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

INITIAL BRIEF ON BEHALF OF FLORIDA ASSOCIATION OF COUNTIES, INC., FLORIDA LEAGUE OF CITIES, INC., AND FLORIDA SCHOOL BOARDS ASSOCIATION

Filed in Opposition to the Initiative Petition

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STATEMENT OF THE CASE AND FACTS

On January 26, 2006, the Secretary of State submitted to the Attorney General an initiative petition containing the following proposed amendment to the Florida Constitution:

> BE IT ENACTED BY THE PEOPLE OF FLORIDA THAT:
> **Art. II, § 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 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.
>
> The ballot title for the proposed amendment is "REFERENDA REQUIRED FOR ADOPTION AND AMENDMENT OF LOCAL GOVERNMENT COMPREHENSIVE LAND USE PLANS."
>
> The summary for the proposed amendment states:
> 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.

On February 1, 2006, the Attorney General petitioned this Court for an advisory opinion as to whether the proposed amendment complies with Article XI, section 3, of the Florida Constitution, and whether the amendment's ballot title and summary comply with section 101.161, Florida Statutes.

SUMMARY OF ARGUMENT

The proposed amendment violates the single subject requirement because it substantially alters the functions of multiple branches and levels of government. It substantially alters the functions of school boards with respect to school siting and planning, thereby creating a constitutional impasse between Article II, section 7 and Article IX, sections 1 and 4. The proposed amendment impacts the state legislature, county school boards, and general purpose local governments, thereby substantially altering the functions of multiple levels of government. In addition, it substantially alters the functions of multiple branches of county and municipal government because it will require referenda on both legislative and quasi-judicial decisions.

Moreover, the proposed amendment fails to comply with the requirement that it identify all affected provisions of the constitution. The proposed amendment identifies only one affected provision, Article II, section 7, relating to natural resources and scenic beauty. It fails to reference other affected provisions, including Article VIII, relating to local government powers, and Article IX, relating to education.

Finally, the ballot title and summary of the initiative are misleading. The term "local government" is misleading because it fails to inform voters of the impact the proposed amendment will have on Florida's school districts. The term

"comprehensive land use plan" is vague and misleading, as well. The term could apply to any number of plans adopted and amended by local governments.

ARGUMENT

I.

THE PROPOSED AMENDMENT VIOLATES THE SINGLE SUBJECT REQUIREMENT OF ARTICLE XI, SECTION 3 OF THE FLORIDA CONSTITUTION

The determination of whether a proposed amendment complies with the single subject requirement of Article XI, section 3 of the Florida Constitution requires the Court to consider "whether the proposal affects separate functions of government and how the proposal affects other provisions of the constitution." *Advisory Op. to the Att'y Gen. Re People's Property Rights*, 699 So. 2d 1304, 1307 (Fla. 1997). The proposed amendment must identify the provisions of the constitution substantially affected so the public may "understand the contemplated changes in the constitution" and so the proposed amendment's "effect on other unnamed provisions is not left unresolved and open to various interpretations." *Advisory Op. to the Att'y Gen. Re Tax Limitation*, 644 So. 2d 486, 490 (Fla. 1994). A proposed amendment violates the single subject requirement when it substantially alters or performs the functions of multiple aspects of government, as in *Advisory Op. to the Att'y Gen. Re Requirement For Adequate Public Education Funding*, 703 So. 2d 446, 448 (Fla. 1997), or "changes more than one government function," as in *Tax Limitation*, 644 So. 2d at 490.

The proposed amendment will substantially affect and alter the function of school districts and the Florida legislature in their ability to comply with Article IX of the constitution. In addition, the proposed amendment will substantially alter the functions of multiple branches of local governments to the extent it will require referenda for both legislative and quasi-judicial decisions of general purpose local governments, thereby affecting Article VIII, sections 1 and 2, and to the extent it will alter the functioning of local school districts.

A. 2005 Amendments to Chapter 163, Part II and Existing School Siting Provisions

In 2005, the Florida Legislature adopted the most sweeping changes to Florida's system of growth management since the passage of the 1985 Growth Management Act. *See Ch. 05-290, Laws of Fla*. The 2005 legislative changes imposed numerous new coordination and planning requirements upon municipalities, counties, and school districts. One of the most momentous changes is a new mandate that local governments and school boards adopt a mandatory school concurrency program by December 1, 2008. § 163.3177(12)(i), Fla. Stat. (2005).[1] The school concurrency program must ensure that adequate school capacity to support new development either exists or will be in place or under

[1] For simplicity, all further references in this brief to provisions of the Florida Statutes will be made by section number only, without repeating "Florida Statutes (2005)."

actual construction within three years after the issuance of subdivision or site plan approval. § 163.3180(13)(e), Fla. Stat.

The 2005 legislative changes, coupled with existing requirements in Chapter 163, Part II, and Chapter 1013, Part III, Florida Statutes, set forth the "ultimate challenge" for intergovernmental coordination.[2] With these statutory provisions, the legislature has recognized and accommodated the delicate balance necessary to ensure the separate constitutional functions of local governments to regulate the use of land and of school districts to finance, construct and operate public schools do not override each other. This balance ensures the separate constitutional objectives in Article II, section 7 and Article IX are achieved.[3]

The school facilities coordination provisions of Chapters 1013 and 163 are voluminous. The various requirements can be summarized as follows:

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[2] *See* David L. Powell, *Growth Management: Florida's Past as Prologue for the Future*, 28 Fla. St. U. L. Rev. 519, 535 (Winter 2001) (noting the difficulty in accommodating the separate constitutional roles of local governments and school boards in efforts to coordinate land development with educational facilities construction).

[3] This Court has recognized the "legislature is required by Art. II, § 7 . . . to regulate the use of land to protect Florida's natural resources and scenic beauty." *Advisory Op. to Att'y Gen. Re Property Rights*, 699 So. 2d at 1308. As such, Chapter 163, Part II provides that it furthers the purpose of the Florida Environmental Land and Water Management Act of 1972, Chapter 380, which is intended to protect the natural resources and scenic beauty of the state as provided in Article II, Section1 7. § 163.3161, 380.21, Fla. Stat.

- All local governments must adopt consistent public schools facilities elements (PSFE) in compliance with the requirements of section 163.3177(12), Florida Statutes;
    - The PSFE must address correction of existing school facility deficiencies, ensure adequate school capacity for applicable planning periods, coordinate school location with residential development, ensure necessary infrastructure to support proposed schools, include procedures for school siting, and include maps for the general locations of schools over the applicable planning periods. § 163.3177(12)(g) & (h), Fla. Stat.
    - Failure to adopt the amendments necessary to implement the PSFE results in a prohibition on the adoption of future plan amendments that would increase residential density. Failure of a school board to enter the interlocal agreement or to implement provisions relating to school concurrency may result in the withholding of revenue for school construction. § 163.3177(12)(j) & (k), Fla. Stat.

- All school boards and local governments must update their school planning interlocal agreements (ILAs) in accordance with the requirements of sections 163.31777 and 163.3180, Florida Statutes.[4]
    - The ILAs must establish consensus between local governments and the school district with respect to level of service standards, concurrency service areas, maximum utilization of school capacity, annual adoption of public schools capital facilities program, and implementation procedures. § 163.31777, 163.3180(13)(g), Fla. Stat.
- All local governments must amend their capital improvements element (CIE) to incorporate a financially feasible public school capital facilities program developed in conjunction with the school board. § 163.3180(13)(d), Fla. Stat.
    - The CIE must include adequate level of service standards established jointly by the local governments and the school board, and the public school capital facilities program must be updated on an annual basis. § 163.3180(13)(b) & (d), Fla. Stat.
- All local governments must amend their intergovernmental coordination element (ICE) in accordance with section 163.3177(6)(h)1&2, Florida Statutes.

[4] The ILA requirements in section 163.31777 also appear in section 1013.33(3), Florida Statutes.

- Comprehensive plans must be coordinated with school board plans, and the element must establish joint processes for population projections and school siting. § 163.3177(6)(h), Fla. Stat.

- School boards and local governments must adopt a uniform system of school concurrency that includes all public schools. §163.3180(13), Fla. Stat.
  - School boards and local governments must jointly establish adequate level of service standards. § 163.3180(13)(b), Fla. Stat.
  - School boards and local governments must identify concurrency service areas within which level of service standards will be measured. § 163.3180(13)(c), Fla. Stat.
  - Local governments and school boards are encouraged to initially establish a district-wide concurrency service area to preserve the concept of uniformity, but five years after concurrency is implemented they must establish service areas on a less than district-wide basis. § 163.3180(13)(c), Fla. Stat.
- School boards are required to adopt annually a tentative educational facilities plan, which includes a financially feasible district facilities work program covering a 5-year period. The work program must include a schedule of capital outlay projects that considers, among other things, the proposed locations for planned facilities, whether those locations are

consistent with affected local government comprehensive plans, and the projected cost for each project. § 1013.35, Fla. Stat.

- The tentative educational facilities plan must be submitted to all affected local governments for review and comment as to whether the plan is consistent with the local comprehensive plans, whether a plan amendment will be necessary, and, if so, whether the local government would support such an amendment. § 1013.35, Fla. Stat.
- The tentative educational facilities plan must then be adopted by the school board. The adopted educational facilities plan must be complete, balanced, and financially feasible, and must also set forth the proposed commitments and expenditures necessary to carry out the plan. The first year of the adopted educational facilities plan must constitute the capital outlay budget. § 1013.35, Fla. Stat.

It is noteworthy that, while the legislature has emphasized the vital need to coordinate land planning and school planning processes, it has retained the requirement that school siting decisions be consistent with local government comprehensive plans and land development regulations. *See* §§ 1013.31(2)(a); 1013.33(10); 1013.35(2)(a); 1013.35(2)(a)5; 1013.35(2)(b)2.b; 1013.35(2)(e); 1013.35(3), Fla. Stat. Indeed, despite the myriad new planning and coordination requirements, the legislature recognizes there will still be circumstances in which a

school district must obtain a comprehensive plan amendment in order to site a new school. *See* §§ 1013.35(3); 163.31777(1)(c), Fla. Stat.

B. The Proposed Amendment Would Alter the Functions of School Districts and the Legislature in Complying With Article IX

Given the interwoven obligations of school districts and local governments under Chapters 1013 and 163, particularly the requirements for school concurrency and that school siting decisions be consistent with local comprehensive plans, the proposed initiative is not limited to affecting the legislative process by which municipalities or counties adopt and amend their comprehensive plans. This proposed alteration of the manner by which "comprehensive land use plans" are adopted and amended will substantially alter the constitutional requirements of school districts to "operate, control and supervise all free public schools." Art. IX, § 4(b), Fla. Const.[5] Moreover, the proposed amendment will also substantially affect the ability of the state legislature and school districts to comply with the constitutional requirements of Article IX, section 1 to make adequate provision for a uniform and efficient system of public schools and to ensure adequate classroom space.[6]

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[5] Article IX, section 4(b) provides that school boards "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."

[6] Article IX, section 1(a) provides in relevant part that:

> The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a *paramount duty* of the state to make

1. Voter Rejection of an Otherwise Consistent Comprehensive Plan Amendment or Rezoning to Establish a New School Will Cause a Constitutional Impasse

If this proposed constitutional amendment passes, voters in a city or county could reject a comprehensive plan amendment or a rezoning[7] that authorized the siting of a school necessary to comply with the provisions of Article IX, section 1. There is no "safety valve" in this proposed initiative to ensure that voters could not reject a plan amendment or rezoning to authorize a school. 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.

Under current law, if a school board were denied a proposed plan amendment by the local government, it could initiate conflict resolution procedures under Chapter 164, Florida Statutes. If these procedures were exhausted without resolution of the impasse, a school board could then file an action in circuit court for declaratory and injunctive relief. *See Martin County v. Yusem*, 690 So. 2d 1288, 1295 (Fla. 1997). The court would uphold such a decision if it were found to

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> *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.

Art. IX, § 1(a) (emphasis added). In addition, Article IX, section (1)(a) mandates a reduction in public school class sizes by the year 2010.

[7] As discussed in Section II, *infra*, the term "comprehensive land use plan" as defined in the text of the proposed amendment could be construed to encompass local government zoning and land development codes.

be fairly debatable. *See id.* at 1294. If the decision were not upheld, the issue would be remanded to the local government with instructions to take action consistent with the court's findings. *See Island, Inc. v. City of Bradenton Beach*, 884 So. 2d 107 (Fla. 2d DCA 2004) (concluding that landowners were entitled to a small-scale amendment to city's comprehensive plan).[8]

Unlike the foregoing "safety valves," there will be no mechanisms to resolve conflicting obligations resulting from a negative referendum under the proposed initiative. Even if a plan amendment was otherwise consistent with a local comprehensive plan and in compliance[9] with state law, it could still be rejected in a referendum, regardless of any finding by a court. This would lead to the very constitutional impasse described by this Court in *Advisory Op. to the Att'y General Re People's Property Rights Amendments*, 699 So. 2d 1304 (Fla. 1997).

In *Property Rights Amendments*, the Court reviewed a proposed constitutional amendment that would require voter approval for new state or local taxes. The Court found the initiative affected other constitutional subjects and multiple functions of government through its substantial impact on Article IX,

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[8] In the case of a quasi-judicial rezoning, the judicial review is by petition for writ of certiorari subject to "strict scrutiny" review. *See Board of County Comm'rs v. Snyder*, 627 So. 2d 469, 476 (Fla.1993). If the appeal challenges the consistency of the local government's action with the comprehensive plan, it is heard as a de novo action unless the local government has adopted a quasi-judicial ordinance pursuant to section 163.3215(1)-(4). Regardless of the type of review, however, the result of a voter rejection of such an amendment or rezoning is the same.

[9] *See* § 163.3184(1)(b), Fla. Stat.

section 1. The Court noted that the State Board of Education supervised the operation of the public school system, and that the Legislature has established funding formulae to calculate the minimum millage rate that each school district is required to levy in order to fund the public school system. The Court observed that if the millage rate increased for a certain school district, a referendum would be required. The Court found that:

> A negative vote in a local referendum could scuttle the state plan and would result in a constitutional impasse because of conflicting constitutional requirements. Thus, it would plainly impact the constitutional requirement for adequate provisions for free public schools.

699 So. 2d at 1311.

The proposed amendment at bar presents the same problem as the proposed amendment in *Property Rights Amendments.* A negative vote on a local referendum regarding a plan amendment or a rezoning for a new school site could result in a constitutional impasse, impacting the constitutional requirements for adequate provision of uniform and efficient public schools and class sizes, as well as school district's constitutional duty to "operate, control and supervise all free public schools."[10]

[10] This outcome would impair the legislature's obligations under Article IX, as well. Article IX, section 1, directs that adequate provision for uniform public schools shall be made by law. The legislature has adopted various laws to fulfill

2. A Referendum Process for Plan Amendments and Rezonings Would Substantially Alter the Development and Adoption of Educational Facilities Plans

Implementation of school concurrency by 2008, coupled with the constitutional mandate to reduce class sizes by the year 2010, will increase the need for school boards to plan for and site new schools. This need will be particularly acute in high growth counties that are already experiencing severe shortages of classroom space. The delays and uncertain outcomes that will inevitably result from having referenda control the outcome of residential development and school siting decisions will substantially alter the functions of school districts in developing and adopting educational facilities plans to comply with their statutory and constitutional directives. Whether this result is good or bad is a question of policy that is not relevant to this Court's inquiry; however, the result of such a change is relevant to the extent it will impair the state's "paramount duty" to provide for public education in the manner provided in Article IX, section 1.

A requirement for a referendum on every comprehensive plan amendment or rezoning will create delays and uncertainty with respect to school planning. This will likely result in higher land acquisition, construction, and related costs for

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this paramount constitutional duty, including the recent school concurrency requirements in Chapter 163, part II, Florida Statutes.

school districts, the amount of which would be nearly impossible for a school district to determine within its statutorily prescribed time frame for developing and adopting its educational facilities plan. In addition, the new process would undoubtedly impair a school district's ability to identify locations for new school facilities. For instance, if approval of a new residential development project is contingent upon a referendum, school districts could not plan with any level of certainty whether new student stations will be required. Similarly, if construction of a new school is contingent upon a referendum, school districts could not plan with any level of certainty on the needed school ultimately being placed in an appropriate location. Such outcomes will de facto remove the requirement of "efficiency" from Article IX, section 1 ("adequate provision shall be made by law for a uniform, *efficient*, safe, secure, and high quality system of free public schools").

C. The Proposed Amendment Substantially Alters Multiple Branches of Local Government

The amendment obviously affects a general purpose local government's legislative functions in the enactment and amendment of comprehensive plans. *See Coastal Development of North Florida, Inc. v. City of Jacksonville Beach*, 788 So. 2d 204, 210 (Fla. 2001) (holding that small-scale amendments to a comprehensive plan are legislative decisions); *Martin County v. Yusem*, 690 So. 2d 1288, 1293 (Fla. 1997) (holding that amendments to comprehensive plans are

legislative decisions). As noted previously, it will also affect another branch of local government – school districts. In addition to these impacts, however, the proposed amendment will likely affect a local government's quasi-judicial function in zoning and re-zoning property separate and apart from the statutory requirement to adopt comprehensive plans. As noted in Section II, *infra*, the term "comprehensive land use plan" as defined in the proposed amendment could be construed to include county or municipal zoning codes and land development regulations. Under the plain meaning of the definitions provided in the proposed amendment, the requirement for citizen referenda would apply to the adoption and amendment of local government zoning or land development regulations. In many instances, the adoption and amendment of zoning codes are legislative acts of the local government body. Rezoning actions that are functionally viewed as policy application rather than policy setting, however, are considered quasi-judicial in nature. *Board of County Comm'rs v. Snyder*, 627 So. 2d 469 (Fla. 1993).

There is simply nothing in the Florida Statutes or the proposed amendment to limit a court's interpretation of the term "local government comprehensive land use plan" to comprehensive plans under Chapter 163. The term could very well be interpreted to require citizen referenda on quasi-judicial functions of local governments. Given this outcome, the proposed amendment substantially alters both the legislative and the quasi-judicial functions of counties and municipalities.

D. The amendment fails to identify all of the substantially affected provisions of the constitution

This Court requires that initiative petitions identify all substantially affected provisions of the constitution. *Advisory Op. to the Att'y Gen. Re Tax Limitation,* 644 So. 2d 486, 490 (Fla. 1994). The requirement applies whether or not the single-subject requirement is met and is an independent ground for invalidation. In *Tax Limitation,* this Court stated:

> While a debatable issue exists as to whether this "Voter Approval of New Taxes" initiative violates the single-subject requirement by dealing with three subjects, we need not address that claim because this initiative substantially affects specific provisions of the constitution without identifying those provisions for the voters, in violation of the principles we established in *Fine.*

644 So. 2d at 492.

As discussed above, the petition under review would impact Article IX, section 1, and Article IX, section 4, because of its substantial effect on school boards and the legislature. In addition, it would substantially affect the legislative functions of local government and the quasi-judicial functions of local governments with respect to quasi-judicial rezonings, thereby affecting Article VIII. Because the proposed amendment refers solely to Article II, section 7, it will be impossible for the "public to understand the contemplated changes in the constitution and to ensure that the initiative's

effect on other unnamed provisions is not left unresolved and open to various interpretations." *Id.* at 490.

II.

THIS COURT SHOULD PROHIBIT THE HOMETOWN DEMOCRACY INITIATIVE FROM APPEARING ON THE BALLOT BECAUSE THE BALLOT TITLE AND SUMMARY ARE FATALLY AMBIGUOUS AND DECEPTIVE

The proposed ballot title and summary reads as follows:

> **BALLOT TITLE:** REFERENDA REQUIRED FOR ADOPTION AND AMENDMENT OF LOCAL GOVERNMENT COMPREHENSIVE LAND USE PLANS.
> **BALLOT SUMMARY:** 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.

The ballot title and summary of a citizen initiative petition cannot be misleading. If the ballot language is not clear or is misleading, then the proposed amendment cannot be put to a vote of the citizens. Section 101.161(1), Florida Statutes, provides, in pertinent part as follows:

> 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. . . . [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.

This statutory section requires the ballot title and summary to "state in clear and unambiguous language the initiative's primary purpose." *See Advisory Op. to the Att'y Gen. re: People's Property Rights Amendments*, 699 So. 2d 1304, 1307 (Fla. 1997) ("*People's Property Rights Amendments*").

Most importantly, the ballot title and summary "must be accurate and informative." *See Advisory Op. to the Att'y Gen. Re Term Limits Pledge*, 718 So. 2d 798, 803 (Fla. 1998). The purpose of section 101.161 is "to provide fair notice of the content of the proposed amendment so that the voter will not be misled as to its purpose, and can cast an intelligent and informed ballot." *Id.* Finally, the ballot title and summary cannot be read in isolation; they must be read together in determining whether the ballot information properly informs the voters. *See Advisory Op. to the Att'y Gen. Re Tax Limitation*, 673 So. 2d 864, 868 (Fla. 1996). "A ballot summary may be defective if it omits material facts necessary to make the summary not misleading." *Advisory Op. to the Att'y Gen. Re Limited Political Terms in Certain Elected Offices*, 592 So. 2d 225, 228 (Fla. 1991). "The problem, therefore, lies not with what the summary says, but, rather, with what it does not say." *Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982).

This Court in *Advisory Op. to the Att'y Gen. Re Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans*, 902 So. 2d 763 (Fla. 2005)("*Referenda I*"), declared that the "chief purpose" of this proposed initiative "is to require referenda before there can be any changes to or adoptions of comprehensive land-use plans." *Id.* at 771 (emphasis in original). The Court further declared in *Referenda I* that the proposed amendment would extend to a "broad range of subject matters" by their necessary inclusion in "local government comprehensive land-use plans" as that term is statutorily defined.[11] *See id.* at 771. While the sentence that this Court found failed to inform the voter of this chief purpose in *Referenda I* has been removed, the remaining language of the ballot title and summary still fails to inform the voter of the chief purpose of the measure.

A. The term "Local Government" is misleading because it does not inform the voter of the amendment's full and direct impacts

The ballot title and summary fail to inform the voter of the direct impact that the proposed amendment has on the school districts in Florida. A voter could reasonably believe the term "local government" refers to a county or a city but not

[11] While the term "comprehensive plan" is defined in Chapter 163, part II, Florida Statutes – as noted by the Court – its effect is very "broad." Coupled with the already established breadth of the statutory definition is the fact that the term "comprehensive land use plan" as defined in the proposed amendment is even broader. This imprecision in the term's definition is misleading to the voter. This conclusion is further discussed, *infra*.

to a school district or the state. In fact, such an interpretation would be supported by the definition of "local government" that is provided in the amendment itself.[12] However, with the passage of Chapter 05-290, Laws of Florida, in 2005, the school districts are also governmental entities that have express, direct, and inherent control over the comprehensive planning process and that are also mandated to abide by a plan's outcomes. Accordingly, the use of the term "local government" excludes school districts from its common and defined meaning and misleads the voter into thinking the school districts of the state are not impacted by the amendment.

This Court has already determined that the statutory comprehensive planning process includes more than just "local governments." In *Advisory Op. to the Att'y Gen. Re People's Property Rights*, 699 So. 2d 1304 (Fla. 1997), this Court expressly recognized the various governmental entities, beyond just cities and counties, that are involved in the statutory comprehensive planning process. "The state, special districts, and local governments have various legislative, executive, and quasi-judicial functions which are applicable to land use including comprehensive planning [and] zoning[.]" *Id.* at 1308. The term "local government" in the proposed ballot title and summary does not inform the voter of all these impacted governmental entities.

[12] The amendment states, "Local government" "means a county or municipality."

Furthermore, the legislature has expressly recognized the constitutional role that school districts play in the comprehensive land use planning process. In the 2005 legislative session, the legislature required the county school district, the county government and the municipalities within the county to enter into an interlocal agreement to "jointly establish[] the specific ways in which the plans and processes of the district school board and the local governments are to be coordinated" with respect to land use planning in that county. *See* § 163.31777(1)(a), Fla. Stat.; *see also* § 163.3177(6)(h)(4)a., Fla. Stat. ("Local governments must execute an interlocal agreement with the district school board, the county and nonexempt municipalities . . . ."). In fact, the connection between this agreement and the comprehensive land use plan is expressly incorporated in the comprehensive plan.

> The local government shall amend the intergovernmental coordination element [of the local comprehensive land use plan] to provide that coordination between the local government and school board is pursuant to the agreement and shall state the obligations of the local government under the agreement.

§ 163.3177(13)(h)(4)a., Fla. Stat. Furthermore, in the legislature's introduction of the required elements of the interlocal agreement, it recognized the unique and direct relationship between the school boards' constitutional duties and the land use authority of the local governments. It is now a symbiotic relationship. The legislature expressly required:

> The interlocal agreement shall acknowledge both the school board's constitutional and statutory obligations to provide a uniform system of free public schools on a countywide basis, and the land use authority of local governments, including their authority to approve or deny comprehensive plan amendments and development orders.

§ 163.3180(13)(g), Fla. Stat.

The school district is not a governmental entity that has land use authority under Florida law and thus it is not, in the words of the ballot title and summary, a "local government" that "adopt[s or amends] comprehensive land use plan[s.]" As more fully explained in the single subject argument, because school concurrency is now a mandatory element of a local government's comprehensive plan, a referendum rejection of a comprehensive plan amendment related to the schools can directly inhibit the ability of the state[13] and the school districts from meeting their constitutional obligations in providing uniform and free public schools[14] and in meeting the class size mandates.[15] The language of the proposed ballot title and

[13] This Court has already recognized the legislative role of the state in the class size requirements of Article IX, section 1(a). In *Advisory Op. to the Att'y Gen. Re Florida's Amendment to Reduce Class Size*, 816 So. 2d 580 (Fla. 2002), this Court declared that the "class size amendment" placed "the obligation to ensure compliance on the Legislature, not the local school boards." *Id.* at 584. Accordingly, the proposed ballot title and summary's use of the term "local government" does not tell the voter that the state legislature is directly impacted by the required referendum under the proposed amendment.

[14] *See* Art. IX, § (1)(a)(as to the state obligations) and Art. IX, § (4)(b)(as to the school board obligations), Fla. Const.

[15] *See id.*

summary provides no hint to the voter that the school districts will be so directly impacted by this proposed constitutional amendment. Neither the common understanding of the term "local government" nor the amendment's proposed definition of "local government" gives the voter any indicia[16] at all that the school districts may be wholly unable to meet their constitutional duties because of the proposed amendment before the Court.

After the enactment of Chapter 05-290, Laws of Florida, less than a year ago, the use of the term "local government" in the proposed ballot title and summary is fatally incomplete. Furthermore, the use of this term actually diverts the voter's thinking away from the fact that the school districts, as governmental entities, are directly impacted by the proposed amendment and toward only municipalities and counties. Accordingly the use of the term "local government" is incomplete, uninformative, and misleading.

B. The term "comprehensive land use plan" is fatally vague and misleading

The term "comprehensive land use plan" as used in the ballot title and summary reveals little to the voter about which documents or plans the voter is

[16] The placement of the proposed amendment in Article II, section 7 of the Florida Constitution only furthers the confusion as to which governmental entities are directly impacted by the amendment. The placement in Article II, section 7 does not give the voter any reason to understand that the school districts and their constitutional obligations to meet the class size requirements and to provide uniform and free public schools are impacted in the natural resource and scenic beauty section of the Florida Constitution. *See* note 18, *infra*.

being given the right to vote. The meaning of the term, other than its obvious connection to "land use," is not apparent from the face of the ballot title and summary. Accordingly, a voter has no way of knowing what a "comprehensive land use plan" might be simply from the ballot title and summary language.

If a voter has any idea of the meaning of the term, such a voter might reasonably assume that a "comprehensive land use plan" refers to the "comprehensive plans" that are mandated by Chapter 163, part II, Florida Statutes, and defined in section 163.3164, Florida Statutes. That definition is much narrower in scope than the definition provided in the proposed amendment itself. For example, the amendment definition is as follows:

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

This definition is extraordinarily broad compared to the "comprehensive plan" definition in section 163.3164. Section 163.3164 defines "comprehensive plan" as "a plan that meets the requirements of §§ 163.3177 and 163.3178." *See* § 163.3164(4), Fla. Stat. This definition clarifies that the "comprehensive plan" is a specific document that is statutorily identifiable. The "local government comprehensive land use plan" in the proposed ballot title and summary is not so identifiable. The definition of the term provided in the proposed amendment only furthers the vagueness of the term's reference: "A plan" "to guide and control"

"future land development" "in an area" "of a local government." This definition describes at least the following plans that guide and control future land development:

- Development of Regional Impact development orders entered pursuant to section 380.06, Florida Statutes
- County or municipal zoning codes adopted pursuant to home rule or legislatively delegated powers
- County or municipal land development regulations adopted pursuant to section 163.3202, Florida Statutes, to implement the comprehensive plans
- An Urban Infill and Redevelopment Area plan adopted pursuant to section 163.2517, Florida Statutes
- Countywide marina siting plans adopted pursuant to section 163.3178(6), Florida Statutes
- Interlocal Agreements between school districts and local governments pursuant to section 163.31777, Florida Statutes
- Compliance Agreements with the Department of Community Affairs pursuant to section 163.3184(16), Florida Statutes
- Development Agreements entered pursuant to section 163.3220, Florida Statutes
- Community Redevelopment Plans adopted pursuant to Chapter 163, part III, Florida Statutes
- Neighborhood and Communitywide plans adopted pursuant to Chapter 163, part III, Florida Statutes
- Neighborhood Improvement Districts and their implementing plans implemented pursuant to Chapter 163, part IV, Florida Statutes

- Neighborhood Preservation and Enhancement Districts and their implementing plans adopted pursuant to Chapter 163, part IV, Florida Statutes

- Charter for Regional Transportation Authorities under Chapter 163, part V, Florida Statutes

- Airport Master Plans under section 333.06, Florida Statutes, when a county or a municipality is the entity that submits the plan

The above list is not exhaustive. Each of these documents is "a plan" "to guide and control" "future land development" "in an area" "of a local government." Must all of these plans be approved by vote of the electors? Is this the intended effect of the amendment? The proposed ballot title and summary do not answer that question. Or, is the intended effect of the proposed amendment to apply only to those "comprehensive plans" statutorily defined in Chapter 163, part II? The proposed ballot title and summary do not answer that question, either.

In addition to assumptions about what type of plan could be subject to referenda, the ballot title and summary could also lead a voter to reasonably assume that he or she would only be voting in the future on "land use" amendments – amendments concerning the development or proposed development of land. However, the statutorily-defined "comprehensive plans" under Chapter 163, Florida Statutes, encompass far more than just "land use." Such plans also address services and intergovernmental programs. These other issues may be related to, but are not in themselves, "land use" as that term is commonly

understood.[17] The "non land use" issues addressed in a statutorily-defined "comprehensive plan" include, but are not limited to, level of service standards for public facilities and services, storm water policies, intergovernmental coordination, economic development, potable water projects, water conservation, emergency management and hurricane evacuation and shelters, and capital improvements such as parks, roads, sanitary sewers, solid waste, and mass transit systems. *See generally* § 163.3177, Fla. Stat.

Accordingly, the term "comprehensive land use plan" in the proposed ballot title and summary does not tell the voter what will be required to be put to a referendum in the future other than a "plan" that is "comprehensive" and related to "land use." This term tells the voter nothing. Even if the voter reads the proposed amendment's definition of the term, which will not be on the ballot, the voter could reasonably assume that his or her entitlement to vote will extend to the numerous types of plans listed *supra*. They are all "plans" that "guide and control" "land development" in "an area" "of a local government." On the other hand, if a voter reasonably assumes that "comprehensive land use plan" in the proposed ballot title and summary means "comprehensive plan" as defined in section 163.3164, Florida

[17] Section 163.3164(12), Florida Statutes, defines "Land use" as "the development that has occurred on the land, the development that is proposed by a developer on the land, or the use that is permitted or permissible on the land under an adopted comprehensive plan or element or portion thereof, land development regulations, or a land development code, as the context may indicate."

Statutes, such an assumption would not match the definition in the proposed amendment and would create still more confusion as to what future voting entitlement is being guaranteed.[18] As such, the term "comprehensive land use plan" in the ballot title and summary is too vague for a voter to make an informed decision.

CONCLUSION

The Court is respectfully urged to strike the proposed amendment from the ballot.

[18] As with the term "local government," any voter who references the amendment language for guidance in interpreting the term "comprehensive land use plan" will be misled by the placement of the proposal in Article II, section 7, and reasonably conclude that only those plans related to natural resources and scenic beauty are affected by the proposed amendment.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this initial brief was sent by U.S. Mail on March _____, 2006, to:

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I hereby certify that this brief was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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