

OA 12.2.96

097

FILED

SID J. WHITE

OCT 17 1996

IN THE SUPREME COURT OF FLORIDA

ADVISORY OPINION TO THE
ATTORNEY GENERAL

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

RE: PEOPLE'S PROPERTY RIGHTS AMENDMENT Case No. 88,696
PROVIDING COMPENSATION FOR RESTRICTING
REAL PROPERTY USE MAY COVER
MULTIPLE SUBJECTS.

Upon Request from the Attorney General
for an Advisory Opinion as to the
Validity of an Initiative Petition

INITIAL BRIEF OF 1000 FRIENDS OF FLORIDA, INC.,
AMERICAN PLANNING ASSOCIATION, FLORIDA CHAPTER,
AND COMMON CAUSE IN OPPOSITION TO THE
"PEOPLE'S PROPERTY RIGHTS AMENDMENTS" PETITION

✓ Thomas G. Pelham
Apgar & Pelham
909 East Park Avenue
Tallahassee, Florida 32301

✓ Terrell P. Arline
Legal Director
1000 Friends of Florida, Inc.
Post Office Box 5948
Tallahassee, Florida 323 14

Attorneys for 1000 Friends of Florida,
Inc., American Planning Association,
and Common Cause

TABLE OF CITATIONS

<u>Cases</u>	<u>Page No.</u>
<u>Advisory Opinion to the Attorney General-Fee on the Everglades Sugar Production, Everglades Trust Fund-, and Responsibility for Paying; Costs of Water Pollution Abatement in the Everglades, 21 FLW S394, 395 (Fla. September 19, 1996)</u>	17
<u>Advisory Opinion to the Attorney General Re: Stop Early Release of Prisoners, 642 So. 2d 724 (Fla. 1994)</u>	19, 21, 22
<u>Advisory Opinion to the Attorney General -- Tax Limitation, 644 So. 2d 486 (Fla. 1994)</u>	10, 13, 16, 18, 21, 22
<u>Askew v. Firestone, 421 So. 2d 151 (Fla. 1982)</u>	20, 21
<u>Deltona Corp. v. United States, 657 F.2d 1184 (Ct.Cl. 1981)</u>	16
<u>Evans v. Firestone, 457 So. 2d 1351 (Fla. 1984)</u>	9, 21, 22
<u>Fine v. Firestone, 448 So. 2d 984 (Fla. 1984)</u>	7, 8, 14, 16
<u>Fox v. Treasure Coast Regional Planning Council, 442 So. 2d 221 (Fla. 1st DCA 1983)</u>	16
<u>Graham v. Estuary Properties, Inc., 399 So. 2d 1374 (Fla. 1981)</u>	15, 21
<u>In Re Advisor-v Opinion to the Attorney General English--The Official Language of Florida, 520 So. 2d 11 (Fla. 1988)</u>	10
<u>In Re: Advisor-v Opinion to the Attorney General -- Restricts Laws Related to Discrimination, 632 So. 2d 1018 (Fla. 1994)</u>	9, 16, 20, 23

In Re: Advisory Opinion to the Attorney
General - Save Our Everglades Trust Fund,
636 So. 2d 1336 (Fla. 1994) , , , 9, 20, 22

Lucas v. South Carolina
Coastal Council, 112 S.Ct. 2886 (1992) 21

Penn Central Transp. Co. v. City of New York,
438 U.S. 130 (1978). 16

Constitution

Article I, Section 9, Florida Constitution 15

Article II, Section 7, Florida Constitution 14, 15

Article IV, Section 10, Florida Constitution 4

Article V, Section 3(b)(10), Florida Constitution 5

Article VIII, Section 1, Florida Constitution 15

Article VIII, Section 2, Florida Constitution 14

Article XI, Section 3, Florida Constitution 6, 7, 9, 23

Statutes

Section 15.21, Florida Statutes (1995) 3

Section 16.061, Florida Statutes (1995) 4

Section 101.161(1), Florida Statutes (1995) 4, 6, 19, 23

INTRODUCTION

1000 Friends of Florida, Inc., the Florida Chapter of the American Planning Association, and Common Cause submit this brief in opposition to the proposed amendment entitled PEOPLE'S PROPERTY RIGHTS AMENDMENTS PROVIDING COMPENSATION FOR RESTRICTING REAL PROPERTY USE MAY COVER MULTIPLE SUBJECTS as interested parties in response to this Court's Interlocutory Order of August 27, 1996.

Each of these parties has an interest in the proper implementation of Florida's growth management and environmental laws. Each has taken part in the enforcement of these laws either by participating in legal proceedings or by engaging in the education of Florida's citizens on the significant benefits of growth management and environmental law.

The proposed amendment would have dire consequences for the fiscal health of government, because it would impose significant new financial limitations on all levels of government in the exercise of existing and future land use and environmental laws. This would have a substantial chilling effect on the ability and willingness of government in Florida to act in the public interest. Moreover, this proposed amendment would create a new exception

to the single subject requirement that would make it easier to amend the Constitution with new takings proposals that deal with multiple subjects. Thus, because the proposed amendment would essentially sanction “log-rolling”, it would inevitably leave voters with the unpalatable, all or nothing decision to approve a subsequent property rights initiative that might include multiple subjects they would not otherwise support. Consequently, the ability of these groups to accomplish these stated interests will be adversely affected should this ill-advised “People’s Property Rights Amendments” initiative become law.

STATEMENT OF THE CASE AND FACTS

On July 26, 1996, the Secretary of State of the State of Florida submitted to the Attorney General of the State of Florida an initiative petition bearing the ballot title of PEOPLE'S PROPERTY RIGHTS AMENDMENTS PROVIDING COMPENSATION FOR RESTRICTING REAL PROPERTY USE MAY COVER MULTIPLE SUBJECTS, (proposed amendment) in accordance with section 15.21, Florida Statutes (1995). The proposed amendment seeks to amend the Florida Constitution by adding a new exemption to Article XI, Section 3, INITIATIVE.

The ballot title and summary of the proposed amendment provide:

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 specifically insert the following 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.

A copy of the Florida Constitutional Amendment Petition form is included as item A to the appendix filed with this brief.

On August 27, 1996, the Attorney General, pursuant to Article IV, Section 10, Florida Constitution and Section 16.061, Florida Statutes (1995), petitioned this Court for an advisory opinion on the validity of the proposed amendment. Specifically, the Attorney General asked this Court to determine whether the proposed amendment complied with the single subject requirement of Article XI, Section 3, Florida Constitution and the ballot title and substance requirements found in Section 101.161, Florida Statutes (1995). In his petition, the Attorney General advised this Court that the while the proposed amendment did not appear to violate the single subject rule of Article XI, Section 3, it did violate the ballot title and substance requirements of Section 101.161, Florida Statutes (1995).¹

¹ 1000 Friends, et al., disagrees with the Attorney General's conclusion that the amendment does not also violate the single subject rule.

A copy of the Attorney General's petition is included as item B to the appendix filed with this brief.

This Court exercised its jurisdiction to render an opinion on the validity of the proposed amendment pursuant to Article V, Section 3(b)(10), Florida Constitution (1986). On August 27, 1996, this Court entered an interlocutory order permitting interested parties to submit briefs on these issues. A copy of this order without the attachments is included as item C to the appendix filed with this brief.

1000 Friends of Florida, Inc., the Florida Chapter of the American Planning Association, and Common Cause submit this brief as interested parties in this proceeding in opposition to the initiative proposal.

SUMMARY OF THE ARGUMENT

The proposed amendment petition bearing the title **PEOPLE'S PROPERTY RIGHTS AMENDMENTS PROVIDING COMPENSATION FOR RESTRICTING REAL PROPERTY USE MAY COVER MULTIPLE SUBJECTS**, violates the single-subject requirement of Article XI, Section 3 of the Florida Constitution, because it substantially alters or performs the executive, judicial and legislative functions of state, county and municipal governments, as well as those of regional agencies. The proposed amendment violates the ballot title and summary notice requirements of Section 101.161(1), Florida Statutes (1995), because it is misleading and omits material facts, thereby failing to satisfy the statutory notice requirements.

For these reasons, 1000 Friends of Florida, Inc., the Florida Chapter of the American Planning Association, and Common Cause collectively urge this Court to find the proposed amendment unconstitutional and invalid and strike it from the ballot.

ARGUMENT I.

THE PEOPLE'S PROPERTY RIGHTS AMENDMENTS INITIATIVE VIOLATES THE SINGLE-SUBJECT REQUIREMENT OF SECTION 3 OF ARTICLE XI OF THE FLORIDA CONSTITUTION BECAUSE IT WOULD SUBSTANTIALLY ALTER OR PERFORM THE FUNCTIONS OF MULTIPLE BRANCHES OF GOVERNMENT

Article XI, of the Florida Constitution sets out four ways to amend the Constitution. It may be amended by a joint resolution agreed to by 3/5th of the membership of both houses, upon voter approval of a recommendation of a constitutional revision commission, by a constitutional convention, or, as in this case, by citizen initiative. Only the initiative process is limited by the single subject rule, which is set forth in Article XI, Section 3, as follows:

[T]he 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. (Emphasis added)

Because the proposed amendment would create a new exception to this rule, the policy behind the single subject limitation on citizen initiated amendments must be kept in mind. This Court discussed this important policy in Fine v. Firestone, 448 So. 2d 984, 988 (Fla. 1984), stating as follows:

It is apparent that the authors of article XI realized that the initiative method did not provide a filtering legislative process for

the drafting of any specific proposed constitutional amendment or revision. The legislative, revision commission, and constitutional convention processes of sections 1,2, and 4 all afford an opportunity for public hearing and debate not only on the proposal itself but also in the drafting of any constitutional proposal. That opportunity for input in the drafting of a proposal is not present under the initiative process and this is one of the reasons the initiative process is restricted to single-subject changes in the state constitution. The single subject requirement in article XI, section 3, mandates that the electorate's attention be directed to a change regarding one specific subject of government to protect against multiple precipitous changes in our state government.

The absence of these “filtering” mechanisms for initiatives means that there is no public record or legislative history to which the courts may turn to interpret the amendment. Without first limiting the initiative process to those encompassing a single subject, courts would otherwise be granted “broad discretionary authority in determining the effect of a proposed amendment or revision of the existing constitution.” Fine v. Firestone at 989.

On this point, this Court stated “We do not believe it was the intent of the authors of the initiative-amendment provision, nor the intent of the electorate in adopting it, that the Supreme Court should be placed in the position of redrafting substantial portions of the constitution by judicial construction. This, in our view, would be a dangerous precedent.” *Id.*

Consequently, since this proposed amendment would create a new exception to the single subject requirement, this Court should be guided by its

underlying policy in order to protect against “dangerous precedent”.

There are four principles involved in an analysis of the single subject requirement. First, the amendment may not perform, alter, or substantially affect multiple, distinct functions of government as opposed to a single function. In Re: Advisory Opinion to the Attorney General - Save Our Everglades Trust Fund, 636 So. 2d 1336, 1340 (Fla. 1994), In Re: Advisory Opinion to the Attorney General -- Restricts Laws Related to Discrimination, 632 So. 2d 1018, 1022 (Fla. 1994), Evans v. Firestone, 457 So. 2d 1351, 1354 (Fla. 1984). To evaluate if an amendment violates this principle the Court must first examine if the amendment, would on its face or in effect, substantially alter or perform: a) a function of more than one branch of government; b) multiple functions of just one branch; or c) governmental functions at different levels of government. See Save Our Everglades Trust Fund, 636 So. 2d at 1340, and Evans v. Firestone, 457 So. 2d at 1354. s
initiative fails on all accounts.

The proponents of this initiative will be heard to argue that this initiative does nothing except merely amend Article XI, Section 3, therefore, it cannot possibly affect multiple functions or levels of government. Admittedly, the proposal will not immediately result in the adoption of a new takings cause of

action. However, the obvious intent of this proposal is to make it easier to adopt such ill-advised amendments at a later time. Given the history of the proponents efforts to pass just such an amendment, it is not unreasonable to assume that if this instant initiative passes, the other will soon be on its heels.² In effect, the proponents of this initiative are attempting to accomplish with two initiatives what they are constitutionally prohibited from doing with one, that is, to affect a radical change to the constitutional dimension of the regulation of private property.

This Court has refused to consider arguments directed to laws that could be adopted should the subject amendment pass. In Re: Advisor-v Opinion to the Attorney General English the Official language, 520 So. 2d 11 (Fla. 1988). However, the inevitable future property rights amendment must be examined now precisely because government cannot reasonably be expected to disregard this potential when making policy and establishing programs related to the regulation of private property if this amendment becomes law. Whether the ultimate compensation amendment comes this year or next, its impacts will be

² The proponents of this initiative were behind the property rights initiative declared invalid in Advisor-v Opinion to the Attorney General Tax Limitation, 644 So. 2d 486 (Fla. 1994), and they proposed the property rights initiative that is the subject of Case No. 88,698, which is consolidated for oral argument with this case.

felt before it arrives. If this initiative becomes law, the other will immediately become a major factor affecting all levels of government as the proponents scurry to collect the required signatures. Therefore, while this amendment may only directly impact one provision of the Constitution, it will certainly indirectly and substantially impact all levels of government if it passes.

The People's Property Rights Amendments initiative affects more than one branch of government. Specifically, it would substantially alter the Legislature's decisions to pass new laws intended to protect the environment or to plan for and regulate land use and manage growth. If this amendment passes, there is a greater likelihood that future Constitutional amendments would require governments to pay full compensation for "acts" which restrict the value of land. This potential will invariably convince the Legislature not to adopt new laws in furtherance of growth management and environmental protection. If this initiative passes, the state will be loath to enact new regulatory programs, because they could not be implemented in the face of an initiative which would make government compensate all those affected by such regulation.

The amendment would also substantially affect the executive branch by affecting the enforcement of existing environmental and land use laws that

happen to “restrict” the “use” of private property. Thus, the Florida Department of Environmental Protection and the water management districts would be reluctant to interpret their rules in such a way as to develop a more aggressive policy that would protect wetlands and support the denial of wetlands permits. These agencies might not enforce their rules relating to water pollution out of fear of having to pay damages at a later date, especially if the ultimate amendment is applied retroactively.³

This state’s judiciary is also affected by this proposal, since the courts might be called upon to decide issues related to environmental or land use laws, which may be enforced in criminal or civil courts. Additionally, pending actions would be affected should a property rights amendment be passed prior to judgment. Clearly an injunction might be held to constitute an act which “restricts” the “use of private real property”. Would courts then be held responsible to compensate the defendant?

The proposed initiative would also affect multiple functions within one branch of government. It would substantially affects several functions of the executive and judicial branch, as they deal with the administration of existing

³ The companion property rights initiative which is the subject of Case No. 88,698 would specifically apply retroactively to regulations enacted on or before the effective date of the amendment.

environmental and land use permitting laws, and with criminal, civil, and administrative programs to enforce these laws and rules. It would also affect several functions within the legislative branch, as set forth above. In addition this proposed amendment would necessarily have to affect all branches of government as they make long range budgetary decisions regarding the expenditure of public resources. Tax policy would become seriously threatened by any compensation amendment.

Finally, the proposed amendment would affect functions performed by different levels of government. All of the concerns expressed above would affect not only the state government, but also the regional agencies, such as the water management districts and the local, county and municipal governments. This impact on local governments was one of the reasons this Court invalidated the property rights initiative proposed in 1994. Tax Limitation, 644 So. 2d 486.

The second principle that can be gleaned from case precedent is that a propose amendment may not substantially alter more than one article or section of the Constitution. Tax Limitation, 644 So. 2d at 490. It must also “identify the articles or sections of the constitution substantially affected. This is necessary for the public to be able to comprehend the contemplated changes in the constitution and to avoid leaving to this Court the responsibility of

interpreting the initiative proposal to determine what sections and articles are substantially affected by the proposal.” Fine at 989. “[H]ow an initiative proposal affects other articles and sections of the constitution is an appropriate factor to be considered in determining whether there is more than one subject included in an initiative proposal.” Id. Therefore, aside from its impacts on multiple functions and levels of government, this amendment would also affect other sections of the Constitution.

It should be noted that the amendment and ballot language are absolutely silent on their effect on other provisions of the Constitution. On the other hand, the drafters of its companion amendment did mention that it affected Article II Section 7. It is submitted that this amendment would also affect Article II, Section 7, which states that “[i]t shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and excessive and unnecessary noise.”

If government was compelled to compensate property owners for restrictions that do not now constitute a taking, this tremendous cost would prevent the enactment of new laws and lessen enforcement of existing laws intended to “abate air and water pollution.” Hence, while the proposed

amendment is silent on its affect on other constitutional provisions, it would certainly make it difficult for the state to implement the policy set forth in Article II, Section 7, to protect the resources of this state.

Article VIII, Section 1 deals with county government. Section 2 addresses the home rule authority of municipalities. Under these provisions of the Florida Constitution local governments are granted broad home rule powers to regulate land use and protect the environment within their jurisdiction. As set forth above, the proposed amendment would substantially alter this power, and thus it would affect these provisions of the Constitution.

Article I, Section 9 is the due process clause and the source of this state's takings doctrine. This provision has been interpreted to require compensation for restrictions on the use of land which result in all the loss of "all economically reasonable use of the property". Graham v. Estuary Properties, Inc., 399 So. 2d 1374 (Fla. 1981). The proposed amendment would significantly change Florida case law as it applies to the takings issue. It would set in motion a process that would ultimately result in a constitutional obligation to compensate owners where no such obligation now exists. Moreover, it might be interpreted to apply to parts of real property, as opposed to the property as a "whole", which is the limit of the current

measure.⁴ See Penn Central Transp. Co. v. City of New York, 438 U.S. 130 (1978), Deltona Corp. v. United States, 657 F.2d 1184 (Ct.Cl. 1981), Fox v. Treasure Coast Regional Planning Council, 442 So. 2d 221 (Fla. 1st DCA 1983).

Years ago this Court held that the proponents of an initiative must explain how the Constitution would be affected by the amendment. In Fine v. Firestone, 448 So. 2d at 989.

The initiative proposed in this case is absolutely silent on how it would affect other provisions of the Florida Constitution. Thus, it violates this principle of the single subject rule.

A third principle is that the initiative cannot result in multiple, unannounced or unanticipated collateral effects. A citizen may not accomplish the equivalent of a constitutional convention by initiative. The initiative process cannot be used to substantially alter “part of Florida’s legal machinery regardless of the consequences to the rest of our governmental system”. Restricts Laws Related to Discrimination, 632 So. 2d at 1022, Kogan concurring opinion at n6. This is precisely the result of this initiative, for as set forth above it would discourage state and local governments from enacting

⁴ The initiative invalidated in Tax Limitation, 644 So. 2d 486, would have applied to “any interest” in private property.

new laws to protect environment or manage growth, or from enforcing current laws out of fear of having to compensate property owners under a new takings cause of action. Other unannounced results would flow from the governments' inevitable decisions to reserve money from current taxes to pay future compensation to property owners. This would divert money needed for other government functions like police, fire, and schools, health, water sewer, garbage etc.

Finally, a fourth principle evaluates whether the initiative asks multiple questions as opposed to just one. This is the principle of "log-rolling". Advisor-v Opinion to the Attorney General-Fee on the Everglades Sugar Production, Everglades Trust Fund-, and Responsibility for Paying Costs of Water Pollution Abatement in the Everglades. 21 FLW S394, 395 (Fla. September 19, 1996). While this initiative is not as blatant in combining numerous unrelated issues as was done in its companion amendment, because it would cause significant collateral changes in government, the initiative in effect engages in "silent log-rolling". In such cases, the unannounced consequences are perhaps more insidious than the obvious variety.

The proponents of this initiative will also argue that their initiative is just as benign as that proposed to add the revenue exemption to the single subject

rule, which this Court approved in Tax Limitation, 644 So. 2d 486. A careful reading of that opinion dispels such reliance on case precedent, for unlike the revenue exception, this property rights initiative is not limited to a single subject.

In Tax Limitation, 644 So. 2d 486, this Court upheld a proposal to amend Article XI, Section 3, to create an exception to the single subject requirement for amendments “limiting the power of government to raise revenue”. In response to arguments that this proposal would affect multiple functions of government, this Court said:

This proposed constitutional amendment would eliminate the single-subject requirement of article XI, section 3, for initiatives that deal solely with limiting “the power of government to raise revenue. ” The single subject requirement would remain for all other types of initiative petitions and for petitions that combine revenue limitation and other subjects. (Emphasis added).

Thus, in the case of the revenue exception, this Court determined that the proposal would not violate the single subject rule precisely because it was limited in scope, did not log-roll other provisions, or result in a wholesale rearrangement of governmental functions. The current proposal is much broader and affects numerous functions of government, not just revenue. Thus, unlike the amendment approved in Tax Limitation, 644 So. 2d 486, this initiative cannot survive the limitations of the single subject rule.

ARGUMENTII.

THE PEOPLE'S PROPERTY RIGHTS AMENDMENTS INITIATIVE VIOLATES THE NOTICE REQUIREMENTS OF SUBSECTION 101.161(1), FLORIDA STATUTES (1995), BECAUSE IT CONTAINS MISLEADING STATEMENTS AND OMITTS MATERIAL FACTS

Under Florida law, the test for the validity of a ballot title and summary is whether or not they are fair and advise the voters of the chief objectives of the proposed amendment so that the voters may intelligently cast their ballots. Advisory Opinion to the Attorney General Re: Stop Early Release of Prisoners, 642 So. 2d 724, 725-726 (Fla. 1994). The ballot title and the explanatory summary statement of the proposed amendment at issue violate Section 101.161(1), Florida Statutes, because they are misleading and omit material facts which could notify the voters of its content.

Section 101.161(1), Florida Statutes (1995), states:

Whenever a constitutional amendment or other public measure 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 after the list of candidates. . . 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.

There are several established principles of law associated with the application of this statute. First, the summary and title must not mislead the voting public and should, therefore explain the “true meaning, and ramifications, of an amendment.” See Save Our Everglades Trust Fund, 636 So. 2d at 1341; Restricts Laws Related to Discrimination, 632 So. 2d 1018; Askew v. Firestone, 421 So. 2d 151, 156 (Fla. 1982). The summary is silent on the very serious and numerous ramifications that the proposed amendment would have on state, regional and local governments, as more fully set forth above.

Secondly, the summary must communicate the collateral effects that would seriously disrupt Florida government. Restricts Laws Related to Discrimination, 632 So. 2d 1018. Its not just what the summary says that is important, but also what it fails to mention. In this case, the summary fails to inform the voter that the amendment would put in play a game that would ultimately shift the balance currently provided in the law away from environmental protection and more to the side of the protection of private property rights. Notwithstanding a voter’s personal predilection on this issue, that voter is nonetheless entitled to know how the proposed amendment would

affect this important relationship between government and the citizen. Thus, state law requires what the summary fails to provide,

Another principle is that the summary must mention whether the proposal would affect or change the current law. See Evans v. Firestone, 457 So. 2d at 1355, Askew v. Firestone, 421 So. 2d at 155, Stop Early Release of Prisoners, 642 So. 2d 724. As more fully set forth above, this proposal would enable an amendment to be proposed which currently would not pass muster under the single subject rule. Moreover, the summary fails to inform the voters that the proposal would substantially alter the current law associated with the taking of private property under the Florida Constitution. It fails to inform the voter that under the current state of the law, there already is a constitutional protection of property rights in the takings clause. Lucas v. South Carolina Coastal Council, 112 S.Ct. 2886 (1992), Graham v. Estuary Properties, Inc., 399 So. 2d 1374. Under this proposal, a voter could be left to question what if any protection there was in the current law for private property rights, which is misleading. See Askew v. Firestone, 421 So. 2d 151, Evans v. Firestone, 457 So. 2d 1351. In other words, the title and summary of this proposal do not tell the voter that this amendment would make it easier to adopt an amendment that would materially change the law of takings and

make land use planning and environmental protection a thing of the past. As regards the statutory measure of its validity, this initiative is no better than that struck down in Tax Limitation, 644 So. 2d 486, and it should fail for the same reasons.

The title and summary must also reflect the text of the amendment. See Stop Early Release of Prisoners, 642 So. 2d 724. In this case the text of the amendment would “provide full compensation” for certain restrictions on the use of private property. However, the ballot title does not include the adjective “full”, leaving the voter to guess as to the quantum of compensation might be paid under the amendment. Thus, since the voter does not see the text of the amendment when voting, the voter may seriously underestimate the costs associated with the proposal. See, Save Our Everglades, 636 So. 2d at 1341, Evans v. Firestone, 457 So. 2d at 1355.

Finally, the summary uses the word “owner”, which was specifically found misleading in Tax Limitation, 644 So. 2d at 495. The initiative is also misleading, because it fails to mention that environmental, health, safety, and land use laws affect property rights, and that these will be restricted by the amendment. For these reasons, the title and summary violate Section

101.161(1), Florida Statutes (1995). Therefore, this Court should strike the proposed amendment from the ballot.

CONCLUSION

There are two serious ramifications to approving this initiative. First, state government would fundamentally change the way it acts to protect the environment and manage growth. Secondly, and perhaps just as tragic, the single subject restriction would become a nullity; this would invariably disrupt the “harmony of purpose” prevailing in the Florida Constitution, state law and local ordinances, by leading to a rash of similar proposals on other subjects. Restricts Laws Related to Discrimination, 632 So. 2d at 1022.

For these reasons, 1000 Friends of Florida, Inc., the Florida Chapter of the American Planning Association and Common Cause request that this Court strike the proposed amendment from the ballot for failure to comply with the legal requirements of Article XI, Section 3 of the Florida Constitution and Section 101.161, Florida Statutes (1995).

Respectfully submitted this 7th day of October 1996.

Thomas G. Pelham

Thomas G. Pelham

Florida Bar No. 0138570

Apgar & Pelham

909 East Park Avenue

Tallahassee, Florida 32301

(904) 222-5984

and

Terrell P. Arline

Legal Director

Florida Bar No. 0306584

1000 Friends of Florida, Inc.

Post Office Box 5948


Tallahassee, Florida 32314

(904) 222-6277

Attorneys for 1000 Friends of Florida,
Inc., American Planning Association,
Florida Chapter and Common Cause

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the Honorable Robert A. Butterworth, Attorney General for the State of Florida; Joslyn Wilson, PL-01, The Capitol, Tallahassee, Florida 32399; the Honorable Sandra B. Mortham, Secretary of State for the State of Florida, Plaza Level, The Capitol, Tallahassee, Florida 32399; Robert L. Nabors, Sarah M. Bleakley, and Virginia S. Delegal, Suite 800 Barnett Bank Building, 315 South Calhoun Street, Tallahassee, Florida 32301; Jane C. Hayman, Deputy General Counsel, Florida League of Cities, 201 West Park Avenue, Tallahassee, Florida 32301-7727; Stephanie Gehres, David Jordan, and Tonya Sue Chavis, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100; James L. Bennett, Chief Assistant County Attorney, Pinellas County, 315 Court Street, Clear-water, Florida 34616; Tatjana Martinez, 2898 Rexwood Drive, Tallahassee, Florida 32304; William J. Roberts, General Counsel, Florida Association of Cities, 217 South Adams Street, Tallahassee, Florida 32301; and Toby Brigham, 203 S.W. 3.3 Street, Miami, Florida 33131, this 17~~th~~ day of October, 1996.


Thomas G. Pelham
Thomas G. Pelham

IN THE SUPREME COURT OF FLORIDA

ADVISORY OPINION TO THE
ATTORNEY GENERAL

RE: PEOPLE'S PROPERTY RIGHTS AMENDMENT Case No. 88,696
PROVIDING COMPENSATION FOR RESTRICTING
REAL PROPERTY USE MAY COVER
MULTIPLE SUBJECTS,

Upon Request from the Attorney General
for an Advisory Opinion as to the
Validity of an Initiative Petition

APPENDIX TO
INITIAL BRIEF OF 1000 FRIENDS OF FLORIDA, INC.,
AMERICAN PLANNING ASSOCIATION, FLORIDA, CHAPTER,
AND COMMON CAUSE IN OPPOSITION TO THE
"PEOPLE'S PROPERTY RIGHTS AMENDMENTS" PETITION

Thomas G. Pelham
Apgar & Pelham
909 East Park Avenue
Tallahassee, Florida 32301

Terrell P. Arline
Legal Director
1000 Friends of Florida, Inc.
Post Office Box 5948
Tallahassee, Florida 32314

Attorneys for 1000 Friends of Florida,
Inc., American Planning Association,
Florida Chapter, and Common Cause

APPENDIX

- A. Petition form
- B. Attorney General's petition requesting advisory opinion
- C. Copy of Interlocutory Order (without attachments)

EXHIBIT A



PRESS HARD AND PRINT LEGIBLY

0123456789

NAME _____ PHONE _____

ADDRESS _____ CITY _____ COUNTY _____ ZIP _____

CONGRESSIONAL DISTRICT COMPLETE IF KNOWN PRECINCT NUMBER

Mail Petitions and Badly Needed Donations To: Tax Cap Committee, P.O. Box 193, New Smyrna Beach, FL 32170-0193
 Note: Prospective volunteers and/or supporters call 1-800-4-TAX LIMIT (482-9546) or 1-904-423-4744
 Paid Political Advertisement, Property of Tax Cap Committee, Copyright © 1995 Tax Cap Committee.

PEOPLE'S PROPERTY RIGHTS AMENDMENTS

PLEASE READ CAREFULLY AND SIGN EXACTLY AS YOU ARE REGISTERED TO VOTE.

PROPOSED **FLORIDA CONSTITUTIONAL AMENDMENT**

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.

BALLOT TITLE:

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

PLEASE SIGN AND DATE

YOUR SIGNATURE HELPS PUT THE PROPOSED AMENDMENT TO A VOTE

I am a Florida registered voter. I petition the Secretary of State to place this ballot title, summary and proposed constitutional amendment, on a general election ballot.

X _____

Signature (Same as registered to vote)

Date

EXHIBIT B



STATE OF FLORIDA

OFFICE OF ATTORNEY GENERAL

ROBERT A. BUTTERWORTH

FILED

AUG 14 1996

CLERK OF THE SUPREME COURT
TALLAHASSEE, FLORIDA

88,696

August 14, 1996

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

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 tLimitationy General re: Tax ' ' _____, 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

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.

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."

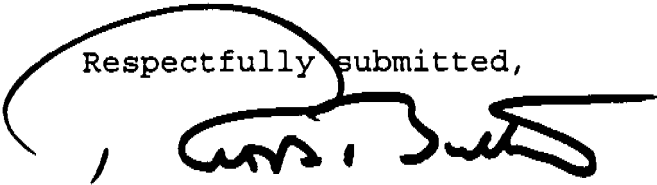
Thus, the voter may be unaware that approval of this amendment would require him to accept or reject the proposition that all property rights compensation amendments may cover multiple subjects. This would constitute a form of "log-rolling" in that voters would not be able to independently express dissatisfaction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

Honorable Gerald Kogan
Page Six

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,



Robert A. Butterworth
Attorney General

RAB/tgk

cc: The Honorable Sandra Mortham
Secretary of State
The Capitol
Tallahassee, Florida 32399-0250

Mr. David Biddulph, Chairman
Tax Cap Committee
5807 South Atlantic Avenue
New Smyrna Beach, Florida 32169



Supreme Court of Florida

TUESDAY, AUGUST 27, 1996

ADVISORY OPINION TO THE
ATTORNEY GENERAL

CASE NO. 88,696

RE: PEOPLE'S PROPERTY RIGHTS
AMENDMENTS PROVIDING
COMPENSATION FOR RE-
STRICTING REAL PROPERTY
USE **MAY** COVER MULTIPLE
SUBJECTS

INTERLOCUTORY ORDER

Attorney General, Robert A. Butterworth, pursuant to the provisions of Article IV, Section 10, Florida Constitution, and Section 16.061, Florida Statutes, has requested this Court's opinion as to whether the text of the proposed amendment seeking 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 complies with Article XI, Section 3, Florida Constitution, and whether the proposed ballot title and summary comply with Section 101.161, Florida Statutes. 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 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 and 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.

Section 16.061, Florida Statutes, requires the Attorney General, within 30 days after receipt of the proposed amendment or revision to the State Constitution by initiative petition, to petition this Honorable Court for an advisory opinion regarding compliance of the text of the proposed amendment with Article XI, Section 3, Florida Constitution, and compliance of the proposed ballot title and summary with Section 101.161, Florida Statutes.

