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## STATEMENT OF THE CASE AND FACTS

The Tax Cap Committee (“Tax Cap”) has invoked the initiative petition process reserved to the people of Florida in Article XI, Section 3 of the Florida Constitution to propose an amendment entitled, **“People’s Property Rights Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects”** (“People’s Property Rights-Multiple Subjects” petition).

The ballot summary for this petition reads as follows:

**SUMMARY:** This provision would expand the people’s rights to initiate constitutional changes by allowing amendments to cover multiple subjects that require full compensation be paid to the owner when government restricts use (excepting common law nuisances) of private real property causing a loss in fair market value, which in fairness should be borne by the public. This amendment becomes effective the day following voter approval.

The full text of the proposed amendment reads:

Insert the underlined words in Article XI, Section 3, on the day following voter approval:

**INITIATIVE -** The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue or those that require full compensation be paid to the owner when government restricts use (except common law nuisances) of private real property causing a loss in fair market value, which in fairness should be borne by the public, shall embrace but one subject and matter directly connected therewith.

Because the People’s Property Rights - Multiple Subjects petition received the requisite number and distribution of signatures to qualify for a Supreme Court review,

and because Tax Cap has otherwise complied with the requirements of Section 15.21 Florida Statutes (1996), the Attorney General, pursuant to article IV, Section 10, Florida Constitution and Section 16.061, Florida Statutes (1995), has petitioned this Court for an advisory opinion on its validity. This Court issued an interlocutory order on August 27, 1996 permitting interested parties to file briefs. Accordingly, the Tax Cap Committee and the undersigned amicus curiae submit this brief in support of the People's Property Rights - Multiple Subjects petition.'

The sole issues before the court are whether the petition meets the single subject requirement of Article XI, Section 3 of the Florida Constitution and whether its ballot title and summary comport with the clarity requirements of Section 10 1.16 1 (1), Florida Statutes (1995).<sup>2</sup>

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<sup>1</sup> Numerous amicus curiae elected to join in this brief per the suggestion to consolidate briefing in *Roofcraft International, Inc. v. Patrick Leavens et al.*, 21 Fla.L. Weekly D 1562 (Fla. 4th DCA 1996).

<sup>2</sup> References to the appendix to this brief will be noted by an "A" followed by the appropriate tab number. Unless otherwise indicated, all emphasis is supplied. For brevity sake, citations to any of this Court's previous advisory opinions will omit the words, "to the Attorney General." Repeat citations to any of those opinions will cite only the title of the petition, e.g., *Limited Marine Net Fishing*.

## SUMMARY OF THE ARGUMENT

The Peoples Property Rights - Multiple Subjects petition satisfies the single subject requirement of Article XT, Section 3, Florida Constitution, as interpreted by this Court, as well as the statutory clarity requirements of Section 10 1.16 1, Florida Statutes (1995).

Accordingly, the Tax Cap Committee and undersigned amicus curiae respectfully request that this Court approve the People's Property Rights - Multiple Subjects petition for a vote of the people on a general election ballot following the certification of the requisite number and distribution of valid signatures.

## ARGUMENT

### I. THE PEOPLE'S PROPERTY RIGHTS - MULTIPLE SUBJECTS PETITION ENTITLED TO GREAT DEFERENCE.

Review of an initiative petition is one of the “most sanctified” areas in which a court can exercise power. *Pope v. Gray*, 104 So.2d 841, 842 (Fla. 1958). Because the people’s right to amend their organic law is so fundamental, this Court must protect that right by applying a very deferential standard of review. The Court has long recognized its duty to protect the right of citizens to amend their Constitution by initiative in reviewing proposals with “extreme care, caution and restraint.” *Askew v. Firestone*, 421 So.2d 151, 156 (Fla. 1982).

Neither the wisdom of a provision or the quality of its draftsmanship is a matter for this Court’s review. *Weber v. Smathers*, 338 So.2d 819, 821-22 (Fla. 1976), quoting *Gray v. Golden*, 89 So.2d 785, 790 (Fla. 1956). This Court may only pass upon the provision’s compliance with the single-subject limitation of Article XI, Section 3 of the Florida Constitution and the technical requirements of Section 10.161 Florida Statutes (3996). The Court has the duty to approve a proposal unless it can be shown to be clearly and conclusively defective. *Advisory Opinion re: Tax Limitation*, 673 So.2d 864, 867 (Fla. 1996) (“*Tax Limitation II*”).

Particularly when given the deference owed to initiative petitions, the People’s Property Rights - Multiple Subjects petition is well within the requirements of the law for placement on the ballot.



II. THE PEOPLE'S PROPERTY RIGHTS - MULTIPLE SUBJECTS PETITION MEETS THE SINGLE-SUBJECT REQUIREMENT OF ARTICLE XI, SECTION 3 OF THE FLORIDA CONSTITUTION.

To comply with the Article XI, Section 3 requirement that an initiative amendment “shall embrace but one subject and matter directly connected therewith,” a proposed amendment must manifest a “logical and natural oneness of purpose.” See *on the Everglades Sugar Production*, 21 Fla.L.Weekly S394, S395 (Fla. 1996) (quoting *Fine v. Firestone*, 448 So.2d 984, 990 (Fla. 1984)). The singular purpose of the People’s Property Rights - Multiple Subjects petition is to create an exception to the “single subject” rule of Article XI, Section 3 of the Florida Constitution which would allow constitutional revisions or amendments that require full compensation be paid to the owner when government restricts use (except common law nuisances) of private real property causing a loss in fair market value, which in fairness should be borne by the public to cover multiple subjects.

In *Advisory Opinion re: Tax Limitation*, 644 So.2d 486, 496 (Fla. 1994), this Court held that an initiative proposal creating an exception to the single subject requirement for revisions or amendments limiting the power of government to raise revenue did not violate the single subject rule. (The amendment approved in *Tax Limitation* is now part of Article XI, Section 3). With respect to the single subject requirement, the People’s Property Rights - Multiple Subjects petition is identical to the proposal in *Tax Limitation*.

Accordingly, it should be approved by this Court for a vote of the people.

**III. THE PEOPLE'S PROPERTY RIGHTS - MULTIPLE SUBJECTS SATISFIES STATUTORY CLARITY REQUIREMENTS.**

Section 10 1.16 1, Florida Statutes, outlines the technical wording requirements for initiative petitions.<sup>3</sup> The purpose of these requirements is to ensure the clarity of proposed amendments for the voting public, The People's Property Rights - Multiple Subjects petition satisfies the length limits for the summary ("explanatory statement" of up to 75 words) and for the ballot title (up to 15 words). The proposal is also commonly referred to by its title as the statute requires.

This Court has construed Section 10 1.16] to require "that the ballot title and summary for a proposed constitutional amendment state in clear and unambiguous language the chief purpose of the measure," *Advisory Opinion re: Save Our Everglades*, 636 So.2d 1336, 1341 (Fla. 1994) (quoting *Askew v. Firestone*, 421 So.2d 151, 154-55 (Fla. 1982)), and that they advise the electorate of true meaning and ramifications of an amendment, *Advisory Opinion re: Tax Limitation, Voter Approval of New Taxes, Property Rights, Revenue Limits*, 644 So.2d 486,490 (Fla. 1994) ("*Tax Limitation I*")

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<sup>3</sup> Section 101.161(1) provides, in pertinent part:

The substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. 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.

(citing *Askew v. Firestone*, 421 So.2d 141, 156 (Fla. 1982)). “This is so the voter will have fair notice of the content of the proposed amendment, will not be misled as to its purpose, and can cast an intelligent and informed ballot.” *Advisory Opinion re: Save Our Everglades*, 636 So.2d at 1341; *Tax Limitation I*, 644 So.2d at 495.

The ballot title and summary of the current People’s Property Rights - Multiple Subjects petition properly advise voters of the chief purpose of the measure and its ramifications. The title and summary mean precisely what they say. The electors are clearly informed that the chief purpose of the measure is to create an exception to the “single subject” requirement for initiative amendments which would allow multiple subjects in initiative proposals which require full compensation be paid owners when government restricts use (except common law nuisances) their of private real property causing a loss in fair market value, which in fairness should be borne by the public.

In his August 14, 1996 letter to this Court, the Attorney General argues that the People’s Property Rights - Multiple Subjects does not comply with statutory clarity requirements in three respects, none of which has any merit.

First, the Attorney General claims that the petition lacks definitions for the terms “owner” and “common law nuisance.” This argument ignores the fact that this Court has approved initiatives with no specific definition for commonly understood legal terms, time and time again. *Advisory Opinion re: Limited Political Terms in Certain Elective Offices* , 592 So.2d 225 (Fla. 1991) (approving initiative petition without specific

definition of term “incumbent”); *Advisory Opinion re: Homestead Valuation Limitation*, 58 1 So.2d 586 (Fla. 1991) (approving initiative without specific definition of “homestead property” or “ad valorem taxation”); *Stop Early Release II*, 661 So.2d 1204 (Fla. 1995) (approved initiative without specific definitions of “pardon,” “clemency,” “parole,” “conditional release” and “term of years”); *Fee on the Everglades Sugar Production*, 21 Fla.L.Weekly S394 (Fla. 1996) (approved initiatives without specific definition of “levy,” “fee,” or “abatment”). The terms “owner” and “common law nuisance” are no more complex than other legal terms for which no definition has been required.

Given the presumption that voters “have a certain amount of common sense and knowledge,” *Tax Limitation II*, 673 So.2d 864, 868 (Fla. 1996), it is particularly hard to understand the Attorney General’s objection to “owner.” Even if the Attorney General isn’t, this Court can be confident that the voting public understands the concept of property ownership and knows that various entities, such as corporations and partnerships, commonly own property.

The same presumption covers “common law nuisance.” As used in this Property Rights petition, the term “common law” is a compound adjective<sup>4</sup> commonly understood to indicate traditional judicial principles.<sup>5</sup> “Nuisance” is also a commonly understood

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<sup>4</sup> *Webster's New Collegiate Dictionary* (150th Edition, 198 1) defines the adjective form of “common law” as “based on the common law.”

<sup>5</sup> Black’s *Law Dictionary* defines “common law” as:

... the body of those principles and rules of action, relating to the government and

term, denoting an activity which unreasonably infringes on the rights of others established case law already protects. Taken together, the adjective “common law” and the noun “nuisances” are readily understood to mean offensive activities against which established case law already protects. Accordingly, the term “common law nuisances” fairly advises the voters that any initiative proposed under the exception created by the People’s Property Rights - Multiple Subjects petition could not provide compensation for government restriction of land uses which the courts have previously recognized as nuisances.

The Attorney General’s assault on the term “common law nuisance” appears to be just the kind of “hair splitting” in which this Court has properly declined to engage while reviewing people’s initiatives. Ignoring the actual wording of the summary, the Attorney General suggests that ambiguity exists as to whether the petition refers to “common law nuisances” or “common nuisances,” the latter of which has a more specialized legal definition to distinguish between a public and private nuisance. [A. 1 at page 4]. Any

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security of persons and property, which derive their authority solely from usages and custom of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs. *Id.* *Common Law*, p. 250, (5th Edition 1979).

This definition is remarkably similar to *Webster’s* version, which reads:

**common law** *n* : the body of law developed in England primarily from judicial decisions based on custom and precedent, unwritten in statute or code . . .  
*Webster’s New Collegiate Dictionary* (150th Edition, 1981), p. 225.

literate person can see that the summary says “common law nuisances.” No where in the summary or the text does the petition use the term “common nuisance.” In fact, the text of the amendment (which reads “nuisance taken together, the adjective “common law” and the noun “nuisances” are readily understood to mean offensive activities against which established case law already protects. Accordingly, the term “common law nuisances” fairly advises the voters that, under the People’s Property Rights - Multiple Subjects petition, compensation would not be available for uses which the courts have previously recognized as nuisances.

Even if the wording of the summary could be confused with the term “common nuisance,” the voter is sufficiently informed of the chief purpose of the proposed amendment. The concept that compensation could be awarded, except for restrictions of nuisance uses, would still be adequately conveyed if the term “public nuisance” (the definition of “common nuisance” quoted by the Attorney General) was substituted into the summary. In situations where different terms convey the same concept, this Court has refused to “split hairs” and strike an initiative.<sup>6</sup> For instance, in *Fee on the Everglades Sugar Production*, this Court refused to strike a measure providing for the assessment of one penny per pound of raw sugar because of asserted distinctions between the terms “fee” and “tax.” The Court was satisfied that voters would not be confused, reiterating

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<sup>6</sup> This Court must interpret the proposal in a manner that renders it valid if at all possible. *Gray v. Golden*, 89 So.2d 785,790 (Fla. 1956).

that “the initiative imposes a levy -- whether characterized as a fee or a tax.” *Id.* 2 1 Fla.L.Weekly S394, S 396 (Fla. 1996).

The Attorney General next argues that the summary fails to adequately inform the voters of when the government may be liable for payment of compensation because it lacks a standard to determine when “in fairness” a loss in value should be borne by the public. He makes the related argument that the summary is too subjective, leaving the standard of fairness to the individual understanding of each voter.

The summary does not remotely suggest that voters are to apply their own individual standard of fairness. Rather, it refers to the operative legal standard by which any amendment proposed under the multiple subject exception would allow compensation to property owners. The standard of “when a loss of market value, in fairness, should be borne by the public” is a judicially created one, well recognized by federal and Florida courts. *Armstrong v. United States*, 364 U.S. 40, 49 (1960); *Nollan v. California Coastal Council*, 483 U.S. 825, 107 S.Ct. 3141, 3147, 97 L.Ed.2d 677 (1987); *Joint Ventures v. Dept. of Transportation*, 563 So.2d 622 (Fla. 1990).

The Attorney General’s construction of the summary as suggesting subjective judgments of fairness is an illogical one. It is based on the speculation that a voter might believe a future compensation claim, brought under a future constitutional amendment, would be up to him or her to decide. To the contrary, voters can be presumed to know that a legal right, such as the kind of right to compensation at issue here, would not be

decided by each individual voter, but rather, in a court of law. All voters are being asked to decide is whether they would favor multiple subject amendments creating a right to compensation using that legal standard. This Court must interpret the proposal in a manner that is logical and that renders it valid if at all possible.<sup>7</sup> *Gray v. Golden*, 89 So.2d 785, 790 (Fla. 1956); *Advisory Opinion re: Tax Limitation*, 673 So.2d 864, 867 (Fla. 1996) (“*Tax Limitation II*”).

The application of such a legal standard may not be precisely predictable, but that is not a prerequisite for approval. As this Court recently observed:

With respect to whether the ballot title and summary accurately inform the voter of the chief purpose and effect of the proposed amendment, this Court has said that the ballot summary is not required to include all possible effects [citation omitted], nor to “explain in detail what the proponents hope to accomplish” [citation omitted]. Rather, it is sufficient that the ballot summary clearly and accurately sets forth the **general rule to be applied** and informs the voters of the chief purpose of the proposal so that an informed decision is possible.

*Id.* (emphasis supplied). The Peoples Property Rights - Multiple Subjects petition clearly meets this test. It informs the electorate that the general rule to be applied is whether, in fairness, a loss in fair market value should be borne by the public.

Next, the Attorney General contends that the title and summary fail to inform the voter that the real objective is to permit “log-rolling.” The Court approved the multiple subject proposal in *Tax Limitation I*, despite the Attorney General’s identical argument in

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<sup>7</sup> *Gray v. Golden*, 89 So.2d 785,790 (Fla. 1956).



that case. A similar log-rolling argument was rejected by the Court in *Advisory Opinion re: Fee on the Everglades Sugar Production, Everglades Trust Fund, and Responsibility for Paying Costs of Water Pollution Abatement in the Everglades*, 21 Fla.L.Weekly S394 (Fla. 1996). The same result should obtain here.

## CONCLUSION

In light of the foregoing, the Tax Cap Committee and undersigned amicus curiae respectfully request that this Court approve the People's Property Rights - Multiple Subjects petition for placement on a general election ballot following the certification of the requisite number and distribution of valid signatures, pursuant to this Court's jurisdiction under Article IV, Section 10, Florida Constitution.

Respectfully submitted,

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By Amy Brigham Bolris for  
TOBY PRINCE BRIGHAM

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing motion has been sent by U.S. Mail to all those on the attached service list this 17th day of October, 1996.

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# Appendix





STATE OF FLORIDA

OFFICE OF ATTORNEY GENERAL

ROBERT A. BUTTERWORTH

FILED

AUG 14 1996

CERTIFIED

August 14, 1996

88,696

The Honorable Gerald Kogan  
chief Justice, and  
Justices of the Supreme Court  
of Florida  
The Supreme Court Building  
Tallahassee, Florida 32399-1925

Dear Chief Justice Kogan and Justices:

In accordance with the provisions of Article IV, Section 10, Florida Constitution, and Section 16.061, Florida Statutes, it is my responsibility to petition this Honorable Court for a written opinion as to the validity of an initiative petition circulated pursuant to Article XI, Section 3, Florida Constitution.

On July 26, 1996, the Secretary of State, as required by Section 15.21, Florida Statutes, submitted to this office an initiative petition entitled "People's Property Rights Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects." This initiative seeks to amend the State Constitution to allow multiple-subject amendments that require full compensation be paid to the owner when government restricts the use of private real property causing a loss in fair market value.

The full text of the proposed amendment provides:

Insert the underlined words in Article XI, Section 3, on the day following voter approval:

INITIATIVE.-The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise

The Honorable Gerald Kogan

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revenue or those that require full compensation be paid to the owner when government restricts use (except common law, nuisances) of private real property causing a loss in fair market value, which in fairness should be borne by the public, shall embrace but one subject and matter directly connected therewith,

The ballot title for the proposed amendment is "PEOPLE'S PROPERTY RIGHTS **AMENDMENTS** PROVIDING COMPENSATION FOR RESTRICTING REAL PROPERTY USE **MAY COVER MULTIPLE SUBJECTS.**" The summary for the proposed amendment provides:

This provision would expand the people's rights to initiate constitutional changes by allowing amendments to cover multiple subjects that require full compensation be paid to the owner when government restricts **use (excepting common Law nuisances)** of private real property causing a **loss** in fair market value, which in fairness should be borne by the public. This amendment becomes effective the day following voter approval.

#### CONSTITUTIONAL REQUIREMENTS

Section 16.061, Florida Statutes, requires the Attorney General, within 30 **days after receipt of the proposed amendment** to the Florida Constitution by citizens' initiative, to petition this Honorable Court for an advisory opinion **as to** whether the text of **the** proposed amendment complies with Article XI, Section 3, Florida Constitution.

**Article XI, Section 3,** Florida Constitution, provides in relevant part :

**The** power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and **matter** directly connected therewith,

This proposed constitutional amendment would eliminate the single subject requirement of **Article XI, Section 3**, of the State Constitution for initiatives requiring full compensation to be paid to owners for **governmental restrictions on private** real property causing a loss in fair market value.

In Advisory Opinion to the Attorney General re: Tax Limitation, 644 So. 2d 486, 496 (Fla. 1994), this Court held that an exemption from the single-subject requirement for revisions or amendments limiting revenues did not violate the single subject requirement. **The** proposed initiative entitled "**People's** Property Rights Amendments **Providing Compensation** for Restricting Real Property Use May Cover Multiple Subjects" seeks to provide a similar exemption for amendments requiring compensation **for** governmental **restrictions** on the use of private real property. By doing **so** it amends only Article XI, Section 3, Florida Constitution.

Thus, this initiative would not appear to violate the **single-**subject requirement contained in Article XI, Section 3, Florida Constitution.

#### BALLOT TITLE AND SUMMARY

Section 16.061, Florida Statutes, requires the Attorney **General** to **petition** this Honorable Court for an advisory opinion as to whether the proposed ballot title and summary comply with Section 101.161, Florida Statutes.

Section 101.161, **Florida Statutes**, provides *in relevant part*:

Whenever a constitutional amendment . . . is submitted to the vote of the **people**, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot . . . .  
**The** substance of the amendment . . . shall be an explanatory **statement**, **not** exceeding 75 words in length, of the chief purpose of the measure. **The**

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ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

This Court has stated on several occasions "that the ballot [must] be fair and advise the voter sufficiently to enable him intelligently to cast his ballot." Askew v. Firestone, 421 So. 2d 151, 155 (Fla. 1982), quoting, Hill v. Milander, 72 So. 2d 796, 798 (Fla. 1954). While the ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, it need not explain every detail or ramification of the proposed amendment. Carroll v. Firestone, 497 So. 2d 1204, 1206 (Fla. 1986); Advisory Opinion to the Attorney General--Limited Political Terms in Certain Elective Offices, 592 So. 2d 225, 228 (Fla. 1991).

The proposed initiative petition is entitled "People's Property Rights Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects." The title would appear to reflect the chief purpose of the amendment.

The summary of the initiative petition requires that full compensation be paid to the owner of private real property when the government restricts the use of such property. However, neither the ballot title and summary, nor the text of the initiative itself, define the term "owner" such that it is clear whether corporate entities are intended to be included within the scope of that term.

The summary refers to "common law nuisances" being exempt from the amendment's scope. A "common nuisance" is "one which affects the public in general, and not merely some particular person; a public nuisance." See, Black's Law Dictionary, p. 962, (5th Ed. 1979) and 66 C.J.S. Nuisances ss. 1-2 (1950). However, absent a definition of "common law nuisance" within the summary or text of the amendment, the voter is not advised of what restrictions are compensable under the terms of the amendment.

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Further, the summary of the initiative petition refers to "loss[es] in fair market value, which in fairness should be borne by the public," without providing a standard to determine when, "in fairness," a governmental entity may be burdened for its actions. Thus, the voter is not adequately informed of when the government may be liable for payment of compensation. Rather it is left to the subjective understanding of each voter as to what he may feel is a standard of fairness.

The ballot title and summary of this initiative do not inform the voter that the real objective of this amendment is to permit "log-rolling" in the context of property rights compensation issues. As was suggested by this office in its 1994 review of the ballot title and summary for the "Revenue Limits" initiative, this initiative petition would effect a fundamental change in the procedures for amending the constitution by the voters and the ballot summary fails to mention "log-rolling" as a collateral consequence of the amendment.

The process by which voters may directly amend the constitution is limited to a single-subject because "the initiative process [does] not provide any filtering mechanism for public debate and hearings." See, Citizen Constitutional and Legislative Initiatives and Referendums, Florida House of Representatives Committee on Governmental Operations, p. 32, November 1985. The integrity of the initiative process depends upon the submission of plain and straightforward proposals to the people rather than a multitude of subjects, commonly known as "log-rolling."

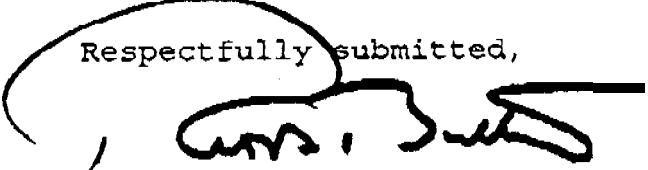
Thus, the voter may be unaware that approval of this amendment would require him to accept or reject the proposition that all property rights compensation amendments may cover multiple subjects. This would constitute a form of "log-rolling" in that voters would not be able to independently express dissatisfaction with or approval of property rights compensation amendments, but would be compelled with one vote to approve or disapprove property rights amendments affecting multiple subjects.

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Thus, the ballot title and summary fail to advise the voter sufficiently to enable him intelligently to cast a vote.

Therefore, I respectfully request this Honorable Court's opinion as to whether the proposed initiative petition complies with the single-subject requirement in Article XI, Section 3, Florida Constitution, and whether the ballot title and summary of the constitutional amendment, proposed by initiative petition, comply with Section 101.161, Florida Statutes.

Respectfully submitted,



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