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PROPOSED SALES TAX AMENDMENT SHOULD NOT BE PASSED

By RANDALL G. HOLCOMBE

The 2002 Florida legislature approved a constitutional amendment that will appear on the November 2002 ballot that, if approved by the voters, would create a 12-member legislative committee to review all sales tax exemptions over a period of three years. Floridians should vote against this amendment. Nothing would be gained from its passage, but it would create substantial disadvantages for the state. The issue is complicated enough and the ballot language will be obscure enough that many voters will consider this amendment without fully understanding its implications. For this reason, it is important to review this proposed amendment's implications, to present them to voters, and to show why the amendment should not be passed.

If the amendment does pass, it would create a committee made up of six legislators appointed by the President of the Senate and six appointed by the Speaker of the House that would review sales tax exemptions. That committee could eliminate exemptions by a majority vote of its members. The entire legislature would then have two years to evaluate the committee's decisions and could reinstate any repealed exemptions within the two-year time frame. Any exemption repealed by the committee and not reinstated by the legislature would then be eliminated after this two-year period. Because the life of the committee would be three years and the legislature would have two years after any committee action to reinstate any exemptions the committee voted to remove, the amendment would create a five-year review process for sales tax exemptions.

The first thing to note about this proposal is that it asks voters to amend the Florida Constitution to do something that the legislature could do without a constitutional amendment. The legislature already has the power to form a joint committee to review sales tax exemptions, which then could be voted on by the legislature. The only substantial procedural difference this amendment would make is that if it is approved, the governor could not veto any exemptions the legislature might remove.

Disadvantages of the Amendment

Consider these drawbacks to the proposed sales tax amendment.

1. The legislative review committee could raise taxes but not lower them. This proposal contains provisions to raise taxes (by eliminating exemptions) but no provisions to lower them. Regardless of whether Florida's sales tax structure could be improved, that issue is obscured by the asymmetric nature of the proposed amendment. Naturally, those who want to raise taxes would support this measure and if it passes, would support removing exemptions. And naturally, those who want to maintain the current level of taxation or to reduce taxes would oppose the amendment and if it passes, would oppose removing exemptions. By design, this proposed amendment is asking Floridians to vote for or against a tax increase, although exactly what kind of an increase would be determined by a 12-member committee. Because any action of the committee would not be revenue-neutral, it would create a situation in which exemptions will be evaluated based on their revenue-generating capacity, rather than on

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whether they make sense based on grounds of economic efficiency or equity.

2. The amendment would place an issue that should be legislatively determined into the constitution. The structure of Florida's sales tax is defined by the Florida statutes, created and modified by the legislature. This amendment would turn what normally would be a legislative issue into a constitutional one. Floridians have a history of doing this—the net ban and bullet train are two examples of constitutionally mandated policies. In both of those cases, however, constitutional amendments were created by citizen initiatives when citizens viewed that the legislature was not responsive to their demands. In this case, the amendment was designed by the legislature to do something they could do anyway with one exception. That points toward another drawback.

3. The amendment would circumvent the normal checks and balances of government. As Florida's government is designed, public policy is created through legislation by the legislature, and is subject to review by the executive branch of government. But this amendment would eliminate the check of executive review on the review of sales tax exemptions. If the amendment passes, the governor could not veto any legislative removal of sales tax exemptions; without it, the governor could. Should the voters agree to alter the constitution to allow the legislature to avoid the governor's review on this one issue? There is no good reason why this type of legislation should be exempt from the same type of executive review that applies to all other legislation. For voters who view the governor as likely to oppose tax increases, this could be a selling point for the amendment. But even those voters should be cautious about approving constitutional amendments that weaken the checks and balances in government.

4. The amendment would add uncertainty to Florida's business climate. If the amendment passes, businesses in Florida and those considering locating in Florida would be on notice that a 12-person committee will review sales tax exemptions, and could remove them without any review by the executive branch. This added uncertainty, which could extend up through 2008, will cause businesses considering relocating to Florida to review their plans more carefully. And other states will look slightly more favorable to multistate businesses that

choose to expand their operations in Florida or elsewhere.

5. The amendment would impose considerable costs on future legislatures. Rather than reform the sales tax, the 2002 legislature offered this amendment as a procedure whereby future legislatures could reform it. If the amendment passes, the committee it creates in 2003 will have three years to evaluate sales tax exemptions and to decide to remove them. Then the legislature would have two years to reverse the committee's decisions. The committee will report its recommendations in 2004, 2005, and 2006, so the legislature could be considering those decisions as late as 2008. There will be considerable lobbying of the committee from groups that will not want their sales tax exemptions removed. And if the committee does vote to remove any, that will allow two more years of lobbying the entire legislature to reinstate those exemptions.

This amendment would open the door to massive amounts of lobbying, with all the attendant expenses and with all the attendant distractions that would draw the legislature's attention away from other pressing issues. In 2002, Floridians saw the legislature consumed in a debate on sales taxes, and if this amendment passes, the voters are asking for the same type of political activity for the next six years.

How Did This Get on the Ballot?

This editorial says nothing positive about this proposed constitutional amendment and even suggests its consequences would be undesirable for legislators. Yet the legislature approved placing it on the ballot. Might voters believe that they had a good reason for doing so? In fact, this proposed amendment is the result of a poorly designed compromise to overcome a stalemate in the 2002 Legislature.

At the beginning of the session, Senate President John McKay proposed a major overhaul of Florida's sales tax that would eliminate many exemptions and would lower the state's sales tax rate from 6 percent to 4.5 percent, with the intention of having the new sales tax raise the same amount of revenue as the existing sales tax. The Senate President made it clear to the legislators that passing this sales tax reform was his top priority for the 2002 legislative session. His plan passed the Senate but met with considerable opposition in the

House, and the legislature's activities ground almost to a halt as it was consumed in a debate over sales tax reform. These debates made it apparent that the McKay proposal had major problems and it was modified several times, but never in ways that satisfied the proposal's critics. When it became clear that the plan would not pass the House, legislators looked for a compromise that would allow the possibility of sales tax reform, as McKay wanted, but one that would be acceptable to a majority in the Florida House. This proposed amendment was the result.

Considering the amendment's history, it would be incorrect to say that this is what the legislature wanted. Legislators agreed to put the amendment on the ballot because it was the best compromise they could produce to put the sales tax issue behind them so they could focus on other issues and be able to adjourn.

From the legislature's standpoint, this compromise was the best way out of a bad situation, but the result is a poorly designed amendment that will make Floridians worse off if it passes. The case against the amendment is compelling and clear. The problem is that voters are not always well-informed.

To make the best choice for Florida, voters need to understand the implications of this constitutional amendment before they arrive at the polls.

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