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## High court axes 3 key amendments

BY MARY ELLEN KLAS

The Florida Supreme Court dealt a blow to a tax revision plan and school vouchers Wednesday, removing from the November ballot three controversial amendments that could have dramatically altered the future of Florida.

In unanimous rulings delivered less than five hours after the court heard oral arguments, the justices rejected Amendments 5, 7 and 9 on grounds they were improperly placed on the November ballot and are misleading to voters.

The amendments were placed directly on the ballot by the Taxation and Budget Reform Commission, a citizens' panel that meets once every 20 years.

Allan Bense, the chairman of the Taxation and Budget Reform Commission, said he hopes a citizens' group will pursue tax reform now that the commission's signature issue has been killed.

"We gave it our best shot," he said. "I thought that was Florida's best chance ever for real tax reform."

Amendment 5 -- known as the tax-swap amendment -- would have eliminated property taxes that pay for schools, lowering average tax bills by 25 percent and forcing legislators to replace the money with sales and other taxes.

Amendment 7 would have repealed the 100-year-old ban on direct state funding of religious institutions, including religious schools.

And Amendment 9 would have overturned the state Supreme Court decision that invalidated state-paid vouchers for students in failing public schools to attend private schools.

Opponents argued that the amendments were flawed and that voters would be hoodwinked into supporting them for the wrong reasons.

The swift ruling, to be followed later by a written opinion, gives the secretary of state time to remove the proposals from the official ballot by the Friday deadline.

The big winners are the state's teachers union and school boards, which feared the property tax and voucher amendments would erode state education spending and dilute the Legislature's desire to fix public schools.

Broward Teachers Union President Pat Santeramo said he was "ecstatic" about the decision: "Public education will be saved."

The unions and school boards, along with a coalition of business, healthcare, education and other interest groups, argued that Amendment 5's ballot language was misleading because it

implied that schools would be protected indefinitely from budget cuts when in fact the amendment says the Legislature must protect school spending only the year the amendment would take effect -- 2010-11.

"In rejecting the measures, the court backed clear, unambiguous constitutional amendments, not proposals that mask their true meaning," said Florida Education Association President Andy Ford.

But Gov. Charlie Crist was "disappointed the people will not have the opportunity to vote to lower their property taxes," said Erin Isaac, Crist's communication's chief.

And former Gov. Jeb Bush, who made private school vouchers a major component of his education reforms, called the ruling "extremely disappointing" and said he feared for the fate of other voucher programs that have not faced a legal challenge.

"Now, more than ever, Floridians should have a voice in determining -- not just how much they are taxed -- but how their tax dollars are spent," Bush said.

The court ruling followed an animated one-hour session Wednesday morning, in which the justices questioned whether the tax commission exceeded its authority when it voted to place the voucher amendments before voters and whether Amendment 5 was misleading.

Leon County Circuit Court Judge John Cooper first ruled Amendment 5 unconstitutional because of that misleading implication. Wednesday, the high court agreed. Several justices reiterated his reasoning that the title and summary could confuse voters.

"The average person is going to read this and say, 'OK, those property taxes are gone, but the state is going to put that same amount of money back into the school system -- I don't have anything to worry about,'" said Chief Justice Peggy Quince. "What will put them on notice . . . that this isn't a feature of it?"

Mark Herron, the attorney representing the Florida Association of Realtors and other proponents, argued that the amendment "doesn't imply or infer" that the money will be replaced beyond the first year.

Justice Charles Wells disagreed. "Unfortunately, like I find with some warranties, it's not a lifetime warranty and I don't have any recourse," he said.

The chief architect of the proposal, tax commission member John McKay, said Wednesday the proposal was drafted by some of Florida's best legal scholars who know the Legislature rewrites the school budget every year. They decided that specifying that school budgets would be immune from cuts after the first year was not necessary, adding, "in hindsight, that would have probably been a good idea."

The high court also agreed with opponents that the Taxation and Budget Reform Commission went beyond its authority when it placed the voucher-related amendments on the ballot. Justice Harry Lee Anstead questioned whether the commission was created to deal with any issue that has budget impact, or if it's limited to those that deal with the budget process. If not, he said, "they could do anything."

Bense said the process exposed some problems with the design of the commission, too. The Constitution requires the panel to get 17 of 25 members to place any amendment on the ballot, so proponents were forced to compromise and revise their proposals to get enough

votes.

In the end, that may have doomed these three proposals, Bense said. For example, the tax reform amendment was tied to eliminating property taxes to win enough votes to put it on the ballot, but that prompted schools to worry about funding cuts.

"Had it required a majority vote, maybe it would be on the ballot," he said.

Miami Herald staff writer Hannah Sampson contributed to this report.

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