

IN THE SUPREME COURT  
STATE OF FLORIDA

Case No. SC06-161

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

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**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 February 1, 2006, 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 2005 Initiative"). See, Section 16.061, Fla. Stat. (2005).

The Attorney General did not take any position on the legal sufficiency of the 2005 Initiative petition.

On February 2, 2006, 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).

In 2003, Florida Hometown Democracy, Inc. sponsored a citizen initiative petition ("the 2003 Initiative") identical to the 2005 Initiative except that the 2003 ballot summary began with the sentence:

Public participation in local government comprehensive land use planning benefits Florida's natural resources, scenic beauty and citizens.

On June 18, 2003, the Florida Division of Elections approved the 2003 Initiative, and assigned the Initiative petition Serial Number 03-23.

On March 17, 2005, this Court rendered an opinion on the 2003 Initiative in Case No. SC04-1134. Adv. Op. to Atty. Gen. Re: Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans, 902 So.2d 763 (Fla. 2005) ("FHD Opinion"). The Court held that the 2003 Initiative complied with the single-subject requirement of Article XI, section 3 of the Florida Constitution, but that the first sentence of the ballot summary was misleading and did not comply with Section 101.161(1), Florida Statutes (2004). FHD Opinion, 902 So.2d at 772.

In view of the FHD Opinion, Florida Hometown Democracy, Inc. decided to delete the first sentence of the ballot summary. Since the Court found the ballot title and the text of the proposed amendment legally sufficient to qualify for ballot consideration, the sponsor made no changes to the title and text.

On June 21, 2005, the Florida Division of Elections approved the 2005 Initiative, and assigned the Initiative petition Serial Number 05-18.

On January 26, 2006, the Secretary of State notified the Attorney General that the 2005 Initiative qualified for review by this Court.

The title of the 2005 Initiative is "Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans."

The ballot summary provides:

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 2005 Initiative provides:

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:

1. "Local government" means a county or municipality.
2. "Local 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.
3. "Local 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.
4. "Governing 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

This Court's advisory opinion on the 2003 Initiative determined that the 2003 Initiative met the single subject requirement of Article XI, Section 3 of the Florida Constitution. Since the text is unchanged, this Court should adhere to the FHD Opinion since no extraordinary circumstances exist to warrant reconsideration.

The ballot title and summary in the 2005 Initiative comply with Section 101.161(1), Florida Statutes (2005). The first sentence of the 2003 Initiative ballot summary, which the Court said was flawed, has been deleted. Otherwise, the 2005 ballot title and summary are identical to the 2003 Initiative. This Court should adhere to the FHD Opinion, and hold that the ballot title and summary meet Constitutional and statutory requirements. There are no extraordinary circumstances to warrant reconsideration.

## 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), 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.**

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 2005 Initiative satisfies the single-subject requirement.

In the FHD Opinion, this Court evaluated text identical to that before the Court in the case at bar and 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.

There has been no amendment to the single subject requirement in Article XI, section 3 of the Florida Constitution since the FHD Opinion.

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 Ray v. Mortham the trial court denied voters' action for declaratory and injunctive relief seeking to have a citizen's initiative amendment ("term limits") to Article VI, section 4(b) of the Florida Constitution stricken as unconstitutional. Upon "pass through" review of an adverse summary judgment, the amici supporting the voters asked the Court to revisit the issue of whether or not the measure met the single subject and ballot title and summary requirements. Id. at 1284. In considering the issue of whether or not to revisit the Advisory Opinion, the Court relied upon precedent established in Florida League of Cities v. Smith, 607 So.2d 397 (Fla. 1992).

Florida League of Cities v. Smith, was a mandamus action filed immediately prior to a scheduled election on a citizen's initiative on "Amendment 10" where the Court had issued an advisory opinion finding the initiative eligible for ballot consideration. Florida League of Cities v. Smith, 607 So.2d 397 (Fla. 1992). The Court said:

We emphasize, however, that relitigation of issues expressly addressed in an advisory opinion on a proposed amendment is strongly disfavored and almost always will result in this Court refusing to exercise its discretionary jurisdiction. Renewed litigation will be entertained only in truly extraordinary cases, such as in the present case where a vital issue was not addressed in the earlier opinion.

Id. at 399. The Court also noted: "advisory opinions are not binding judicial precedents," but are frequently very persuasive and usually adhered to." Id. at n. 3, citing Lee v. Dowda, 155 Fla. 68, 73, 19 So.2d 570, 572 (1944).

In the case at bar there are no extraordinary circumstances. The single subject requirement of Article XI, section 3 of the Florida Constitution is unchanged. Accordingly, the FHD Opinion should not be reconsidered and the Court should hold that the 2005 Initiative meets the single subject requirement.

**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.

**A. THE BALLOT TITLE MEETS STATUTORY REQUIREMENTS.**

As to the title requirement, the statutory standard reviewed in the FHD Opinion still applies. It 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 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.

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.

**B. THE BALLOT SUMMARY MEETS STATUTORY REQUIREMENTS.**

As to the ballot summary, the legal requirements are the same as those reviewed in the FHD Opinion. Section 101.161(1), Florida Statutes (2005) 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.

Since the Court determined that the first sentence of the 2003 Initiative was "editorial comment", the Sponsor deleted the language and began the petition process anew.

FHD Opinion, 902 So.2d at 772. The first sentence, deleted from the 2005 Initiative, provided:

Public participation in local government comprehensive land use planning benefits Florida's natural resources, scenic beauty and citizens.

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). Except for the "editorial comment" in the first sentence of the 2003 Initiative, the Court found the language legally sufficient.

There has been no extraordinary circumstance to warrant reconsideration of this Court's earlier opinion as to the remaining text of the ballot summary. FHD Opinion, 902 So.2d at 770-772; Ray v. Mortham, 742 So.2d at 1284-1285.

In 2005, the Local Government Comprehensive Planning and Land Development Regulation Act was amended, but each local government is still required to adopt a comprehensive land use plan, and to amend such plans. See, Ch. 2005-290, Laws of Fla. (2005). However, that Act reaffirms the viability of local government comprehensive land use planning, and is not an extraordinary circumstance to warrant reconsideration of the accuracy of the summary.

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 2005  
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 hand delivery to the following persons this \_\_\_\_ day of \_\_\_\_\_ 2006:

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**CERTIFICATE OF FONT**

I HEREBY CERTIFY that the foregoing was word-processed using Courier New, 12-point font in compliance with Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

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