review tax exemptions on the sale of certain goods, creating a broad sales tax on undefined services that were currently excluded from the sales tax, and limiting the authority of the Legislature to pass exemptions or exclusions to the sales tax by requiring an enunciation of a public purpose. 880 So. 2d at 635. This Court stated:

"While all of these three goals arguably relate to sales taxes, and any one of these three goals might be the permissible subject of a constitutional amendment under the initiative process, we conclude that together they constitute impermissible logrolling and violate the single subject requirement of article XI, section 3, of the Florida Constitution because of the substantial, yet disparate, impact they may have."

Id.

The proposed initiative under consideration by this Court seeks to extend the existing sales tax to non-taxed services where an exclusion fails to serve a public purpose.

Therefore, I respectfully request this Honorable Court's opinion as to whether the constitutional amendment, proposed by initiative petition, complies with Article XI, section 3, Florida Constitution.

Ballot Title and Summary

Section 101.161(1), Florida Statutes, provides in relevant part:

"Whenever a constitutional amendment . . . is submitted to the vote of the people, the substance of such amendment . . . shall be printed in clear and unambiguous language on the ballot . . . . The wording of 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 "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, they need not explain every detail or ramification of the proposed amendment. *Carroll v. Firestone*, 497 So. 2d 1204, 1206 (Fla. 1986). The ballot, however, must give the voter fair notice of the decision he must make. *Askew v. Firestone, supra* at 155. This Court has stated that the purpose of section 101.161, Florida Statutes, is to ensure that voters are advised of the amendment's true meaning.

In *Advisory Opinion to the Attorney General–Fairness Initiative Requiring Legislative Determination that Sales Tax Exemptions and Exclusions Serve a Public Purpose*, *supra*, this Court considered the summary of an initiative petition which sought, among other things, to create a broad sales tax on undefined services that were currently excluded from the sales tax. The Court concluded that the summary was deficient because it did not inform the voter that the proposed amendment would operate in a way that would create a tax on services if the Legislature failed to enact specific exclusions for services. 880 So. 2d at 636.

The ballot title for the proposal under consideration by this Court advises the voter that the amendment seeks to extend the existing sales tax to non-taxed services where an exclusion fails to serve a public purpose. The ballot summary advises the voter that services will be reviewed by the Legislature to determine whether the exclusion from taxation serves a public purpose and those services not exempted by the Legislature will be subject to the sales tax.

Therefore, I respectfully request this Honorable Court's opinion as to whether the amendment's ballot title and summary comply with section 101.161, Florida Statutes.

Sincerely,

Charlie Crist
Attorney General

CC/tfl

cc: Ms. Glenda Hood
Secretary of State

The Honorable Jeb Bush
Governor, State of Florida

The Honorable Tom Lee
President, Florida Senate

The Honorable Allan G. Bense
Speaker, Florida House of Representatives

John McKay
Chair, Floridians Against Inequities in Rates (FAIR)