IN THE SUPREME COURT OF FLORIDA

Case No. SC08-318

Upon Request From the Attorney General
For An Advisory Opinion As To The
Validity Of An Initiative Petition

ADVISORY OPINION TO THE ATTORNEY GENERAL RE: Florida Growth Management Initiative Giving Citizens the Right to Decide Local Growth Management Plan Changes

INITIAL BRIEF AND APPENDIX OF THE SPONSOR, FLORIDIANS FOR SMARTER GROWTH, INC.

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STATEMENT OF THE CASE AND FACTS

Floridians for Smarter Growth, Inc. is a Florida political committee sponsoring an amendment to the Florida Constitution through the initiative petition process (the "Smarter Growth amendment"). [A 1.] See Art. XI, § 3, Fla. Const. The chief purpose of the proposed Smarter Growth amendment is to create a process allowing voters to petition for a referendum on changes to local growth management plans. The Smarter Growth amendment has qualified for this Court's review [A 2], and the Attorney General has requested this Court's advisory opinion as to whether the Smarter Growth amendment encompasses a single subject, and whether the ballot title and summary comply with the pertinent legal requirements.[1] [A 3.] The Court has jurisdiction. Art. V, § 3(b)(10), Fla. Const.[2]

[1] Section 16.061, Florida Statutes (2007), requires the Attorney General to petition this Court within 30 days after receiving an initiative from the Secretary of State, "requesting an advisory opinion regarding the compliance of the text of the proposed amendment or revision with s. 3, Art. XI of the State Constitution and the compliance of the proposed ballot title and substance with s. 101.161." This section implements Florida Constitution article IV, section 10, which requires the Attorney General to "request the opinion of the justices of the supreme court as to the validity of any initiative petition circulated pursuant to Section 3 of Article XL"

[2] Article V, section 3(b)(10) provides that "The supreme court ... [sjhall, when requested by the attorney general pursuant to the provisions of Section 10 of Article IV, render an advisory opinion of the justices, addressing issues as provided by general law."

Title, Ballot Summary, and Text Of the Smarter Growth Amendment

The ballot title for the proposed Smarter Growth amendment is "Florida Growth Management Initiative Giving Citizens the Right to Decide Local Growth Management Plan Changes."

The ballot summary provides 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 full text of the amendment provides as follows:

BE IT ENACTED BY THE PEOPLE OF FLORIDA THAT:

> **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 statewide 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 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 competing interests without over-burdening 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 amendment. The referendum shall be conducted as provided by applicable general law of the State or the 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 from 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 of general law, no referendum on that particular plan or amendment shall be held pursuant to this Section.

c) Definitions: For 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 a written petition, on a form designated for that purpose, containing and describing all elements of the applicable growth management plan or amendment, and otherwise conforming in all respects to any requirements imposed by general law. Not more than one applicable growth management plan or amendment may be included in any one petition.

4) "Offer a 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 amendment which is the subject of the Petition (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, 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 on the particular growth management plan or amendment 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 qualification as a voter of the local government at the time of the

signing of 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 for verification of the signatures; 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.

c) 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.

The Competing* Land Use Plans *Amendment.

The Court in 2006 approved another citizens' initiative involving the same subject matter as the present Smarter Growth amendment. *Advisory Op. to Att'y Gen. re Referenda Required For Adoption and Amendment of Local Gov't Comprehensive Land Use Plans,* 938 So. 2d 501, 502 (Fla. 2006) (the *"Land Use*

Plans amendment"). The Court had previously held that the *Land Use Plans* amendment satisfied the single-subject rule, concluding that it "calls for only one discrete change in the established scheme of comprehensive land-use plans-the local government legislative process of enactment and amendment." *See Advisory Op. to Att'y Gen. re Referenda Required for Adoption & Amendment of Local Gov't Comprehensive Land Use Plans,* 902 So. 2d 763 (Fla. 2005).[3] The major difference between the *Land Use Plans* amendment and the present Smarter Growth amendment is that the former would require a referendum on every new land-use plan and every amendment to an existing land-use plan, while the Smarter Growth amendment allows for a referendum only if a valid and sufficient petition for referendum is duly filed and at least 10% of the voters of the affected city or county sign the petition. *See Land Use Plans,* 938 So. 2d at 501-02. The sponsor of the *Land Use Plans* amendment, Hometown Democracy, Inc., has filed a brief in opposition to the Smarter Growth amendment.[4]

[3] The Court struck the original *Land Use Plans* amendment from the ballot because of a flaw in its ballot summary, which flaw was eliminated in the second attempt. *See Land Use Plans,* 938 So. 2d at 502-03.

[4] The opponent's brief was filed before the due date, and after Smarter Growth had filed a Motion for Extension of Time and a separate Request to Toll Time; thus, although this is the sponsor's Initial Brief, it addresses the opponent's arguments.

SUMMARY OF THE ARGUMENT

The Court must pass on only two legal issues in this proceeding: whether the amendment complies with the single-subject requirement, and whether the ballot title and summary inform the voter of the chief purpose of the amendment. In this original proceeding, the Court reviews the proposed amendment *de novo.* However, because of the inherently political nature of the initiative petition process, the Court has always tempered its review by the principle that the sovereign right of the people to amend their constitution should be preserved unless a proposed amendment is "clearly and conclusively defective." Thus, review is deferential.

The Smarter Growth amendment satisfies the single-subject rule because it has a logical and natural oneness of purpose and may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme. The amendment has only one chief purpose, which is to create a process allowing voters to petition for a referendum on changes to local growth management plans. The amendment also includes directly connected matter, which the constitution expressly allows. The amendment does not substantially alter or perform the functions of multiple branches or levels of government, nor does it substantially affect other provisions of the constitution without disclosing them. Just as the Court approved the *Land Use Plans*

amendment as satisfying the single-subject rule, it should approve the Smarter Growth amendment.

The title and ballot summary of the Smarter Growth amendment comply with the governing legal requirements. Both the title and the summary satisfy the governing word limits. The title and summary together accurately inform the voter of the chief purpose of the amendment in language that is clear and unambiguous. The summary accurately discloses the chief purpose of the measure as set forth in the text of the amendment. The summary also discloses significant details such as the requirement that citizens must initiate the process by petitioning for a referendum, and that at least 10% of the voters in the city or county must sign the petition before a referendum must be conducted. The summary discloses that the text of the amendment defines terms and establishes petition requirements. While the summary does not set forth every operational detail of the amendment, no summary has ever been required to do so. The summary is required to set forth the chief purpose of the measure, and it does that. Thus, the title and summary pass muster. Floridians For Smarter Growth, Inc. urges the Court to approve the Smarter Growth amendment for submission to the voters.

ARGUMENT

Standard of Review. Sponsoring an initiative petition is the exercise of a unique right under the Florida Constitution. The initiative petition process is the only method of constitutional amendment or revision that empowers the people at all stages of the process. Given this context, although the Court's review is *de novo,* the Court applies its review deferentially in order to protect the sovereign right of the people to amend their own organic law in whatever manner they choose. *See Askew v. Firestone,* 421 So. 2d 151, 156 (Fla. 1982) (applying standard of "extreme care, caution, and restraint"); *Pope v. Gray,* 104 So. 2d 841, 842 (Fla. 1958) (reviewing initiatives represents the "most sanctified" aspect of the Court's jurisdiction).

An initiative petition must be upheld unless it is ""clearly and conclusively defective/" *Weber v. Smathers,* 338 So. 2d 819, 822 (Fla. 1976) (quoting *Goldner v. Adams,* 167 So. 2d 575, 575 (Fla. 1964)), *receded from on other grounds, Floridians Against Casino Takeover v. Let's Help Florida,* 363 So. 2d 337 (Fla. 1978)). The Court lacks authority to pass on the merits, wisdom, draftsmanship, or constitutionality of a proposed amendment in these proceedings. *See Advisory Op. to Att'y Gen. Re Tax Limitation,* 644 So. 2d 486, 489 (Fla. 1994); *Weber v. Smathers,* 338 So. 2d at 821-22. The Court itself has noted that it "has no authority to inject itself in the process, unless the laws governing the process have been

'clearly and conclusively' violated." *Advisory Opinion to the Attorney Gen. re Right to Treatment & Rehab, for Non-Violent Drug Offenses*, 818 So. 2d 491, 498-99 (Fla. 2002). The Smarter Growth amendment easily satisfies the governing standard of review, and the Court should approve it for submission to the voters.

I. THE SMARTER GROWTH AMENDMENT SATISFIES THE SINGLE-SUBJECT REQUIREMENT.

Article XI, Section 3, of the Florida Constitution restricts most citizens' initiatives, including the Smarter Growth initiative to "one subject and matter directly connected therewith." As developed in case law over the years, an amendment satisfies the single-subject rule if it passes two main tests: it is not guilty of logrolling, and it does not substantially alter or perform multiple functions of government. *E.g.*, *Land Use Plans*, 902 So. 2d at 766. The Court has also examined whether an amendment's impact on the Florida Constitution is limited and accurately disclosed. *See, e.g.*, *Advisory Op. to the Att'y Gen. re Physician Shall Charge The Same Fee For The Same Health Care Service To Every Patient*, 880 So. 2d 659, 663 (Fla. 2004). An examination of each component of the single-subject rule reveals that the Smarter Growth amendment complies fully with the governing law; and accordingly, this Court should approve it for submission to the voters.

A. The Amendment Is Not Guilty Of Logrolling.

One purpose of the single-subject rule is to prevent "logrolling," which is combining different issues into one initiative so that people have to vote for something they might not want, in order to gain something different that they do want. *Advisory Op. to Att'y Gen. re: Florida Transportation Initiative for Statewide High Speed Monorail ("High-Speed Rail"),* 769 So. 2d 367, 369 (Ha. 2000); *Advisory Op. to Att'y Gen.—Save Our Everglades,* 636 So. 2d 1336 (Fla. 1994). The inclusion of operative details in a proposed amendment does not constitute logrolling, because the test is unity of purpose:

> The Court uses a "oneness of purpose" standard, which looks at whether a proposed amendment "may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme. Unity of object and plan is the universal test." *[Fine v. Firestone*, 448 So.2d 984, 990 (Fla. 1984)] (quoting *City of Coral Gables v. Gray,* 154 Fla. 881, 19 So.2d 318, 320 (1944)).

Advisory Op. to Att'y Gen. re Prohibiting State Spending for Experimentation that Involves the Destruction of a Live Human Embryo, 959 So. 2d 210, 213 (Fla. 2007). The key indicator of logrolling is *disparity* of subjects, and thus logrolling does not exist merely because an amendment sets forth *related* provisions that '"may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme.'" *Advisory Op. to Att'y Gen. re Fla. Locally Approved Gaming,* 656 So. 2d 1259, 1263 (Fla. 1994)

(quoting *City of Coral Gables v. Gray,* 154 Ha. 881, 883-884, 19 So. 2d 318, 320 (1944)).

The Smarter Growth amendment complies with the single-subject rule because it manifests a "logical and natural oneness of purpose." *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984). Its single subject is the creation of a process allowing citizens to petition for a referendum on changes to local growth management plans. In legal effect, this is the same subject that the Court has already held constituted a single subject in *Land Use Plans:*

> The proposed amendment deals only with local comprehensive land-use plan adoption and amendment and makes one change to the procedure by which these plans are adopted and amended - requiring referenda.

902 So. 2d at 766.

All of the provisions of the Smarter Growth amendment relate directly to its single subject of creating a process allowing voters to petition for a referendum. Viewed as a whole, it "may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme." *Florida Locally Approved Gaming,* 656 So. 2d at 1263. Accordingly, it is not guilty of logrolling.

B. The Amendment Does Not Substantially Alter Or Perform Multiple Functions Of Government.

A second reason for the single-subject rule is to prevent one initiative from "substantially altering or performing the functions of multiple aspects of government." *High-Speed Rail,* 769 So. 2d at 369. The concern addressed in this requirement is to prevent "multiple 'precipitous' and 'cataclysmic' changes in state government." *Advisory Op. to the Att'y Gen. re Right to Treatment & Rehab. For Non-Violent Drug Offenses,* 818 So. 2d 491, 495 (Fla. 2002).

The Court has always recognized that a constitutional amendment may, and almost always will, *affect* multiple branches of government. *E.g., Limited Casinos,* 644 So. 2d at 74. Although it may be difficult to articulate a bright-line test for determining when an amendment crosses from permissible *effect* to impermissible *usurpation* of a government function, the Court's consistent standard is that an amendment must *substantially* perform or alter the function of *multiple* branches of government before it may be stricken. *High Speed Rail,* 769 So. 2d at 369-70; *Advisory Op. To Atty. Gen. re Fish & Wildlife Conservation Comm'n,* 705 So. 2d 1351, 1353 (Ha. 1998); *Limited Casinos,* 644 So. 2d at 74; *Fine v. Firestone,* 448 So. 2d 984, 988 (Fla. 1984).

The Court held that the *Land Use Plans* amendment "calls for only one discrete change in the established scheme of comprehensive land-use plans - the local government legislative process of enactment and amendment." 902 So. 2d at

768 (citing *Coastal Dev. OfN. Fla., Inc. v. City of Jacksonville Beach,* 788 So. 2d 204, 208-09 (Ha. 2001), for the proposition that adoption of and amendments to local comprehensive plans are legislative acts). The Court further held that because of the singular effect of the *Land Use Plans* amendment, it did not have an improperly broad substantial impact on multiple branches of government. 902 So. 2d at 769. For the same reasons, the Smarter Growth amendment does not substantially alter or perform the functions of multiple branches of government. The Smarter Growth amendment, by the same token, changes only the process for local growth management plans. It does not substantially alter or affect other levels of government, and it does not substantially impact either the executive or judicial governmental functions.

The fact that other governmental bodies must comply with the amendment as the need may arise in the course of conducting their customary business does not mean the amendment usurps a governmental function within the meaning of the single-subject rule for initiatives. *See, e.g., Advisory Op. to Att'y Gen. re Term Limits Pledge,* 718 So. 2d 798, 802 (Ha. 1998); *Advisory Op. to Att'y Gen. re: Public Funding of Political Candidates' Campaigns,* 693 So. 2d 972, 975 (Ha. 1997); *Advisory Op. to Att'y Gen. re Limited Political Terms in Certain Elective Offices,* 592 So. 2d 225, 227 (Ha. 1991); *In re Adv. Op. to Att'y Gen., English -*

The Official Language of Flo., 520 So. 2d 11, 13 (Fla. 1988); *Carroll v. Firestone*, 497 So. 2d at 1205-06; *Smathers v. Smith*, 338 So. 2d 825, 831 (Fla. 1976).

The Court in its 2006 decision approving the *Land Use Plans* amendment specifically rejected the argument that, because of recent changes in statutory requirements for school facilities, the referendum requirement would "alter the functions of school boards and substantially affect the ability of school boards and the Legislature" to carry out school siting and class-size requirements. 938 So. 2d at 503-04. The Smarter Growth amendment is substantially the same in effect as the *Land Use Plans* amendment, although it merely allows for referenda rather than mandating them. The Smarter Growth amendment would not substantially alter school board or Legislative functions any more than *Land Use Plans* would; to the contrary, because it merely allows for referenda rather than mandating them in all instances, its impact would be far less than that of the *Land Use Plans* amendment. The Smarter Growth amendment does not substantially alter or perform the functions of multiple branches or levels of government, and therefore the Court should approve it.

C. The Amendment Does Not Substantially Impact Other Provisions Of The Florida Constitution Without Disclosing Them.

The Court has noted in its analysis of the single-subject requirement that an amendment must disclose any provisions of the Florida Constitution that it

substantially impacts, and that a substantial impact on multiple sections could violate the single-subject rule. *See, e.g., Advisory Op. to the Att'y Gen. re Physician Shall Charge The Same Fee For The Same Health Care Service To Every Patient,* 880 So. 2d 659, 663 (Ha. 2004).

The Smarter Growth amendment does not violate this component of the single-subject rule. The Smarter Growth amendment accurately discloses that it would create a new section at the end of Article II, section 7, of the Florida Constitution.[5] The Florida Constitution does not presently address referenda on growth management plans, and therefore the amendment does not amend or affect any existing constitutional provision, and does not need to disclose any such impact.

The opponent of the Smarter Growth amendment, Hometown Democracy, argues that Smarter Growth amendment violates the single-subject rule by failing to identify its allegedly substantial amendment of existing constitutional provisions governing the right to petition the government for redress and the right to privacy, as well as provisions governing elections and local government. [HD Br. 9-13] Specifically, the opponent argues that the details of the petition process as outlined in the Smarter Growth amendment would *violate* existing constitutional provisions

[5] The Smarter Growth amendment does not claim any particular section number, because as a practical matter, by the time the amendment is adopted, a section number currently available may be in use by another provision. The Secretary of State is authorized to assign an appropriate section number. § 15.155(1), Ra. Stat. (2007); *see Same Fee,* 880 So. 2d at 660 n.l.

by requiring petitioning voters to "in effect, waive existing rights to petition the government, free speech rights and the right to privacy ... ." [HD Br. 10] In short, the opponent simply disagrees with the wisdom or legality of the operational details set forth in the Smarter Growth amendment. However, the fact that the Smarter Growth amendment requires individuals who offer a petition to provide certain information could not possibly be construed as amending other portions of the Florida Constitution. The requirement is fair and logical, because it gives the public relevant information about the sponsor's interest in offering the initiative. Aside from that logical reason for the requirement, if the sponsors do not wish to provide the information, they may simply decline the opportunity to offer an initiative. There is no invasion of privacy rights and no amendment to the Florida Constitution.

In any event, the Court has consistently adhered to the principle that it will not adjudicate the wisdom or even the constitutionality of a citizens' initiative, in the advisory opinion proceeding. *See, e.g., Tax Limitation,* 644 So. 2d at 489; *Weber,* 338 So. 2d at 821-22. The Court "has no authority to inject itself in the process, unless the laws governing the process have been 'clearly and conclusively' violated." *Non-Violent Drug Offenses,* 818 So. 2d at 498-99. Thus, it really makes no difference in this proceeding that the opponent claims the operational details of the petition process violate the constitution or impact

individuals' constitutional rights. While the sponsor of the Smarter Growth amendment disagrees strongly with that argument, that issue is not justiciable in this proceeding. The only pertinent question is what parts of the constitution are substantially amended, and the Smarter Growth amendment does not *amend* or substantially *affect* any existing provision of the constitution.

The opponent also argues, very briefly and without citation of any authority, that the Smarter Growth amendment substantially amends Article VI, regulating elections, and Article VIII, regulating county and municipal powers. [HD Br. 13] The gist of the opponent's argument is that because the Smarter Growth amendment itself contains the details of how the petition process works, it "amends" the elections article of the Florida Constitution, Article VI. The opponent does not identify any alleged amendment of Article VIII. Apparently the opponent would require the amendment to disclose that its subject matter is related in a broad sense to the subject matter of already-existing provisions of the Florida Constitution. This argument is without merit because the Smarter Growth amendment does not change anything in Article VI or Article VIII. Those provisions of the constitution do not contain any specific regulation of referenda, merely authorizing local elections in general terms. The Smarter Growth amendment is entirely consistent with the existing provisions of the constitution.

An initiative that does not substantially modify existing constitutional provisions is not required to identify such other provisions. *See, e.g., Advisory Op. to Atty. Gen. ex rel. Local Trustees,* 819 So. 2d 725, 731-32 (Fla. 2002) (initiative creating localized boards of trustees to govern state universities was not required to disclose impact on other constitutional provisions because no such provisions were substantially modified or amended). A new initiative may interact with existing constitutional provisions, and this does not constitute an amendment of such sections, and therefore no disclosure is required. *Advisory Op. to Att'y Gen. ex rel. Local Trustees,* 819 So. 2d 725, 730 (Fla. 2002) (initiative changing university governance structure interacted with other provisions of constitution but was not required to disclose those provisions because "it does not substantially affect or change either one").

The Court's discussion and approval of the *Land Use Plans* amendment is again instructive on this point. The Court noted in the original *Land Use Plans* opinion that a referendum process is already contemplated by statute:

> In fact, the statutory scheme already in place allows local governments to utilize a referendum process in regard to a plan amendment if the amendment affects more than five parcels of land. *See* § 163.3167(12), Fla. Stat. (2004). ... Thus, this amendment would mandate a process already approved by the Legislature in certain instances. Although the initiative would override section 163.3167(12) with respect to plan amendments that affect five or fewer parcels, the nullification of an existing statutory provision does not in and of itself establish a single-subject violation. *See, e.g.,*

> *Advisory Opinion to the Attorney General re Public Protection from Repeated Medical Malpractice,* 880 So. 2d 667, 670 (Fla. 2004).

Land Use Plans, 902 So. 2d at 769. This illustrates that the details of when and how to conduct referenda is a matter of statutory law, and the Smarter Growth amendment, like the *Land Use Plans* amendment, modifies that statutory law. The amendment is not required to disclose its impact on pre-existing statutes; they simply must give way. *Id*. Article XI, section 3, of the Florida Constitution expressly authorizes amendments to include matter directly connected to the chief purpose of the amendments. The Smarter Growth amendment does not violate the single-subject rule by including operational details about its petition and referendum process.

II. THE BALLOT TITLE AND SUMMARY FAIRLY AND UNAMBIGUOUSLY DISCLOSE THE CHIEF PURPOSE OF THE SMARTER GROWTH AMENDMENT.

Section 101.161(1), Florida Statutes (2007), provides that whenever a constitutional amendment is submitted to the vote of the people, a summary of the amendment shall appear on the ballot. The statute further states as follows:

> The 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. 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.

§ 101.161(1), Ha. Stat. (2007). The Court analyzes three aspects of ballot titles and summaries: whether the summary fairly informs the voter of the "chief

purpose" of the measure, whether the summary is misleading; and whether the title and summary comply with the word-length and other technical requirements of the statute. In this review, the Court always reads the ballot title and summary together to determine whether they accurately inform the voter. *Advisory Op. to Att'y Gen. re: Voluntary Universal Pre-Kindergarten Education,* 824 So. 2d 161, 166 (Fla. 2002) (citing *Tax Limitation,* 673 So. 2d at 868).

The title of the Smarter Growth amendment is "Florida Growth Management Initiative Giving Citizens the Right to Decide Local Growth Management Plan Changes."

The ballot summary provides 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 ballot title and summary of the Smarter Growth amendment easily pass each applicable test, and this Court should approve them.

A. The Summary Fairly Informs The Voter Of The Chief Purpose Of The Measure.

The statute demands of the ballot summary only that it disclose the "chief purpose of the measure." § 101.161(1), Ra. Stat. (2007). The Court has ruled that the purpose of this statute 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." *Term Limits Pledge,* 718 So. 2d at 803; *Hill v. Milander,* 72 So. 2d 796, 798 (Fla. 1954) ("All that the Constitution requires or that the law compels or ought to compel is that the voter have notice of that which he must decide . . . . What the law requires is that the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot.").

The Court has applied the ballot summary requirement to mean that the language disclosing the chief purpose must be clear, unambiguous, and not misleading. *Land Use Plans,* 902 So. 2d at 770; *Public Funding of Political Candidates' Campaigns,* 693 So. 2d at 976; *Askew v. Firestone,* 421 So. 2d at 154-55. While a ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, they need not explain every detail, ramification, or effect of the proposed amendment. *Grose v. Firestone,* 422 So. 2d 303, 305 (Fla. 1982). The Court consistently approves amendments that omit some details from their summaries, because it is neither necessary nor, in most cases, possible, to include every detail within a 75-word summary. *See Advisory Op. to Att'y Gen. re Funding of Embryonic Stem Cell Research,* 959 So. 2d 195, 201 (Fla. 2007).

The ballot summary of the Smarter Growth amendment clearly and unambiguously discloses the chief purpose and legal effect of the Smarter Growth amendment, which is to create a process allowing voters to petition for a referendum on changes to local growth management plans. The summary

accurately reflects the text of the amendment, covering all of the main provisions of the amendment. The summary fairly and accurately discloses the requirements that citizens must initiate the process by petitioning for a referendum, and that at least 10% of the voters in the city or county must sign the petition before a referendum must be conducted. The summary also discloses that the text of the amendment defines terms and establishes petition requirements. It thus gives the voter the key operative provisions of the amendment so that the voter can make an informed decision with an accurate understanding of the issue to be determined.

The summary also advises the voter that additional details are provided in the text of the amendment itself, so the voter knows to look further in order to obtain additional details if desired. *See Carroll v. Firestone*, 497 So. 2d 1204, 1207 (Fla. 1986) (Boyd, J., concurring) (immaterial to validity of summary whether voters choose to educate themselves or not, as long as the chief purpose of the measure is disclosed so that they have the opportunity to inform themselves). The ballot summary of the Smarter Growth amendment more than satisfies the requirement that it fairly inform the voter of the chief purpose of the measure. The Court should approve it so that the voters may express their views on the amendment at the polls.

In this respect, again, the ballot summary of the Smarter Growth amendment parallels the contents of the summary that the Court ultimately approved for the

Land Use Plans amendment. The summary of the *Land Use Plans* amendment discloses first that land use plan changes must be subjected to a vote of the local government's electors in a referendum; then provides the details that the local planning agency must first prepare the proposed change and the governing body must consider it and give notice; and finally advises the voter that the amendment itself provides definitions. 938 So. 2d at 503. The Smarter Growth amendment's summary follows this same pattern, disclosing the chief purpose and key operative provisions of the amendment, and then also disclosing that additional details are provided in the amendment itself. The Smarter Growth summary is legally sufficient.

B. The Title And Summary Are Not Misleading To The Public.

The title and ballot summary of the Smarter Growth amendment are not misleading. They fully and fairly disclose the chief purpose of the measure. The summary discloses the key operational details of the proposal, and discloses that further details are available in the amendment itself. Both the title and summary use language that is readily understandable, and avoid impermissible rhetoric. Thus, the title and summary are accurate and not misleading, and should be approved.

The opponent nevertheless argues in scattershot fashion that the title and ballot summary of the Smarter Growth amendment fail the accuracy requirement.

[HD Br. 18] In essence, the opponent challenges every difference in wording between the title and summary on the one hand, and the amendment on the other hand; as well as some details within the amendment itself. Upon objective scrutiny, no substantive differences exist that would render the title and summary inaccurate or misleading.

The opponent argues that the title is inaccurate by using the phrase "giving citizens the right to decide," because that phrase suggests an absolute right to decide, whereas under the text of the amendment, the right to decide is dependent upon meeting certain criteria. [HD Br. 18, 20-21] The opponent also argues that the summary is guilty of a "gross oversimplification" by using the phrase "call for voter approval." [HD Br. 24-25] These arguments are without merit for at least two reasons. First, the title and summary are always read together to determine whether they comply with the governing legal requirements, and thus it is impermissible to isolate one phrase from the title and claim that it is fatal to the entire amendment. *Advisory Opinion to the Attorney General re: Limited Casinos*, 644 So. 2d 71, 75 (Fla. 1994) ("This Court has always interpreted section 101.161(1) to mean that the ballot title and summary must be read together in determining if the ballot information properly informs the voter.").

Second, there is no inconsistency or misleading suggestion in the title and summary. The "right to decide" is no less a right to decide because it is subject to

implementing details. The principal structural details of the "right to decide" process are disclosed in the summary, which also discloses that further details are provided in the amendment itself. To "call for voter approval" is an accurate summary of the petition process. The entire process *must* be simplified to be addressed in the summary, and it is no flaw to do so. The title and summary cannot, and are not required to, disclose every single detail related to the amendment.

The opponent also argues that the title is misleading because it says "citizens" have the right to decide, whereas the amendment specifies that only registered voters can petition for a referendum. [HD Br. 18-19] Even if it were appropriate to evaluate the title standing alone, which it is not, the title would pass muster. The title uses the correct common terminology for the petition contemplated in the amendment, which is a "citizen" petition. The phrases "citizen petition" or "citizen initiative" are commonly used and understood to refer to a proposal brought forward by citizens, just as those phrases are used with respect to the initiative process authorized by Article XI, section 3, of the Florida Constitution. This Court always refers to such petitions as "citizen petitions" or "citizen initiatives," notwithstanding that one must also be a registered voter in Florida to sign a petition supporting a proposed amendment and to vote on a proposed amendment. *See, e.g., Land Use Plans,* 938 So. 2d at 501 (explaining

that the sponsor had invoked the process "to propose a constitutional amendment through *citizen initiative")* (emphasis added).

Rather than reviewing the title alone, however, the law requires that the title and summary be read together. In context, there is nothing inaccurate or misleading about the title's use of the word "citizen." The summary provides a more detailed disclosure that "voters" must petition and "voters" must approve a plan if the 10% threshold is achieved. Read together, the title and summary are accurate and not misleading.

Further, this argument about the words "citizen" and "voter" is unfounded because it defies common sense and general knowledge. The title and summary could not be misleading in this respect to anyone who understands that one must be a registered voter in order to vote in an election in Florida, and obviously the persons considering the amendment will be registered voters participating in an election. *See Advisory Opinion to the Atty. Gen.-Tax Limitation,* 673 So. 2d 864, 868 (Fla.1996) ("The voter must be presumed to have a certain amount of common sense and knowledge.").

Next, the opponent argues that the title and summary are fatally flawed because they refer to "changes" in growth management plans, while the text of the amendment states that the petition process may be directed to "any growth management plan or amendment to such a plan." [HD Br. 21] This argument is

unavailing, because it is not necessary for the title and summary to parrot exactly the language of the text so long as the meaning and effect are not materially misleading. The test is whether the language is materially misleading to the public, selection." *Advisory Op. to the Att'y Gen. English-The Official Language of Florida,* 520 So. 2d 11, 13 (Ha. 1988) (differences in wording of implement/enforce and section/article did not rise to level of being so misleading as to require striking the amendment); *Advisory Op. to Att'y Gen. ex rel. Local Trustees,* 819 So. 2d 725, 731-32 (Fla. 2002) (approving initiative summary that used inconsistent phrases "local," "accountable operation," and "procedures for selection," which were different from that of the text, because it "could not reasonably mislead the voters").

In this case, the public will not be materially misled by the summary's use of the single word "changes" to encompass both the initial adoption of a new plan by a local governmental entity, and amendments to an existing plan. As a threshold matter, all land in Florida is already subject to land-use regulation at the state, regional, and county levels, and every existing local government already has a land-use plan and regulations (or, if a new municipality, is subject to a requirement of adopting one). *See, e.g.,* § 163.3167(4), Fla. Stat. (2007) (giving new municipalities one year after incorporation to adopt a comprehensive plan, and in the interim or in absence of adoption of such a plan, the county plan remains in

effect: "A county comprehensive plan shall be deemed controlling until the municipality adopts a comprehensive plan in accord with the provisions of this act."). Thus, referenda on initial adoption of plans will be very rare, occurring only after the creation of a brand-new local governmental entity. Even in that instance, the land at issue will have been subject to state and county land-use regulations. § 163.3167(4), Fla. Stat. (2007). Thus, in practice, all referenda under the Smarter Growth amendment will literally address "changes" to existing plans.

In any event, "changes" is a fair and not misleading paraphrase of the initiative's provision allowing referenda on both adoptions and amendments of land use plans. The word "change" has no special definition in the amendment, and thus must be construed to have its ordinary meaning. Its ordinary meaning as a verb is "to make different," and as a noun it means "the act, process, or result of changing; alteration; transformation; substitution." *Merriam-Webster Online Dictionary,* www.m-w.com. It is a matter of common knowledge that land use is already regulated. *See Tax Limitation,* 673 So. 2d at 868 (common sense and knowledge must be taken into account in evaluating a proposed initiative). Consistent with the ordinary meaning of "change," the adoption of a new plan or component of a plan is a change from the existing status quo, and so is the adoption of an amendment to an existing plan. Both adoptions and amendments are "changes" affecting a local government's growth management plan status. A

vote on a growth management "plan or amendment" is not substantively different from a vote on a "change" to a growth management plan. In any of these situations, the point is that a change is occurring, and the amendment creates a process for petitioning to be heard on the change. "Change" as used in the title and summary is an accurate, fair, and not misleading summary of the more detailed and expanded language used in the amendment itself.

Although the opponent also challenges the summary for not disclosing that the phrase "growth management plan" is defined in the text of the amendment [HD Br. 21-221, this challenge too must fail. The summary discloses that it "defines terms and establishes petition requirements." There is no requirement that a summary include an exhaustive list of all definitions and other details set forth in the amendment; it is called a "summary" for a reason. The disclosure that the terminology is explained in the amendment is completely sufficient.

The opponent again jumps ahead to a merits argument, asserting that the definition of "growth management plan" set forth in the amendment is too vague or too broad, particularly in its use of a catch-all phrase, "or similar document." Again, however, merits arguments are not justiciable in this proceeding. Even if the issue were before the Court, it would be inappropriate to interpret the catch-all phrase "or similar document" out of its context within the definition of "growth management plan." A common rule of construction, *ejusdem generis,* requires that

such phrases at the end of a series of similar items must be construed in relation to the other items in the list. *Fayad v. Clarendon Nat. Ins. Co.*, 899 So. 2d 1082, 1088-89 (Fla. 2005) ("Distilled to its essence, this rule provides that where general words follow an enumeration of specific words, the general words are construed as applying to the same kind or class as those that are specifically mentioned."). The opponent's argument criticizing the phrase "or similar document" runs afoul of this principle of construction and fabricates an interpretive issue that does not exist.

In a series of catch-all arguments, the opponent asserts that insufficient details were included in the summary, and repeats the merits-based arguments discussed under the single-subject headings. [HD Br. 25-29] There is no need to repeat every counter-argument; suffice it to say that the summary is only required to set forth the chief purpose of the amendment, and this summary does so. It goes further by disclosing that additional terms and petition requirements are contained in the amendment itself. The summary complies with the governing legal requirements.

None of these arguments presents any obstacle to approval of the Smarter Growth amendment. The title and summary, read together, are far from "clearly and conclusively" defective, and in fact are in full compliance with the governing standards. The Court should approve the amendment.

C. The Title And Summary Comply With The Technical Requirements Of The Statute.

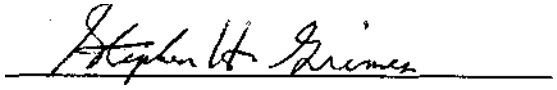
The title of the Smarter Growth amendment is "Florida Growth Management Initiative Giving Citizens the Right to Decide Local Growth Management Plan Changes." This title is exactly fifteen words, not exceeding the amount allowed by the statute; and it is the common reference for the proposed amendment. It thus satisfies the governing legal requirements. § 101.161(1), Fla. Stat. (2007). The ballot summary, which is 52 words long, also satisfies the word-length limitation of section 101.161(1). Because the title and summary satisfy all legal requirements, the Court should approve them.

CONCLUSION

The Smarter Growth amendment satisfies the governing legal requirements for the title, ballot summary, and text of a citizens' initiative. The Court should approve it for placement on the ballot.

Respectfully submitted this 11th day of June, 2008.

HOLLAND & KNIGHT LLP



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing with its appendix has been furnished by United States mail to the Honorable Bill McCollum, Attorney General, The Capitol, PL-01, Tallahassee, FL 32399-1050; and to counsel for the opponent, Hometown Democracy, Ross Stafford Burnaman, 1018 Holland Dr., Tallahassee, FL 32301, this llth day of June, 2008.

Attorney

CERTIFICATE OF TYPEFACE COMPLIANCE

Pursuant to Florida Rule of Appellate Procedure 9.210(a)(2), I HEREBY CERTIFY that this brief was prepared using Times New Roman 14 point type, a font that is proportionately spaced.

Attorney