

IN THE SUPREME COURT  
STATE OF FLORIDA

Case No. SC04-1134

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IN RE: ADVISORY OPINION  
TO THE ATTORNEY GENERAL  
RE: REFERENDA REQUIRED FOR  
ADOPTION AND AMENDMENT OF  
LOCAL GOVERNMENT COMPREHENSIVE  
LAND USE PLANS

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**ANSWER BRIEF  
OF THE SPONSOR  
FLORIDA HOMETOWN DEMOCRACY, INC.**

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**OPPONENTS-BRIEFS**

Opponents, Florida League of Cities and Florida Association of Counties, Inc. are referred to as AFLC/FAC.@ Opponent, Foundation for Preserving Florida's Future, Inc. is referred to as AFPFF.@

## SUMMARY OF ARGUMENT

The Court should not consider the merits of the Initiative.

The Initiative fully complies with the single subject requirement of Article XI, Section 3 of the Florida Constitution. The Initiative affects only one local government function **B** adoption of comprehensive plans and plan amendments. The Initiative does not substantially affect any Constitutional provision other than the one that is identified **B** Article II, Section 7.

The ballot title and summary for the Initiative meet the requirements of Section 101.161(1), Florida Statutes (2003). The ballot summary fairly informs and is not misleading.

## ARGUMENT

**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 (2003). 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, 890-91 (Fla. 2000).

### **I. THE MERITS OF THE INITIATIVE ARE NOT AT ISSUE.**

The Court should reject Opponents' invitations to review the merits of the Initiative. For instance, FLC/FAC's Illustration of the Miami-Dade County Comprehensive Plan is not relevant to the issues before the Court. [FLC/FAC Brief, pages 8-11 & Appendix 2-3]. Similarly, the number of comprehensive land use plan amendments allegedly adopted in recent years is of no legal import. [FLC/FAC Brief, page 4].<sup>1</sup>

The Court does not rule on the wisdom or the merits of an initiative. 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 891. As stated in this Court's ballot approval of the citizen initiative to create the Government in the Sunshine amendment to Article II, Section 8 of the Florida

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<sup>1</sup> FLC/FAC's request for judicial notice of Mr. Eubank's memorandum and testimony should be declined as legally insufficient. See, Sections 90.202(5) and 90.203, Fla. Stat. (2003).

Constitution:

Neither the wisdom of the provision nor the quality of its draftsmanship (sic) is a matter for our review.

Weber v. Smathers, 338 So.2d 819, 822 (Fla. 1976), (citing Gray v. Childs, 115 Fla. 816, 156 So. 274 (1934)).

The Court's review of the Initiative is guided by deference to the democratic process. As such amendments are reviewed under a forgiving standard and will be submitted to the voters if at all possible. @ Advisory Op. to the Att'y Gen. re: Right to Treatment & Rehab. for Non-Violent Drug Offenses, 818 So.2d 491, 494 (Fla. 2002). The Court uses Aextreme care, caution and restraint before it removes a constitutional amendment from the vote of the people. @ Askew v. Firestone, 421 So.2d 151, 156 (Fla. 1982). Indeed, there is a Astrong public policy against courts interfering in the democratic processes of elections. @ Florida League of Cities v. Smith, 607 So.2d 397, 400 (Fla. 1992)(citing Askew, 421 So.2d at 154). The Court must approve the Initiative unless it is Aclearly and conclusively defective. @ Advisory Op. to the Att'y Gen. Re: Florida's Amend. to Reduce Class Size, 816 So.2d 580, 582 (Fla. 2002). This is true even if an initiative may have Abroad ramifications. @ See, Advisory Op. to Att'y Gen. re: Fla. Transp. Initiative, 769 So.2d at 376, 370 (Fla. 2000).

## **II. THE INITIATIVE SATISFIES THE SINGLE-SUBJECT REQUIREMENT.**

The Initiative contains Aone subject and matter directly connected therewith. @ Art. XI, s. 3, Fla. Const.

The Initiative proposes a single dominant plan to enhance Florida's environmental policy by increasing public participation in local government comprehensive land use planning. To that end, the Initiative will require a referendum vote in order to adopt or amend a local government comprehensive land use plan, once such plan or plan amendment is prepared by the local planning agency and considered by the local governing body.

### **A. THE INITIATIVE DOES NOT CONSTITUTE LOGROLLING.**

Contrary to Opponents' claims, the Initiative does not constitute logrolling. [FLC/FAC

Brief, page 29; FFFF Brief, pages 19-21]. Notwithstanding scads of statutory citations, Opponents= Briefs omit citation to Section 163.3167 (12), Florida Statutes (2003). It provides

(emphasis supplied):

An initiative or **referendum process** in regard to any development order or in regard to **any local comprehensive plan amendment or map amendment** that affects five or fewer parcels of land is prohibited.

This language is provided in the scope of act@ portion of the Local Government Comprehensive Planning and Land Development Regulation Act (the Act@).

Opponent FFFF=s logrolling arguments ignore statutory authorization for the use of referenda in local adoption of comprehensive land use plans, and plan amendments that affect six or more parcels of land. Although Section 163.3167 (12), Florida Statutes (2003), was enacted almost a decade ago, there is no indication that statutory authorization of land use referenda has limited the State=s role in the integrated review process@ embodied in the Act. See, Ch. 95-322, s. 1, Laws of Fla. (1995); Martin County v. Yusem, 690 So.2d 1288, 1294 (Fla. 1997).

The Court evaluates whether or not a proposed amendment constitutes a logrolling@ under a oneness of purpose@ standard. Fine v. Firestone, 448 So.2d 984, 990 (Fla. 1984). A proposed amendment meets this standard when it: 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.

Id. (quoting City of Coral Gables v. Gray, 19 So.2d 318, 320 (Fla. 1944)).

To ascertain if a oneness of purpose@ exists, the court must consider whether the proposal affects separate functions of government, and how the proposal affects other provisions of the constitution. 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 892.

The Initiative evidences a unity of object and plan to amend that portion of the Florida Constitution that provides the predicate for the Act to recognize the public policy of increasing

public participation in local government comprehensive land use planning. Such increased public participation will include a referendum vote of local government electors to approve any comprehensive plan or plan amendment.

As explained below, the local government adoption of a plan or plan amendment is a single governmental function and the Initiative will not substantially affect any Constitutional provision other than the one identified in Article II, Section 7.

## **B. THE INITIATIVE ALTERS ONLY ONE LOCAL FUNCTION.**

The second aspect of the single-subject requirement bars an amendment from: substantially altering or performing the functions of multiple aspects of government and thereby causing multiple precipitous and cataclysmic changes in state government.

Advisory Op. to the Attorney Gen. re: Right to Treatment & Rehab. for Non-Violent Drug Offenses, 818 So.2d at 495.

The Initiative includes a definition of local government comprehensive land use plan that paraphrases Section 163.3167(1)(b), Florida Statutes (2003), which provides: The several incorporated municipalities and counties shall have the power and responsibility: ... (b) To adopt and amend comprehensive plans, or elements or portions thereof, to guide their future development and growth.

Opponents' criticisms of the definition of local government comprehensive land use plan lack merit, as discussed more fully in Point II A of this Brief.

The Initiative alters only one aspect of a long-established integrated review process established by the Act. At the adoption stage, before a local government can adopt a plan or plan amendment, such plan or plan amendment will be subject to a local referendum. See, Martin County v. Yusem, 690 So.2d at 1294.

Local government comprehensive plan adoption and amendment decisions are legislative decisions. Coastal Development of North Florida, Inc. v. City of Jacksonville Beach, 788

So.2d 204, 205 (Fla. 2001); Martin County v. Yusem, 690 So.2d at 1293 (We expressly conclude that amendments to comprehensive land use plans are legislative decisions).

Opponents cite to Advisory Op. to Atty Gen. re Property Rights Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects, 699 So.2d 1304, 1308 (Fla. 1997) as a basis for a single-subject rule violation. [FPCC Brief, pages 18-19; FLC/FAC Brief, page 25]. In that opinion, the Court recognized that the Legislature is required by article II, section 7 ... to regulate the use of land to protect Florida's natural resources and scenic beauty. Advisory Op. to Atty Gen. re Property Rights Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects, 699 So.2d at 1308. The opinion specifically enumerates various functions of government applicable to land use including: comprehensive planning, zoning, and controlling storm-water drainage and flood waters. Id. (emphasis supplied). This Court has already determined that comprehensive planning is a singular governmental function and is distinct from other land use functions such as zoning. See also, Machado v. Musgrove, 519 So.2d 629, 631-32 (Fla. 3d DCA 1987), rev. denied, 529 So.2d 693 (Fla. 1988).

The basic distinction between planning and zoning can be described as: A comprehensive plan is a plan that meets certain statutory requirements. It is a statutorily mandated legislative plan to control and direct the use and development of property within a county or municipality. The plan is like a constitution for all future development within the governmental boundary. A comprehensive land use plan is not a zoning ordinance; rather, it serves as a conceptual framework within which zoning is to be accomplished consistent with the plan.

7 Fla. Jur. 2d, Building, Zoning and Land Controls, s. 111 (citations omitted)(emphasis supplied); See also, Martin County v. Yusem, 690 So.2d at 1293 (citing Machado v. Musgrove).

If comprehensive plans are akin to constitutions, and constitutional amendments require voter approval, then referenda for adoption of comprehensive plans and plan amendments would constitute one function. Existing (limited) statutory authorization for such referenda further

supports that functional determination. Section 163.3167(12), Fla. Stat. (2003).

While the Initiative may affect multiple branches of government, it does not substantially alter or perform the functions of any of those branches. This Court has recognized that most amendments will affect multiple branches of government, but this fact alone is insufficient to invalidate an amendment on single-subject grounds. Advisory Op. to the Att’y Gen. re: Right to Treatment & Rehab. for Non-Violent Drug Offenses, 818 So.2d at 496. Rather, when a proposal substantially alters or performs the functions of multiple branches of government that it violates the single-subject test. Id.

The Initiative does not substantially alter or perform the State and regional review of proposed or adopted local government comprehensive land use plans and plan amendments: it only addresses the local legislative process of adoption of such plans and plan amendments.

The Initiative does not address or suggest any change to any existing (or future) Executive Branch processes (including the Governor, the Department of Community Affairs and the Administration Commission) respecting comprehensive land use planning.

The Initiative will have an incidental effect on the Legislature, only in that the limited, statutory authority for local land use planning referenda will be expanded by the local referendum-approval requirement for all comprehensive land use plans and plan amendments. See, Section 163.3167(12), Fla. Stat. (2003). This is a difference in degree, rather than in kind. It is hardly a cataclysmic change, as asserted by Opponents. [FLC/FAC Brief, pages 24-25]. The Initiative would dismantle none of the integrated planning processes in Florida. [FPFFF Brief, page 5].

Amendments to a comprehensive plan, like the adoption of the plan itself, result in the formulation of policy. Martin County v. Yusem, 690 So.2d at 1295.

The Initiative credits consideration of the governing body as provided by general law and notice and referendum will be as provided by general law.

Opponents do not argue that the Initiative affects the judicial branch. [FLC/FAC Brief, page 25; FPFF Brief, pages 8-19].

**C. THE INITIATIVE DOES NOT SUBSTANTIALLY AFFECT ANY OTHER PROVISION IN THE FLORIDA CONSTITUTION.**

The Initiative does not violate the single-subject rule by substantially affecting any section of the Florida Constitution other than that section which is identified. See, Advisory Op. to the Att’y Gen. re Amendment to Bar Gov’t. from Treating People Different Based on Race in Public Ed., 778 So.2d at 893.

Opponent FPDF contends that the Initiative would substantially affect Article II, Section 7, Article III (Legislature), Article IV (Executive), and Article VII (Local Government). [FPDF Brief, pages 21-23].

The Sponsor acknowledges that the Initiative would amend Article II, Section 7.

Article III, Section 19 (State Budgeting, Planning and Appropriations Processes) is said to be substantially affected by the Initiative. [FPDF Brief, pages 12-14, 22].

Subsection 19(h)(State Planning Document and Department and Agency Planning Processes) refers to processes for review and revision to the state planning document and provides for all departments and agencies of state government to develop planning documents consistent with the state planning document. (emphasis supplied). There is no reference to local government or to local government comprehensive plans. As stated by Opponent FPDF, the State Comprehensive Plan is the state planning document. See, Chapters 186 and 187, Fla. Stat. (2003)[FPDF Brief, page 12]. Those statutes establish a multitude of State and regional planning requirements, and envision coordination of those efforts with local government planning efforts. To that extent the Initiative may affect Article III, Section 19(h) tangentially but not in a substantial way. The Initiative does not substantially affect the determination as to whether a local government adoption is in compliance with the State Comprehensive Plan or regional plans. See, Sections 163.3184(1)(b) and 163.3184(8), Fla. Stat. (2003).

Article IV, Section 1 (Governor) provides in part: The governor shall be the chief administrative officer of the state responsible for the planning and budgeting for the state. (emphasis supplied). This State-level administrative function differs from the legislative

function performed by local governments respecting adoption and amendment of comprehensive land use plans. See, Coastal Development of North Florida, Inc. v. City of Jacksonville Beach, 788 So.2d at 205; Martin County v. Yusem, 690 So.2d at 1293-94.

FPPF contends that the Initiative would have a substantial effect on Article VII in that municipalities and counties are empowered by Article VII ... to regulate land use within their jurisdictions to the extent not inconsistent with general law.@[FPPF Brief, page 8].

To the same end, Opponents FLC/FAC contend that the Initiative affects a substantial alteration of the functions of local government which are presently provided in the Florida Constitution and in Florida statutes.@[FLC/FAC Brief, page 27].

Article VII is devoid of any reference to comprehensive land use planning. Nothing in the Initiative affects the exercise of a local government's Article VII powers in that regard.

Opponents' arguments are premised on a faulty dichotomy between local governing bodies and the people whom they represent. Opponents FLC/FAC posit: The Proposed Amendment would alter the performance of these responsibilities by overlaying them with voter negation at the ballot box, effectively taking the legislative function of land use planning out of the hands of local governments and ceding performance of those functions to citizens.

[FLC/FAC Brief, page 26].

Opponents' fundamental (mis)understanding of local government is at odds with this Court's recognition that plan adoption is a local legislative function, and that the referendum is at the essence of the power reserved in Article I, Section 1 of the Florida Constitution. Florida Land Co. v. City of Winter Springs, 427 So.2d 170 (Fla. 1983); See also, Coastal Development of North Florida, Inc. v. City of Jacksonville Beach, 788 So.2d at 205; Martin County v. Yusem, 690 So.2d at 1293.

The Initiative does not substantially affect any of the Constitutional provisions cited by Opponents.

## **II. THE BALLOT TITLE AND SUMMARY FAIRLY DISCLOSE THE CHIEF PURPOSE OF THE INITIATIVE.**

Notwithstanding the captions to pertinent sections in their Briefs, Opponents do not argue that the ballot title violates Section 101.161(1), Florida Statutes (2003). [FPFF Brief, page 24; FLC/FAC Brief, page 15].

Opponents FLC/FAC contend that the ballot summary is clearly and conclusively defective.<sup>2</sup> [FLC/FAC Brief, pages 15-24]. Opponent FPFF contends that the ballot summary contravenes Section 101.161(1), Florida Statutes (2003). [FPFF Brief, pages 24-33].

Opponents' arguments should be rejected, as explained below.

**THE BALLOT SUMMARY IS NOT MISLEADING.**

The ballot summary is an accurate and informative synopsis of the Initiative, and is not misleading.

Opponents acknowledge that the Initiative includes a definition of local government comprehensive land use plan.<sup>2</sup> [FPFF Brief, pages 1 & 26; FLC/FAC Brief, page 3]. However, Opponents do not credit that definition and complain that the ballot summary is misleading.<sup>2</sup> Opponents' arguments are based upon fundamental misunderstandings of the Initiative, and to some extent, of Florida law.

FLC/FAC assert the term "comprehensive land use plan" is not defined in the proposed Amendment or explained in the ballot summary.<sup>2</sup> [FLC/FAC Brief, page 5]. While that is true, the Initiative does define local government comprehensive land use plan.<sup>2</sup>

Incredibly, FLC/FAC contend that the summary fails to inform voters that they will be required to vote on land use decisions made by state agencies.<sup>2</sup> [FLC/FAC Brief, page 15]. No reasonable reading of the Initiative even remotely suggests or implies such a requirement. In fact, voters will not be required to vote on State agency land use decisions. On its face, the Initiative applies only to local government action. The Administration Commission, comprised of the

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<sup>2</sup> Ironically, FLC/FAC admits: "The chief purpose of the Proposed Amendment is stated in both its title and summary; namely, to require a citizen vote on local government comprehensive land use plans and amendments." [FLC/FAC Brief, page 15].

Governor and Cabinet, is not a local government.

Additionally, FLC/FAC assert:

In fact, no amendment to a comprehensive land use plan can even become effective until the Department, or the Governor and Cabinet sitting as the Administration Commission, has issued a final order of compliance with state planning laws. s. 163.3189(2)(a).

[FLC/FAC Brief, page 22]. To the contrary, outside of an Area of Critical State Concern, a local government may elect to make the amendment effective by resolution at a public meeting after public notice, even if the plan amendment is found by the Administration Commission to be not in compliance. See, Section 163.3189(2)(b), Florida Statutes (2003) (After the final order of the [Administration Commission] the local government, except in designated areas of critical state concern, may elect to make the amendment effective by resolution at a public meeting; see also, Sections 380.055, 380.0551, 380.0552, 380.0555, Florida Statutes (2003).

Opponent FPDF attacks the Initiative's definition of local government comprehensive land use plan. FPDF asserts: A plan to guide and control future land development is broad enough to cover virtually any land use ordinance or administrative regulation. The language would include every zoning ordinance, setback requirement, environmental use restriction, tree ordinance, riparian regulation, etc.

[FPDF Brief, page 26, (footnote omitted)].

The definition and use of the phrase local government comprehensive land use plan in the Initiative are simple and straightforward. They describe the comprehensive plans that Florida's counties and cities have adopted and amended for decades and that are well known to Floridians.

The Sponsor acknowledges that a variety of phrases have been used by the Legislature and Florida's appellate courts to describe such plans. However, the quality of the Sponsor's penmanship (draftsmanship) in selecting among the various alternatives should not factor into this Court's decision. Weber v. Smathers, 338 So.2d 819, 822 (Fla. 1976), (citing Gray v. Childs,

115 Fla. 816, 156 So. 274 (1934).

As noted in the Sponsor's Initial Brief, the Florida Legislature has used a variety of phrases to describe local government comprehensive plans: A land use plan@ in Section 403.508(2), Florida Statutes (2003); A comprehensive land use plan@ in Sections 163.2517(4) and 380.0555 (8)(a) 1, Florida Statutes (2003); A county land use plan@ in Section 171.062(2), Florida Statutes (2003); and A local comprehensive plan@ in Section 403.973(12)(a) and (14)(a), Florida Statutes (2003).

Similarly, Florida's appellate courts have described local government comprehensive plans and plan amendments using different phrases: A small-scale development amendments@ and A comprehensive plan@ in Coastal Development of North Florida, Inc. v. City of Jacksonville Beach, 788 So.2d at 205; A amendments to a comprehensive land use plan@, A comprehensive land use plan,@ comprehensive plan amendment,@ A comprehensive plan,@ and A plan amendment@ in Martin County v. Yusem, 690 So.2d at 1289, 1291, 1292; A comprehensive plan@ in Board of County Comm-rs of Brevard County v. Snyder, 627 So.2d 469, 471 (Fla. 1993); A comprehensive plan@ and A local comprehensive plan@ in Edgewater Beach Owners Assn. Inc. v. Walton County, 833 So.2d 215, 219, 220 (Fla. 1<sup>st</sup> DCA 2002); A Lee County Comprehensive Land Use Plan@ and A amendments to the comprehensive plan@ in Lee County v. Zemel, 675 So.2d 1378, 1379, 1380 (Fla. 2<sup>nd</sup> DCA 1996); A Master Plan@ and A comprehensive plan or amendment@ in Village of Key Biscayne v. Dept. of Community Affairs, 696 So.2d 495 (Fla. 3d DCA 1997); A County's Comprehensive Development Master Plan@ and A master plan@ in Village of Key Biscayne v. Dade County, 627 So.2d 1180, 1181-82 (Fla. 3d DCA 1993); A local comprehensive land use plan,@ A comprehensive plan,@ A land use plan,@ in Machado v. Musgrove, 519 So.2d 629, 631-633 (Fla. 3d DCA 1987)(en banc), rev. denied, 529 So.2d 693 (Fla. 1988); A comprehensive land use plan@, A comprehensive plan@ and A local comprehensive plan@ in Pinecrest Lakes v. Shidel, 795 So.2d 191, 192, 198, 199 (Fla. 4<sup>th</sup> DCA 2001), rehearing den., rev. denied, 821 So.2d 300 (Fla. 4<sup>th</sup> DCA 2001); A County's comprehensive plan@ and A comprehensive plan@ in Martin County v. Dept. of Community

Affairs, 771 So.2d 1268, 1269 (Fla. 4<sup>th</sup> DCA 2000); Acomprehensive growth management plan<sup>@</sup> and Acomprehensive land use plans<sup>@</sup> in Martin County v. Section 28 Partnership, 772 So.2d 616, 618, 619 (Fla. 4<sup>th</sup> DCA 2000); and Alocal comprehensive plans,<sup>@</sup> and Acomprehensive plan<sup>@</sup> in Lee v. St. Johns County Bd. of Com~~r~~s., 776 So.2d 1110, 1112, 1114 (Fla. 5<sup>th</sup> DCA 2001).

Given these various Legislative and judicial appellations, this Court should credit the Initiative as meeting Constitutional and statutory requirements. The Initiative includes a definition of Alocal government comprehensive land use plan<sup>@</sup> that is sufficiently descriptive of the comprehensive plans and plan amendments required by the 1985 Local Government Comprehensive Planning and Land Development Regulation Act, as amended. It is not a coincidence that the Initiative uses the same descriptive phrase used by the Third District Court of Appeal when it likened a Alocal comprehensive land use plan<sup>@</sup> to a Aconstitution for all future development within the governmental boundary.<sup>@</sup> Machado v. Musgrove, 519 So.2d at 631-32 (citation omitted). Just as a voter approval is required to amend Florida's Constitution, voter approval will be required to amend local government comprehensive land use plans if the Initiative is approved as an amendment to Florida's Constitution.

Although FPF's Brief contains a multitude of citations to Florida's state and local government planning statutes, no land use planning cases are cited that interpret those statutes. [FPF Brief, pages iv-v].

FLC/FAC's Asample judicial decisions which have addressed the comprehensive land use plan amendment process<sup>@</sup> do not reference Coastal Development of North Florida, Inc. v. City of Jacksonville Beach, 788 So.2d 204, (Fla. 2001) and Martin County v. Yusem, 690 So.2d 1288 (Fla. 1997). [FLC/FAC Brief, pages 12-13]. Notably, Coastal Development contains this Court's most recent discussion of the comprehensive planning process, including the interplay between local government adoption of plan amendments, and State and regional agency review of such local, legislative action.

Opponents' harsh criticisms of the ballot summary are really directed at the merits of the

primary purpose of the Initiative and the basic reference to Alocal government comprehensive land use plan.@ [See Point I of this Brief].

Opponents also criticize the merits of the Initiative by attacking the summary's first sentence -- Apublic participation in local government land use planning benefits Florida's natural resources, scenic beauty, and citizens.@ [FPFF Brief, pages 31-33; FLC/FAC Brief, pages 16-18]. This is called Apolitical rhetoric@ and Aemotional rhetoric.@ [FPFF Brief, pages 31,33; FLC/FAP Brief, pages 16, 18].<sup>3</sup>

However, as noted in the Sponsor's Initial Brief, citizen initiatives properly contain such expressions of public policy. [Sponsor's Brief, pages 17-18, citations omitted]. Accordingly, it is appropriate to include a summary of such text in the ballot summary.

In 2002, this Court approved the initiative entitled AAnimal Cruelty Amendment: Limiting Cruel and Inhumane Confinement of Pigs During Pregnancy.@ See, Advisory Op. to Att'y Gen. re Limiting Cruel and Inhumane Confinement of Pigs During Pregnancy, 815 So.2d 597 (Fla. 2002). The ballot summary was as follows:

**Inhumane treatment of animals is a concern of Florida citizens** ; to prevent cruelty to animals and as recommended by the Humane Society of the United States, no person shall confine a pig during pregnancy in a cage, crate or other enclosure, or tether a pregnant pig, on a farm so that the pig is prevented from turning around freely, except for veterinary purposes and during the prebirthing period; provides definitions, penalties, and an effective date.

Id. at 597 (emphasis supplied). The text of the initiative provided in relevant part: **AInhumane treatment of animals is a concern of Florida citizens....** the people of the State of Florida hereby limit the cruel and inhumane confinement of pigs during pregnancy as provided herein.@

Id. (emphasis supplied). See also, Advisory Op. to the Att'y Gen. re: English Bthe Official

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<sup>3</sup> The Sponsor's Initial Brief inadvertently included quotation marks around the phrase Amaterially misstates the substance of the amendment@ following the quoted phrase Apolitical rhetoric@ from In re Advisory Op. to the Att'y Gen. B Save Our Everglades, 636 So.2d 1336, 1341-42 (Fla. 1994). [Sponsor's Initial Brief, pages 17-18]. The opinion uses the phrase Amisled on this material point.@

Language of Fla., 520 So.2d 11 (Fla. 1988)(AEnglish is the official language of Florida@).

The reference to Apublic participation@ in the ballot summary and text of the Initiative is easily distinguishable from the phrase Aprovides property tax relief to Florida homeowners@ in the disapproved ballot summary in Advisory Op. to the Att-y Gen. re: Additional Homestead Tax Exemption, 29 Fla. L. Weekly S405 (Fla. July 15, 2004). In that case, the text of the amendment was less than the statutory 75-word limit. The ballot summary included a phrase -- Aprovides property tax relief to Florida homeowners@ -- that was not contained in the text and was found to materially misstate the amendment. Id. Instead of an expression of public policy, the Homestead Tax Exemption summary contained a promise that the amendment could not deliver. Id.

It can hardly be argued that Aa vote of the electors@ is not a form of Apublic participation.@ Consistent with existing law, the text of the Initiative recognizes other types of Apublic participation@ as well B Apublic notice and hearings@ (by the local planning agency) and Aconsideration by the governing body.@ See, Sections 186.002(2)(e), 187.201(26)(a) and (b)6, 163.3167(11), 163.3181, Fla. Stat. (2003). That said, it is illogical to argue that the Initiative implies that no public participation currently exists.

Nothing in the Initiative suggests that citizens will lose their ability to express themselves during consideration of a comprehensive land use plan or plan amendment by their local governing body. Nothing in the Initiative suggests that citizens= rights to participate in compliance determination challenges to local comprehensive plans and plan amendments will be affected. See, Section 163.3184, Fla. Stat.; Martin County v. Dept. of Community Affairs, 771 So.2d at 1268.

The answer to the question -- Awhether the language of the title and summary, as written, misleads the public@ is **NO!** Advisory Op. to Att-y Gen. re Right of Citizens to Choose Health Care Providers, 705 So.2d 563, 566 (Fla. 1998).

**B. THE BALLOT SUMMARY FAIRLY INFORMS AS TO THE CHIEF PURPOSE OF THE INITIATIVE.**

The ballot title and summary fairly inform voters as to the chief purpose of the amendment. Advisory Op. to the Att’y Gen. re: Right to Treatment & Rehab. for Non-Violent Drug Offenses, 818 So.2d at 497.

The first sentence of the ballot summary fairly informs voters of the text of the first sentence of the Initiative.

This Court has stated:

[t]he legislature is required by article II, section 7 of the Florida Constitution to regulate the use of land to protect Florida’s natural resources and scenic beauty.

Advisory Op. to Att’y Gen. re Property Rights Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects, 699 So.2d at 1308.

The second sentence of the summary clearly advises that this increased public participation will be implemented via the requirement of a local referendum prior to local government adoption of a new comprehensive plan, or amendment to a comprehensive plan. The second sentence also explains that the referendum will follow preparation of the comprehensive land use plan or amendment by the local planning agency, consideration by the governing body, and notice. The last sentence advises voters that the Initiative provides definitions.

The ballot summary fairly summarizes the text of the proposed amendment. See, 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). In considering whether a ballot summary is misleading, the Court presumes that voters have a certain amount of common sense and knowledge. See, Advisory Op. to Att’y Gen. re Tax Limitation, 673 So.2d at 868.

For decades, Florida cities and counties have been required to provide public notice, to conduct public hearings before local planning agencies, and to have their local governing bodies adopt comprehensive land use plans and plan amendments. See, Sections 163.3184(15)(b) & (e), 125.66(4)(b)2, 166.041(3)(c)2.b, Fla. Stat. (2003).

The definition of local government comprehensive land use plan set forth in the Initiative is plainly descriptive of the existing comprehensive plans required by the 1985 Local Government Comprehensive Planning and Land Development Regulation Act, as amended. The use of the phrase -- local government comprehensive land use plan -- in the ballot summary is appropriate and informative. Moreover, this Court has long upheld citizen initiatives that include definitions. See, Advisory Op. to Atty Gen. re Limiting Cruel and Inhumane Confinement of Pigs During Pregnancy, 815 So.2d 597 (Fla. 2002); Advisory Op. to Atty Gen. B Limited Marine Net Fishing, 620 So.2d 997 (Fla. 1993).

The ballot title and summary are consistent with the requirements of Section 101.161(1), Florida Statutes (2003), and should be approved by this court.

**CONCLUSION**

Florida Hometown Democracy, Inc., the sponsor, respectfully requests the court to find that the Initiative meets the constitutional and statutory requirements, and approve the Initiative for placement on the ballot.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by

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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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