IN THE SUPREME COURT
STATE OF FLORIDA

Case No. SC06-521

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

ANSWER BRIEF
OF THE SPONSOR
FLORIDA HOMETOWN DEMOCRACY, INC.

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TABLE OF CONTENTS

TABLE OF CITATIONS

CASES

FLORIDA CONSTITUTION

FLORIDA STATUTES (all references to 2005 unless noted)

LAWS OF FLORIDA

OTHER AUTHORITY

SUMMARY OF ARGUMENT

The constitutional basis for this Court's jurisdiction is infirm. Section 100.371(6), Florida Statutes (2005) is not appropriately authorized by Article XI, Section 5(c) of the Florida Constitution. The Constitution does not authorize placement of a FIS on the ballot.

The standard for review has been de novo, based upon whether or not the FIS complies with Article XI, Section 5(c) and Section 100.371(6), Florida Statutes (2005).

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

ARGUMENT

STANDARD OF REVIEW: The standard of review has been de novo and has been limited to whether the FIS complies with Article XI, Section 5(c) 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).

I. THIS COURT DOES NOT HAVE JURISDICTION.

Neither Article V, section 3(b)(10), nor Article IV, section 10 provide a basis for jurisdiction, contrary to the Attorney General's argument. [Attorney General's Supplemental Brief, pages 5-6]. Those provisions address citizen's initiative petitions and not the financial impact statement. The references to "general law" in Article V, section 3(b)(10) and in Article IV, section 10, Florida Constitution have no bearing on statutes related to a financial impact statement; instead they pertain to the "validity of the initiative petition."

As argued in the Sponsor's Supplemental Brief, Article XI, section 5(c) of the Florida Constitution does not provide a basis for jurisdiction or for placement of a financial impact statement on the ballot.

The Sponsor respectfully disagrees with the Attorney General's assertion that Article V, section 3(b)(10) of the Florida Constitution has been cited as authority for this Court to issue an advisory opinion on a financial impact statement. [Attorney General's Supplemental Brief, page 7]. Some of the cases cited as authority for that claim, do in fact, contain general citation to Article V(3)(b)(10) with regard to jurisdiction. See, Advisory Op. to Att'y Gen. re: Marriage Protection, 926 So.2d 1229 (Fla. 2006); Advisory Op. to Atty. Gen. re: Protect People, Especially Youth, From Addiction, Disease, and Other Health Hazards of Using Tobacco, 926 So.2d 1186, 1188 (Fla. 2006). However, the citation was obviously included because this Court considered the ballot title, summary and text along with "the corresponding financial impact statement." Those portions of each opinion addressing the financial impact statement, specifically, only cited as "applicable law" the Constitutional authority of Article XI, section 5(c). Eg. Id at 926 So.2d at 1194-95.

Where this Court has considered only the financial impact statement in an advisory opinion, Article V(3)(b)(10) has not been cited as a basis for jurisdiction. See, Advisory Op. to Att'y Gen. re: Authorizes Miami-Dade & Broward County Voters to Approve Slot Machines in

Parimutuel Facilities, 882 So.2d 966 (Fla. 2004)(Pariente, C.J. dissenting, which with Anstead, J. concurs)[1]; Advisory Op. to Att'y Gen. re: Authorizes Miami-Dade & Broward County Voters to Approve Slot Machines in Parimutuel Facilities, 880 So.2d 689 (Fla. 2004); Advisory Op. to Att'y Gen. re: Public Protection from Repeated Medical Malpractice, 880 So.2d 686 (Fla. 2004) Advisory Op. to Att'y Gen. re: Repeal of High Speed Rail Amendment, 880 So.2d 628, 629 (Fla. 2004).

Moreover, instead of supporting this Court's jurisdiction in the case at bar, Article V(3)(b)(10) and Article IV, section 10, demonstrate the lack of such jurisdiction. Both the Sponsor and the Attorney General cite Gandy v. State, 846 So.2d 1141, 1143 (Fla. 2003), for the proposition that jurisdiction extends to the "narrow class" of cases enumerated in Article V, section 3(b) of the Florida Constitution. This Court is a "tribunal of limited jurisdiction." See, Harry Lee Anstead, Gerald Kogan, Thomas D. Hall & Robert Craig Waters, The Operation and Jurisdiction of the Supreme Court of Florida, 29 Nova Law Review 1, 52 (Spring 2005)(page citations to on-line

[1] The dissent provides in part: "This Court has apparently been charged by the Legislature with ensuring that the financial impact statement ... complies with these requirements."

edition updated December 28, 2005, downloaded from Florida Supreme Court website on October 17, 2006, www.floridasupremecourt.org/pub_info/documents/juris.pdf).

Advisory opinions requested by the Attorney General are:

> confined solely to the question of whether a citizen's petition to amend the state constitution complies with the technical requirements of the amendment process.

Id. at 61 (citation to on-line document, citation omitted).

Considered in the context of Gandy v. State, the grant of jurisdiction to render an advisory opinion on the "validity of any initiative petition circulated pursuant to Section 3 of Article XI," and the absence of a similarly worded grant of jurisdiction to render a financial impact statement advisory opinion strongly indicates that this Court does not have jurisdiction to render an advisory opinion in the case at bar. In interpreting the Florida Constitution, a construction is favored that gives effect to every clause and part. See, Burnsed v. Seaboard Coastline Railroad Co., 290 So.2d 13, 16 (Fla. 1974)(fundamental rule of construction that a construction that renders superfluous, meaningless or inoperative any provision should not be adopted by the courts). In other words, since House Joint Resolution 571 (2001) did not

include a proposed amendment to Article V, section 3(b) that cross-referenced the proposed amendment to Article XI, section 5, the then-existing cross reference in Article V, section 3(b)10 to Article IV, section 10 would be rendered superfluous by a construction of 2002 amendment finding such advisory opinion jurisdiction.

Turning to the Attorney General's argument regarding the additional mandates of Article XI, section 5(c) to the Legislature, the Sponsor acknowledges that this Court in Smith v. Coalition to Reduce Class Size, 827 So.2d 959, 964-65 (Fla. 2002) suggested that if the proposed amendment were to be approved during the 2002 general election, Floridians would "wish to have a fiscal impact statement included with all initiatives to amend the constitution." The opinion also provided in relevant part:

> Similarly, the proper way to impose a fiscal impact requirement would be to amend Article XI as the 2001 Legislature proposed by passage of House Joint Resolution 571.

However, this Court's statements regarding House Joint Resolution 571, and then-prospective amendment are clearly dicta. This Court affirmed the trial court's judgment because "Article XI does not contain any language, either explicit or implicit, regarding the fiscal impact of initiatives" and "we are unable to conclude that chapter

2002-390 is necessary to ensure ballot integrity." Id. at 963. See, State ex rel. Citizens Proposition for Tax Relief v. Firestone, 386 So.2d 561 (Fla. 1980)(cited at 827 So.2d 962)(ballot integrity standard). Similarly, the dissenting opinion in Advisory Op. to Att'y Gen. re: Authorizes Miami-Dade & Broward County Voters to Approve Slot Machines in Parimutuel Facilities, 882 So.2d 966, 967-69 (Fla. 2004), suggests that "voters of this State passed the constitutional amendment requiring the ballot to contain a financial impact statement...."

With all due respect to such sentiments, the Sponsor notes that this Court has also recognized that "the Legislature only has limited authority to adopt regulations that affect the initiative process" and that the four methods of amending the constitution are "delicately balanced." Smith v. Coalition to Reduce Class Size, 827 So.2d at 962.

This Court has not specifically addressed whether Chapter 2004-33, Laws of Florida, is constitutional implementing legislation for Article XI, section 5(c)(proposed as House Joint Resolution 571 (2001). The Sponsor respectfully submits that this Court should reject the dicta in Smith v. Coalition to Reduce Class Size.

As argued in the Sponsor's Supplemental Brief, the plain language of the 2002 amendment to Article XI, section 5 adopted pursuant to House Joint Resolution 571 (2001), and of the ballot statement voted upon, do not provide for this Court's jurisdiction to review financial impact statements, or for ballot placement of financial impact statements. See, Gandy v. State, 846 So.2d 1141, 1143 (Fla. 2003)((jurisdiction extends only to narrow class of cases enumerated in Art. V, section 3(b)); Zingale v. Powell, 885 So.2d 277, 282-83 (Fla. 2004) (plain language of amendment is first consideration); Florida League of Cities v. Smith, 607 So.2d 397, 400 (Fla. 1992) (when constitutional language is precise, its exact letter must be enforced and extrinsic guides to construction are not allowed to defeat the plain language).

The Legislature cannot expand this Court's jurisdiction beyond that authorized by the Constitution. See, City of Dunedin v. Bense, 90 So.2d 300, 302-03 (Fla. 1956)(original jurisdiction of Florida Supreme Court limited by Florida Constitution). Sections 16.061(3) and 100.371(6), Florida Statutes (2005) are an unconstitutional attempt to expand this Court's jurisdiction beyond that authorized by the plain language of the Florida Constitution, especially Article V, section 3(b).

Unlike the unconstitutional 2002 law, the Legislature-sponsored 2002 constitutional amendment spoke neither to judicial review, nor to ballot placement of a judicially approved FIS with this Court's governmental imprimatur.

Notably, as to pre-election notice, Article XI, section 5 (now section 5(d)) was not amended during the 2002 general election. That provision requires newspaper publication of the ballot title, summary and text and the date of the election, but does not authorize such publication of the financial impact statement:

> Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of the election at which it will be submitted to the electors, shall be published in one newspaper of general circulation in each county in which a newspaper is published.

The voters should be presumed to understand that "provision of a statement to the public prior to holding of an election" is quite different than newspaper publication "once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held." Similarly, "provision of a statement to the public" is quite different than "shall be published in one newspaper of general circulation in each county in which a

newspaper is published." See, Zingale v. Powell, 885 So.2d 277, 282-83 (Fla. 2004)(plain language of amendment is first consideration).

The lack of any authority for a financial impact statement to be published as part of the notice requirements for citizen initiatives mitigates against this Court spending its limited resources reviewing financial impact statements for ballot consideration.

The Sponsor urges this Court to reject reliance upon past advisory opinions where it has approved financial impact statements for ballot consideration. Such opinions are not binding judicial precedents and did not carefully consider the constitutional basis for jurisdiction. See, Florida League of Cities v. Smith, 607 So.2d 397, 399 n.3 (Fla. 1992)(citation omitted).

II. THE STANDARD OF REVIEW HAS BEEN DE NOVO.

The Sponsor relies upon its Supplemental Brief in the case at bar as to the standard of review.

III. THE FINANCIAL IMPACT STATEMENT IS FLAWED.

The Attorney General's "discussion" of the text of the financial impact statement seems to "argue" that the phrase "direct impact of the proposed amendment on local government expenditures cannot be determined precisely" is

legally-sufficient. [Attorney General's Supplement Brief, page 10]. The Sponsor agrees.

It is not clear which "explanatory language" the Attorney General argues to be "internally consistent and unambiguous in view of the conclusion that costs cannot be precisely quantified." [Attorney General's Supplement Brief, page 10].

To the extent that such argument is inconsistent with the Sponsor's Brief and Supplemental Brief in the case at bar, the Sponsor would rely upon those briefs to answer the Attorney General.

CONCLUSION

Florida Hometown Democracy, Inc. respectfully requests this Court to determine that it does not have FIS advisory opinion jurisdiction, and that the Florida Constitution does not authorize placement of a FIS on the general election ballot. Should this Court find a lawful basis for review and ballot placement, this Court should find that the Financial Impact Statement does not comply with Article XI, Section 5(c) of the Florida Constitution in conjunction with Section 100.371(6), Florida Statutes (2005), and remand the Financial Impact Statement to the Financial Impact Estimating Conference.

Respectfully submitted,

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

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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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