

IN THE SUPREME COURT
STATE OF FLORIDA

Case No. SC04-1134

IN RE: ADVISORY OPINION
TO THE ATTORNEY GENERAL
RE: REFERENDA REQUIRED FOR
ADOPTION AND AMENDMENT OF
LOCAL GOVERNMENT COMPREHENSIVE
LAND USE PLANS

**INITIAL BRIEF
OF THE SPONSOR
FLORIDA HOMETOWN DEMOCRACY, INC.**

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STATEMENT OF THE CASE AND FACTS

STATEMENT OF THE CASE

By letter dated July 13, 2004, Florida's Attorney General requested this Court's opinion on the validity of a constitutional amendment initiative petition sponsored by Florida Hometown Democracy, Inc. (the Initiative). See, Section 16.061, Fla. Stat. (2003).

The Attorney General did not take any position on the legal sufficiency of the Initiative petition, but he mentioned three items for possible consideration: (1) that the ballot summary and text may include language that may be considered political rhetoric or emotional language that may mislead the voter; (2) that voters may not understand the implications of Section 163.3167(4), Florida Statutes (2003), vis a vis the Initiative; and (3) that since the Initiative broadly defines the term local government comprehensive land use plan, it may create confusion over such land use issues as zoning.

On July 14, 2004, this Court issued a scheduling Order in this case.

STATEMENT OF THE FACTS

Florida Hometown Democracy, Inc. is the political action committee sponsor of a citizen initiative petition proposed pursuant to Article XI, Section 3 of the Florida Constitution (1968).

On June 18, 2003, the Florida Division of Elections approved the Initiative, and assigned the Initiative

petition Serial Number 03-23.

On June 25, 2004, the Secretary of State notified the Attorney General that the Initiative qualified for review by this Court.

The title of the Initiative is **AReferenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans.**@

The ballot summary provides:
Public participation in local government comprehensive land use planning benefits Florida's natural resources, scenic beauty and citizens. Establishes that before a local government may adopt a new comprehensive land use plan, or amend a comprehensive land use plan, the proposed plan or plan amendment shall be subject to vote of the electors of the local government by referendum, following preparation by the local planning agency, consideration by the governing body and notice. Provides definitions.

The full text of the Initiative is as follows:
BE IT ENACTED BY THE PEOPLE OF FLORIDA THAT:

Article II, Section 7. **Natural resources and scenic beauty** of the Florida Constitution is amended to add the following subsection:

Public participation in local government comprehensive land use planning benefits the conservation and protection of Florida's natural resources and scenic beauty, and the long-term quality of life of Floridians. Therefore, before a local government may adopt a new comprehensive land use plan, or amend a comprehensive land use plan, such proposed plan or plan amendment shall be subject to vote of the electors of the local government by referendum, following preparation by the local planning agency, consideration by the governing body as provided by general law, and notice thereof in a local newspaper of general circulation. Notice and referendum will be as provided by general law. This amendment

shall become effective immediately upon approval by the electors of Florida.

For purposes of this subsection:

ALocal government@ means a county or municipality.

ALocal government comprehensive land use plan@ means a plan to guide and control the future land development in an area under the jurisdiction of a local government.

ALocal planning agency@ means the agency of a local government that is responsible for the preparation of a comprehensive land use plan and plan amendments after public notice and hearings and for making recommendations to the governing body of the local government regarding the adoption or amendment of a comprehensive land use plan.

AGoverning body@ means the board of county commissioners of a county, the commission or council of a municipality, or the chief elected governing body of a county or municipality, however designated.

SUMMARY OF ARGUMENT

The Initiative does not violate the single subject requirement of Article XI, Section 3 of the Florida Constitution. The Initiative consists of a single dominant plan to enhance Florida's environmental policy by increasing public participation in local government comprehensive land use planning. A referendum vote of local electors will be required in order to adopt or amend a local government comprehensive land use plan once such plan or plan amendment is prepared by the local planning agency and considered by the local governing body.

The ballot title and summary for the Initiative meet the requirements of Section 101.161(1), Florida Statutes (2003).

ARGUMENT

STANDARD OF REVIEW: The standard of review is de novo. The Court's review is limited to two legal issues: whether the Initiative satisfies the single-subject requirement in Article XI, Section 3 of the Florida Constitution; and if the ballot title and summary meet the requirements of Section 101.161(1), Florida Statutes (2003). See, Advisory Op. to the Att'y Gen. Re Amendment to Bar Gov't From Treating People Differently Based on Race in Pub. Educ., 778 So.2d 888, 890-91 (Fla. 2000); Advisory Op. to Att'y Gen. re Term Limits Pledge, 718 So.2d 798, 801 (Fla. 1998). The Court must approve the Initiative unless it is **A**clearly and conclusively defective.[@] Advisory Op. to the Att'y Gen. Re: Florida's Amend. to Reduce Class Size, 816 So.2d 580, 582 (Fla. 2002). The Court uses **A**extreme care, caution and restraint before it removes a constitutional amendment from the vote of the people.[@] Askew v. Firestone, 421 So.2d 151, 156 (Fla. 1982). **A**Such amendments are reviewed under a forgiving standard and will be submitted to the voters if at all possible.[@] Advisory Op. to the Att'y Gen. re: Right to Treatment & Rehab. for Non-Violent Drug Offenses, 818 So.2d 491, 494 (Fla. 2002). The Court does not rule on the wisdom or the merits of an initiative. See, Advisory Op. to the Att'y Gen. re Amendment to Bar Gov't From Treating People Differently Based on Race in Pub. Educ., 778 So.2d at

891.

I. THE INITIATIVE SATISFIES THE SINGLE-SUBJECT REQUIREMENT.

With one exception not applicable here, the Florida Constitution restricts citizens' initiatives to one subject and matter directly connected therewith. Art. XI, s. 3, Fla. Const. The Initiative satisfies the single-subject requirement.

A. THE INITIATIVE DOES NOT CONSTITUTE LOGROLLING.

The single-subject limitation has been interpreted to prevent logrolling, or combining different matters (or measures) into one initiative so that electors will have to vote in favor of something that they do not want in order to gain something that they do want. Advisory Op. to Atty Gen. re Fla. Transp. Initiative, 769 So.2d 367, 369 (Fla. 2000).

The Court evaluates whether or not a proposed amendment constitutes logrolling under a oneness of purpose standard. Fine v. Firestone, 448 So.2d 984, 990 (Fla. 1984). A proposed amendment meets this standard when it:
may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme. Unity of object and plan is the universal test.

Id. (quoting City of Coral Gables v. Gray, 19 So.2d 318, 320 (Fla. 1944)).

The Initiative should be logically viewed as a single dominant plan to enhance Florida's environmental

policy by increasing public participation in local government comprehensive land use planning. To that end, the Initiative will require a referendum vote in order to adopt or amend a local government comprehensive land use plan, once such plan or plan amendment is prepared by the local planning agency and considered by the local governing body.

B. THE INITIATIVE ALTERS ONLY ONE LOCAL FUNCTION.

The second aspect of the single-subject requirement bars an amendment from:
substantially altering or performing the functions of multiple aspects of government and thereby causing multiple precipitous and cataclysmic changes in state government.

Advisory Op. to the Att'y Gen. re: Right to Treatment & Rehab. for Non-Violent Drug Offenses, 818 So.2d at 495.

In 1968, Florida's Constitution was amended to include Article II, Section 7. It expresses State policy to Aconserve and protect@ Florida's environment and requires that Adequate provision shall be made by law@ toward that end. The Initiative enhances that policy by expanding citizen participation in the local land use planning process. The Initiative simply substitutes a referendum vote in lieu of final legislative action by a local governing body regarding any ordinance that would adopt, or amend, a local government comprehensive land use plan.

Comprehensive land use planning legislation

implementing Article II, Section 7 of the Florida Constitution supports the conclusion that the Initiative only alters one local function.

The Florida Land and Water Management Act of 1972 was adopted with the express purpose to protect the natural resources and environment of this state as provided in Article II, Section 7 of the Florida Constitution. Section 380.021, Florida Statutes (2003); Ch. 72-317, Laws of Fla. (1972). See also, Department of Community Affairs v. Moorman, 664 So.2d 930, 932 (Fla. 1995)(Article II, Section 7 supports State land use regulations for environmental protection).

Three years later, the Legislature enacted additional implementing legislation -- the Local Government Comprehensive Planning Act of 1975. Ch. 75-257, Laws of Fla. (1975)(codified at Section 163.3161, et. seq., Fla. Stat. (1975)).¹ The stated purpose of the 1975 Act was: In conformity with, and furtherance of, the purpose of the Florida Environmental Land and Water Management Act of 1972, chapter 380, it is the purpose of this act to utilize and strengthen the existing role, processes, and powers of local governments in the establishment and implementation of comprehensive planning programs to guide and control future development.

Section 163.3161 (2), Fla. Stat. (1975). The 1975 Act required local governments to adopt comprehensive plans, which are also known as local government comprehensive land use plans, land use plans and local comprehensive plans. See, Point II.B. of this Brief.

¹ Prior to the 1975 Act, some local governments had adopted master plans or comprehensive plans. See, Town of Surfside v. Abelson, 106 So.2d 108 (Fla. 3d DCA 1958)(master plan); Town of Belleair v. Moran, 244 So.2d 532 (Fla. 2nd DCA 1971)(comprehensive plan).

The 1975 Act was substantially amended by the Local Government Comprehensive Planning and Land Development Regulation Act. Ch. 85-55, Laws of Fla. (1985). However, the stated purpose of the 1985 Act was identical to the 1975 Act. Section 163.3161(2), Fla. Stat. (1985).

Both the 1975 and 1985 Acts prescribe a basic local government land use planning process. A local planning agency prepares comprehensive plans and plan amendments. The local planning agency provides notice and the opportunity for public participation in the planning process. Thereafter, the local governing body provides notice and one or more public hearings to consider the adoption of the comprehensive land use plan or plan amendment. See, Sections 163.3174, 163.3181, 163.3184, 163.3187, Fla. Stat. (1975); Sections 163.3174, 163.3181, 163.3184, 163.3187, Fla. Stat. (2003).

The Initiative alters only one aspect of this well-established procedure. The Initiative simply provides that the final local legislative decision to adopt a plan or plan amendment shall be by referendum.

Local government comprehensive plan adoption and amendment decisions are legislative decisions. Coastal Development of North Florida, Inc. v. City of Jacksonville Beach, 788 So.2d 204, 205 (Fla. 2001); Martin County v. Yusem, 690 So.2d 1288 (Fla. 1997). Accordingly, such legislative decisions are properly subject to referenda.

Instead of multiple precipitous or cataclysmic changes to State government, the Initiative offers a single, incremental change in the local government land use legislative process. Advisory Op. to the Att’y Gen. re: Right to Treatment & Rehab. for Non-Violent Drug Offenses, 818 So.2d at 495.

The Initiative does not address ancillary land use matters or government functions such as land development regulations, development orders, or development permits. See, Sections 163.3164(23)(definition of land development regulations); 163.3164(7) (definition of development order); 163.3164(8) (definition of development permit), Florida Statutes (2003).

In Advisory Op. to Att’y Gen. re Property Rights Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects, 699 So.2d 1304, 1308 (Fla. 1997), this Court enumerated various functions of government applicable to land use including: comprehensive planning, zoning, and controlling storm-water drainage and flood waters. Thus, this Court has recognized that comprehensive planning is a singular governmental function and is distinct from other land use functions such as zoning.

The Initiative does not address or suggest any change to any existing processes of the executive branch (such as the Department of Community Affairs or Administration Commission). Similarly, the Initiative does not address or suggest any change to judicial remedies such as de novo or certiorari review of a local government’s adoption (or rejection) of a local government comprehensive plan or plan amendment. While the Initiative contains references to general law, it does not require any Legislative action.

The Initiative should be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme. Advisory Op. to Att’y Gen. re Fla. Locally Approved Gaming, 656 So.2d 1259, 1263 (Fla. 1995), quoting City of Coral Gables v. Gray, 19 So.2d 318, 320 (Fla. 1944).

C. THE INITIATIVE DOES NOT SUBSTANTIALLY AFFECT ANY OTHER PROVISION IN THE FLORIDA CONSTITUTION.

The Initiative does not violate the single-subject rule by substantially affecting any section of the Florida Constitution other than that section which is identified. See, Advisory Op. to the Att’y Gen. re Amendment to Bar Gov’t. from Treating People Different Based on Race in Public Ed., 778 So.2d 888, 893 (Fla. 2000).

The Initiative is consistent with Article I, Section 1 of the Florida Constitution, but does not affect it. This Court has recognized that the referendum is the essence of the power reserved in Article I, Section 1 of the Florida Constitution. Florida Land Co. v. City of Winter Springs, 427 So.2d 170 (Fla. 1983).

The Initiative meets the single-subject limitation.

II. THE BALLOT TITLE AND SUMMARY MEET THE REQUIREMENTS OF SECTION 101.161(1), FLORIDA STATUTES.

Section 101.161(1), Florida Statutes (2003), provides that whenever a constitutional amendment is submitted to the vote of the people, a title and summary of the amendment must appear on the ballot.

A. THE BALLOT TITLE MEETS STATUTORY REQUIREMENTS.

As to the title, the statute provides:
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.

Section 101.161(1), Fla. Stat. (2003). The ballot title of the Initiative is: **Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans.** The ballot title meets the statutory requirements.

B. THE BALLOT SUMMARY MEETS STATUTORY REQUIREMENTS.

As to the ballot summary, the statute requires:
[T]he 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.

Id.

The ballot summary meets the statutory word limitation and explains the chief purpose of the Amendment as follows:

Public participation in local government comprehensive land use planning benefits Florida's natural resources, scenic beauty and citizens. Establishes that before a local government may adopt a new comprehensive land use plan, or amend a comprehensive land use plan, the proposed plan or amendment shall be subject to vote of the electors of the local government by referendum, following preparation by the local planning agency, consideration by the governing body and notice. Provides definitions.

This Court has stated that the basic purpose of the statute is **to provide fair notice of the content...so that the voter will not be misled as to its purpose, and can cast an intelligent and informed ballot.** Advisory Op. to Att'y Gen. B Fee on Everglades Sugar Prod., 681 So.2d

1124, 1127 (Fla. 1996).

The Court's fair notice inquiry concerns two questions. First, do the ballot title and summary fairly inform voters as to the chief purpose of the amendment? Advisory Op. to the Att'y Gen. re: Right to Treatment & Rehab. for Non-Violent Drug Offenses, 818 So.2d at 497.

Secondly, whether the language of the title and summary, as written, misleads the public. Advisory Op. to Att'y Gen. re Right of Citizens to Choose Health Care Providers, 705 So.2d 563, 566 (Fla. 1998).

The first sentence of the ballot summary fairly informs voters of the text of the first sentence of the Initiative.

This Court has stated:

[t]he legislature is required by article II, section 7 of the Florida Constitution to regulate the use of land to protect Florida's natural resources and scenic beauty.

Advisory Op. to Att'y Gen. re Property Rights Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects, 699 So.2d at 1308.

The second sentence of the summary clearly advises that this increased public participation will be implemented via the requirement of a local referendum prior to local government adoption of a new comprehensive plan, or amendment to a comprehensive plan. The second sentence also explains that the referendum will follow preparation of the comprehensive land use plan or amendment by the local planning agency, consideration by the governing body, and notice. The last sentence advises voters that the Initiative provides definitions.

The Attorney General's transmittal letter suggests that the Court may wish to consider whether the ballot summary and text ... include language that may be considered political rhetoric. This concern, directed to the policy statement about public participation is misplaced.

Citizen initiatives properly contain such expressions of public policy. The Limited Marine Net Fishing initiative provided in part:

The marine resources of the State of Florida belong to all of the people of the state and should be conserved and managed for the benefit of the state, its people, and future generations.

Art. X, S. 16, Fla. Const. See, Advisory Op. to Att’y Gen. B Limited Marine Net Fishing, 620 So.2d 997 (Fla. 1993). The AHigh-Speed Rail@ initiative provides in relevant part: To reduce traffic congestion and provide alternatives to the traveling public, it is hereby declared in the public interest that a high speed ground transportation system...be developed and operated....

Art. X, S. 19, Fla. Const. See, Advisory Op. to Att’y Gen. re: Fla. Transp. Initiative, 769 So.2d at 367. More recently the APregnant Pig@ initiative stated: AInhumane treatment of animals is a concern of Florida citizens.@See, Advisory Op. to Att’y Gen. re Limiting Cruel and Inhumane Confinement of Pigs During Pregnancy, 815 So.2d 597 (Fla. 2002).

APolitical rhetoric@ that Amaterially misstates the substance of the amendment@ cannot appear in the ballot summary. In re Advisory Op. to the Att’y Gen. B Save Our Everglades, 636 So.2d 1336, 1341-42 (Fla. 1994). However, in the case at bar, the ballot summary fairly summarizes the text of the proposed amendment. The Attorney General’s concern is directed to the merits of the text of the Initiative, rather than the legal sufficiency of the ballot summary. See, Advisory Op. to the Att’y Gen. re Tax Limitation, 644 So.2d 486, 490 (Fla. 1994)(ballot summary must be accurate and informative and objective and free from political rhetoric).

The Attorney General’s transmittal letter also suggests that voters may not realize the implications of the Initiative vis a vis Section 163.3167(4), Florida Statutes (2003).² On its face, the Initiative only applies to adoption of comprehensive plans and plan amendments by a Alocal government@, which is defined as Aa county or municipality.@

In considering whether a ballot summary is misleading, the Court presumes that voters Ahave a certain amount of common sense and knowledge.@See, Advisory Op. to Att’y Gen. re

² The Attorney General refers to Alocal planning agency@ but the statute refers to Aregional planning agency@ which is defined in Section 163.3164(19), Florida Statutes (2003).

Tax Limitation, 673 So.2d at 868.

Notwithstanding that the term is defined in the text, voters understand that the phrase "local government" refers to counties and cities. Accordingly, the Attorney General's concern is meritless.

The Attorney General's transmittal letter also states that: the amendment broadly defines the term "local government comprehensive land use plan" and it may not be clear to the voters that the term does not include such land use issues as zoning. Moreover, voters may not realize that the amendment affects all changes, even small-scale changes which are currently exempt under the statutory scheme from the same type of scrutiny given to larger scale changes.

These concerns address the merits of the Initiative rather than the legal sufficiency of the ballot summary.

For decades, Florida cities and counties have been required to provide public notice, to conduct public hearings before local planning agencies, and to have their local governing bodies adopt comprehensive land use plans and plan amendments.

Existing State statutes refer to these plans using different terms, including for example: "land use plan" in Section 403.508(2), Florida Statutes (2003); "comprehensive land use plan" in Sections 163.2517(4) and 380.0555 (8)(a)1, Florida Statutes (2003); "county land use plan" in Section 171.062(2), Florida Statutes (2003); and "local comprehensive plan" in Section 403.973(12)(a) and (14)(a), Florida Statutes (2003).

Existing State statutes also contain references to other types of plans, including for example: "comprehensive plan" in Sections 373.470(1)(a) and 373.1502(2)(a), Florida Statutes (2003); "safe neighborhood improvement plan" in Section 163.516(1), Florida Statutes (2003); "military base reuse plan" in Section 288.975(5), Florida Statutes (2003); "transportation plans and programs for metropolitan areas" in Section 339.175, Florida Statutes (2003).

The definition of "local government comprehensive land use plan" set forth in the Initiative is plainly descriptive of the existing "comprehensive plans" required by the 1985 Local Government Comprehensive Planning and Land Development Regulation Act, as amended. The

use of the phrase -- Alocal government comprehensive land use plan@-- in the ballot summary is appropriate and informative. Moreover, this Court has long upheld citizen initiatives that include definitions. See, Advisory Op. to Att=y Gen. re Limiting Cruel and Inhumane Confinement of Pigs During Pregnancy, 815 So.2d 597 (Fla. 2002); Advisory Op. to Att=y Gen. B Limited Marine Net Fishing, 620 So.2d 997 (Fla. 1993).

The Initiative clearly applies to adoption of a new proposed comprehensive land use plan and to any amendment to an existing plan. As noted by this Court:
It seems to us that all comprehensive plan amendment requests necessarily involve the formulation of policy, rather than its mere application. Regardless of the scale of the proposed development, a comprehensive plan amendment request will require that the governmental entity determine whether it is socially desirable to reformulate the policies previously formulated for the orderly future growth of the community.

Coastal Development v. Jacksonville Beach, 788 So.2d at 209 (quoting with approval from First District Court of Appeals opinion).

The ballot title and summary are consistent with the requirements of Section 101.161(1), Florida Statutes (2003), and should be approved by this court.

CONCLUSION

Florida Hometown Democracy, Inc., the sponsor, respectfully requests the court to find that the Initiative meets the constitutional and statutory requirements, and approve the Initiative for placement on the ballot.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by

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