

IN THE SUPREME COURT OF FLORIDA  
CASE NO. SC05-1566

ADVISORY OPINION TO THE  
ATTORNEY GENERAL

RE: INITIATIVE DIRECTING MANNER  
BY WHICH SALES TAX EXEMPTIONS  
ARE GRANTED BY THE LEGISLATURE

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**INITIAL BRIEF AND APPENDIX OF THE SPONSOR  
FLORIDIANS AGAINST INEQUITIES IN RATES**

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## **STATEMENT OF THE CASE AND FACTS**

Pursuant to the provisions of Article IV, section 10, Florida Constitution and section 16.061, Florida Statutes, the Florida Attorney General has requested an advisory opinion on the validity of the amendment directing the manner by which State tax exemptions are granted by the Legislature proposed through the initiative petition process of Article XI, section 3, Florida Constitution. See App. A.

### Jurisdiction

The Court has jurisdiction pursuant to the provisions of Article V, section 3(b)(10), Florida Constitution.

### The Petitioner

The constitutional amendment in the Initiative Directing Manner By Which Sales Tax Exemptions are Granted by the Legislature is proposed by Floridians Against Inequities in Rates ("FAIR"), a political action committee organized by three citizens of Florida with long experience in public service. Former Senate President John McKay, former Comptroller General Bob Milligan and former Attorney General Bob Butterworth are the joint chairs of FAIR. As reflected in its title, FAIR was organized to present to the people by petition three proposed constitutional amendments directing the Legislature to perform an open review of exemptions and exclusions to the sales tax, mandating a

legislative decision on whether each exemption or exclusion advances a public purpose and directing the manner by which sales tax exemptions are granted.

Ballot Title, Ballot Summary and Text of Amendment

The ballot title for the proposed amendment provides:

Initiative directing manner by which sales tax exemptions are granted by the legislature

The ballot summary for the proposed amendment provides:

Each law granting an exemption to the sales tax shall contain a legislative determination that such exemption advances or serves a public purpose and shall contain the single subject of a single exemption.

The text for the proposed amendment provides:

Article III of the Florida Constitution is hereby amended to add the following as Section 21:

Laws creating sales tax exemptions.--

Each law creating or reenacting a sales tax exemption shall contain the single subject matter of a single exemption and shall contain a factual statement of the public purpose advanced or served by the exemption.

The constitutional amendment proposed in the Initiative Directing Manner By Which Sales Tax Exemptions are Granted By the Legislature is one of three amendments proposed by FAIR and crafted to present to the people three proposed constitutional amendments directing the Legislature to perform an open review of exemptions and

exclusions to the sales tax, mandating a legislative decision on whether each exemption or exclusion advances a public purpose and directing the manner by which sales tax exemptions are granted. Such proposed amendments are presented to the public as separate amendments to comply with the reasoning provided by the Court in its opinion concerning a prior initiative proposed by FAIR in Advisory Opinion to the Att'y Gen. re Fairness Initiative Requiring Legislative Determination That Sales Tax Exemptions and Exclusions Serve a Pub. Purpose, 880 So. 2d 630 (Fla. 2004) (attached hereto as Appendix B).

In that decision, the Court held that the amendment then proposed by FAIR violated the single-subject rule of Article XI, section 3, Florida Constitution, by containing the following three disparate subjects:

Although FAIR argues that the proposed amendment deals with the single-subject of sales tax, in reality, the initiative before the Court for review contains three disparate subjects: (1) a scheme for the Legislature to review existing exemptions to the sales tax under chapter 212; (2) the creation of a sales tax on services that currently does not exist; and (3) limitations on the Legislature's ability to create or continue exemptions and exclusions from the sales tax.

Fairness Initiative, 880 So. 2d at 634. See also App. B.

The proposed constitutional amendment now before the Court as proposed in the Initiative Directing Manner By Which Sales Tax Exemptions are Granted By the Legislature has independent constitutional viability and advances the objectives of FAIR

even if the other two initiatives proposed by FAIR are rejected by the electors. See App. C (ballot title, ballot summary and ballot text of proposed amendment in the Initiative Requiring Legislative Determination that Sales Tax Exemptions Serve a Public Purpose). See App. D (ballot title, ballot summary and ballot text of proposed amendment in the amendment Extending Existing Sales Tax To Non-Taxed Services Where Exclusion Fails to Serve Public Purpose).

Certification By the Secretary of State;  
Attorney General's Request for Advisory Opinion

After the Secretary of State approved the format of the proposed amendment, FAIR began collecting the signatures required by section 15.21, Florida Statutes (2004), beginning the process leading to the Secretary of State's certification.

The Attorney General received the certification from the Secretary of State on August 24, 2005, and, pursuant to Article IV, section 10 and Article V, section 3(b)(10), Florida Constitution, and section 16.061, Florida Statutes (2004), petitioned the Court for an advisory opinion. See App. A. The advisory opinion is to ensure compliance of the amendment's text with Article XI, section 3, Florida Constitution, and compliance of the proposed ballot title and summary with section 101.161, Florida Statutes (2004). The Court issued an interlocutory order on September 2, 2005, containing a briefing schedule. This brief supports the constitutionality of the proposed amendment.

## SUMMARY OF ARGUMENT

The Court has recognized the sovereign right of the people to amend their Constitution and has been reluctant to interfere with that right. While the standard of review is *de novo*, the Court accords deference to the initiative process, including proposed amendments. It is only when the proposed amendment is clearly and conclusively defective that the Court will remove it from the ballot.

### Point I - The Amendment Satisfies the Single Subject Rule.

The amendment must comply with the single subject rule of Article XI, section 3, Florida Constitution.

The constitutional amendment proposed by FAIR addresses the single subject of directing the manner by which the Legislature enacts exemptions to the sales tax. The amendment states that each law creating or reenacting an exemption is required to contain the single subject matter of a single exemption and state the public purpose advanced or served by the exemption enacted.

The proposed amendment has a logical and oneness of purpose of ensuring openness and fairness in the adoption of exemptions in the sales tax structure. The proposed amendment does not impact the functions of multiple branches of government nor does it impact multiple provisions of the Florida Constitution. The constitutional appropriation power of the Legislature remains unfettered. The discretion of the

Legislature to adopt exemptions to the sales tax remains intact. The proposed amendment merely directs the manner by which the legislative power to grant the special privilege of a sales tax exemption is exercised. The amendment is straightforward and clear and does not affect any collateral powers of the Legislature.

Point II - The Ballot Title & Summary Meet Applicable Statutory Requirements.

Section 101.161(1), Florida Statutes (2004), requires the proposed amendment to have a short ballot title and summary that informs the voter of the chief purpose of the amendment and is not misleading.

This statutory requirement is plainly met. The proposition's title and summary contain no more words than are allowed and they inform the voter in clear and unambiguous language that the proposed amendment directs the manner by which the Legislature grants exemptions to the sales tax. The ballot summary informs the voter that each law granting an exemption shall contain a legislative determination that such exemption advances or serves a public purpose and shall contain the single subject of a single exemption.

A review of all Florida case law construing the initiative process demonstrates that the proposed Amendment complies with the principles announced by the Court in its review of initiative amendments. The proposed amendment in the Initiative Directing Manner By Which Sales Tax Exemptions are Granted By the Legislature satisfies the

requirements of the Florida Constitution, the Florida Statutes and rulings of the Court. It should be placed on the ballot as a proposed constitutional amendment.

## ARGUMENT

### I. STANDARD OF REVIEW.

The Court's respect for the right of Floridians to amend their Constitution has led to a general reluctance to interfere with the initiative process. See Weber v. Smathers, 338 So. 2d 819, 821 (Fla. 1976); League of Women Voters v. Smith (Advisory Op. to the Att'y Gen. re Tax Limitation), 644 So. 2d 486, 489 (Fla. 1994). Specifically, when reviewing a proposed constitutional amendment for the ballot, the Court has noted that each proposition is to be reviewed with "extreme care, caution and restraint." Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982). "[S]uch amendments are reviewed under a forgiving standard and will be submitted to the voters if at all possible . . . ." Advisory Op. to the Att'y Gen. re Right to Treatment & Rehab. for Non-Violent Drug Offenses, 818 So. 2d 491, 494 (Fla. 2002). Still, as there is no factual inquiry, and as the analysis requires only the application of law, the standard of review is *de novo*. See Fine v. Firestone, 448 So. 2d 984, 987 (Fla. 1984). However, the Court's review is deferential due to the great respect afforded to the initiative process. See Gray v. Golden, 89 So. 2d 785, 790 (Fla. 1956).

A petition for a proposed amendment will be upheld by the Court unless it is "clearly and conclusively defective." Weber v. Smathers, 338 So. 2d 819, 822 (Fla. 1976). The Court lacks the authority to pass on the merits and wisdom of the proposed

amendment, see League of Women Voters, 644 So. 2d at 489; nor may the Court be concerned with the draftsmanship quality, Weber, 338 So. 2d at 822; or even the constitutionality of the proposal, In re Advisory Op. to the Att'y Gen.--Restricts Laws Related to Discrimination, 632 So. 2d 1018, 1019 n.1 (Fla. 1994). Rather, the Court's review is limited to determining whether the Petition violates the single subject requirement of Article XI, section 3, Florida Constitution, and whether the ballot title and summary violate the clarity requirement of section 101.161, Florida Statutes (2004). The proposed amendment at issue clearly satisfies both criteria, and it should be submitted to the people.

**II. THE PROPOSED AMENDMENT COMPLIES WITH THE SINGLE SUBJECT REQUIREMENT OF THE FLORIDA CONSTITUTION.**

The limitation on the people's right to amend their Constitution is embodied in the single subject rule of Article XI, section 3, Florida Constitution. The only type of initiative amendments that are exempt from the single subject rule are those amendments limiting the government's power to raise revenue. Id. This rule requires the amendment to embrace only a single subject and matter. Id. Limiting proposed constitutional amendments to those that contain a single subject has been termed a "rule of restraint," Fine v. Firestone, 448 So. 2d 984, 988 (Fla. 1984), requiring the subject encompassed by the amendment to be singular in function, not location. League of Women Voters v.

Smith (Advisory Op. to the Att'y Gen. re Tax Limitation), 644 So. 2d 486, 490 (Fla. 1994).

There are three primary justifications for the single subject rule. The first justification is to prevent "logrolling." In re Advisory Op. to the Att'y Gen.--Save Our Everglades, 636 So. 2d 1336, 1339 (Fla. 1994). Logrolling occurs when a single initiative embraces several separate issues, some of which may be attractive to voters, and some of which may be disfavored. Id. The consequence of this practice is that voters must offer their "approval" of disfavored provisions in order to secure passage of an issue they favor. Id. (quoting Adams v. Gunter, 238 So. 2d 824, 831 (Fla. 1970)). The second justification for the rule is that it is more likely "to prevent a single constitutional amendment from substantially altering or performing the functions of multiple aspects of government." Advisory Op. to the Att'y Gen. re Fla. Transp. Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation Sys., 769 So. 2d 367, 369 (Fla. 2000). The third justification is that it is "designed to insulate Florida's organic law from precipitous and cataclysmic change." Save Our Everglades, 636 So. 2d at 1339.

The court utilizes a "oneness of purpose" standard in applying the single subject rule. Fine, 448 So. 2d at 990. This test is satisfied when the amendment concerns a single subject, Advisory Op. to the Att'y Gen. re Stop Early Release of Prisoners, 661 So. 2d 1204, 1206 (Fla. 1995); when the amendment does not substantially affect multiple

provisions of the Constitution, Weber v. Smathers, 338 So. 2d 819, 822 (Fla. 1976); and when the amendment does not "substantially alter or perform the functions of multiple branches of government." Monorail, 769 So. 2d at 369-70. See also Advisory Op. to the Att'y Gen. re Funding For Criminal Justice, 639 So. 2d 972, 973 (Fla. 1994).

The constitutional amendment proposed in the Initiative Directing Manner By Which Sales Tax Exemptions are Granted By the Legislature contains the single subject of directing the manner by which the Legislature creates or reenacts exemptions to the sales tax. The Court itself has determined that a proposal placing limitations on the ability of the Legislature to create exemptions to the sales tax under Chapter 212 is a disparate subject. Advisory Op. to the Att'y Gen. re Fairness Initiative Requiring Legislative Determination That Sales Tax Exemptions and Exclusions Serve a Pub. Purpose, 880 So. 2d 630, 634 (Fla. 2004). The amendment directs the Legislature in a manner that focuses the political debate on the wisdom and necessity of the special privilege granted in a legislative vehicle that is not obscured by collateral issues which bury public scrutiny or chill constitutional oversight.

The proposed amendment has the logical and oneness of purpose of directing the Legislature to ensure openness in the creation or continuation of exemptions in the sales tax structure. The amendment does not impact the functions of multiple branches of government nor does it impact multiple provisions of the Florida Constitution. The

constitutional appropriation power of the Legislature remains unfettered. While the discretion of the Legislature to enact or continue sales tax exemptions remains intact, by their approval of the proposed amendment, the people are directing the Legislature to declare the public purpose advanced by the special privilege granted by an exemption in a law containing the single subject matter of a single exemption. By their directive, the people are creating a constitutional mandate to the Legislature to ensure that the public purpose advanced or served by a sales tax exemption is not obscured but is openly debated.

Notwithstanding the provisions of Article III, section 6, Florida Constitution, no observer of a Legislative Session can fail to note that most exemptions to the sales tax are midnight riders to comprehensive laws of similar but barely related subject matters. More often than not the exemption is incorporated in a pending bill by an amendment in one house which is required to be accepted by the other if the primary subject matter of the comprehensive bill is to be enacted.

The Court has recognized that Article III, section 6, Florida Constitution, providing that, "Every law shall embrace but one subject and matter properly connected therewith, . . ." has been interpreted liberally, and the Court has upheld laws apparently containing many different subjects. See, e. g., Williams v. State, 459 So. 2d 319 (Fla. 5th DCA 1984), appeal dismissed, 458 So. 2d 274 (Fla. 1984). The Court in Williams recognized

that this constitutional one subject limitation applying to the passage of bills is a less stringent provision than the single subject limitation applied to constitutional initiatives provided in Article XI, section 3, Florida Constitution.

The "logrolling" that Article III, section 6, Florida Constitution, is designed to prevent was described by the Court in Williams as follows:

The logrolling problem has also been alluded to by our supreme court in its interpretation of article III, section 6 of the 1968 constitution. If diverse and dissimilar matters were included within one law, the legislative process could be subverted by passing matters which really have no majority support in the legislative body, but which were passed because legislators were voting to approve other provisions included in the bill. It could also impair the Governor's veto power if he or she were forced to accept an unwanted or undesirable provision in order to obtain the enactment of a desirable one.

459 So. 2d at 320 (footnotes omitted).

This prevailing legislative practice has frustrated the constitutional exercise of the executive veto by requiring a Governor to accept an undesirable sales tax exemption to achieve the greater good advanced by the comprehensive law in which the exemption is embedded. The proposed amendment opens the process for the consideration of exemptions to the sales tax and frames the public debate in a meaningful way. In adopting a more stringent single subject requirement for the enactment of law granting a

sales tax exemption, the people will ensure the creation of an open and reviewable process for the legislative grant of the special privilege provided by each sales tax exemption.

The limitations on the Legislature embodied in the proposed amendment does not reach the power of the Legislature to enact exemptions to the sales tax but merely the manner in which such power is exercised. The amendment is straightforward and clear and does not affect any collateral legislative power.

Such limitations on legislative power have precedent in existing sections in Article III of the Florida Constitution. See Art. III, ' 12, Fla. Const. (limits the Legislature by requiring that, "Laws making appropriations for salaries of public officers and other current expenses of the state shall contain provisions on no other subject.").

The proposed amendment in the Initiative Directing Manner By Which Sales Tax Exemptions are Granted By the Legislature complies with the single subject requirement of Article XI in a manner similar to Stop Early Release of Prisoners, which addressed the single subject of limiting sentence reduction methods, 661 So. 2d at 1206; and Monorail, which only addressed whether the government should provide a high speed transit system throughout Florida, 769 So. 2d at 369-71. The proposed amendment addresses the single subject of imposing limitations on the manner by which the Legislature enacts or continues exemptions to the sales tax by requiring sales tax exemptions to serve a public purpose and thus does not constitute logrolling. See also Advisory Op. to the Att'y Gen.

re Ltd. Political Terms in Certain Elected Offices, 592 So. 2d 225, 227 (Fla. 1991) (addressing the subject of limiting the number of consecutive terms that certain elected officials may serve); Advisory Op. to the Att'y Gen. re Ltd. Casinos, 644 So. 2d 71, 73 (Fla. 1994) (addressing only the authorization of privately-owned casinos in Florida).

The proposed amendment also meets the single subject rule in that it does not substantially affect multiple provisions of the Constitution. Section 21 will be added to Article III to direct the manner by which the Legislature creates or reenacts sales tax exemptions. There are no substantial incidental effects on other provisions of the Constitution. The addition of a single section to Article III, which does not adversely affect other constitutional provisions, conforms with the case law interpretation of the single subject requirement.

The proposed amendment does not substantially alter or perform the functions of multiple branches of government since it merely directs the legislative branch the manner in which it creates or reenacts exemptions to the sales tax.

Finally, the proposed amendment is in direct response to the decision of the Court in its prior opinion in Fairness Initiative, 880 So. 2d 630 (Fla. 2004). See also App. B. Additionally, the proposed amendment is less restrictive of legislative power than that previously construed in Fairness Initiative. Eliminated in the proposed amendment is any requirement that the Legislature "enumerate a public purpose within a set of defined

criteria." Also eliminated in the proposed amendment before the Court is any requirement for the extraordinary "three-fifths vote of the membership of each house of the Legislature." The proposed amendment in the Initiative before the Court now merely directs the manner by which the Legislature creates or removes exemptions to the sales tax.

**III. THE BALLOT TITLE AND SUMMARY PROVIDE FAIR NOTICE OF THE AMENDMENT'S CONTENT AND UNAMBIGUOUSLY DISCLOSE THE CHIEF PURPOSE OF THE AMENDMENT.**

Section 101.161(1), Florida Statutes (2004), provides that whenever a proposed constitutional amendment is submitted to the vote of the people, a summary of the amendment shall appear on the ballot, which shall not exceed seventy-five words and must set forth the chief purpose of the amendment. It also requires a title for the ballot of fifteen words or less that represents the name by which the amendment is commonly known. Id. The title and summary must be drafted "so the voter will have fair notice of the content of the proposed amendment, will not be misled as to its purpose, and can cast an intelligent and informed ballot." Advisory Op. to the Att'y Gen. re Stop Early Release of Prisoners, 661 So. 2d 1204, 1206 (Fla. 1995). An informed vote does not equate to providing the voter with every potential detail or ramification of the proposal. Carroll v. Firestone, 497 So. 2d 1204, 1206 (Fla. 1986) (citing Miami Dolphins v. Metropolitan Dade County, 394 So. 2d 981 (Fla. 1981)). However, if a material fact is omitted so that

the primary purpose of the amendment is unclear, ambiguous, or misleading, the proposal will be struck for failure to comply with section 101.161(1), Florida Statutes. See Advisory Op. to the Att'y Gen. re Term Limits Pledge, 718 So. 2d 798, 803 (Fla. 1998).

The ballot summary provides fair notice of the content and chief purpose of the amendment and is not misleading. An intelligent vote can be cast on the ballot question since the voter is informed in clear and unambiguous language that the proposed amendment directs the Legislature to create or reenact exemptions to the sales tax only in a law containing the single subject matter of a single exemption that contains a statement of the public purpose advanced or served by the exemption.

The Court has removed proposals from the ballot for violating this statutory requirement when the summary failed to address the true scope of the amendment, Term Limits Pledge, 718 So. 2d at 804; when the proposal was deceptive, and "fly[ing] under false colors," Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982); when the proposal is misleading and appealing to voters' emotional vulnerabilities, In re Advisory Op. to the Att'y Gen.--Save Our Everglades, 636 So. 2d 1336, 1341 (Fla. 1994); and when the summary failed to define certain terms necessary for an informed vote, Advisory Op. to the Att'y Gen. re Amendment to Bar Gov't From Treating People Differently Based on Race in Pub. Educ., 778 So. 2d 888, 897 (Fla. 2000).

The current Petition does not violate any of these principles. The title of this Petition is "Initiative Directing Manner By Which Sales Tax Exemptions are Granted By the Legislature." The title does not exceed fifteen words, and it provides a common reference for the proposed amendment.

The ballot summary also falls within the word limitation and explains the chief purpose of the amendment, accurately reflecting the text of the proposed amendment. There are no material omissions from the ballot summary which prevent a voter from casting an informed vote. In addition, there are no undefined words that would make the summary unclear or ambiguous. Every vital aspect of the amendment is adequately represented in the ballot summary. It satisfies the governing legal requirement of section 101.161(1), Florida Statutes (2004). The Attorney General does not challenge this point. See App. A.

The ballot title and summary inform the voter of the amendment's purpose, which is to direct the Legislature to create or reenact a sales tax exemption only in a law containing the single subject matter of a single exemption stating the public purpose advanced or served by the exemption. As the title and summary inform the voter of the chief purpose and scope of the amendment, and are not misleading, the Court should approve the ballot title and summary.

## CONCLUSION

There is no reason for the Court to place a hand of restraint on submitting the proposed amendment to the people. The citizens of Florida retain the inherent political power to direct the manner by which the Legislature enacts sales tax exemptions to ensure that the special privilege granted serves a public purpose. Any cataclysmic change by the approval by the people of the proposed amendment would not be to the Florida Constitution but would be to focus legislative labor on this essential element of sales tax reform. The direction to the Legislature by the people in the proposed amendment if adopted is precisely the exercise of political power that is reserved to the people in Article XI, section 3, Florida Constitution.

It is submitted that the Initiative fully meets the requirements of Article XI, section 3, Florida Constitution, and section 101.161, Florida Statutes, and qualifies for submission to the electorate when the requisite signatures are collected.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and accurate copy of the foregoing brief and appendix has been furnished by United States Mail with adequate postage to the Office of the Attorney General, The Capitol, Tallahassee, Florida 32399, this 12th day of September, 2005.

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Robert L. Nabors

**CERTIFICATE OF FONT**

**I HEREBY CERTIFY** that this brief is presented in Times New Roman font, 14 point type, a font that is proportionately spaced as required by the Florida Rules of Appellate Procedure.

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Robert L. Nabors

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