

Local government comprehensive land use plan, referenda

Number: PETITION

Date: July 14, 2004

The Honorable Barbara J. Pariente
Chief Justice, and Justices of
The Supreme Court of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

Dear Chief Justice Pariente and Justices:

In accordance with the provisions of Article IV, section 10, Florida Constitution, and section 16.061, Florida Statutes, it is the responsibility of the Attorney General to petition this Honorable Court for a written opinion as to the validity of an initiative petition circulated pursuant to Article XI, section 3, Florida Constitution.

On June 25, 2004, this office received from the Secretary of State an initiative petition seeking to amend the Florida Constitution to require referenda for the adoption and repeal of local government comprehensive land use plans. The full text of the proposed amendment states:

"BE IT ENACTED BY THE PEOPLE OF FLORIDA THAT:

Article II, Section 7. Natural resources and scenic beauty of the Florida Constitution is amended to add the following subsection:

Public participation in local government comprehensive land use planning benefits the conservation and protection of Florida's natural resources and scenic beauty, and the long-term quality of life of Floridians. Therefore, before a local government may adopt a new comprehensive land use plan, or amend a comprehensive land use plan, such proposed plan or plan amendment shall be subject to vote of the electors of the local government by referendum, following preparation by the local planning agency, consideration by the governing body as provided by general law, and notice thereof in a local newspaper of general circulation. Notice and referendum will be as provided by general law. This amendment shall become effective immediately upon approval by the electors of Florida.

For purposes of this subsection:

1. 'Local government' means a county or municipality.
2. 'Local government comprehensive land use plan' means a plan to guide and control future land development in an area under the jurisdiction of a local government.
3. 'Local planning agency' means the agency of a local government that is responsible for the preparation of a comprehensive land use plan and plan amendments after public notice and hearings and for making recommendations to the governing body of the local government regarding the adoption or amendment of a comprehensive land use plan.
4. 'Governing body' means the board of county commissioners of a county, the commission or

council of a municipality, or the chief elected governing body of a county or municipality, however designated."

The ballot title for the proposed amendment is "REFERENDA REQUIRED FOR ADOPTION AND AMENDMENT OF LOCAL GOVERNMENT COMPREHENSIVE LAND USE PLANS." The summary for the proposed amendment states:

"Public participation in local government comprehensive land use planning benefits Florida's natural resources, scenic beauty and citizens. Establishes that before a local government may adopt a new comprehensive land use plan, or amend a comprehensive land use plan, the proposed plan or amendment shall be subject to vote of the electors of the local government by referendum, following preparation by the local planning agency, consideration by the governing body and notice. Provides definitions."

Article XI, section 3, Florida Constitution, provides in relevant part:

"The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith."

The single-subject provision "is a rule of restraint designed to insulate Florida's organic law from precipitous and cataclysmic change." *Advisory Opinion to the Attorney General--Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994); *Advisory Opinion to the Attorney General--Tax Limitation*, 644 So. 2d 486, 490 (Fla. 1994).

To comply with the single-subject requirement, an initiative must manifest a "logical and natural oneness of purpose." *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984). This Court stated in *Advisory Opinion to the Attorney General--Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1020 (Fla. 1994), that "[t]o ascertain whether the necessary 'oneness of purpose' exists, we must consider whether the proposal affects separate functions of government and how the proposal affects other provisions of the constitution."

Section 101.161(1), Florida Statutes, provides in relevant part:

"Whenever a constitutional amendment . . . is submitted to the vote of the people, the substance of such amendment . . . shall be printed in clear and unambiguous language on the ballot The wording of 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."

This Court has stated "that the ballot [must] be fair and advise the voter sufficiently to enable him intelligently to cast his ballot." *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982), quoting, *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954). While the ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, they need not explain every detail or ramification of the proposed amendment. *Carroll v. Firestone*, 497 So. 2d 1204, 1206

(Fla. 1986). The ballot, however, must give the voter fair notice of the decision he must make. *Askew v. Firestone, supra* at 155. This Court has stated that the purpose of section 101.161, Florida Statutes, is to ensure that voters are advised of the amendment's true meaning.

Both the ballot summary and the text of the amendment include language that may be considered political rhetoric by stating that public participation in local government comprehensive land use planning benefits Florida's natural resources, scenic beauty and citizens. Thus, the court may wish to consider whether this language constitutes emotional language that may mislead the voter. See *Advisory Opinion to the Attorney General--Save Our Everglades*, 636 So. 2d 1336 (Fla. 1994).

The statutes currently require that a municipality adopt a comprehensive plan within three years of the date of incorporation. If a municipality fails to adopt a plan, that responsibility falls to the local planning agency. Section 163.3167(4), Florida Statutes (2003). Since the amendment refers only to the governing body of a county or municipality, the plan adopted by the local planning agency would not appear to be subject to the requirements of the constitutional amendment. The voters may not realize the implications of this system.

The amendment broadly defines the term "local government comprehensive land use plan" and it may not be clear to the voters that the term does not include such land use issues as zoning. Moreover, voters may not realize that the amendment affects all changes, even small scale changes which are currently exempt under the statutory scheme from the same type of scrutiny given to larger scale changes. See, e.g., section 163.3167(12), and section 163.3187(1)(c), Florida Statute.

Therefore, I respectfully request this Honorable Court's opinion as to whether the constitutional amendment, proposed by initiative petition, complies with Article XI, section 3, Florida Constitution, and whether the amendment's ballot title and summary comply with section 101.161, Florida Statutes.

Sincerely,

Charlie Crist
Attorney General

CC/tgk

cc: Ms. Glenda Hood
Secretary of State

The Honorable Jeb Bush
Governor, State of Florida

The Honorable James E. "Jim" King
President, Florida Senate

The Honorable Johnnie Byrd

Speaker, Florida House of Representatives

Lesley G. Blackner

Chair, Florida Hometown Democracy, Inc.