

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA

Andy Ford, Beverly Slough,
Joseph Joyner, Christi Moss,
Rabbi Merrill Shapiro, and
Reverend Harry Parrot, Jr.,

CASE NO. 2008-CA-1905

Plaintiff(s)

vs.

Kurt S. Browning, in his official
Capacity as Florida Secretary of State,

Defendant, and

Florida Catholic Conference, Inc.,
et al.; Hon. Allan Bense, et al.,

Intervenors.

**SUMMARY FINAL JUDGMENT FOR DEFENDANT
AND INTERVENORS**

In this action, Plaintiffs contend that the Taxation and Budget Reform Commission ("TBRC") exceeded its authority in proposing Ballot Initiatives 7 and 9. These proposed initiatives, if approved by the voters, would amend Article I, section 3, Article IX, sections 1 and 8, and Article XII, section 28 of the Florida Constitution. Plaintiffs also assert that the ballot title and summary language for Ballot Initiative 9 is defective. The parties seek to resolve this matter on motions for summary judgment pursuant to the Court's scheduling order. The Plaintiffs have standing and this Court has jurisdiction. The Court, having reviewed the respective motions for summary final judgment and supporting memoranda

of the parties and Intervenor, heard argument on August 4, 2008, and finding no genuine issues of material fact, finds and concludes, for the reasons set forth below, that Plaintiffs' motion for summary judgment is denied and those of the Defendant and Intervenor¹ are granted.

BACKGROUND

The TBRC

Created in 1988 via Article XI, section 6 of the Florida Constitution, the TBRC was constitutionally mandated "to review the revenue needs and expenditure processes of the state, recommend statutory changes, and propose revisions to the constitution." Smith v. Am. Airlines, 606 So. 2d 618, 619 (Fla. 1992).

Article XI, section 6 of the Florida Constitution sets out the TBRC's process, composition, duties, and powers. Beginning in 2007, and every twentieth year thereafter, the TBRC convenes. Art. XI § 6(a), Fla. Const. Members are appointed by the Governor, Speaker of the House of Representatives, and the Senate President, and include four non-voting members from the legislature.

Section 6(d) of Article XI sets forth the TBRC's scope of authority of examining, reviewing, and making recommendations regarding a broad range of matters:

The commission shall examine the state budgetary process, the revenue needs and expenditure processes of the state, the appropriateness of the tax

¹ The intervenors represented by Holland & Knight did not file a motion for summary judgment, but did file a memorandum opposing the Plaintiffs' motion and supporting the Defendant's cross-motion for summary judgment. The intervenors represented by Daniel Woodring filed a memorandum opposing Plaintiffs' summary judgment motion and joining Defendant's cross-motion for summary judgment.

structure of the state, and governmental productivity and efficiency; review policy as it relates to the ability of state and local government to tax and adequately fund governmental operations and capital facilities required to meet the state's needs during the next twenty year period; determine methods favored by the citizens of the state to fund the needs of the state, including alternative methods for raising sufficient revenues for the needs of the state; determine measures that could be instituted to effectively gather funds from existing tax sources; examine constitutional limitations on taxation and expenditures at the state and local level; and review the state's comprehensive planning, budgeting and needs assessment processes to determine whether the resulting information adequately supports a strategic decision making process.

Art. XI, § 6(d), Fla. Const.

Section 6(e) provides that the TBRC must hold public hearings as needed, issue a report and make proposals for statutory and constitutional revisions:

The commission shall hold public hearings as it deems necessary to carry out its responsibilities under this section. The commission shall issue a report of the results of the review carried out, and propose to the legislature any recommended statutory changes related to the taxation or budgetary laws of the state. Not later than one hundred eighty days prior to the general election in the second year following the year in which the commission is established, the commission shall file with the custodian of the state records its proposal, if any, of a revision of this constitution or any part of it dealing with taxation or the state budgetary process.

Art. XI, § 6(e), Fla. Const.

The TBRC's rules, as adopted by its first and second commissions in 1991 and 2007, defined both "taxation" and "state budgetary process" broadly:

1991 Rule

1.005 - Functions and Duties

The primary role of the Commission shall be to recommend statutory and constitutional changes dealing with taxation and the state budgetary process. The 'state budgetary process' means the manner in which every level of government in the state expends funds, incurs debt, assesses needs, acquires financial information, and administers its fiscal affairs, and includes the legislative appropriation process and the budgetary practices and principles of all agencies and subdivisions of the state involved in financial

planning, determining, implementing, administering, and reviewing governmental programs and services. 'Taxation' means all public revenues and revenue raising laws at every level of government in the state.

2007 Rule (as amended February 26, 2008)

1.005 - Functions and Duties

The primary role of the commission shall be to recommend statutory and constitutional changes dealing with taxation and the state budgetary process. 'Taxation' means all public revenues and revenue raising laws at every level of government in the state. The 'State budgetary process' means the manner in which every level of government in the state expends funds, incurs debt, assesses needs, acquires financial information, and administers its fiscal affairs, and includes the legislative appropriation process and the budgetary practices and principles of all agencies and subdivisions of the state involved in financial planning, determining, implementing, administering, and reviewing governmental programs and services.

The TBRC proposed seven amendments during its 2007-08 session. Two of those ballot initiatives are the subject of this action.

The Ballot Initiatives at Issue

Ballot Initiative 7 proposes two changes in the language of Article I, section 3. The first change is to delete the last sentence of the section, which provides: "No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution." The second change is to add a new sentence stating: "An individual or entity may not be barred from participating in any public program because of religion."

Ballot Initiative 9 modifies Article IX as to education expenditures. First, it creates Article IX, section 8 (an implementation schedule is set forth in Article XII, section 28):

SECTION 8. Requiring sixty-five percent of school funding for classroom instruction. — At least sixty-five percent of the school funding received by school districts shall be spend on classroom instruction, rather than on administration. Classroom instruction and administration shall be defined by law. The legislature may also address differences in administrative expenditures by district for necessary services, such as transportation and food services. Funds for capital outlay shall not be included in the calculation required by this section.

Second, it modifies Article IX, section 1(a):

SECTION 1. Public Funding of education. —

a) The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state of make adequate provision for the education of all children residing within its borders. This duty shall be fulfilled, at a minimum and not exclusively, through adequate provision by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require. Nothing in this subsection creates an entitlement to a publicly-financed private program.

Standard of Review

Judicial review of a proposed constitutional amendment is deferential. This review is governed by several well-established principles:

1. The Court “will not address the merits or wisdom of the proposed amendment.”
2. The Court “must act with extreme care, caution, and restraint” before removing “a constitutional amendment from the vote of the people.”
3. The Court “has no authority to inject itself in the process, unless the laws governing the process have been ‘clearly and conclusively’ violated.”

Advisory Op. to the Att’y Gen. re: Fla. Marriage Protection Amendment, 926 So. 2d 1229,

1233 (Fla. 2006).

4. With regard to legislatively submitted amendments, "if there is any reasonable theory under which it can be done" they must be submitted to the voters. Armstrong v. Harris, 773 So. 2d 7, 14 (Fla. 2000) (quoting Gray v. Golden, 89 So. 2d 785, 790 (Fla. 1956)). This deference is not unlimited, for the Constitution and applicable statutes impose strict minimum requirements that apply to all proposed amendments. Id. at 14. While this case discussed legislatively proposed amendments, the same principles logically apply to amendments proposed by the TBRC.
5. An agency's interpretation of the statute it is charged with enforcing is entitled to deference. A court should not depart from a contemporaneous construction of a statute by an agency charged with its enforcement unless the construction is "clearly unauthorized or erroneous." However, a court shall not give deference to an agency's determination if it exceeds its authority. Level 3 Communications, LLC v. Jacobs, 841 So 2d 447, 450 (Fla. 2003).²
6. An inquiry into the interpretation of a constitutional provision must begin with the provision's explicit language. If the "language is clear, unambiguous and addresses the matter in issue then it must be enforced as written." Florida Society Of Ophthalmology v. Florida Optometric Association, 489 So. 2d

² The rules which govern the construction of statutes are generally applicable to the construction of constitutional provisions. Coastal Fla. Police Benev. Ass'n v. Williams, 838 So. 2d 543, 548 (Fl. 2003), and Zingale v. Powell, 885 So. 2d 277, 282 (Fla. 2004).

1118, 1119 (Fla. 1986). Additionally, the Court should attempt to “construe a constitutional provision consistent with the intent of the framers and the voters.” Zingale v. Powell, 885 So. 2d 277, 282 (Fla. 2004).

7. “Constitutional provisions must be read in pari materia ‘ to form [a] congruous whole so as not to render any language superfluous.” Physicians Healthcare Plans, Inc. v. Pfeifler, 846 So. 2d 1129, 1134 (Fla. 2003).

LEGAL DISCUSSION

A. Ballot Initiatives 7 and 9 are within the TBRC’s authority.

The Plaintiffs argue that the TBRC exceeded its authority by proposing initiatives which would amend the “no aid” provision of Article 1, section 3, and the education provisions in Article IX, sections 1(a) and 8 of the Florida Constitution.

In interpreting the constitutional provisions that established the TBRC’s authority and duties, the Court “consider[s] the object or purpose to be accomplished by the provision, the prior state of the law, including the origin of the provision, as well contemporaneous and practical considerations.” City of Ft. Lauderdale v. Crowder, 983 So. 2d 37, 39 n.2 (Fla. 4th DCA 2008). Fundamental considerations include the plain language of the provisions, the importance of harmonizing related provisions, and the interpretation of those provisions by the authors of the text. Zingale v. Powell, 885 So. 2d 277, 282-83 (Fla. 2004). Courts must also avoid interpreting a provision in a way that would render other provisions superfluous or unnecessary. Hechtman v. Nations Title Ins. of New York, 840 So. 2d 993, 996 (Fla. 2003). The Court concludes that these principles

of constitutional interpretation and the history and purpose of the TBRC support the Defendant's argument that the proposed initiatives are within the TBRC's authority.

Article I, section 6(d) provides the TBRC with broad authority to review any matters involving taxation or the state budgetary process. Nothing in section 6(d) precludes the TBRC from exercising its authority to review these broadly stated matters as they apply to education or the provision of educational services by private entities. The scope of the TBRC's authority to propose statutory and constitutional changes in section 6(e) must logically flow from and relate to the scope of authority in section 6(d). Additionally, sections 6(d) and 6(e) must be read in conjunction with the overall purpose of the TBRC, which is to study and propose reforms on taxation and budget matters. See Physicians Healthcare Plans, Inc. V. Pfeifler, 846 So. 2d 1129, 1134 (Fla. 2003) (noting that "constitutional provisions must be read in pari materia 'to form [a] congruous whole so as to not render any language superfluous'" (citation omitted)).

Taking section 6(d) into account, this Court reads the phrase "state budgetary process" in section 6(e) broadly as allowing the TBRC to propose revisions to any portion of the constitution touching upon the state budgetary process generally. Contrary to Plaintiffs' contention, the phrase "budgetary process" cannot be read to narrow the TBRC's authority. To do so would render useless that portion of section 6(d) allowing the TBRC to "examine constitutional limitations on taxation and expenditures at the state and local level." The Court does not agree that the TBRC can determine that a constitutional limitation should be revised, but be prevented from doing so under Plaintiffs' view of section 6(e). Section 6(d) would be substantially rendered superfluous under the Plaintiffs' construction of section 6(e). Evidence of the intended scope of section 6(e) is provided by

the scope of section 6(d).

Beyond the conclusion that the phrase “budgetary process” must be given a broad meaning to preserve the viability of the language in section 6(d), the natural meanings of “budget” and “process” also convey broad meanings. The primary definitions of the word “budget” include “[a]n itemized summary of probable expenses and income for a given period” and “ a systematic plan for meeting expenses in a given period....”³ The primary definitions of the word “process” include a “system of operations in the production of something” and a “series of action, changes, or functions that bring about an end result.”⁴ In the context of state governmental operations, the concept of a “budgetary process” must necessarily take into account how the state raises revenue, how much revenue is raised, how state monies are spent, the relationship between revenues and expenditures, and ways to help the state become fiscally sound while meeting the needs of its people. For Florida, the budgetary process is complex, far-reaching, and involves many portions of the constitution.

Moreover, as Plaintiffs note, the TBRC’s understanding of its own mandate is particularly important because of the well-established principle that courts should not “depart from the contemporaneous construction of a statute by a state agency ... unless the construction is clearly erroneous.” Level 3 Communications, LLC v. Jacobs, 841 So. 2d 447, 450 (Fla 2003); see also Pershing Industries., Inc. v. Department of Banking & Finance., 591 So. 2d 991, 993 (Fla. 1st DCA 1991) (“If an agency’s interpretation is one

³The American Heritage Dictionary 214 (2d college ed. 1985)

⁴Id. at 987.

of several permissible interpretations, it must be upheld despite the existence of reasonable alternatives.”) The TBRC in 1991 and 2007 explicitly adopted rules that interpreted its authority to propose constitutional amendments by defining the terms “taxation” and “state budgetary process.” These rules are broad and state that “budgetary process” encompasses the “manner in which every level of government in the state expends funds,” and “the budgetary practices and principles of all agencies and subdivisions of the state involved in financial planning, determining, implementing, administering, and reviewing governmental programs and services.” TBRC Rule 1.005 (2007, as amended February 26, 2008).

The constitutional provision addressed by Ballot Initiative 7 is the prohibition against the public funding of religious and sectarian institutions in Article I, section 3. Plaintiffs fail to explain persuasively why Ballot Initiative 7's elimination of this barrier to state budgetary expenditures for religious-affiliated programs, thereby allowing them to be eligible for educational services, public contracting, and procurement matters, is not a matter of the state's budgetary process. Likewise, Plaintiffs fail to explain persuasively why Ballot Initiative 9's alteration of the education clause as it applies to public funds is not a matter of the state's budgetary process.

Ballot Initiatives 7 and 9 are not impermissible simply because they affect portions of the Constitution involving religious freedoms and public education. The Court concludes that both proposals involve matters involving taxation or the budgetary process.

Plaintiffs also argue that the 65 percent requirement in Ballot Initiative 9 is impermissible because it does not concern a *state* budgetary process. They assert that the TBRC cannot propose amendments dealing with “local” processes because section

6(e) includes the term “state” in the phrase “taxation or the state budgetary process.” It is undisputed, however, that a 35 percent cap on administrative spending would impact the state’s budget. The state annually spends substantial sums on its schools. That these funds are distributed to local school districts does not transform this proposed amendment to an exclusively local budget issue. Moreover, section 6(d), which as noted must be taken into account in reading section 6(e), contemplates the TBRC’s review of constitutional limitations on taxation and spending at the state and local level. Art. XI, § 6(d), Fla. Const.

The Court finds that there is not clear and conclusive evidence that the TBRC exceeded the scope of its authority. Based on the plain language of the Constitution, the TBRC rules, the history of the TBRC, and the subject of the Ballot Initiatives, the Court concludes that the TBRC acted within the scope of its authority in proposing Ballot Initiatives 7 and 9. These findings, however, do not constitute a comment on the merits or wisdom of the proposals.

B. The title and summary for Ballot Initiative 9 provide fair notice and are not misleading.

Plaintiffs next allege that the ballot title and summary for Ballot Initiative 9 are misleading. Section 101.161(1), Florida Statutes, sets the standards for ballot titles and summaries. It states that 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” and limits the ballot summary to 75 words that must explain “the chief purpose of the measure.” § 101.161(1), Fla. Stat. (2007). The purpose of a ballot title and summary is “to provide fair notice of the content of the proposed amendment so that the voter will not be misled as to its purpose,

and can cast an intelligent and informed ballot.” Advisory Op. to the Att’y Gen. re: Right of Citizens to Choose Health Care Providers, 705 So. 2d 563, 566 (Fla. 1998) (quoting Advisory Op. to the Att’y Gen. — Fee on the Everglades Sugar Prod., 681 So. 2d 1124, 1127 (Fla. 1996)). The title and summary must “state in clear and unambiguous language the chief purpose of the measure.” Health Care Providers, 705 So. 2d at 566. Finally, the ballot title and summary may not be read in isolation, but must be read together in determining whether the ballot information properly informs the voters. Advisory Op. to the Att’y Gen. re Voluntary Universal Pre-kindergarten Education, 824 So. 2d 161, 166 (Fla. 2002).

The ballot title and summary for Ballot Initiative 9 read as follows:

REQUIRING 65 PERCENT OF SCHOOL FUNDING FOR CLASSROOM INSTRUCTION; STATE’S DUTY FOR CHILDREN’S EDUCATION. - Requires at least 65 percent of school funding received by school districts be spent on classroom instruction, rather than administration; allows for differences in administrative expenditures by district. Provides the constitutional requirement for the state to provide a ‘uniform, efficient, safe, secure, and high quality system of free public schools’ is a minimum, nonexclusive duty. Reverses legal precedent prohibiting public funding of private school alternatives to public school programs without creating an entitlement.

Plaintiffs contend that the ballot title gives too much emphasis to the 65 percent requirement and is therefore misleading.

Ballot titles and summaries cannot “fly under false colors” or “hide the ball” as to the proposed amendment’s true effect. Armstrong v. Harris, 773 So. 2d 7, 16 (Fla. 2000). A ballot title may not imply some peril that is not supported by the text of the proposed amendment. Advisory Op. to the Att’y Gen.--- Save Our Everglades, 636 So. 2d 1336, 1341 (Fla. 1994). Nor may the title and summary leave a key term undefined so that the

meaning of the proposal is ambiguous or misleading. Advisory Op. to the Att'y Gen. re: People's Prop. Rights Amendments Providing Confirmation for Restricting Real Prop. Use May Cover Multiple Subjects, 699 So. 2d 1304, 1308 - 1310 (Fla. 1997).

The ballot title and summary, read as a whole, do not create any improper imbalance in their contents.

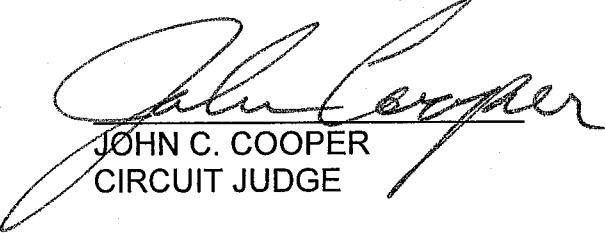
"[T]he ballot title and summary must be read together in determining if the ballot information properly informs the voter." People's Prop. Rights Amendments, 699 So. 2d at 1309. When considered in tandem, the ballot title and summary sufficiently inform the voters of the chief purposes of Ballot Initiative 9, as to both the 65 percent spending requirement and the modification of the state's funding duty. Accordingly, the ballot title and summary comply with section 101.161(1).

CONCLUSION

Based on the foregoing, it is ORDERED AND ADJUDGED that Plaintiffs' Motion for Summary Judgment is DENIED, and Defendant's Cross Motion for Summary Final Judgment joined by the Intervenors, is GRANTED. The Court finds that the TBRC did not exceed its constitutional authority in proposing the challenged ballot initiatives, and that the ballot title and summary for Ballot Initiative 9 are not misleading. Accordingly, summary final judgment is hereby entered in favor of Defendant and the Intervenors.

DONE AND ORDERED in Tallahassee, Leon County, Florida on this 4th day

of August, 2008.


JOHN C. COOPER
CIRCUIT JUDGE

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