

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

BEVERLY SLOUGH; FLORIDA SCHOOL
BOARDS ASSOCIATION; FLORIDA
ASSOCIATION OF DISTRICT SCHOOL
SUPERINTENDENTS; FLORIDA ASSOCIATION
OF SCHOOL ADMINISTRATORS; FLORIDA FARM
BUREAU FEDERATION; FLORIDA INSTITUTE OF
CERTIFIED PUBLIC ACCOUNTANTS; NATIONAL
FEDERATION OF INDEPENDENT BUSINESS,
FLORIDA; ASSOCIATED INDUSTRIES
OF FLORIDA; PRINTING ASSOCIATION OF
FLORIDA; FLORIDA FRUIT AND VEGETABLE
ASSOCIATION.

Plaintiffs,

vs.

DEPARTMENT OF STATE
OF THE STATE OF FLORIDA,

Defendant.

Case No. 2008CA216

BOE INZER
CLERK CIRCUIT COURT
LEON COUNTY, FLORIDA

09 JUL -3 PM 3:51

FILED

COMPLAINT

1. This is an action for declaratory and injunctive relief challenging the legal sufficiency a proposed amendment to the Florida Constitution (hereinafter referred to as "Amendment 5".)

2. Plaintiff Beverly Slough is a resident of the State of Florida, a Florida registered voter and taxpayer, and a member of the St. Johns County, Florida School Board.

3. All other plaintiffs are Florida associations that meet the criteria for associational standing in that: (1) a substantial number of their members would be substantially affected if the

Amendment 5 were adopted; (2) the subject matter of Amendment 5 is within the associations' general scope of interest and activities; and (3) the requested relief is the type appropriate for a such associations to receive on behalf of their members.

4. Defendant Secretary Florida Department of State is responsible for placing proposed constitutional amendments that are legally sufficient on the election ballot.

5. Since adoption of Florida's 1868 Constitution, the primary source of funding for Florida elementary and secondary public schools has been local ad valorem taxes on real property.

6. Since 1973, Florida law has provided for funding of Florida K through 12 schools in a manner designed to equalize funding of programs and services for each student regardless of geographical area in which such student attends school. A core element of the program is a statutory plan designated the Florida Education Finance Program ("FEFP"), which includes the requirement that each local school district levy a minimum tax millage according to a formula set by statute in order for a school district to participate in the FEFP.

7. On April 28, 2008, the Florida Department of State approved a proposed amendment to the Florida Constitution for placement on the November 2008 general election ballot as Amendment 5.

8. Amendment 5 would radically change the method of funding K through 12 education in Florida by cutting in half the tax millage available for local funding of most school purposes and by prohibiting the Legislature from requiring school districts to levy an ad valorem tax as a required local effort for participation in the FEFP.

9. The full text of Amendment 5 is attached hereto as Exhibit A. The provisions that make substantive changes are as follows:

Article VII

Section 4. Taxation; assessments.-- By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

(f) For all levies other than school district levies, assessments of residential real property, as defined by general law, which contains nine units or fewer and which is not subject to the assessment limitations set forth in subsections (a) through (c) shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on the date of assessment provided by law; but those changes in assessments shall not exceed five ~~ten~~ percent (5%) (~~10%~~) of the assessment for the prior year.

(g) For all levies other than school district levies, assessments of real property that is not subject to the assessment limitations set forth in subsections (a) through (c) and (f) shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on the date of assessment provided by law; but those changes in assessments shall not exceed five ~~ten~~ percent (5%) (~~10%~~) of the assessment for the prior year.

Section 9. Local taxes. --

(b) Ad valorem taxes, exclusive of taxes levied for the payment of bonds and taxes levied for periods not longer than two years when authorized by vote of the electors who are the owners of freeholds therein not wholly exempt from taxation, shall not be levied in excess of the following millages upon the assessed value of real estate and tangible personal property: for all county purposes, ten mills; for all municipal purposes, ten mills; for all school purposes, five ~~ten~~ mills; for water management purposes for the northwest portion of the state lying west of the line between ranges two and three east, 0.05 mill; for water management purposes for the remaining portions of the state, 1.0 mill; and for all other special districts a millage authorized by law approved by

vote of the electors who are owners of freeholds therein not wholly exempt from taxation. A county furnishing municipal services may, to the extent authorized by law, levy additional taxes within the limits fixed for municipal purposes.

Section 19. Replacement of ad valorem taxes required by the legislature with other funds for education.—

(a) Commencing in the 2010-2011 fiscal year, the legislature shall be prohibited from requiring school districts to levy an ad valorem tax as a required local effort for participation in the Florida Education Finance Program or a successor program.

(b)(1) The legislature shall replace the revenue impact of the elimination of the required local effort as provided in subsection (a) through one or more of the following options:

a. the repeal of sales tax exemptions, which are determined not to advance or serve a public purpose, except for the current exemptions for: food; prescription drugs; health services; charitable organizations; religious organizations; residential rent, electricity and heating fuel; sales of tangible personal property purchased for resale or imported, produced, or manufactured in this state for export; sales of real property; and sales of intangible personal property.

b. an increase of up to one percentage point to the sales and use tax rate in existence on January 6, 2009.

c. spending reductions for other components of the state budget and revenue increases resulting from economic growth attributable to lower property taxes.

d. other revenues identified or created by the legislature.

(2) In implementing this section, the amount appropriated and set in the General Appropriations Act in the 2010-2011 fiscal year shall not be less than the amount appropriated and set in the 2008-2009 fiscal year for the funding of public schools under the Florida Education Finance Program, as increased by the average historical growth for such amounts during state fiscal years 2006-2007 and 2007-2008, which appropriated and set amount shall be referred to as the “education hold harmless amount.”

(3) Nothing contained herein shall be construed to replace or eliminate: the ad valorem tax millage dedicated to capital outlay, school renovation and repair, or for the payment of lease purchase obligations authorized by general law; voter-approved millage authorized in the constitution; or discretionary ad valorem millage for school districts authorized by law.

(c) Each law creating a sales tax exemption shall contain the single subject of a single exemption and a legislative finding that the exemption advances or serves the public purpose of: encouraging economic development and competitiveness; supporting educational, governmental, literary, scientific, religious, or charitable initiatives or organizations; or securing tax fairness.

ARTICLE XII

SCHEDULE

SECTION 28. Implementation of school property tax reform.--

(a) The amendments to Section 4 of Article VII reducing the maximum annual change in assessments for non-homestead properties to five percent (5%) from ten percent (10%) shall take effect January 1, 2009.

(b) The amendment to Section 9 of Article VII reducing to five mills from ten mills the authorized ad valorem millage for school purposes shall take effect January 1, 2010.

10. The ballot title and summary of Amendment 5 reads as follows:

ELIMINATING STATE REQUIRED SCHOOL PROPERTY TAX AND REPLACING WITH EQUIVALENT STATE REVENUES TO FUND EDUCATION. –

Replacing state required school property taxes with state revenues generating an equivalent hold harmless amount for schools through one or more of the following options: repealing sales tax exemptions not specifically excluded; increasing sales tax rate up to one percentage point; spending reductions; other revenue options created by the legislature. Limiting subject matter of laws granting future exemptions. Limiting annual increases in assessment of non-homestead real property. Lowering property tax millage rate for schools.

11. The title and summary that would appear on the ballot with for Amendment 5 is misleading and fails to adequately inform the voter of the chief purposes of the amendment. In particular:

a. The title of the amendment, which reads in total: "ELIMINATING STATE REQUIRED SCHOOL PROPERTY TAX AND REPLACING WITH EQUIVALENT STATE REVENUES TO FUND EDUCATION," indicates that the sole purpose of the amendment is to eliminate the local minimum tax required for FEFP participation. In fact, the amendment also cuts in half from ten mills to five mills the total amount of taxation that can be levied by local government for most school purposes, cuts in half from 10% to 5% the total amount of annual increases in assessments of real property that can be made by local government for non-school purposes, and limits the subject matter of future sales tax exemptions. Thus, the title is affirmatively and materially misleading by indicating to the voter that the subject matter of Amendment 5 is limited to state required school property taxes when, in fact, it makes significant changes in other, unrelated tax provisions of the Florida Constitution.

b. The summary indicates that the amendment has the effect of "replacing state required school property taxes with state revenues generating an equivalent harmless amount" through one or more options. In fact, the amendment simply directs the Legislature to replace the revenue impact resulting from the elimination of the required local effort through elimination of sales tax exemptions, increase in sales and use tax, spending reductions, or development of other revenue sources. The amendment does not itself provide for replacement revenue and does not make the elimination of the required FEFP taxation and the 50% reduction in maximum allowable millage dependent upon the

creation of replacement revenue sources by the Legislature. That elimination and reduction takes place automatically upon Amendment 5 becoming effective and remains in effect permanently regardless of whether or not the Legislature creates alternative revenue sources. Thus, the summary is affirmatively and materially misleading because the amendment does not replace the lost revenue with other state revenue and does not, as the summary states, "hold harmless" the current revenue stream by ensuring an equivalent amount from other state-created sources.

12. Because Amendment 5 is misleading and fails to adequately inform the voter of the chief purposes of the amendment, it's placement on the ballot would violate Article XI, Section 5 of the Florida Constitution, the Due Process clauses of the Fifth Amendment to the United States Constitution and Article I, Section 9 of the Florida Constitution and Section 101.161, Florida Statutes.

WHEREFORE, plaintiffs seek judgment declaring that Amendment 5 does not meet constitutional requirements necessary for placement on the ballot and enjoining the Department of State from placing Amendment 5 on the ballot.

GREENBERG TRAUIG, P.A.

Bridget Smitha for Barry Richard

BARRY RICHARD

FLORIDA BAR NO. 105599

101 EAST COLLEGE AVENUE

TALLAHASSEE, FLORIDA 32301

Telephone (850) 222-6891

Facsimile (850) 681-0207

E-Mail: richardb@gtlaw.com

1 Resolution of the Taxation and Budget Reform Commission
 2 A resolution proposing an amendment to Sections 4 and 9
 3 and the creation of Section 19 of Article VII and Section
 4 28 of Article XII of the State Constitution to limit the
 5 growth of assessments of certain real property for the
 6 purposes of ad valorem taxation, to mandate the
 7 elimination of property taxes set as required local
 8 effort, to reduce the maximum millage for school purposes,
 9 and to replace the revenues from property taxes set as
 10 required local effort with other funds.

11
 12 Be It Resolved by the Taxation and Budget Reform Commission:

13
 14 That the following amendment to Sections 4 and 9, and the
 15 creation of Section 19 of Article VII, and Section 28 of Article
 16 XII of the State Constitution are agreed to and shall be
 17 submitted to the electors of this state for approval or
 18 rejection at the next general election or at an earlier special
 19 election specifically authorized by law for that purpose:

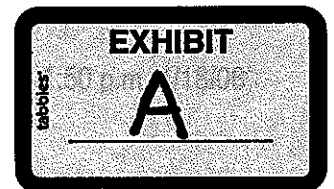
20 ARTICLE VII

21 FINANCE AND TAXATION

22 SECTION 4. Taxation; assessments.--By general law
 23 regulations shall be prescribed which shall secure a just
 24 valuation of all property for ad valorem taxation, provided:

25 (a) Agricultural land, land producing high water recharge
 26 to Florida's aquifers, or land used exclusively for
 27 noncommercial recreational purposes may be classified by general
 28 law and assessed solely on the basis of character or use.

29 (b) Pursuant to general law tangible personal property



30 held for sale as stock in trade and livestock may be valued for
 31 taxation at a specified percentage of its value, may be
 32 classified for tax purposes, or may be exempted from taxation.

33 (c) All persons entitled to a homestead exemption under
 34 Section 6 of this Article shall have their homestead assessed at
 35 just value as of January 1 of the year following the effective
 36 date of this amendment. This assessment shall change only as
 37 provided herein.

38 (1) Assessments subject to this provision shall be changed
 39 annually on January 1st of each year; but those changes in
 40 assessments shall not exceed the lower of the following:

41 a. Three percent (3%) of the assessment for the prior
 42 year.

43 b. The percent change in the Consumer Price Index for all
 44 urban consumers, U.S. City Average, all items 1967=100, or
 45 successor reports for the preceding calendar year as initially
 46 reported by the United States Department of Labor, Bureau of
 47 Labor Statistics.

48 (2) No assessment shall exceed just value.

49 (3) After any change of ownership, as provided by general
 50 law, homestead property shall be assessed at just value as of
 51 January 1 of the following year, unless the provisions of
 52 paragraph (8) apply. Thereafter, the homestead shall be assessed
 53 as provided herein.

54 (4) New homestead property shall be assessed at just value
 55 as of January 1st of the year following the establishment of the
 56 homestead, unless the provisions of paragraph (8) apply. That
 57 assessment shall only change as provided herein.

58 (5) Changes, additions, reductions, or improvements to

59 homestead property shall be assessed as provided for by general
60 law; provided, however, after the adjustment for any change,
61 addition, reduction, or improvement, the property shall be
62 assessed as provided herein.

63 (6) In the event of a termination of homestead status, the
64 property shall be assessed as provided by general law.

65 (7) The provisions of this amendment are severable. If any
66 of the provisions of this amendment shall be held
67 unconstitutional by any court of competent jurisdiction, the
68 decision of such court shall not affect or impair any remaining
69 provisions of this amendment.

70 (8)a. A person who establishes a new homestead as of
71 January 1, 2009, or January 1 of any subsequent year and who has
72 received a homestead exemption pursuant to Section 6 of this
73 Article as of January 1 of either of the two years immediately
74 preceding the establishment of the new homestead is entitled to
75 have the new homestead assessed at less than just value. If this
76 revision is approved in January of 2008, a person who
77 establishes a new homestead as of January 1, 2008, is entitled
78 to have the new homestead assessed at less than just value only
79 if that person received a homestead exemption on January 1,
80 2007. The assessed value of the newly established homestead
81 shall be determined as follows:

82 1. If the just value of the new homestead is greater than
83 or equal to the just value of the prior homestead as of January
84 1 of the year in which the prior homestead was abandoned, the
85 assessed value of the new homestead shall be the just value of
86 the new homestead minus an amount equal to the lesser of
87 \$500,000 or the difference between the just value and the

88 assessed value of the prior homestead as of January 1 of the
89 year in which the prior homestead was abandoned. Thereafter, the
90 homestead shall be assessed as provided herein.

91 2. If the just value of the new homestead is less than the
92 just value of the prior homestead as of January 1 of the year in
93 which the prior homestead was abandoned, the assessed value of
94 the new homestead shall be equal to the just value of the new
95 homestead divided by the just value of the prior homestead and
96 multiplied by the assessed value of the prior homestead.

97 However, if the difference between the just value of the new
98 homestead and the assessed value of the new homestead calculated
99 pursuant to this sub-subparagraph is greater than \$500,000, the
100 assessed value of the new homestead shall be increased so that
101 the difference between the just value and the assessed value
102 equals \$500,000. Thereafter, the homestead shall be assessed as
103 provided herein.

104 b. By general law and subject to conditions specified
105 therein, the Legislature shall provide for application of this
106 paragraph to property owned by more than one person.

107 (d) The legislature may, by general law, for assessment
108 purposes and subject to the provisions of this subsection, allow
109 counties and municipalities to authorize by ordinance that
110 historic property may be assessed solely on the basis of
111 character or use. Such character or use assessment shall apply
112 only to the jurisdiction adopting the ordinance. The
113 requirements for eligible properties must be specified by
114 general law.

115 (e) A county may, in the manner prescribed by general law,
116 provide for a reduction in the assessed value of homestead

117 property to the extent of any increase in the assessed value of
118 that property which results from the construction or
119 reconstruction of the property for the purpose of providing
120 living quarters for one or more natural or adoptive grandparents
121 or parents of the owner of the property or of the owner's spouse
122 if at least one of the grandparents or parents for whom the
123 living quarters are provided is 62 years of age or older. Such a
124 reduction may not exceed the lesser of the following:

125 (1) The increase in assessed value resulting from
126 construction or reconstruction of the property.

127 (2) Twenty percent of the total assessed value of the
128 property as improved.

129 (f) For all levies other than school district levies,
130 assessments of residential real property, as defined by general
131 law, which contains nine units or fewer and which is not subject
132 to the assessment limitations set forth in subsections (a)
133 through (c) shall change only as provided in this subsection.

134 (1) Assessments subject to this subsection shall be
135 changed annually on the date of assessment provided by law; but
136 those changes in assessments shall not exceed five ~~ten~~ percent
137 (5%) ~~(10%)~~ of the assessment for the prior year.

138 (2) No assessment shall exceed just value.

139 (3) After a change of ownership or control, as defined by
140 general law, including any change of ownership of a legal entity
141 that owns the property, such property shall be assessed at just
142 value as of the next assessment date. Thereafter, such property
143 shall be assessed as provided in this subsection.

144 (4) Changes, additions, reductions, or improvements to
145 such property shall be assessed as provided for by general law;

146 however, after the adjustment for any change, addition,
 147 reduction, or improvement, the property shall be assessed as
 148 provided in this subsection.

149 (g) For all levies other than school district levies,
 150 assessments of real property that is not subject to the
 151 assessment limitations set forth in subsections (a) through (c)
 152 and (f) shall change only as provided in this subsection.

153 (1) Assessments subject to this subsection shall be
 154 changed annually on the date of assessment provided by law; but
 155 those changes in assessments shall not exceed five ~~ten~~ percent
 156 (5%) ~~(10%)~~ of the assessment for the prior year.

157 (2) No assessment shall exceed just value.

158 (3) The legislature must provide that such property shall
 159 be assessed at just value as of the next assessment date after a
 160 qualifying improvement, as defined by general law, is made to
 161 such property. Thereafter, such property shall be assessed as
 162 provided in this subsection.

163 (4) The legislature may provide that such property shall
 164 be assessed at just value as of the next assessment date after a
 165 change of ownership or control, as defined by general law,
 166 including any change of ownership of the legal entity that owns
 167 the property. Thereafter, such property shall be assessed as
 168 provided in this subsection.

169 (5) Changes, additions, reductions, or improvements to
 170 such property shall be assessed as provided for by general law;
 171 however, after the adjustment for any change, addition,
 172 reduction, or improvement, the property shall be assessed as
 173 provided in this subsection.

174 SECTION 9. Local taxes.--

175 (a) Counties, school districts, and municipalities shall,
 176 and special districts may, be authorized by law to levy ad
 177 valorem taxes and may be authorized by general law to levy other
 178 taxes, for their respective purposes, except ad valorem taxes on
 179 intangible personal property and taxes prohibited by this
 180 constitution.

181 (b) Ad valorem taxes, exclusive of taxes levied for the
 182 payment of bonds and taxes levied for periods not longer than
 183 two years when authorized by vote of the electors who are the
 184 owners of freeholds therein not wholly exempt from taxation,
 185 shall not be levied in excess of the following millages upon the
 186 assessed value of real estate and tangible personal property:
 187 for all county purposes, ten mills; for all municipal purposes,
 188 ten mills; for all school purposes, five ~~ten~~ mills; for water
 189 management purposes for the northwest portion of the state lying
 190 west of the line between ranges two and three east, 0.05 mill;
 191 for water management purposes for the remaining portions of the
 192 state, 1.0 mill; and for all other special districts a millage
 193 authorized by law approved by vote of the electors who are
 194 owners of freeholds therein not wholly exempt from taxation. A
 195 county furnishing municipal services may, to the extent
 196 authorized by law, levy additional taxes within the limits fixed
 197 for municipal purposes.

198 SECTION 19. Replacement of ad valorem taxes required by
 199 the legislature with other funds for education.--

200 (a) Commencing in the 2010-2011 fiscal year, the
 201 legislature shall be prohibited from requiring school districts
 202 to levy an ad valorem tax as a required local effort for
 203 participation in the Florida Education Finance Program or a

204 successor program.

205 (b) (1) The legislature shall replace the revenue impact of
 206 the elimination of the required local effort as provided in
 207 subsection (a) through one or more of the following options:

208 a. the repeal of sales tax exemptions, which are
 209 determined not to advance or serve a public purpose, except for
 210 the current exemptions for: food; prescription drugs; health
 211 services; charitable organizations; religious organizations;
 212 residential rent, electricity and heating fuel; sales of
 213 tangible personal property purchased for resale or imported,
 214 produced, or manufactured in this state for export; sales of
 215 real property; and sales of intangible personal property.

216 b. an increase of up to one percentage point to the sales
 217 and use tax rate in existence on January 6, 2009.

218 c. spending reductions for other components of the state
 219 budget and revenue increases resulting from economic growth
 220 attributable to lower property taxes.

221 d. other revenues identified or created by the
 222 legislature.

223 (2) In implementing this section, the amount appropriated
 224 and set in the General Appropriations Act in the 2010-2011
 225 fiscal year shall not be less than the amount appropriated and
 226 set in the 2008-2009 fiscal year for the funding of public
 227 schools under the Florida Education Finance Program, as
 228 increased by the average historical growth for such amounts
 229 during state fiscal years 2006-2007 and 2007-2008, which
 230 appropriated and set amount shall be referred to as the
 231 "education hold harmless amount."

232 (3) Nothing contained herein shall be construed to replace

233 or eliminate: the ad valorem tax millage dedicated to capital
 234 outlay, school renovation and repair, or for the payment of
 235 lease purchase obligations authorized by general law; voter-
 236 approved millage authorized in the constitution; or
 237 discretionary ad valorem millage for school districts authorized
 238 by law.

239 (c) Each law creating a sales tax exemption shall contain
 240 the single subject of a single exemption and a legislative
 241 finding that the exemption advances or serves the public purpose
 242 of: encouraging economic development and competitiveness;
 243 supporting educational, governmental, literary, scientific,
 244 religious, or charitable initiatives or organizations; or
 245 securing tax fairness.

246 ARTICLE XII

247 SCHEDULE

248 SECTION 28. Implementation of school property tax
 249 reform.--

250 (a) The amendments to Section 4 of Article VII reducing
 251 the maximum annual change in assessments for non-homestead
 252 properties to five percent (5%) from ten percent (10%) shall
 253 take effect January 1, 2009.

254 (b) The amendment to Section 9 of Article VII reducing to
 255 five mills from ten mills the authorized ad valorem millage for
 256 school purposes shall take effect January 1, 2010.

257
 258
 259
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261 BE IT FURTHER RESOLVED that the following statement be
 262 placed on the ballot:

263 CONSTITUTIONAL AMENDMENT

264 ARTICLE VII, SECTIONS 4, 9, AND 19

265 ARTICLE XII, SECTION 28

266 ELIMINATING STATE REQUIRED SCHOOL PROPERTY TAX AND
 267 REPLACING WITH EQUIVALENT STATE REVENUES TO FUND EDUCATION.--

268 Replacing state required school property taxes with state
 269 revenues generating an equivalent hold harmless amount for
 270 schools through one or more of the following options: repealing
 271 sales tax exemptions not specifically excluded; increasing sales
 272 tax rate up to one percentage point; spending reductions; other
 273 revenue options created by the legislature. Limiting subject
 274 matter of laws granting future exemptions. Limiting annual
 275 increases in assessment of non-homestead real property. Lowering
 276 property tax millage rate for schools.