IN THE SUPREME COURT
STATE OF FLORIDA

Case No. SC06-161

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

ANSWER BRIEF
OF THE SPONSOR
FLORIDA HOMETOWN DEMOCRACY, INC.

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SUMMARY OF ARGUMENT

The Initiative complies with the single subject requirement in Article XI, section 3 of the Florida Constitution. Neither the functions of the Florida Legislature, nor Florida's school boards, under Article IX, sections 1 and 4 are substantially affected by the Initiative.

The Initiative alters only one step of an already established process of local government comprehensive land use plan adoption and amendment. The functions of multiple branches of government are not substantially altered or performed and multiple provisions of the Florida Constitution are not affected by the Initiative.

The ballot title and summary meet statutory format and substantive requirements, and clearly explain the chief purpose of the Initiative.

ARGUMENT

STANDARD OF REVIEW: The Court's review is limited to two legal issues: (1) whether the Initiative satisfies the single-subject requirement in Article XI, Section 3 of the Florida Constitution; and (2) whether the ballot title and summary violate the requirements of Section 101.161(1), Florida Statutes (2005). See, Adv. Op. to Atty. Gen. Re: Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans, 902 So.2d 763, 765 (Fla. 2005)("FHD Opinion"), citing 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). In addressing those two issues, the Court's inquiry is governed by several general principles. The Court does not rule on the wisdom or the merits of an initiative. Id. 778 So.2d at 891. The Court uses "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). The Court must approve the Initiative unless it is "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). "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).

Where the Court has already issued an advisory opinion on a proposed constitutional initiative, the Court will revisit the issues "only under *extraordinary* circumstances." Ray v. Mortham, 742 So.2d 1276, 1285 (Fla. 1999)(emphasis in original).

I. THE INITIATIVE SATISFIES THE SINGLE-SUBJECT REQUIREMENT.

Opponents argue that the Initiative violates the single subject rule since it:

> * will substantially affect and alter the function of the school districts and the Florida Legislature in their ability to comply with Article IX of the constitution.
>
> * will substantially alter the functions of multiple branches of local government to the extent it will require referenda for both legislative and quasi-judicial decisions of general purpose local governments, thereby affecting Article VII, sections 1 and 2, and to the extent it will alter the functioning of local school districts. (sic).

[Opponents' Brief, page 6].

In the FHD Opinion, this Court evaluated text identical to that before the Court in the case at bar and the Court unanimously concluded that the text complied with the single subject requirement in Article XI, section 3 of the Florida Constitution. FHD Opinion, 902 So.2d at 765-772. This Court noted that the proposed amendment "calls for only one discrete change in the established scheme of comprehensive land use plans." Id. at 768.

This Court correctly found:

> The proposed amendment deals only with local comprehensive land-use plan adoption and amendment and makes one change to the procedure by which these plans are adopted and amended -- requiring referenda. That the plans themselves contain more than one subject does not support the conclusion that the initiative has combined "unrelated provisions," some of which are popular and others that may be disfavored.

Id. at 766.

Since the text of the Initiative is identical to that reviewed by this Court in 2005, the Court's description is still accurate, as is the finding of compliance with the single subject requirement. There have been no amendments to the Constitutional provisions cited by the Opponents since the Court's earlier review of the Initiative text -- Article IX, sections 1(a) and 4(b). The Initiative does not

substantially affect either the Florida Legislature or the State's School Boards with respect to public schools, does not substantially affect multiple provisions of the Florida Constitution, and otherwise fully complies with the single subject rule.

A. LEGISLATIVE FUNCTIONS UNDER ARTICLE IX ARE NOT SUBSTANTIALLY AFFECTED.

Opponents contend that the Legislature's functions under Article IX, section 1(a) of the Florida Constitution will be substantially affected by the Initiative. [Opponents' Brief, page 12 and n. 6].

Article IX, section 1(a) provides "in relevant part":

> The education of children is a fundamental value to the people of the State of Florida. It is therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education.

Article IX, section 1(a) was last amended by the "class size" amendment approved in the 2002 general election. See, In re: Advisory Op. to Atty. Gen re: Florida's Amendment to Reduce Class Size, 816 So.2d 580 (2002)("Class Size Amendment"). The "class size" amendment gave the

Legislature "latitude in designing ways to meet the class size goal ... and places the obligation to ensure compliance on the Legislature." Id at 584-85.

The Initiative does not in impair the Legislature's responsibility to implement the class size goal. Opponents speculate that the "voters could reject a comprehensive plan amendment ... that authorized the siting of a school necessary to comply with the provisions of Article XI, section 1."

However, the Initiative does not affect the Legislature's power to authorize public school development to meet the class size goal irrespective of local government comprehensive planning restrictions. In the 2005 Legislation touted in Opponents' Brief, for example, the Legislature declared that all existing schools are considered to be consistent with existing comprehensive land use plans. See, Ch. 05-290, Laws of Fla.; Section 1013.33(15), Fla. Stat. (2005). School expansions at existing sites are apparently not subject to local government comprehensive land use plan development restrictions and placement of temporary or portable classrooms at existing public schools are exempt from "local government review or approval." Id.

The Court should decline to engage in speculation as to whether any new public school sites will be needed in order to meet the class size goals, whether or not the existing comprehensive plan land use classification of any such site is inconsistent with the local government comprehensive land use plan, and whether or not a school board-sponsored comprehensive land use plan amendment for any such public school site would be declined by the voters at a referendum.

The Initiative does not limit the Florida Legislature's authority to amend the statutory definition of "development" to exempt public school construction activities from the requirement of consistency with local government comprehensive land use plans. See, Sections 163.3164(6) and 380.04, Florida Statutes (2005)(definition of "development"); Florida Wildlife Federation v. Collier County, 819 So.2d 200, 204-05 (Fla. 1st DCA 2002).

Likewise, the Initiative does not limit the Legislature's authority to enact procedures such as those applicable to electrical power plants siting "land use and certification proceedings" where sites are evaluated for consistency with "existing land use plans and zoning ordinances." Section 403.508(2), Fla. Stat. (2005). If the site is inconsistent with the adopted local government

comprehensive land use plan, the Siting Board may authorize a variance to allow site certification. Id.

The Initiative does not substantially affect the Florida Legislature, as claimed by Opponents.

B. SCHOOL BOARD FUNCTIONS UNDER ARTICLE IX ARE NOT SUBSTANTIALLY AFFECTED.

The Initiative's referendum requirement only applies to local governments, not to school boards. "Local government" is specifically defined in the Initiative to mean "a county or municipality." A school board is neither a county nor a municipality.

The 2005 legislation cited by Opponents imposed additional duties upon both local governments and school boards to improve coordination of school facilities planning. See, Sections 163.3177(12), 163.31777, and 1013.33, Fla. Stat. (2005). Under the legislation, school boards are not authorized to adopt or to amend a local government comprehensive land use plan: that authority is retained by local governing bodies. See, Section 1013.33, Fla. Stat. (2005)("coordination of planning with local governing bodies").

Opponents assert the 2005 legislation causes the Initiative to substantially affect school boards' implementation of Article IX, section 4(b) of the Florida

Constitution. [Opponents' Brief, p. 12, citing Ch. 05-290, Laws of Fla.].

Article IX, section 4(b), adopted in 1998, provides:

> The school board shall operate, control and supervise all free public schools within the school district and determine the rate of school district taxes within the limits prescribed herein. Two or more school districts may operate and finance joint educational programs.

In considering this constitutional provision vis a vis the "class size" amendment, this Court concluded:

> We agree that the proposed amendment does not substantially alter or perform the functions of the local school board. Although, as result of the amendment, the Legislature may choose to fund the building of new schools ... this is not the only method of ensuring that the number of students meets the numbers set forth in the amendment. Rather than restricting the Legislature, the proposed amendment gives the Legislature latitude in designing ways to reach the class size goal ... and places the obligation to ensure compliance on the Legislature, not the local school boards.

Class Size Amendment, 816 So.2d at 584-85 (emphasis supplied).

Thus, this Court has already determined that Article IX, section 1, does not mandate new public school construction and that the "class size" obligations do not

substantially alter school board duties under Article IX, section 4(b) of the Florida Constitution.

Opponents' incorrectly assume that new public school construction is mandated by the "class size" amendment to Article IX, and allege a single-subject violation saying, "there is no mechanism whereby the need for a new school to comply with constitutional requirements could trump the desires of voters in a referendum." [Opponents' Brief, page 13].

Opponents misunderstand that local government comprehensive land use planning is an exercise of delegated legislative authority. See, Article VII, sections 1(f) and (g), 2(b), Florida Constitution.

The 2005 legislation emphasized by Opponents did not repeal Section 163.3167(12), Florida Statutes (2004), which allows for local government referenda on comprehensive land use plan amendments affecting more than five parcels of land. This Court recognized that the 2003 Initiative would have overridden that statute, but the Court noted that nullification of an existing statute does not necessarily cause a single-subject rule violation. FHD Opinion, 902 So.2d at 769.

As noted by Opponents, local governments and school boards are directed to enter into, or to amend, interlocal

agreements to facilitate coordinated planning efforts. [Opponents' Brief, pages 9, 24]. Local governments are directed to amend the "intergovernmental coordination element" of the comprehensive land use plan to refer to local government -school board coordination under such agreements. Section 163.3177(6)(h)4.a, Fla. Stat. (2005).

The interlocal agreements called for by the 2005 legislation are not within the Initiative's definition of "local government comprehensive land use plan." In fact, the Legislature characterized such interlocal agreements as "data and analysis" to be considered with regard to the public school facilities element of a local government comprehensive land use plan. Section 163.3177(12)(c), Fla. Stat. (2005). Moreover, such interlocal agreements must acknowledge "the land use authority of local governments, including their authority to approve or deny comprehensive plan amendments...." Section 163.3180(13)(g), Fla. Stat. (2005)(emphasis supplied).

The 2005 "school concurrency" legislation did not fundamentally change the basic local government process of adopting and amending comprehensive land use plans. Prior to the 2005 law, Section 163.3177(12), Florida Statutes (2004) addressed the "public school facilities element adopted to implement a school concurrency program."

Statutory changes to "school concurrency" are not an extraordinary circumstance to warrant this Court's departure from the FHD Opinion. See, Ray v. Mortham, 742 So.2d 1276, 1285 (Fla. 1999).

C. FUNCTIONS OF MULTIPLE BRANCHES OF GOVERNMENT ARE NOT SUBSTANTIALLY ALTERED OR PERFORMED.

That the Initiative might impact coordination between school boards and local governments with regard to prospective, new public schools is not a basis for finding a single-subject rule violation.

In Advisory Op. to the Att'y Gen. re: Protect People, Especially Youth, From Addiction, Disease, and Other Health Hazards of Using Tobacco, Case No. SC05-1897 (Fla. March 16, 2006), this Court considered a proposed amendment with a single plan for the education of youth about the health hazards related to tobacco. The plan included "components such as advertising, school curricula, and law enforcement" and the Court concluded that all related to the single, underlying purpose. Id. at 7. The Court noted that even when a proposed amendment delineates program components, where the Legislature is left with wide discretion to determine project details, the program does not usurp the legislative lawmaking function. Id. at 8.

The Initiative only changes one step of an already established process; the relationship to school planning is not sufficiently substantial to constitute the type of multiple precipitous and cataclysmic changes that the single subject requirement was designed to prevent. See, FHD Opinion, 902 So.2d at 769 (internal citation omitted).

Contrary to the Opponents' assertion, the Initiative does not substantially affect the ability of either school boards or the Legislature to comply with Article IX, sections 1(a) and 4(b) of the Florida Constitution. [Opponents' Brief, pages 12-20].

D. MULTIPLE PROVISIONS OF THE FLORIDA CONSTITUTION ARE NOT SUBSTANTIALLY AFFECTED.

Just as the Initiative does not substantially alter or perform the functions of multiple branches of government, it does not substantially affect any other provision of the Florida Constitution.

Opponents contend "the petition ... would impact Article IX, section 1, and Article IX, section 4, because of its substantial effect on school boards and the legislature." [Opponents' Brief, page 19]. Opponents also make an oblique claim that it would affect Article VIII based on the erroneous claim that the 2005 Initiative applies to quasi-judicial rezonings. Id.

Sprinkled throughout Opponents' Brief are references to the purported applicability of the 2005 Initiative to local government quasi-judicial rezoning decisions. [Opponents' Brief, pages 3, 6, 13, 15-16, 18-19, 28]. However, this Court has expressly distinguished comprehensive plan amendments ("legislative decisions") from quasi-judicial rezoning decisions. Martin County v. Yusem, 690 So.2d 1288, 1293-96 (Fla. 1997). The Initiative only addresses comprehensive plans and plan amendments.

The fact that the 2005 Initiative might "impact" or "affect" another Constitutional provision, even if true, is not a basis to find a single-subject rule violation. 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, 893 (Fla. 2000)

Article IX, section 1 was last amended in 2002 prior to the FHD Opinion. Article IX, section 4 was last amended in 1998, well before the FHD Opinion. The enactment of the 2005 "school concurrency" legislation has not transformed these pre-existing Constitutional provisions into something that forms the basis for a single-subject violation.

Where this Court has previously considered whether a proposed constitutional initiative complies with the single-subject requirement, the Court will only revisit the

issue under "only under *extraordinary* circumstances." Ray v. Mortham, 742 So.2d 1276, 1284-1285 (Fla. 1999)(emphasis in original).

In the case at bar there are no extraordinary circumstances created by the 2005 legislation. Accordingly, the Court should hold that the Initiative meets the single subject requirement.

E. THE DEFINITION OF "LOCAL GOVERNMENT COMPREHENSIVE LAND USE PLAN" IS NOT VAGUE.

Opponents contend that the term "comprehensive land use plan" as defined in the 2005 Initiative is vague. [Opponents' Brief, pages 26-29]. With regard to the identical ballot text in the 2003 Initiative, this Court correctly observed the amendment "alters only one step in an already established process." FHD Opinion, 902 So.2d at 769.

The statutory reference to "comprehensive plan" in Section 163.3164(4), Florida Statutes (2005), ("a plan that meets the requirements of ss. 163.3177 and 163.3178") is hardly informative to prospective voters. As argued extensively in this Court's consideration of the Sponsor's 2003 Initiative, the definition and use of the phrase "local government comprehensive land use plan" in the ballot text is easily understood and is fully consistent

with the historical use of the phrase in numerous Florida court opinions. The laundry list of purported "plans" offered by Opponents is simply not consistent with the definition.

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

Section 101.161(1), Florida Statutes (2005), 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. The requirements of the statutory test were discussed in the FHD Opinion. FHD Opinion, 902 So.2d at 770-772.

Opponents do not argue that ballot title and summary violate the statutory word limits, but instead Opponents contend that the ballot title and summary are "fatally ambiguous and deceptive." [Opponents' Brief, page 20].

While acknowledging this Court's prior determination as to the "chief purpose" of the 2003 Initiative text, Opponents offer no alternative as to what they assert is the "chief purpose" of the Initiative. [Opponents' Brief, page 22].

A. THE BALLOT TITLE IS LEGALLY SUFFICIENT.

As to the title requirement, the statutory standard 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. (2005).

The ballot title of the 2005 Initiative is unchanged from the 2003 Initiative: “Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans.” FHD Opinion, 902 So.2d at 764, 770.

Opponents apparently confuse the requirements for the ballot summary in Section 101.161, Florida Statutes, with the ballot title requirement. [Opponents' Brief, pages 22-31]. Both of the phrases used in the ballot title and argued to be infirm -- "local government" and "comprehensive land use plan" -- are defined in the ballot text. The title does not exceed 15 words and consists of a caption by which the measure is known.

Absent a change in the Constitutional "accuracy requirement", in the implementing statute, or in the title, no extraordinary circumstance exists to reconsider approval of the title. FHD Opinion, 902 So.2d at 764, 770; Ray v. Mortham, 742 So.2d at 1284-1285.

The ballot title merits ballot consideration since it meets the statutory requirements.

B. THE BALLOT SUMMARY IS LEGALLY SUFFICIENT.

As to the ballot summary, the legal requirements are set out in Section 101.161(1), Florida Statutes (2005) which provides in relevant part:

> [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.

FHD Opinion, 902 So.2d at 770.

The 2005 ballot summary meets the statutory word limitation and explains the chief purpose of the Amendment as follows:

> 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.

In the FHD Opinion, the Court found that the chief purpose of the measure itself, was "to require referenda before there can be *any* changes to or adoptions of

comprehensive land use plans." FDH Opinion, 902 So.2d at 771 (emphasis in original).

Opponents do not state what they believe is the "chief purpose" of the Initiative. [Opponents' Brief, pages 22-31]. Opponents' attack on the ballot summary is not based upon whether or not it is a fair rendition of the "chief purpose" of the 2005 Initiative text, but is an oblique attack on compliance with the single-subject requirement.

Apparently, Opponents contend that the 2005 Initiative has a "direct impact" on "school districts" based upon a misunderstanding of the 2005 legislation. [Opponents' Brief, pages 22-23 ("school districts ... have express, direct, and inherent control over the comprehensive planning process....")].

However, the 2005 legislation did not transform school boards into county or municipal governing bodies, but instead retained the traditional scheme of local government adoption and amendment of local government comprehensive land use plans.

Opponents state:

> Neither the common understanding of the term "local government" nor the amendment's proposed definition of "local government" gives the voter any indicia at all that the school districts may be wholly unable to meet their constitutional duties because of

> the proposed amendment before the Court.

[Opponents' Brief, page 26]. The Sponsor incorporates by reference arguments in support of the compliance with the single-subject requirement.

The enactment of Chapter 2005-290, Laws of Florida, reaffirms the viability of local government comprehensive land use planning and is not an extraordinary circumstance to warrant reconsideration of this Court's earlier opinion as to the accuracy of the remaining text of the 2003 ballot summary. FHD Opinion, 902 So.2d at 770-772; Ray v. Mortham, 742 So.2d at 1284-1285.

The ballot title and summary are consistent with the requirements of Section 101.161(1), Florida Statutes (2005), and should be approved for ballot consideration.

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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