

Special Report

September 2002



"The power to tax involves the power to destroy."

Former U.S. Supreme Court Chief Justice John Marshall, McCulloch v. Maryland (1819)

A Dangerous Idea: **Amendment 5 Would Put the Power to Raise Taxes in the Hands of Too Few**

Slated to be on the November 2002 ballot as this *Special Report* goes to press is a constitutional amendment (CS/CS/HJR 833) that would radically change the way Florida sets tax policy. This proposal -- Amendment 5, its title, and ballot summary language -- will be confusing to Florida voters and is deceptive on several counts. Some of the ballot language is so contradictory as to defy logic. Amendment 5 is a dangerous idea and needs to be struck from the ballot.

Florida voters need to know that the threat posed by Amendment 5 reaches far beyond inherent language inconsistencies. Neither Amendment 5 nor its ballot title and summary so informs them. The Legislature has chosen, if the voters approve, to abrogate its own power to too few members, in effect empowering a minority tyranny. The Governor is left out of the process. He has no say in the enabling legislation, nor is he allowed to veto tax increases decided by as few as seven of 160 legislators.

The overriding constitutional question involves the essence of political liberty: "Who legitimately has the power to raise taxes?" Later in the late 1800s, echoing John Marshall's concern about the inherent danger of power, historian Lord Acton (1834-1902) issued an epic proclamation that resonates to this day: **"Power tends to corrupt, and absolute power corrupts absolutely."** This attempt by the Florida Legislature to hand over its constitutional power to raise taxes with full force of law to less than five percent of its members strikes at the very heart of good government and defies fundamental principles of representative democracy. This abrogation of power to too few clashes directly with Article III, Section 7 of the Florida Constitution, which requires a majority vote in each house of the Legislature to pass a bill and send it to the governor.

Earl Mackey, founding Director of the National Conference of State Legislators (NCSL), states, "It's doubtful that voters would be comfortable with establishing a constitutional precedent that a handful of legislators can repeal laws passed by the Legislature. One only needs to reflect on such a precedent in the areas of civil rights, voting rights and public education to recognize just how badly this amendment effort has gone astray." Not surprisingly, neither NCSL, the National Association of State Budget Officers, nor

the Eagleton Institute of Rutgers University knows of any state that places such plenary power to raise taxes, as Amendment 5 would, in the hands of a minority of legislators. No other state has dared to so drastically change the fundamental precepts whereby taxes can be raised. Consequently, this bad constitutional amendment would be unique to Florida: a brazen rejection of important checks and balances normally afforded by a bi-cameral legislature and gubernatorial oversight.

Not surprising too is the strong opposition to Amendment 5 by the Board of Directors of Enterprise Florida, the state's chief marketing arm and former Commerce Department, and many other official state and regional and local economic development groups. They oppose the amendment on the grounds that it will harm the economic well being of Florida and its communities. By spreading the repeal of exemptions, exclusions and other transactions across multiple years, Amendment 5 invites legislative equivocation (if not errant mischief) in the proceedings and places the state's economy and business climate in a disquieted state of limbo, and "business uncertainty." This is extremely dangerous, not just for Florida businesses, but for all citizens because it would give all states, not being so encumbered, a distinct competitive advantage over Florida.

Florida TaxWatch is Working for Meaningful Tax Modernization on Three Fronts

Florida TaxWatch supports a meaningful modernization of Florida's tax system. With deliberate speed and thoughtful care, TaxWatch is taking direct action on three strategic fronts to assure that Florida's tax system will be able to meet the challenges of the new global economy in a manner that is healthy for Florida citizens, employees, businesses and the state's overall economy.

Front No. 1. In August 2001, TaxWatch's Center for a Competitive Florida began a series of *Special Reports* on tax system modernization.* The ongoing series -- this *Report* being the seventh in the series -- addresses a variety of issues affecting Florida's tax system's reliability and ability to meet the evolving challenges to Florida's economy. It covers topics ranging from the possibly unique vulnerability of Florida's sales and use tax to uncollected remote sales over the Internet (estimated to be upwards of a billion dollars in uncollected revenues in 2001-2002 alone) to problems that would have resulted had a constitutional amendment initiated by Senate President John McKay during the 2001-2002 Legislative Session been successful. McKay's amendment would have unilaterally taken off the table billions of dollars worth of sales and use tax exemptions, exclusions and transactions without giving proper forethought to the harmful effect this would have on Florida's economy, its businesses and citizen-taxpayers.

Front No. 2. Florida TaxWatch is lead plaintiff in the state courts to strike Amendment 5 from the November 2002 ballot on grounds that the ballot language and title are inconsistent and fail to explain the full ramifications of the proposal, thereby misleading Florida voters. As this *Report* goes to press, Florida's First District Court of Appeal has directed that the ballot title and summary of Amendment 5 be struck from the November ballot. The Florida Senate has asked that this decision be appealed to the Florida Supreme Court. Whatever the outcome, Florida TaxWatch will continue its efforts to promote

thoughtful and comprehensive tax modernization along Front No. 3.

Front No. 3. This front, a Task Force on Tax Modernization, was launched by TaxWatch's Center for a Competitive Florida. Scheduled to meet five times through January 2003, the Task Force will be analyzing how to best modernize Florida's tax system. This Task Force is an unprecedented effort to model in a thoughtful and comprehensive manner how Florida's current, as compared to alternative tax system models, would meet Florida's revenue needs now and over the next ten years under varying economic conditions.

The Task Force is charged to look beyond the short-term time horizon of election cycles by modeling Florida's tax system over several years. The modeling will be dynamic rather than static by measuring indirect as well as direct feedbacks that prospective changes to the current tax structure would likely have on job creation, capital formation and state revenues.

The Task Force will examine several alternative tax system models and economic scenarios. Florida's current tax system (the benchmark model) will be compared to alternative tax system models in terms of its resiliency, or lack thereof, when faced with probable challenges to Florida's economy. Equipped with such "defense knowledge," the state will be less likely to be caught "flat-footed" by mild or severe, short- or long-term downturns in the economy or by more catastrophic economic dislocations such as Florida experienced on 9/11 of this year or in the aftermath of Hurricane Andrew in 1992. Unless so armed, Florida's tax system will less likely be able to meet the challenges and uncertainties of the new economy with the resiliency that Florida business and Florida's citizen-taxpayers are entitled to expect. Florida deserves no less than a tax system modernized to reflect the best possible form of good government that a genuinely representative democracy can provide.

* See Florida TaxWatch Center for a Competitive Florida's series of *Special Reports on Modernizing Florida's Tax System* on this website. The 6th publication in the series -- "Carefully Overhauling Florida's Tax System Over the Long Haul, March 2002" -- discusses the ongoing effort to modernize Florida's tax system by the Center's Task Force on Tax Modernization.

*The Seventh in a series of Special Reports on Modernizing Florida's Tax System
By The Center for a Competitive Florida*

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