

IN THE SUPREME COURT  
STATE OF FLORIDA

Case No. SC06-521

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IN RE: ADVISORY OPINION  
TO THE ATTORNEY GENERAL  
ON FINANCIAL IMPACT STATEMENT  
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 March 27, 2006, Florida's Attorney General requested this Court's opinion on whether the Financial Impact Statement ("FIS") prepared by the Financial Impact Estimating Conference complies with Section 100.371, Florida Statutes.

The FIS pertains to the constitutional amendment initiative petition sponsored by Florida Hometown Democracy, Inc. ("the Initiative").

On April 4, 2006, this Court entered an Order establishing the briefing requirements and schedule.

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

On June 21, 2005, the Florida Division of Elections approved the Initiative, and assigned the Initiative petition Serial Number 05-18. On March 10, 2006, the

Financial Impact Estimating Conference submitted the FIS to the Attorney General. The text of the FIS provides:

The direct impact of this amendment on local government expenditures cannot be determined precisely. Over each two year election cycle, local governments cumulatively will incur significant costs (millions of dollars statewide). Costs will vary depending upon the processes employed by cities and counties in obtaining approval for plan amendments. The direct impact on state government expenditures will be insignificant. There will be no direct impact on government revenues.

**SUMMARY OF ARGUMENT**

The FIS fails to comply with Article XI, Section 5(b) of the Florida Constitution applied in conjunction with Section 100.371(6), Florida Statutes.

The second and third sentences of the FIS are unclear and ambiguous as to probable costs to local governments.

## ARGUMENT

**STANDARD OF REVIEW:** The standard of review is de novo and the Court's review is limited to whether the FIS complies with Article XI, Section 5(b) of the Florida Constitution in conjunction with Section 100.371(6), Florida Statutes. See, Advisory Op. to the Att'y Gen. re: Repeal of High Speed Rail Amendment, 880 So.2d 628, 629 (Fla. 2004).

Article XI, Section 5(b) of the Florida Constitution requires the Legislature to provide by general law, for provision of "a statement to the public regarding the probable financial impact of any amendment proposed by initiative pursuant to section 3." (emphasis supplied).

The Legislature enacted Section 100.371(6), Florida Statutes (2003), an amended it in 2004. Ch. 2004-33, s. 3, Laws of Fla.

A Financial Impact Estimating Conference<sup>1</sup> ("FIEC") must

complete an analysis and financial impact statement to be placed on the ballot of the estimated increase or decrease in any revenues or costs to state or local governments resulting from the proposed initiative.

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<sup>1</sup> A FIEC consists of "four principals" and "each ... shall have appropriate fiscal expertise in the subject matter of the initiative." Section 100.371(6)(b)2, Fla. Stat.

Id (emphasis supplied). A FIEC must "review, analyze, and estimate the financial impact of amendments" and "reach a consensus or majority concurrence on a clear and unambiguous financial impact statement" limited to 75 words. Id. Absent consensus, a FIS provides: "The financial impact of this measure, if any, cannot be determined at this time." In addition, a FIEC must prepare a "financial information statement" with greater detail than a FIS and which includes a summary of no more than 500 words to be made available at each Supervisor of Elections' office and each polling place. Section 100.371(6)(d) 3 & 4, Fla. Stat.

While not specifically authorized, the Court has approved FIS narrative on "direct" and "indirect" impacts. See, Advisory Op. to Att'y Gen. re: Protect People, Especially Youth, From Addiction, Disease and Other Health Hazards of Using Tobacco, 31 Fla. L. Weekly S166, 169 (Fla. 2006).

The Court's review is unaided by a record on appeal<sup>2</sup>, and affords no opportunity for review of a FIS on the merits as to whether it is supported by competent, substantial evidence, is consistent with the "detailed information and assumptions" of the financial information

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<sup>2</sup> It appears that the financial information statement is provided to the Court along with the FIS.



statement analysis, or is accurate<sup>3</sup>. A FIS can be wrong, but if it is clear and is 75 words or less, it apparently meets the standard of review. See, Advisory Op. to Att'y Gen. re: Public Protection from Repeated Medical Malpractice, 880 So.2d 686 (Fla. 2004)(J. Lewis specially concurring).

**I. THE FIRST, FOURTH AND FIFTH SENTENCES OF THE FIS ARE ADEQUATE.**

The first, fourth and fifth sentences of the FIS are adequate. The first addresses probable local government cost impacts ("expenditures"). The fourth sentence addresses probable state government cost impacts. The last sentence addresses probable revenue impacts, presumably to both State and local governments.

**II. THE SECOND AND THIRD SENTENCES OF THE FIS ARE DEFECTIVE.**

The second and third sentences of the FIS do not comply with Article XI, Section 5(b) of the Florida Constitution applied in conjunction with Section 100.371(6), Florida Statutes.

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<sup>3</sup> For example, the FIEC "survey" of local governments reportedly "indicate the majority of local governments anticipate the volume of proposed plan amendments would remain the same." Since the Florida Association of Counties and Florida League of Cities are opponents to the measure, one could hardly expect their members to provide unbiased, unsworn responses at odds with a fundamental economic principle that a higher price reduces the demand for an elastic good or service.

The second sentence is argumentative and vague rather than "clear and unambiguous." The second sentence provides:

Over each two year election cycle, local governments cumulatively will incur significant costs (millions of dollars statewide).

The use of the terms "cumulatively" and "statewide" will be confusing to voters. Moreover, the phrase "millions of dollars" could technically range from \$2 million to \$999 million - hardly clear and unambiguous. While the term "significant"<sup>4</sup> is also subject to wide interpretation, this Court has previously approved the use of the term "minor." See, Advisory Op. to Att'y Gen. re: Florida Marriage Protection Amendment, 31 Fla. L. Weekly S177, 181 (Fla. 2006).

The third sentence of the FIS is also vague and does not address "probable impact:"

Costs will vary depending upon the processes employed by cities and counties in obtaining approval for plan amendments.

The Initiative addresses local government comprehensive land use plans and comprehensive land use plan amendments.

Moreover, the sentence presumes that voters will "approve" plan amendments, rather than vote or whether or not to adopt land use plan amendments (and plans). Finally, the phrase "processes employed ... in obtaining approval" fails to inform voters that election costs will vary depending upon on the frequency of plan adoptions and amendments, the timing of referenda vis a vis other general or special elections, and the type of election process (e.g. mail in).

This Court should reject the FIS given the ambiguity of the second and third sentences, and the failure to clearly state probable cost impacts to local governments. Ideally, a FIS should be limited to probable "direct" impacts, instead of indirect impacts, lest the Court ensnare itself into endless arguments about how remote an indirect impact may be to qualify for consideration.

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<sup>4</sup> "Significant" has various plain meanings, including "of a noticeably or measurably large amount." Webster's Ninth New

**CONCLUSION**

Florida Hometown Democracy, Inc. respectfully requests the court to find that the Financial Impact Statement does not comply with Article XI, Section 5(b) of the Florida Constitution in conjunction with Section 100.371(6), Florida Statutes, and remand the Financial Impact Statement to the Financial Impact Estimating Conference.

Respectfully submitted,

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Collegiate Dictionary (1984) at 1096.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail to the following persons this 24\_\_ day of April, 2006:

Honorable Charlie Crist  
Attorney General  
The Capitol, PL-01  
Tallahassee, Florida 32399-1050

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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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