

IN THE SUPREME COURT
STATE OF FLORIDA

Case No. SC08-318

IN RE: ADVISORY OPINION
TO THE ATTORNEY GENERAL
RE: FLORIDA GROWTH MANAGEMENT
INITIATIVE GIVING CITIZENS THE RIGHT
TO DECIDE LOCAL GROWTH MANAGEMENT CHANGES

INITIAL BRIEF
OF INTERESTED PERSON
FLORIDA HOMETOWN DEMOCRACY, INC.

Ross Stafford Burnaman
Attorney at Law
Fla. Bar No. 397784
1018 Holland Drive
Tallahassee, Florida 32301
(850) 942-1474
Counsel for Florida Hometown Democracy, Inc.

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STATEMENT OF THE CASE AND FACTS

STATEMENT OF THE CASE

By letter dated February 26, 2008, Florida's Attorney General requested this Court's opinion on the validity of a constitutional amendment initiative petition sponsored by Floridians for Smarter Growth, Inc. ("the FSG Initiative"). See, Section 16.061, Fla. Stat. (2007); Rule 9.510(b), Fla. R. App. P.

The Attorney General did not take any position on the legal sufficiency of the Initiative petition, however, he did note:

Although not stated in the ballot summary, the proposed amendment, as indicated in the petition's statement and purpose, is intended, among other things, to "pre-empt or supersede recent proposals to subject all comprehensive land use plans and amendments to votes[.]"

On April 23, 2008, this Court issued a scheduling Order in this case.

STATEMENT OF THE FACTS

Florida Hometown Democracy, Inc. is an interested person.

Florida Hometown Democracy, Inc., a Florida corporation in good standing, is the political action committee sponsor of a citizen initiative petition proposed pursuant to Article XI, Section 3 of the Florida

Constitution (1968). (Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans, Serial No. 05-18).

This Court has approved the Florida Hometown Democracy citizen initiative for ballot eligibility. Advisory Op. to the Att'y Gen. re Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans, 938 So. 2d 501 (Fla. 2006).

The text of the FSG Initiative provides, in its "Statement and Purpose" in part (emphasis supplied):

a) Statement and Purpose:
This amendment is intended to modify existing law, permit flexibility in future growth-management related legislation (except rules which would affect voters' ability to petition for referenda), and pre-empt or supersede recent proposals to subject all comprehensive land use plans and amendments to votes, thus balancing competition interests without overburdening voters.

Thus, Florida Hometown Democracy, Inc. the sponsor of one so-called "recent proposal to subject all comprehensive land use plans and amendments to votes" is an interested person in this case.

The Floridians for Smarter Growth, Inc. Initiative

The FSG Initiative ballot title is: "Florida Growth Management Initiative Giving Citizens the Right to Decide Local Growth Management Legislation Plan Changes."

The FSG Initiative ballot summary is as follows:

Allows Floridians to call for voter approval of changes to local growth management plans through a citizen petition. Voter approval of growth management plan changes will be required if 10% of the voters in the city or county sign a petition calling for such a referendum. Defines terms and establishes petition requirements.

The text of the FSG Initiative is:

a) Statement and Purpose

The Legislature has enacted growth management and land use planning legislation; these laws do not provide for voters' direct approval of the resulting plans or amendments. The purpose of this amendment is to provide a limited opportunity for voters to approve or disapprove these plans or amendments. Because thousands of growth management plans and amendments are adopted each year, this amendment would limit such referenda to situations where a sufficient number of persons file a petition seeking such a referendum during a set period of time. The criteria for signing and filing a petition are intended to demonstrate that there is a substantial interest in a referendum, and are based, in part, on existing Section 550.175, Fla. Stat. This amendment is intended to modify existing law, permit flexibility in future growth-management related legislation (except rules which would

affect voters' ability to petition for referenda), and pre-empt or supersede recent proposals to subject all comprehensive land use plans and amendments to votes, thus balancing competition interests without overburdening voters.

b) Amendment of Florida Constitution:

Art. II, Section 7, Fla. Const., is amended by inserting the following new subsection at the end thereof, to read: "Florida Growth Management Initiative Petitions."

a) In addition to any power or ability of voters to participate in growth management planning processes provided by this Section or by general law, the registered voters of a local government may offer a Florida Growth Management Initiative Petition regarding any growth management plan or amendment to such a plan.

b) If a valid and sufficient Florida Growth Management Initiative Petition is filed and verified by the appropriate election authorities for a local government, the local government shall conduct a referendum approving or disapproving the specific growth management plan or plan amendment. The referendum shall be conducted as provided by applicable general law of the State or local government. If a plan or amendment is disapproved in such a referendum, it is not effective and may not be adopted or implemented by the local government or relied on by others. The fact that a plan or amendment has been the subject of a referendum under this Section does not preclude future changes to that plan or amendment, or exempt such changes for these or other procedures and requirements. If a valid and sufficient Florida Growth Management Initiative Petition is not filed for a

particular plan or amendment, notwithstanding any other provision of this section or general law, no referendum on that particular plan or amendment shall be held pursuant to this Section.

c) Definitions: For the purposes of this section, the following terms shall have the following meanings:

1) "Local government" means a county or municipality.

2) "Growth management plan" means a plan to guide and control future land development in an area under the jurisdiction of a local government, including a comprehensive land use plan or similar document, and includes amendments to such plans, however described.

3) "Florida Growth Management Initiative Petition" means, in addition to any other requirement imposed by general law, that one or more individuals registered to vote for elections of a local government may complete a Florida Growth Management Initiative Petition form and deposit the form with the County Supervisor of Elections or City Clerk (or similar election authority for the local government). The individuals completing the form must provide identification information, including name, address, telephone numbers, any Internet address or website owned, operated or used by the individuals which contains or will contain information on the particular plan or amendment which is the subject of the Petition, and any information indicating whether they have a financial interest in the particular plan or plan amendment which is the subject of the Petition (including interests involving personal, commercial, or land uses affected by the plan or amendment), and if so,

describing the financial interest. The identification information shall be made available to the public, along with notice of the availability of the Petition; posting of this information on the Internet, in a manner reasonably calculated by the election authority to inform the public, shall be considered sufficient public availability of this information. Individuals who are registered voters of the local government and who are in favor of holding a referendum shall be permitted to sign the Florida Growth Management Initiative Petition; a signature shall be affixed in a manner, which clearly indicates that the signer is in favor of holding the referendum. Every signature upon every Florida Growth Management Initiative Petition must be signed at the office of the appropriate County Supervisor of Elections or City Clerk (or similar election authority for the local government), and the signer must present at the time of such signing evidence showing the person's qualifications as a voter of the local government at the time of signing the petition. Once the appropriate County Supervisor of Elections or City Clerk (or similar election authority for the local government) determines that, prior to verification, the Florida Growth Management Initiative Petition contains the facially-valid original signatures of at least ten percent of persons registered to vote in elections of the local government, the election authority shall notify the persons who completed and deposited the petition form. The election authority shall inquire if the persons wish to offer the Florida Growth Management Initiative Petition, the election authority shall verify the signatures, with any costs paid by the offering

persons, and consider the Petition offered and submitted.

5) "Valid and sufficient Florida Growth Management Initiative Petition" means a written petition containing the valid original signatures of at least 10 percent of persons registered to vote in elections of the local government, and which is offered and submitted to the appropriate County Supervisor of Elections or City Clerk (or similar election authority for the local government) within sixty days from the date of the first signature on the petition.

d) Effective date and severability:

This amendment shall be self-executing and effective on the date it is approved by the electorate. If any portion of this measure is held invalid for any reason, the remaining portion of this measure, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application.

SUMMARY OF ARGUMENT

The FSG Initiative fails to meet the requirements of the single subject rule, in that it fails to identify all substantially affected provisions of the Constitution.

The proposal substantially affects fundamental rights, including the right to petition the government for redress and right to privacy, but the text of the proposed amendment does not identify such provisions.

The proposal substantially affects provisions of the Florida Constitution governing elections and local

government, but the text of the proposed amendment does not identify such provisions.

The ballot title and summary for the FSG Initiative, read together, do not meet the accuracy requirements of Section 101.161(1), Florida Statutes (2007).

In addition to not identifying Constitutional provisions that would be substantially affected, the ballot title and summary do not provide a fair, accurate and objective statement of the chief purpose of the measure.

The ballot title and summary use inconsistent terminology (including "citizen," "Floridian," and voter) and do not adequately describe the general operation of the proposed amendment.

Because the FSG Initiative does not meet the single-subject requirements, and the ballot title and summary do not comply with Section 101.161(1), Florida Statutes, the measure should be removed from ballot consideration.

ARGUMENT

I. THE FSG INITIATIVE VIOLATES THE SINGLE-SUBJECT REQUIREMENT.

STANDARD OF REVIEW: The standard of review is de novo. The Court's review is limited to two legal issues: whether the Initiative satisfies the single-subject requirement in Article XI, Section 3 of the Florida Constitution; and if the ballot title and summary meet the requirements of Section 101.161(1), Florida Statutes. See, Advisory Op. to the Att'y Gen. re Funding of Embryonic Stem Cell Research, 959 So.2d 195, 197 (Fla. 2007), 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 (Fla. 2000)(internal citations omitted).

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.

Each citizen initiative must identify all substantially affected provisions of the Florida Constitution. See, Advisory Op. to the Att'y Gen. re Tax Limitation, 644 So.2d 486, 492 (Fla. 1994); Fine v. Firestone, 448 So.2d 984, 989 (Fla. 1984).

In Fine v. Firestone, 448 So.2d 984, 989 (Fla. 1984), this Court noted that a citizen initiative "should identify the articles or sections of the Constitution substantially amended."

The initiative under review only identifies an amendment to Article II, section 7. However, the FSG Initiative would substantially amend Article I, sections 2, 4, 5 and 23; Article VI, sections 1 and 6; and Article VIII, sections 1(d) and 2(b), of the Florida Constitution.

Under the pretext of defining the term "Florida Growth Management Initiative Petition," the proposed amendment imposes draconian restrictions on any registered voter who becomes an "offering person" by completing the Petition form. By initiating the referendum process by offering such a Petition, the offering persons, in effect, waive existing rights to petition the government, free speech rights and the right to privacy provided in Article I.

For example, the "offering persons" must identify any (emphasis supplied):

Internet address or website owned,
operated or used by the individuals
which contains or will contain
information on the particular plan or
amendment which is the subject of the
Petition and

any information indicating whether they have a financial interest in the particular plan or amendment ... (including interests involving personal, commercial or other land uses affected by the plan or amendment) and if so, describing the financial interest. The identification information shall be made available to the public....

Florida's Constitutional Right of Privacy provides:

Every natural person has the right to be let alone and free from governmental intrusion into the persons private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

Article I, section 23, Fla. Const.

In Menke v. Broward County School Bd., 916 So.2d 8, 9-11 (Fla. 4th DCA 2005), the court noted that one's computer is like an "electronic filing cabinet" and recognized the right to privacy associated with "what internet sites an individual might access...."

Surely, the requirement that the "offering persons" publicly disclose any internet or website addresses that they "use" "which contains or will contain information on the particular plan or amendment" would substantially impact fundamental privacy rights.

In Winfield v. Div. of Pari-mutuel Wagering, 477 So.2d 544, 548 (Fla. 1985), this Court noted that Article I,

section 23 "was intentionally phrased in strong terms" and is stronger than the corresponding Federal right. Moreover, this Court stated:

Thus, we find that the law in the State of Florida recognizes an individual's legitimate expectation of privacy in financial institution records.

Surely, the protection the "fundamental" right to privacy in one's finances is substantially impacted by the proposal to require public disclosure of financial interests in conjunction with signing a petition to invoke a referendum.

By requiring a registered voter who petitions the government to "Offer a Florida Growth Management Initiative Petition" to disclose, for public dissemination, any Internet address or website used by that voter that "contains or will contain information" about the subject of the Petition, the FSG Initiative substantially amends Article I, sections 2, 4, 5 and 23.

The requirement for mandatory disclosure, for public dissemination, of the offering persons' "personal, commercial or other land uses" financial information likewise substantially amends existing rights provided in Article I, sections 2, 4, 5 and 23.

In addition to the failure to identify substantial changes to the Article I, the FSG Initiative also fails to

identify substantial amendments to Article VI, sections 1 (Regulation of Elections) and 6 (Municipal and district elections); and Article VIII, sections 1(d) (County Officers) and 2(b) (Municipalities - Powers), of the Florida Constitution.

Presently, the Constitution authorizes regulation of elections, including municipal elections, as regulated or as provided by law. The FSG Initiative would substantially amend Article VI (Elections) and Article VIII (Local Government) to set forth specific requirements on the conduct of a land use referendum, including requirements that: (1) a registered voter may only sign a petition at the Supervisor of Elections or City Clerk's office (or similar election authority of local government) within sixty (60) days of the initial petition; (2) requiring a pre-verification determination by the Supervisor of Elections, City Clerk (or similar election authority of local government) of facially-valid petitions of ten (10) percent of registered voters; and (3) requiring the "election authority" to verify the petitions with "any costs paid by the offering persons."

Since the FSG Initiative fails to identify provisions of the Florida Constitution that would be substantially amended, the measure must be determined to be ineligible

for the ballot. , Advisory Op. to the Att'y Gen. re Tax Limitation, 644 So.2d 486, 492 (Fla. 1994); Fine v. Firestone, 448 So.2d 984, 989 (Fla. 1984).

II. THE BALLOT TITLE AND SUMMARY DO NOT MEET THE REQUIREMENTS OF SECTION 101.161(1), FLORIDA STATUTES.

STANDARD OF REVIEW: The standard of review is de novo. The Court's review is limited to two legal issues: whether the Initiative satisfies the single-subject requirement in Article XI, Section 3 of the Florida Constitution; and if the ballot title and summary meet the requirements of Section 101.161(1), Florida Statutes. See, Advisory Op. to the Att'y Gen. re Funding of Embryonic Stem Cell Research, 959 So.2d 195, 197 (Fla. 2007), 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 (Fla. 2000)(internal citations omitted).

Section 101.161(1), Florida Statutes (2007), 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.

That statute provides:

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 ... followed by the word "yes" and also by the word "no," Except for amendments and ballot language proposed by joint resolution, the substance of the amendment...shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure.... 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.

Because voters will not have the actual text of the proposed FSG Initiative in the voting booth when they cast their votes, compliance with this statutory ballot accuracy requirement is "of paramount importance." See, Armstrong v. Harris, 773 So.2d 7, 12-13 (Fla. 2000), rehearing denied, certiorari denied 121 S.Ct. 1487, 532 U.S. 958, 149 L.Ed.2d 374 (2001) citing Askew v. Firestone, 421 So.2d 151, 154-55 (Fla. 1982).

The statute is a codification of the accuracy requirement implicit in Article XI, section 5 of the Florida Constitution. See, Askew v. Firestone, 421 So.2d at 155.

Stressing the importance of the ballot title and summary, this Court noted:

[the] constitutional amendment process relies on an accurate, objective ballot summary for its legitimacy. Voters ... never see the actual text of the proposed amendment. They vote based

only on the ballot title and summary. Therefore, an accurate, objective, and neutral summary of the proposed amendment is the *sine qua non* of the citizen-driven process of amending our constitution.

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, 770 (Fla. 2004) (emphasis in original), quoting Advisory Op. to the Att'y Gen. re Additional Homestead Tax Exemption, 880 So.2d 646, 653-54 (Fla. 2004).

This Court has described the basic test for ballot accuracy for all proposed Constitutional amendments as follows:

[t]he gist of the constitutional accuracy requirement is simple: A ballot title and summary cannot either "fly under false colors" or "hide the ball" as to the amendment's true effect.

Armstrong v. Harris, 773 So.2d at 15-16.

Confirming that the accuracy requirement evaluates the ballot title and ballot summary together, this Court recently summarized the two questions at issue in cases such as the instant one:

The proper analysis to assess whether [the] ballot title and summary meet this requirement focuses on two questions: (1) whether the ballot title and summary, in clear and

unambiguous language, fairly inform the voter of the chief purpose of the amendment; and (2) whether the language of the title and summary, as written, misleads the public.

Advisory Op. to the Att'y Gen. re Funding of Embryonic Stem Cell Research, 959 So.2d at 200 (internal citations omitted).

The ballot title and summary must be read together in determining whether the ballot information properly informs the voters. See, Advisory Op. to the Att'y Gen. re Universal Pre-Kindergarten Education, 824 So.2d 161 (Fla. 2002)(internal citation omitted).

The omission of material information from the ballot title and summary is misleading and violates the accuracy requirement. 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, 897-99 (Fla. 2000); Advisory Op. to Att'y Gen. re Term Limits Pledge, 718 So.2d 798, 803 (Fla. 1998); Askew v. Firestone, 421 So.2d at 156.

In the case at bar, the FSG Initiative's title and summary, taken together, fail the accuracy requirement of Section 101.161, Florida Statutes (2007) and Florida's Constitution.

A. THE BALLOT TITLE FAILS THE ACCURACY REQUIREMENT.

As to the title, the statute 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. (2007). The ballot title meets the statutory length requirement. However, it fails the accuracy requirement.

One phrase within the title "giving citizens the right to decide" does not fairly inform the voter of the chief purpose, and is misleading and inaccurate.

The text of the FSG Initiative offers:

The purpose of this amendment is to provide a limited opportunity for voters to approve or disapprove these plans or amendments [resulting from State growth management and land use planning laws].

A "limited opportunity" is far different from a "right to decide." Moreover, "voters" (registered voters) are only a subset of "citizens" (and "Floridians").

The use of the term "citizens"¹ is misleading since it is only a subset of "citizens" -- "registered voters" -- who can either sign a petition or vote on any referendum

¹ The term "Floridians" is used in the ballot summary. Obviously, one can be a "Floridian" without being a registered Florida voter. A "Floridian" is: "a native or

generated by a "valid and sufficient Florida Growth Management Initiative Petition."

The plain meaning of the term "citizens" is not the same as "registered voters." A "citizen" is primarily defined as: (1.a) "An inhabitant of a city or a town; esp.: one that is entitled to the civic rights and privileges of a freeman". Webster's Third New International Dictionary (1986) Vol I, p. 411. See also, Maldonado v. Allstate Insurance Co., 789 So.2d 464, 467-68 (Fla. 2nd DCA 2001)("In the context of citizenship in Florida or any other state, the term is often comparable to domicile or legal residence." and "illegal alien" deemed "resident" of Florida for insurance purposes). In 2007, Florida had a population of over 18 Million people, but had only about 10.3 Million registered voters. University of Florida, Bureau of Economic and Business Research, Florida Statistical Abstract (2007), pages 7 and 717, respectively.

In Advisory Op. to Att'y Gen. re Right of Citizens to Choose Health Care Providers, 705 So.2d 563, 566 (Fla. 1998), this Court determined that the ballot title and summary were impermissibly vague since the ballot title and summary used the term "citizens" while the text of the

resident of Florida." Webster's Third New International Dictionary (1986) Vol I, p. 874.

proposal used the term "natural persons." The ballot title in the case at bar uses the term "citizens" instead of "registered voters," and when read in conjunction with the term "Floridians" in the ballot summary must be rejected under the holding in Advisory Op. to Att'y Gen. re Right of Citizens to Choose Health Care Providers.

The use of such divergent terms renders the FSG Initiative ineligible for the ballot.

[t]his Court has repeatedly held that ballot summaries which do not adequately define terms, use inconsistent terminology, fail to mention constitutional provisions that are affected, and do not adequately describe the general operation of the proposed amendment must be invalidated.

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 at 899.

Next, the phrase "right to decide" does not plainly or accurately describe this new "right," even with regard to the subset of "citizens" that are registered to vote in Florida. In actuality, FSG's proposal to "offer a Florida Growth Management Petition" goes to a vote on the "valid

and sufficient Florida Growth Management Initiative
Petition."²

The phrase "Local Growth Management Plan Changes"
fails to accurately inform that the measure applies both to
land use plans and plan amendments. The text provides in
relevant part:

Article II, section 7, Fla. Const., is
amended by inserting the following new
subsection...:
[r]egistered voters of a local
government may offer a Florida Growth
Management Initiative Petition
regarding any growth management plan or
amendment to such a plan.

This inaccuracy is compounded by the material omission
that "growth management plan" is defined in the text
expansively (emphasis supplied):

"Growth management plan" means a plan
to guide and control future land
development in an area under the
jurisdiction of a local government,
including a comprehensive land use plan
or similar document, and includes
amendments to such plans, however
described.

While the phrase "growth management plan" is not
defined by Florida Statute or rule, some persons refer to

² The phrases "Offer a Florida Growth Management Initiative
Petition" and "Valid and sufficient Florida Growth
Management Initiative Petition" are defined in the text of
the FSG Initiative.

local government comprehensive land use plans by that phrase. See, Section 633.0215(10)(c), Fla. Stat. (2007).

Existing State statutes refer to these "growth management" plans using different terms, including for example: "local land use plan" in Section 403.508(2), Florida Statutes (2007); "comprehensive land use plan" in Sections 163.2517(4) and 380.0555 (8)(a)1, Florida Statutes (2007); "county land use plan" in Section 171.062(2), Florida Statutes (2007); "local comprehensive plan" in Sections 380.031(10), 403.973(12)(a) and (14)(a), Florida Statutes (2007); "comprehensive plan" in Section 163.3221(2), Florida Statutes (2007); .

The text of the FSG Initiative includes the vague phrase "or similar document" in the definition. Existing Florida statutes contain references to other types of plans than "local government comprehensive land use plans" adopted pursuant to Chapter 163, Part II, Florida Statutes, including for example: "community redevelopment plan" in Section 163.360(2), Florida Statutes (2007); "comprehensive plan" in Sections 373.470(2)(a) and 373.1502(2)(a), Florida Statutes (2007); "safe neighborhood improvement plan" in Section 163.516(1), Florida Statutes (2007); "military base

reuse plan" in Section 288.975(5), Florida Statutes (2007)³; "long- range transportation plan" in Section 339.175(6), Florida Statutes (2007). Some of these plans "guide and control future land development in an area under the jurisdiction of a local government" and therefore fall within the definition of "growth management plan" in the text of the FSG Initiative. The ballot title and summary do not inform voters of the legal effect of the proposal.

Additionally, some Florida voters already have a right under local Charter provisions to a referendum vote on all changes to local comprehensive land use plans without the need to file a petition with the local government. See, City of St. Pete Beach Charter. [Appendix 1]. As this Court noted in Advisory Op. to the Att'y Gen. re: Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans, 938 So. 2d 501 (Fla. 2006), Section 163.3167(12), Florida Statutes, implicitly authorizes referenda in regard to any local comprehensive plan amendment or map amendment that affects more than five parcels of land.

Moreover, if Florida Hometown Democracy's amendment is approved by the voters prior to the FSG Initiative then

³ The host local government has the discretion to adopt the military base reuse plan as a separate component of the

that right would extend to all registered voters in Florida. If Florida Hometown Democracy's amendment is placed on the ballot during the same election as the FSG Initiative, nothing in the ballot title advises that it would "pre-empt or supersede" the Florida Hometown Democracy amendment.

B. THE BALLOT SUMMARY FAILS THE ACCURACY REQUIREMENT.

The ballot summary (considered along with the title) fails to fairly inform the voter in clear and unambiguous language, of the chief purpose of the amendment and otherwise fails to comply with Section 101.161(1), Florida Statutes (2007).

As noted previously, the FSG Initiative contains an express declaration of "statement and purpose." In part, it provides:

The purpose of this amendment is to provide a limited opportunity for voters to approve or disapprove these plans or amendments [resulting from State growth management and land use planning laws].

However, what is promised in the ballot summary is: "Allows Floridians to call for voter approval." The phrase is misleading and constitutes a gross oversimplification of

local government comprehensive plan.

the procedures established in the text that constitute the "limited opportunity."

Key details of that "limited opportunity" are omitted from the summary, and are only provided in the definitions in the text of the proposal.

As noted in Point I of this Brief, the FSG Initiative omits any reference to other provisions of the Florida Constitution that would be substantially amended. The failure to mention those provisions in the ballot summary (or title) renders the proposal legally defective. 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 at 898-901.

The ballot summary materially fails to adequately describe the general operation of the proposal. Id.

Nothing in the ballot summary (or title) informs the voter that the phrase "allows Floridians to call for voter approval" actually pertains to registered voters, who must waive important privacy rights (to Internet and financial information) by becoming an "offering person" to initiate the process.

The definition of "Offer a Florida Growth Management Initiative Petition" includes the requirement that the petition can only be signed by a registered voter "at the

office of the appropriate County Supervisor of Elections or City Clerk (or similar election authority for the local government)."

Presently, voters can sign petitions for public measures such as initiative and referenda on most public property, on their own property, at their residence, and any number of other places as enabled by the Declaration of Rights, Article I of the Florida Constitution.

Likewise, the summary omits mention of the material fact that the "if 10% of the voters sign a petition" phrase in the summary is limited to a sixty (60) day period beginning when the first petition is signed at the supervisor of elections' (or clerk's) office.

Under existing petition signing procedures, a registered voter can sign the petition without having to produce identification to the supervisor of elections or other official. The ballot summary omits to mention this material limitation on the "right to petition."

Some Florida counties are geographically large and the County Supervisor of Elections' office may be distant from the residence or workplace of many registered voters.⁴ The failure to mention that the Petition signatures can only be

executed at such offices (with the voter producing identification) is a material omission, especially since gasoline prices are approaching \$4.00 per gallon.

The initiative and referenda processes are encompassed by section 1 "Political power," section 4 "Freedom of speech and press," and section 5 "Right to assemble, and section 9 "Due process." The use of the local initiative and referenda processes is a form of democratic expression and part of the "unquestioned right to petition" the government for redress under Article I, section 5 the Florida Constitution. See, Krivanek v. Take Back Tampa Political Committee, 625 So.2d 840, 843 (Fla. 1993), cert. denied, 114 S.Ct. 1538, 511 U.S. 1030, 128 L.Ed.2d 191.

Since the amendment text imposes unprecedented restrictions on the right to use these initiative and referendum rights, the ballot title and summary are misleading for failure to advise the voter accordingly.

Another material omission from the ballot summary that renders it inaccurate and misleading is the reference only to "approval of growth management plan changes...." The text of the proposal clearly applies both to land use plans

⁴ Palm Beach County, for example, is 2,578 square miles in area. McGovern, Florida Almanac (2004), p. 161. The City of Jacksonville comprises 758 square miles.

and land use plan amendments, yet the summary omits this material aspect of the legal effect of the amendment.

Next, the summary refers to a "citizen petition." As previously noted, one can be a "citizen" without being a registered voter. The use of the term "citizen" is inaccurate and constitutes political rhetoric rather than an informative statement of the legal effect of the proposal.

"Political rhetoric" that "materially misstates the substance of the amendment" cannot appear in the ballot summary. In re Advisory Op. to the Att'y Gen. re Save Our Everglades, 636 So.2d 1336, 1341-42 (Fla. 1994). See also, Advisory Op. to the Att'y Gen. re Tax Limitation, 644 So.2d 486, 490 (Fla. 1994)(ballot summary must be accurate and informative and objective and free from political rhetoric).

The Attorney General's transmittal letter states that:

Although not stated in the ballot summary, the proposed amendment, as indicated in the petition's statement and purpose, is intended, among other things, to "pre-empt or supersede recent proposals to subject all comprehensive land use plans and amendments to votes[.]"

As noted previously, the ballot summary (and title) does not inform the voter of this intended preemption of Florida Hometown Democracy's citizen initiative.

Finally, the use of the phrase "growth management plan" in the ballot summary (and title) omits to inform the voter that in addition to local government comprehensive land use plans, the measure includes a definition that encompasses "other similar document(s)."

This Court has upheld citizen initiatives that include definitions. See, Advisory Op. to Att'y Gen. re Limiting Cruel and Inhumane Confinement of Pigs During Pregnancy, 815 So.2d 597 (Fla. 2002); Advisory Op. to Att'y Gen. re Limited Marine Net Fishing, 620 So.2d 997 (Fla. 1993). However, the failure of the ballot summary (and title) to fairly acknowledge such definitions is problematic.

The ballot title and summary are inconsistent with the requirements of Section 101.161(1), Florida Statutes (2007), and the FSG Initiative must be declared ineligible for ballot placement.

CONCLUSION

Florida Hometown Democracy, Inc., an interested person, respectfully requests the court to find that the FSG Initiative does not meet the constitutional and statutory requirements and disqualify the Initiative for placement on the ballot.

Respectfully submitted,

Ross Stafford Burnaman
Attorney at Law
Fla. Bar No. 397784
1018 Holland Drive
Tallahassee, Florida 32301
(850) 942-1474

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 9th day of May, 2008:

Honorable Bill McCollum, Attorney General
The Capitol, PL-01
Tallahassee, Florida 32399-1050

Susan L. Kelsey, Esquire
Kelsey Appellate Law Firm
115 North Calhoun Street
Tallahassee, Florida 32301

Stephen H. Grimes, Esquire
Holland & Knight LLP
P.O. Drawer 810
Tallahassee, Florida 32302

Ross Stafford Burnaman
Attorney at Law
Fla. Bar No. 397784
1018 Holland Drive
Tallahassee, Florida 32301
(850) 942-1474

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.

Ross Stafford Burnaman
Attorney at Law
Fla. Bar No. 397784
1018 Holland Drive
Tallahassee, Florida 32301
(850) 942-1474