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INTRODUCTION

In response to this Court's interlocutory order of August 27, 1996, the Florida Department of Community Affairs (Department), the Florida League of Cities, Inc. (League), and the Association of Counties, Inc., (Association) submit this brief as interested parties opposing the placement on the ballot of the initiative petition for PEOPLE'S PROPERTY RIGHTS AMENDMENTS PROVIDING COMPENSATION FOR RESTRICTING REAL PROPERTY USE MAY COVER MULTIPLE SUBJECTS.

The Department, whose secretary is appointed by and serves at the pleasure of the Governor, is an executive agency of state government, created by section 20.18, Florida Statutes (1995). The Department is the state land planning agency and acts in concert and cooperation with local governments throughout the state in the exercise of their duties relating to economic development, growth management, affordable housing, community development, special districts, and emergency management. See, e.g., Chs. 163, 186, 187, 189, 190, 252, 380, and 421-424, Fla. Stat., (1995).

The League is a Florida not-for-profit corporation, composed of more than 390 municipalities and five charter counties in the State of Florida. As provided in the League's charter, the

principal purposes of the League are the general improvement of municipal government, its efficient administration, and the promotion of the welfare of the citizens in municipalities throughout the State of Florida.

The Florida Association of Counties, Inc., is a not-for-profit corporation organized specifically to protect, promote, and improve the mutual interests of all counties within the State of Florida. Presently, the Association represents all sixty-seven county governments, both charter and non-charter. The Association believes the issues in this matter to be of great public concern as they affect every county government within the State and further believes its participation will assist the Court in resolving the issues presented.

The issues raised by the title and summary of the "People's Property Rights" initiative, and the subjects it addresses, affect the continuing ability of the state and the membership of the League and of the Association to exercise, and to have reviewed and enforced by the courts, the reasonable regulatory authority of government to protect the public health, safety, and welfare. Because state and local government rely on the exercise of the authority of government in meeting their respective duties to state and local citizens, the Department, the League, and the

Association have a vital interest in seeing that any amendment to the Florida Constitution respecting property rights is presented to the voters in a manner which is consistent with Florida law. Otherwise, the electorate may be led to approve results it neither intends, nor desires. Therefore, the League, the Association and the Department are interested parties to this proceeding, which will determine whether or not the title and summary and single-subject provisions for constitutional initiatives have been satisfied.

STATEMENT OF THE CASE AND FACTS

This case concerns the validity of an initiative petition concerning "People's Property Rights" circulated by a group known as the Tax Cap Committee and submitted by the Department of State to the Attorney General on July 26, 1996, in accordance with section 15.21, Florida Statutes (1995). The initiative petition seeks to amend the Florida Constitution by inserting a new phrase in Article XI, section 3. The ballot title and summary of the initiative state:

Ballot Title: PEOPLE'S PROPERTY RIGHTS AMENDMENTS
PROVIDING COMPENSATION FOR RESTRICTING REAL PROPERTY
USE MAY COVER MULTIPLE SUBJECTS

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 loss in fair market value, which in fairness should be borne by the public. This amendment becomes effective the day following voter approval.

The proposed amendment would insert the following underlined words to section 3 of Article XI, to be effective 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.

In accordance with section 16.061, Florida Statutes (1995), the Attorney General petitioned this Court for an advisory opinion on the validity of the "property rights" initiative on August 14, 1996. Specifically, the Attorney General asked this Court to determine whether the proposal satisfies the single subject requirement of Article XI, section 3, of the Florida Constitution and the ballot title and substance requirements found in section 101.61, Florida Statutes (1995).

In his petition, the Attorney General advised this Court that the initiative does not appear to violate the constitutional single subject requirements for initiatives (a conclusion with which these interested parties respectfully disagree), but appears to violate the statutory provisions concerning proposed constitutional initiatives.

SUMMARY OF ARGUMENT

The People's Property Rights initiative, which proposes to add a property rights exemption to Article XI, section 3 of the Florida Constitution, itself violates the single subject requirement of the Florida Constitution. The second phrase of this constitutional requirement mandates that the bounds of the subject of the proposal must be defined not only by the alleged single subject but also by the "matter directly connected therewith".

The bounds of the narrow exception in Article XI, section 3, which was accepted by the Court in Advisory Opinion to the Attorney General Re: Tax Limitation, 644 So. 2d 486 (Fla. 1994), affected only the legislative function and its constitutionally assigned power to raise revenue (Article VII, § 1(a)). The matters directly connected with the People's Property Rights initiative, in contrast, include a substantial restructuring of the balance of power among the three branches and functions of government as they are involved with governmental restrictions on private real property, a revocation of the protections afforded under Article II, section 7 and Article X, section 6, and a modification of constitutional responsibilities presently defined in Article IV, Section 9 and Article X, Section 11 of the Florida

Constitution. These directly connected matters make it clear that the true bounds or embrace of the proposal go beyond merely creating an exception to the single subject rule.

The People's Property Rights amendment is drafted in a manner which "interlocks" with the companion Property Rights amendment pending in Case No. 88,698. Together, the two initiatives are plainly intended to accomplish what cannot be done by a single amendment. Such a "daisy-chain" of amendments is a violation of the single subject requirement.

Additionally, the initiative violates the "truth-in-advertising" provisions of the statute governing ballot titles and summaries. The initiative fails to adequately describe the other constitutional provisions it will alter, such as the eminent domain provision. The initiative also utilizes political rhetoric urging the passage of the amendment because it is "fair." Furthermore, the initiative fails to advise the voters of the fundamental change in Florida government that will occur if the constitution is revised in the manner suggested by the amendment.

ARGUMENT

- I. THE PROPOSED AMENDMENT, WHICH WOULD EXCEPT FUTURE PROPERTY RIGHTS INITIATIVES FROM THE SINGLE SUBJECT RULE, DOES ITSELF VIOLATE THE SINGLE SUBJECT RULE AS ITS BOUNDS, AS DEFINED BY MATTERS DIRECTLY CONNECTED THEREWITH, EMBRACE MORE THAN A SINGLE SUBJECT

Article XI, Section 3, Florida Constitution (1986), contains the so-called "single subject" rule which requires that a constitutional amendment initiative "shall embrace but one subject and matter directly connected therewith" [emphasis added]. The conjunctive "and" makes it clear that the single subject rule consists of two requirements: that the initiative embrace only one subject and that the initiative 'embrace but one . . . matter directly connected therewith." Accordingly, in order to determine whether the single subject rule has been satisfied, the embrace or bounds of the initiative must be examined not only in light of the proffered single subject purpose but also in light of the "matter directly connected therewith".

This Court requires a precise analysis of the "matter directly connected therewith." Fine v. Firestone, 448 So. 2d 984, 989 (Fla. 1984). This Court has used this second phrase in single subject analysis to determine if the language of a proposed amendment includes matters outside the bounds of the

stated one subject. Advisory Opinion to the Attorney General Homestead Valuation Limitation, 581 So. 2d 587 (Fla. 1991) ("The remaining provisions, which provide details of the scope and implementation of that limitation, are logically connected to the subject of the amendment.") Advisory Opinion to the Attorney General Re: Limited Casinos, 644 So. 2d 71, 73 (Fla. 1994) ("Although the petition contains details pertaining to the number, size, location, and type of facilities, we find that such details only serve to provide the scope and implementations of the initiative proposal. These features properly constitute matters directly and logically connected to the subject of the amendment.")

This Court must also consider matters directly connected with the proffered subject, even if those matters are not stated in the initiative language. This is so because the "directly connected" or second phrase of the single subject rule also is a constitutional mandate that directly connected matter(s) define the embrace or bounds of the actual single subject. To the extent directly connected matter(s) are identified and those matters cause the bounds of the proposal to lose its "logical and natural oneness of purpose," (Advisory Opinion to the Attorney General - Fee on Everglades Sugar Production, 21 Fla. L. Weekly

s394, S395 (Fla. Sept. 24, 1996), quoting Fine v. Firestone, 448 so. 2d 990) it is a clear indication that the proffered single subject is not the true subject and that the true subject is not singular at all.

The proponents have attempted to avoid the mandate of the second phrase of the single subject rule by failing to identify directly connected matter(s) . This failure, however, does not relieve the Court of its responsibility to identify and examine such matters. In its examination, the second phrase of the single subject rule requires this Court to expand the bounds of the subject to accommodate those directly connected matters. Further, this Court must strike the initiative should the expanded subject lose its singular nature. By limiting the initiative process to "one subject" as fully delineated by the "matter directly connected therewith," the scope of the constitutionally required single subject rule is sufficiently narrowed to preclude a full-blown constitutional revision by initiative, especially where, as here, the proposed amendment is in the form of an exemption to the single subject rule itself.

The People's Property Rights initiative proposing to create an exception to the single subject rule fails to reference the initiative's direct connection with:

- a change in the balance of powers between and among the branches of government as they are involved with governmental restrictions on private real property; and
- the revocation of the protections afforded under Article II, section 7 and Article X, section 6, and a change in the constitutional regulatory and proprietary duties and responsibilities of the Game and Freshwater Fish Commission as they relate to private real property.

As these directly connected matters define the bounds of the true subject of the amendment, this Court must make its own analysis of those bounds to determine if only a single subject is embraced. As discussed below, the bounds of this initiative, as defined by the directly connected matter(s), defines more than a single subject. The initiative must be stricken from the ballot.

A. THE PROPOSED AMENDMENT PROVIDES FOR LOGROLLING IN AN AREA IMPACTING THE FUNCTIONS OF MULTIPLE BRANCHES OF GOVERNMENT AND, THEREFORE, EMBRACES MORE THAN ONE MATTER DIRECTLY CONNECTED WITH THE SUBJECT(S) OF THE AMENDMENT

The purpose of the single-subject requirement is violated when a single proposal substantially alters or performs the function of multiple branches of government. Advisory Opinion to the Attorney General -- Save Our Everglades Trust Fund, 636 So. 2d 1336, 1340 (Fla. 1994); see also, Advisory Opinion to the Attorney General Re: Limited Casinos; 644 So. 2d 71 (Fla. 1994). The Attorney General, in his request for an advisory opinion to

this Court, stated that this initiative appears to embrace the singular subject of amending only Article XI, section 3. The proposed amendment, however, fails to disclose that in matters directly and logically connected with the proposal, the proposal will legitimize logrolling in areas affecting the powers and function of multiple branches and levels of government. These undisclosed matters reveal that the proposed initiative involves more than the singular matter of creating an exception to the single subject rule. The missing "matters" provide details of the true and multiple purposes of the amendment.

Two years ago this Court approved the ballot title and summary of a proposed amendment which excepted from the single subject rule initiatives dealing solely with limiting the power of the government to raise revenue. Advisory Opinion to the Attorney General Re: Tax Limitation, 644 So. 2d 486 (Fla. 1994) . This Court's holding, that the proposed amendment did not violate the single subject rule, was founded solely on the fact that it only affected a single constitutional provision. Id. at 496. Left unsaid by this Court was the fact that the narrow subject of "raising revenue" is confined, as a single matter, to the legislative function of government. Article VII, § 1(a), Florida Constitution; Campus Communications, Inc. v. Dest. of Revenue,

473 So. 2d 1290 (Fla. 1985). Hence, the bounds of the subject were sufficiently narrow as defined by the single matter of legislative revenue raising authority.

In contrast to "raising revenue" by the exercise of the legislative function of government, the proposed People's Property Rights initiative involves governmental restrictions on the use of private real property. At the time this Court approved the Tax Limitation amendment, it held that a then-proposed property rights amendment violated the single subject requirement because it would substantially alter the function of multiple branches of government. Advisor-v Opinion to the Attorney General Re: Tax Limitation, 644 So. 2d 486, 494 (Fla. 1994). Once again, the Court is confronted with the same broad subject -- property rights.

"[W]hen government restricts the use of private real property," all three branches and levels of government are significantly involved and that involvement is increasing. The legislative bodies create the laws while the executive quasi-judicial bodies administer those laws. At this Court's direction, we are also witnessing the reassertion of judicial involvement in the land use arena. Board of County Commissioners

of Brevard County v. Snyder, 627 So. 2d 469 (Fla. 1993). The details of these issues are addressed in Argument II, below.

Failing to address these directly and practically related matters leaves the voting public uninformed that by approving this proposed amendment, they will have the power, via a logrolling initiative, to virtually fashion state land use policy and adjust the balance of land use regulatory power between and among all branches and levels of government without the single subject rule's protection from "precipitous and cataclysmic change." Advisory Opinion i-o i-he Attornev General -- Save Our Everglades, 636 So. 2d 1336 (Fla. 1994).

By comparison, an initiative that locationally affects a single constitutional section, and functionally affects a single legislative prerogative, such as "raising revenues" with regard to the Tax Limitation initiative, need say no more as it is only the legislative branch that is involved. *Id.*, at 1340; Advisory Opinion to the Attornev General Re: Tax Limitation, 644 So. 2d 486 (Fla. 1994). But, in this case, to functionally modify established legislative, executive, quasi-judicial and judicial prerogatives involved in the governmental restriction of private real property without mentioning that functional effect, requires this Court, under the mandate of the second phrase of the single

subject rule, to expand the bounds of the subject(s) of the amendment to meet the multiple matters inescapably, directly and logically connected therewith. The bounds of the initiative, as established by the above-referenced directly connected matters make it clear that the initiative addresses more than the single subject of creating an exception to the single subject rule.

The initiative process cannot be used to effect multiple changes in state government or law, and it cannot be used to implement a fundamental revision of the Florida Constitution.

Advisory Opinion to the Attorney General -- Restricts Laws

Related to Discrimination, 632 So. 2d 1018, 1022 n.6 (Fla. 1994)

(Kogan, J., concurring). Constitutional revisions may only be proposed through one of the other appropriate amendment procedures. Id., Fine, 448 So. 2d at 995 (McDonald, J., concurring). The rules do not change for an amendment to Article XI, section 3.

The proposed People's Property Rights initiative embraces a subject which crosses the functions of multiple branches of government. It would legitimize "logrolling" in all areas touching real property rights, and would eviscerate the protections against constitutional revision by initiative. As discussed in Argument II, below, the sponsors desire to use a

two-step process to, first, create an exemption to the single subject rule for a subject **area** that embraces matters about which the voters have not been informed. Then, after approval by the electorate, the sponsors would present the real object of the sponsor's affections: an adjustment of power between and among the branches and levels of government, Surely, this is a form of "logrolling" taken to the extreme.

In the context of an amendment to the single subject rule, the single subject rule itself requires that the initiative inform the electorate of matters directly connected with potential future amendments (much less actual proposed amendments discussed in Argument II, below) during the initial ballot initiative for the exemption. Failure to do so does not avoid the second phrase of the single subject rule. The bounds of the amendment, and hence the subject of the amendment, include these multiple undisclosed matters and reveal a multi-subject amendment that goes way beyond the creation of an exemption to the single subject rule.

B. THE PROPOSED AMENDMENT AFFECTS OTHER SECTIONS OF
THE CONSTITUTION

The decisions of the Court often place great weight on whether the proposed amendment will substantially affect other

sections of the Florida Constitution. Advisory Opinion to the Attorney General -- Restricts Laws Related to Discrimination, 632 So. 2d 1018, 1020 (Fla. 1994); Evans v. Firestone, 457 So. 2d 1352, 1354 (Fla. 1984); Fine v. Firestone, 448 So. 2d 984, 990-992 (Fla. 1984). Expressly identifying what sections of the constitution will be impacted by a proposed amendment is necessary for the public to be able to comprehend the breadth of that amendment Fine, at 989. Mere interaction with other constitutional provisions is insufficient to invalidate a proposed amendment, but substantial impact is viewed differently.

Advisory Opinion to the Attorney General - Fee on Everglades Sugar Production, 21 Fla. L. Weekly S394 (Fla. Sept. 24, 1996).

The proposed amendment contemplates an exemption to the single subject rule in a very broad and substantive area -- property rights. Currently, Article X, section 6 of the Florida Constitution, serves as the sole constitutional protector of sovereign intrusion on private property rights, for both real and personal property. Consequently, the protections afforded, both directly and indirectly, by this provision of the constitution, as well as the associated "takings" law, will be substantively impacted by this proposed amendment, but only in matters related to private real property. Personal property is left unaffected+

Any amendment to the constitution which proposes an exemption to the single subject rule in a substantive area such as property rights must inform the public of the direct connection of the proposal with the present constitutional provision regarding eminent domain, Article X, section 6. This failure to expressly embrace this directly and practically connected matter requires the Court to satisfy the second clause of the single subject rule by expanding the bounds of the subject of this amendment to meet this matter and thus reveal its multi-subject nature.

Inescapably, directly, and logically connected to the issue of real property rights is the issue of environmental protection. Article II, Section 7 of the Florida Constitution mandates protection from air, water and noise pollution and establishes that the policy of the state is to protect Florida's natural resources and scenic beauty. The existence of the direct connection between the People's Property Rights initiative and the present constitutional provisions for environmental protection again requires an expansion of the bounds of the subject to meet this matter and makes it clear that more than a single subject is involved.

The Peoples Property Rights initiative also affects the authority granted to the Game and Freshwater Fish Commission

under Article IV, section 9 of the Florida Constitution, which provides that the Commission, "shall exercise the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life. . . ." The amendment is silent concerning the limitations that will be imposed upon the Commission by this matter directly connected with the Peoples Property Rights amendment. Exercise of the state's rights of sovereign ownership of submerged lands, as provided by Article X, section 11 of the Florida Constitution, often results in a government restriction of the use of private real property. The second phrase of the single subject rule requires expansion of the bounds of the subject to meet these directly connected matters and reveal a violation of the single subject rule.

II. THE "PEOPLE'S PROPERTY RIGHTS" INITIATIVE VIOLATES THE SINGLE SUBJECT REQUIREMENT BY FORMING A "DAISY CHAIN" ARRANGEMENT WITH THE "PROPERTY RIGHTS" INITIATIVE

The People's Property Rights amendment at issue in this case would not merely create a general exception to the single subject rule for "amendments related to property rights." The People's Property Rights amendment specifies that the exception will apply only to amendments

that require full compensation to 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.

Although the People's Property Rights amendment and the companion Property Rights amendment (Case No. 88,698) do not explicitly refer to each other, they are patently two halves of a single mechanism. The new exception to the single subject rule which would be created by the People's Property Rights amendment is a glove which fits only the Property Rights amendment. The Property Rights amendment clearly violates the single subject rule, and cannot be placed on the ballot unless the People's Property Rights amendment is approved by the electorate. As such, the two interlocked initiatives amount to an unconstitutional "daisy chain" of constitutional amendments. Rivera-Cruz v. Grav, 104 So. 2d 501 (Fla. 1958).

Revision by interlocked amendments would frustrate the sovereign right of the people to re-frame the entire organic law by the means the people themselves proclaimed when they adopted the present Constitution.

Id., at 504.

Although Rivera-Cruz involved amendments proposed by the Legislature under the amendment provisions of the Florida Constitution of 1885, the Rivera-Cruz rationale has been applied to amendments proposed by initiative under Article XI, section 3 of the 1968 Constitution. Adams v. Gunter, 238 So. 2d 824, 829 (Fla. 1970). In Adams v. Gunter, this Court rejected a proposal for a unicameral Legislature which contemplated additional constitutional amendments. This Court stated:

It is the type of amendment which this Court condemned in Rivera-Cruz v. Gray . . . , which concerned the so-called "daisy-chain amendments" to the Constitution of 1885,

* * *

It is clear . . . that the power reserved to the people to amend any section of the Constitution, includes only the power to amend any section in such a manner that such amendment if approved would be complete within itself, relate to one subject and not substantially affect any other section or article of the Constitution or require further amendments to the Constitution to accomplish its purpose.

Id., at 830-831.

The People's Property Rights amendment is not complete within itself, and will require a further amendment to the

Constitution to accomplish its purpose. The transparent purpose behind the People's Property Rights initiative is the passage of the 1996 version of the Property Rights amendment. The People's Property Rights amendment seeks to open a door through the single subject rule for a guarantee of compensation for any loss in fair market value of real property caused by a government restriction, except for common law nuisances, which in fairness should be borne by the public. This substantive change is the heart of the 1996 Property Rights initiative.

As discussed in the Department/League/Association initial brief in **Case** 88,698, the 1996 Property Rights amendment, if adopted, will substantially reframe the organic law of Florida. In the same manner as the 1994 Property Rights amendment discussed in Advisory Opinion to the Attorney General Re: Tax Limitation, 644 So. 2d 486 (Fla. 1994), the 1996 Property Rights initiative,

not only substantially alters the functions of the executive and legislative branches of state government, it also has a very distinct and substantial affect on each local government entity. The ability to enact zoning laws, to require development plans, to have comprehensive plans for a community, to have uniform ingress and egress along major thoroughfares, to protect the public from diseased animals or diseased plants, to control and manage water rights, and to control or manage storm-water drainage and flood

waters, all would be substantially affected by this provision.

Id., at 494.

An "expansive generality" of this nature, which encompasses the power of all state and local governmental bodies, is unconstitutional in an initiative proposal. Advisory Opinion to the General Assembly -- Restricts Laws Related To Discrimination, 632 So. 2d 1018, 1020 (Fla. 1994).

If the changes attempted are so sweeping that it is necessary to include the provisions interlocking them, then it is plain that the plan would constitute a recasting of the whole Constitution and this, we think, it was purposed to accomplish by a convention under Sec. 2 (now at Art. XI, § 4) which has not yet been disturbed.

Rivera-Cruz, 104 So. 2d at 503.

The proposed People's Property Rights amendment should be stricken from the ballot.

III. THE "PEOPLE'S PROPERTY RIGHTS" 'BALLOT TITLE AND SUMMARY ARE MISLEADING AND OMIT MATERIAL FACTS

Section 1131.161, Florida Statutes, (1995), provides that only the ballot title and summary of a proposed constitutional amendment actually appear on the election ballot presented to the voters. Although the amendment itself does not appear on the ballot, section 101.161, requires that "the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot" It is the "chief purpose of the measure" that must be stated clearly and unambiguously. Askew v. Firestone, 421 So. 2d 151, 154-55 (Fla. 1982). The ballot title and summary must "provide fair notice of the content of the proposed amendment so that the voter will not be misled as to its purpose, and can cast an intelligent and informed ballot." Advisory Opinion to the Attorney General - Fee on Everslades Susar Production, 21 Fla. L. Weekly 5394 (Fla. Sept. 24, 1996). The ballot summary should advise the voter of the true meaning and ramifications of the constitutional amendment and be accurate and informative. Advisory Opinion to the Attorney General Re: Tax Limitation, 644 So. 2d 486, 490 (Fla. 1994).

The ballot title and summary for the proposed "People's Property Rights" amendment mislead voters and do not give "fair notice" of the proposed amendment's purpose. Each defect is addressed in turn.

A. THE BALLOT TITLE IS MISLEADING

Although the Court has historically been wary of interfering with the public's right to vote on an initiative, it has been equally cautious of approving the validity of a ballot title or summary that is misleading, Advisory Opinion to the Attorney General - Restricts Laws Related to Discrimination, 632 So. 2d 1018 (Fla. 1994). In the instant case, the ballot title reads "People's Property Rights Amendments Providing Compensation for Restricting Real Property May Cover Multiple Subjects." This title is misleading as it has a double meaning,

A voter may well believe that the ballot title is referring to property which belongs to people, and may then be unclear on whether "people's property" includes property owned by corporations or other legal entities. Alternatively, the voter may believe that the title is actually referring to the initiative petition process, as did the "People's Amendments" language considered by this Court in Advisory Opinion to the Attorney General Re: Tax Limitation, 644 So. 2d 486, 496 (Fla.

1994) . The understandable confusion raised by the ballot title is misleading because the effect of the amendment is clearly not limited to property owned by living people.

B. THE TERM "OWNER" IS TOO BROAD AND UNDEFINED

The ballot title refers to "People's Property Rights," but the text of the amendment states that full compensation will be paid to "owners." Neither the title, the summary, nor the full text of the amendment itself, contain any definition of the term "owner." This Court stated with regard to the 1994 Property Rights initiative that,

the term "owner," as used in the summary of the proposed initiative, includes natural persons and businesses, yet the text of the proposed initiative is silent as to the meaning of the term "owner" and includes no reference to businesses. We . . . find the ballot title and summary misleading and ambiguous."

Tax Limitation, 644 So. 2d at 496. In this case, the ballot title seems to exclude businesses, but the meaning of the term "owner" in the text continues to be ambiguous.

A definition of the term "owner" is critical to an understanding of the true meaning and ramifications of the People's Property Rights initiative. For example, in the Bert J. Harris, Jr., Private Property Rights Act of 1995, the Florida Legislature carefully presented a short and conclusive definition

of the term "property owner" as the person (not including a governmental entity) who holds legal title to the real property at issue. § 70.001(3)(f), Fla. Stat. (1995). In the absence of a clear definition of the term "owner," it is unclear to the voter whether the intent of the proposed amendment is to include natural persons, corporate or equitable entities, long-term leaseholders, easement holders or holders of less than fee interest. See, Department of Revenue v. Gibbs, 342 So. 2d 562 (Fla. 1st DCA 1977) (holding that property leased for 99 years or more is considered owned for purposes of tax valuation).

The ambiguity in the term "owner" is misleading to the electorate.

C. THE CONCEPT OF RESTRICTING GOVERNMENTAL USE TO
NUISANCES AT COMMON LAW IS NOT READILY
UNDERSTANDABLE

The term "nuisance," as used in the ballot summary, does not adequately describe the legal effect of the Property Rights initiative. The proposed ballot summary explains to the voter that the amendment requires compensation when the government restricts the use of real property, "excepting common law nuisance." The first of many legal definitions of the term is

activity that arises from unreasonable, unwarranted, or unlawful use by a person of his property, working obstruction or injury to right of another, or to the

public, and producing such material annoyance, inconvenience and discomfort that the law will presume resulting damage.

Black's Law Dictionary 1065 (6th ed. 1990). A voter searching the Florida Statutes for guidance would find a list of "public nuisances" in chapter 823, Florida Statutes (1995), including provisions regarding bonfires, derelict vessels and abandoned refrigerators, as well as a vague statement that "all nuisances which tend to annoy the community or injure the health of the citizens in general, or to corrupt the public morals are misdemeanors of the second degree," § 823.01, Fla. Stat. (1995). On the other hand, the lay definition of nuisance is "harm, injury," or "one that is annoying, unpleasant or obnoxious: pest." Webster's Ninth New Collegiate Dictionary 811 (1984).

Judicial examples of what might constitute a nuisance would add to the voters' confusion. See, Bartlett v. Moats, 162 So. 2d 477 (Fla. 1935) (loud and disturbing noises at night in a residential zone); Federal Amusement Co. v. State, 32 So. 2d 1 (Fla. 1947) (operating a nightclub is not a nuisance per se); Palm Corp. v. Walters, 4 So. 2d 696 (Fla. 1941) and Town of Surfside v. County Line Land Co., 340 So. 2d 1287 (Fla. 3d DCA 1977) (anything which annoys or disturbs one in the free use, possession or enjoyment of one's property or renders its ordinary

use or occupation physically uncomfortable may become a nuisance). Furthermore, the relationship between the common-law doctrine and the statutory definition of "nuisance" has been debated in the Florida courts. See, State of Florida v. SCM Glidco Orsanics Corp., 592 So. 2d 710 (Fla. 1st DCA 1992).

Although the phrase "common law nuisance" may put the electorate on notice that the ordinary meaning of "nuisance" is not intended, the lack of definition of the term does not inform the voter of the extent of the exception in the amendment. As the Attorney General noted in his request for an advisory opinion, the average voter cannot be expected to know that a "common **law** nuisance" is "one which affects the public in general, and not merely some particular person; a public nuisance." Black's Law Dictionary, 962 (5th ed. 1979).

D. THE BALLOT TITLE AND SUMMARY INCLUDE EMOTIONAL LANGUAGE AND POLITICAL RHETORIC

Section 101.161, Florida Statutes (1995), requires that the ballot title and summary must be "objective and free from political rhetoric." Advisory Opinion to t-he Attorney General Re: Tax Limitation, 644 So. 2d 486, 490 (Fla. 1994). A proposed amendment cannot appear on the ballot with a title which includes "emotional language" or a summary which "closely resembles

political rhetoric." Advisory Opinion to the Attorney General -
Save Our Everglades, 636 So. 2d 1336, 1342 (Fla. 1994). The
People's Property Rights summary contains the comment, "which in
fairness should be borne by the public." That comment is
political rhetoric devised to induce the electorate to vote for
the People's Property Rights initiative. Few voters are opposed
to "fairness," but many will disagree on what is or is not fair.
The summary may proclaim that all losses in fair market value of
real property attributable to government restriction ought to be
reimbursed from the public coffers, or it may imply that
compensation will only be available for those few losses which
"in fairness" should be passed on to the public. This vague call
for "fairness" is an editorial or political comment on the
proposed amendment. As the Attorney General stated in his
request for an advisory opinion, the initiative does not provide

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.

As this Court stated in Evans v. Firestone, 457 So. 2d 1352, 1355
(Fla. 1984),

(T)he ballot summary should tell the voter the legal effect of the amendment, and no more. The political motivation behind a given change must be propounded outside the voting booth.

E. THE BALLOT TITLE AND SUMMARY FAIL TO INFORM THAT THE INITIATIVE WILL AMEND MORE THAN ONE SECTION OF THE CONSTITUTION

The ballot title and summary of the People's Property Rights amendment lack any mention of the significant consequences of the initiative. The new exception from the single subject rule that would be created by the People's Property Rights initiative is drafted so narrowly that it can only apply to the companion Property Rights amendment (Case No. 88,698). The People's Property Rights amendment is clearly intended to push the companion Property Rights amendment over the otherwise insurmountable hurdle of the single subject rule. As an essential component of the Property Rights amendment, the People's Property Rights amendment, if adopted, would produce the same fundamental change in Florida government as the 1994 Property Rights amendment. That initiative was rejected by this Court because the amendment

would result in a major change in the function of government because it would require all entities of government to provide compensation from tax revenue to owners or businesses for damages allegedly caused to their property by the government's exercise of its police powers. Because most true police power actions

of the government are not now compensable, the fiscal impact of this proposal would be substantial. The proponents of the initiative acknowledge that the police powers affected by this initiative are broad and, in their words, "take any number of forms, such as flooding, deprivation of access, environmental regulation and permitting, zoning ordinances, and development exactions, among others." The ballot title and summary are devoid of any mention of these consequences.

Advisory Opinion to the Attorney General Re: Tax Limitation, 644

so. 2d 486, 495 (Fla. 1994).

(A)ny initiative petition that substantially amends or modifies an existing provision of the constitution must mention that fact in its explanation of the proposal; otherwise, the initiative petition is misleading. (emphasis in original)

Advisory Opinion to the Attorney General Re: Stop Early Release of Prisoners, 642 So. 2d 724, 727 (Fla. 1994) (Overton, concurring).

The ballot title and summary for the Property Rights initiative fail to truly inform the electorate that the proposal will affect other provisions of the Florida Constitution. Unlike the ballot title and summary for the companion Property Rights amendment, the People's Property Rights amendment ballot title does not admit that the amendment "substantially affects constitutional provisions including Article II, Section 7."

The electorate is not put on notice that Article II, section 7 would be rendered a nullity by the passage of the People's Property Rights amendment and its anticipated companion. The inclusion of such a warning in the Property rights summary, and the lack of warning in the People's Property Rights summary, might lead a reasonable voter to conclude that the initiative will have no effect upon the constitutional requirement that, "Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise," Article II, § 7, Florida Constitution (1968).

The ballot title and summary also fail to mention that the amendment would alter existing "trial-by-jury" provisions in Article I, section 20, or that the initiative could effectively displace the constitutional provision relating to eminent domain, Article X, section 6. The ballot title and summary are also silent concerning the effect of the initiative on the due process rights under Article I, section 9 (the transfer of proceedings from administrative and elective officials to juries), and on the powers of the Game and Fresh Water Fish Commission in Article VI, section 9.

The ballot title and summary are misleading because they offer no hint of these outcomes.

CONCLUSION

For the reasons stated in this brief, the Department of Community Affairs, the Florida Leagues of Cities, Inc., and the Florida Association of Counties, Inc., urge the Court to issue an opinion striking this initiative from the ballot as violative of applicable constitutional and statutory requirements.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this brief has been furnished by U.S. Mail to the parties listed below on this 17~~th~~ day of October, 1996.

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