

IN RE: ADVISORY OPINION
TO THE ATTORNEY GENERAL
RE: REFERENDA REQUIRED FOR CASE NO. SC06-161
ADOPTION AND AMENDMENT OF
LOCAL GOVERNMENT COMPREHENSIVE
LAND USE PLANS

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SPONSOR'S RESPONSE TO ORDER

The Sponsor of the Initiative, Florida Hometown Democracy, Inc., pursuant to the Court's March 10, 2005 Order, hereby advises the Court as follows:

1. The Florida Secretary of State, Division of Elections did not have the required number of verified signatures by February 1, 2006, in order for the proposed amendment to qualify for placement on the 2006 general election ballot based upon the Division of Elections' interpretation of the word "filed" in Article XI, section 5(b) of the Florida Constitution. See, Division of Elections' Opinion DE-06-3 (March 7, 2006).

2. However, the Sponsor has pending litigation seeking to have the February 1st deadline declared unconstitutional. Florida Hometown Democracy, Inc. et al v. Mann, Case No. 2004-CA-2571 (Second Judicial Circuit, in and for Leon County Florida). The litigation was filed on October 26, 2004, prior to the 2004 general election seeking declaratory and injunctive relief as to the amendments proposed by Senate Joint Resolution 2394. The amendments were approved by the majority of voters in the 2004 general election and were codified in the Florida Constitution. On February 24, 2006, the Sponsor filed a

Motion for Summary Judgment on the Second Amended Complaint, and the Circuit Court is scheduled to hear the Motion for Summary Judgment on April 24, 2006, at 11 a.m.

3. The full text of the amendments proposed in Senate Joint Resolution 2394, now codified in the Constitution, provided:

ARTICLE IV
EXECUTIVE

SECTION 10. Attorney General. -
The attorney general shall, as directed by general law, 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 XI. The justices shall, subject to their rules of procedure, permit interested persons to be heard on the questions presented and shall render their written opinion no later than April 1 of the year in which the initiative is to be submitted to the voters pursuant to Section 5 of Article XI expeditiously.

ARTICLE XI
AMENDMENTS

SECTION 5. Amendment or revision election. -
(a) A proposed amendment to or revision of this constitution, or any part of it, shall be submitted to the electors at the next general election held more than ninety days after the joint resolution, ~~initiative petition~~ or report of revision commission, constitutional convention or taxation and budget reform commission proposed it is filed with the custodian of state records, unless, pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the legislature and limited to a single amendment or revision, it is submitted at an earlier special election held more

than ninety days after such filing.

(b) A proposed amendment or revision of this constitution, or any part of it, by initiative shall be submitted to the electors at the general election provided the initiative petition is filed with the custodian of state records no later than February 1 of the year in which the general election is held.

c) ~~(b)~~ The legislature shall provide by general law, prior to the holding of an election pursuant to this section, for the provision of a statement to the public regarding the probable financial impact of any amendment proposed by initiative petition to section 3.

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

(e) ~~(d)~~ If the proposed amendment or revision is approved by a vote of the electors, it shall be effective as an amendment or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.

4. The Sponsor's Second Amended Complaint contains two counts directed to the constitutionality of the 2004 amendments referenced in paragraph three, above. First, the ballot statement is alleged, in essence, to have failed to meet the "truth in packaging" standard discussed in Armstrong v. Harris, 773 So.2d 7, 16 (Fla.

2000), rehearing denied, certiorari denied 121 S.Ct. 1487, 532 U.S. 958, 149 L.Ed.2d 374. Second, the Sponsor alleges that the publication of newspaper notice did not substantially comply with the requirements of Article XI, section 5 of the Florida Constitution, as interpreted in State v. State Bd. of Education, 467 So.2d 294 (Fla. 1985).

5. The Sponsor notes that even if the amendments sponsored in Senate Joint Resolution 2394 are constitutional (which is not conceded), this Court can still exercise discretion to render an advisory opinion to the Attorney General prior to April 1st of the year of the general election. The Court's jurisdiction is provided in Article V, section 3(b)(10) of the Florida Constitution.

6. There is no constitutional or other lawful prohibition from the Court hearing this matter at oral argument as scheduled for April 3, 2006, and from rendering an expeditious opinion. Indeed, such an expeditious disposition would serve to further Article I, sections 1 and 5 of the Florida Constitution, and would also serve to promote governmental efficiency and economy with respect to the verification processes of the Supervisors of Election and Secretary of State. See, Section 100.371, Florida Statutes (2005). These public policy considerations are particularly relevant where, as

here, the Court has already issued an advisory opinion on a prior version of an amendment. See, Adv. Op. to Atty. Gen. Re: Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans, 902 So.2d 763 (Fla. 2005). As noted in the Sponsor's Initial Brief in the instant case, the only change in the proposed ballot title, ballot summary and amendment text is the deletion of the first sentence in the prior ballot summary.

WHEREFORE, the Court is affirmatively advised of the status of the Sponsor's potential eligibility for ballot consideration for the 2006 general election.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the following persons this 14th day of March, 2006.

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