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**Advisory Opinion to the Attorney General: Local Government Comprehensive Land Use Plans  
Docket Number: SC06-161**

HEAR YE. HEAR YE. HEAR YE. THE SUPREME COURT OF THE STATE OF FLORIDA IS NOW IN SESSION. ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR, GIVE ATTENTION AND YOU SHALL BE HEARD. GOD SAVE THE UNITED STATES, THIS GREAT STATE OF FLORIDA AND THIS HONORABLE COURT. LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

CHIEF JUSTICE: GOOD MORNING LADIES AND GENTLEMEN. WELCOME TO THE FLORIDA SUPREME COURT. THE FIRST CASE ON THIS MORNING'S DOCKET IS THE ADVISORY OPINION TO THE ATTORNEY GENERAL REGARDING THE AMENDMENT TO THE LOCAL GOVERNMENT COMPREHENSIVE LAND USE PLAN.

LOUIS HUBNER WITH THE ATTORNEY GENERAL'S OFFICE THIS CASE IS HERE ON A REQUEST FOR AN ADVISORY OPINION. ROSS BURNHEIM WILL ARGUE IN -- BURMAN WILL ARGUE IN SUPPORT AND TWO WILL ARGUE AGAINST. THANK YOU.

GOOD MORNING. MAY IT PLEASE THE COURT. I AM ROSS STAFFORD BURNHEIM, HERE ON BEHALF OF THE PROPONENT, FLORIDA HOMETOWN DEMOCRACY INCORPORATED.

CHIEF JUSTICE: JUST SO WE ARE CLEAR, THIS CASE AND THIS AMENDMENT HAS BEEN BEFORE US PREVIOUSLY. THE COURT STRUCK IT ONLY ON AN ISSUE OF THE BALLOT SUMMARY, AND IT APPEARS THAT YOU HAVE CORRECTED OR AT LEAST ADDRESSED THE ISSUE THAT THE COURT STRUCK IT ON, WHICH IS YOU REMOVED THAT SENTENCE.

YES, MA'AM. CHIEF JUSTICE. THE TEXT IS IDENTICAL TO THE TEXT THAT WAS PREVIOUSLY REVIEWED BY THIS COURT AND UNANIMOUSLY IT WAS FOUND COMPLIANT WITH THE SINGLE SUBJECT REQUIREMENT. SIMILARLY, THE TITLE OF THE INITIATIVE THAT IS BEFORE YOU TODAY, IS EXACTLY THE SAME AS THAT WHICH WAS CONSIDERED PREVIOUSLY. THE ONLY CHANGE BETWEEN THE INITIATIVE THAT IS BEFORE THE COURT TODAY AND THAT WHICH WAS PREVIOUSLY CONSIDERED IN THE 2005 DECISION, IS THAT THE FIRST SENTENCE OF THE BALLOT SUMMARY HAS BEEN REMOVED.

IF I AM A VOTER, TELL ME HOW I SHOULD EXPECT THIS TO PRACTICALLY WORK.

IF THE AMENDMENT IS ADOPTED BY THE VOTERS, THEN THE SAME EXACT PROCESS WILL BE FOLLOWED THAT IS PRESENTLY THE CASE, AND THAT IS TYPICALLY, THE PLANNING STAFF OF THE CITY OR COUNTY DEVELOPS PROPOSALS FOR CHANGES TO THE COMPREHENSIVE PLAN. THAT IS IN THE CASE OF A COMMUNITY, OF COURSE, THAT HAS A COMPREHENSIVE PLAN RATHER THAN A NEWLY-FORMED COMMUNITY. THERE, THERE IS A LOCAL PLANNING AGENCY, WHICH CAN BE EITHER THE CITY OR COUNTY COMMISSION OR IT CAN BE AN APPOINTED BOARD OF CITIZENS THAT REVIEWS, THEN, THE WORK PRODUCT OF THE CITY OR COUNTY PLANNING STAFF AND DEVELOPS RECOMMENDATIONS IN A PROPOSAL FOR SUBMISSION TO THE LOCAL GOVERNING BODY, WHETHER IT BE THE CITY COUNCIL OR THE COUNTY COMMISSION. IN MOST INSTANCES, THAT IS OTHER THAN SMALL SCALE COMPREHENSIVE PLAN AMENDMENTS, THE LOCAL

GOVERNING BODY CONSIDERS WHETHER OR NOT TO ADOPT ONE OR MORE AMENDMENTS TO THE COMPREHENSIVE PLAN. THAT IS A LEGISLATIVE ACT AS THE COURT HAS RECOGNIZED IN THE COASTAL DEVELOPMENT CASE AND U.S. EMAN. THAT THEN GOES TO THE STATE FOR REVIEW AND THE STATE ISSUES A REPORT AS TO WHETHER OR NOT THE AMENDMENTS SHOULD BE ADOPTED WITH OR WITHOUT CHANGES OR NOT AT ALL, AND SINCE THAT, THEN, -- AND SENDS THAT, THEN, BACK TO THE LOCAL GOVERNMENT. THE LOCAL GOVERNING BODY THEN HAS A SECOND ADOPTION HEARING, AND THAT IS TO EITHER DECIDE WHETHER TO ADOPT THE AMENDMENT AS, EXACTLY AS PROPOSED AND SENT TO THE STATE PREVIOUSLY, TO MAKE CHANGES TO IT OR NOT TO ADOPT IT AT ALL. THAT IS A LEGISLATIVE ACT. SHOULD THE LOCAL GOVERNING BODY DECIDE THAT THEY ARE NOT GOING TO GO FORWARD WITH THE AMENDMENT, THEN THEY WOULD NOT PUT IT ON THE BALLOT. SHOULD THE LOCAL GOVERNING BODY DECIDE THAT ONE OR MORE AMENDMENTS IS WORTHY OF ENACTMENT, THEN THEY WOULD TAKE ACTION TO PLACE THE MATTER ON THE BALLOT, AND THE LOCAL GOVERNING BODY WOULD HAVE THE OPTION AS TO HOW TO PACKAGE IT. THEY COULD EITHER PACKAGE THE AMENDMENTS INDIVIDUALLY OR THEY COULD --

WOULD THERE BE ANY REQUIREMENT UNDER THIS AMENDMENT AS TO HOW FAR IN ADVANCE OF THE ELECTION IT HAS TO GO?

THE TEXAS THAT IS BEFORE -- THE TEXAS THAT IS BEFORE YOU JUSTICE -- THE TEXT THAT IS BEFORE YOU, JUSTICE WELLS, PROVIDES THE NOTICE OF SUCH THINGS, IN GENERAL LAW. REFERENDUM, THERE IS A SPECIFIC STATUTE ON THE NOTICING OF THAT. THAT WOULD BE UP TO THE LEGISLATURE IN TERMS OF THE IMPLEMENTATION, BUT THERE IS AN EXISTING PROCESS FOR DOING THAT.

JUSTICE: IS THIS A SELF ENACTING PROVISION, OR IS IT REQUIRED LEGISLATIVE ADOPTION?

I DON'T BELIEVE IT REQUIRES ANY LEGISLATIVE ADOPTION.

JUSTICE: WELL, THEN, HOW DOES IT DETERMINE HOW LONG BEFORE THERE HAS TO BE ACTION BY THE LEGISLATIVE PART OF THE LOCAL GOVERNMENT?

WELL, AGAIN, YOUR HONOR, THE AMENDMENT ITSELF PROVIDES THAT NOTICE SHALL BE AS PROVIDED BY GENERAL LAW. THERE IS AN EXISTING GENERAL LAW ON THE BOOKS THAT DEALS WITH THAT. WE HAVE BEEN, OF COURSE, HAVING ELECTIONS FOR A GOOD LONG WHILE IN FLORIDA, SO TO THAT END, SHOULD THE AMENDMENT BE ADOPTED BY THE ELECTOR TO FLORIDA -- BY THE ELECTORATE OF FLORIDA, THERE IS NO FURTHER LEGISLATIVE THAT IS REQUIRED. NO FURTHER LEGISLATIVE ACTION IS REQUIRED OTHER THAN THE STATUTES THAT ARE ON THE BOOKS AS WELL AS THE CONSTITUTIONAL PROVISIONS GOVERNING ELECTIONS.

JUSTICE: IT APPEARS THAT YOU HAVE REMOVED SOME OF THE OBJECTIONABLE PARTS OF THIS. BUT THE OPPONENTS SEEM TO SUGGEST THERE HAS BEEN A CHANGE IN THE LAY OF THE LAND, SO THAT NOW IT DOES IMPACT OR CHANGE FUNCTIONS OF MULTIPLE BRANCHES OF GOVERNMENT AND APPROACHES IT A LITTLE DIFFERENTLY. COULD YOU TAKE PART OF YOUR TIME TO AT LEAST ADDRESS SOME OF THOSE SO YOU DON'T RUN OUT OF TIME? THAT SEEMS TO BE THE DIFFERENCE. IS THAT THE ONLY DIFFERENCE THAT WE ARE PERCEIVING REALLY, SUBSTANTIVELY?

JUSTICE WELLS, WE HAVE REMOVED THE ENTIRETY OF THE FIRST SENTENCE. THAT THE ONLY DEFECT THAT THE COURT FOUND. WE HAVEN'T REMOVED SOME OF IT. WE REMOVED ALL OF IT.

JUSTICE: HOW ABOUT ADDRESSING THE --

YES, SIR. THE ONLY CHANGE THAT HAS OCCURRED SUBSEQUENT TO THE COURT'S PRIOR

DECISION IS THIS ENACTMENT OF AMENDMENTS TO THE LAND USE PLANNING LAW, TO STRENGTHEN THE, WHAT IS CALLED SCHOOL CONCURRENCY. THE OBJECTIVE OF SCHOOL CONCURRENCY IS TO MAKE SURE THAT THERE IS SUFFICIENT SCHOOLS IN PLACE BEFORE NEW DEVELOPMENT IS AUTHORIZED. THE CHANGES TO THE STATUTE, ALSO, PROVIDE FOR INTERLOCAL AGREEMENT BETWEEN THE SCHOOL BOARD AND THE LOCAL GOVERNING BODY. AS POINTED OUT IN THE BRIEF, FIRST OF ALL A SCHOOL BOARD IS NOT A LOCAL GOVERNMENT, AND ARTICLE VI II OF THE CONSTITUTION RECOGNIZES THERE ARE TWO TYPES OF LOCAL GOVERNMENT IN FLORIDA, COUNTIES AND MUNICIPALITIES, SO LET'S PUT THAT TO REST. THE CHANGES TO THE STATUTE DON'T TURN A SCHOOL BOARD OR SCHOOL DISTRICT INTO A LOCAL GOVERNMENT. SIMILARLY, THE STATUTORY CHANGE DOESN'T CHANGE THE BASIC PREDICATE FOR OUR AMENDMENT, AND THAT IS THAT WE HAVE COMPREHENSIVE LAND USE PLANS ADOPTED BY ALL OF FLORIDA'S CITIES AND COUNTIES PRESENTLY. AND THERE IS A STATUTORY REQUIREMENT THAT THE SAME BE ENACTED. AND SO THESE INTERLOCAL AGREEMENTS THAT ARE ENVISIONED IN THE STATUTORY CHANGE, VIS-A-VIS THE SCHOOL BOARD AND THE LOCAL GOVERNMENT FOR PURPOSES OF SCHOOL PLANNING AND CONCURRENCY, CALL FOR AN INTERLOCAL AGREEMENT, BUT THE INTERLOCAL AGREEMENT IS NOT BY DEFINITION, A COMPREHENSIVE PLAN OR A COMPREHENSIVE PLAN AMENDMENT, AND IN FACT, THE STATUTE SPECIFICALLY RECOGNIZES THAT THE INTERLOCAL AGREEMENT BETWEEN THE SCHOOL BOARD AND THE LOCAL GOVERNING BODY HAS TO PROVIDE FOR AND PUT THE SCHOOL BOARD ON NOTICE OF THE FACT THAT THE LOCAL GOVERNMENT RETAINS THE AUTHORITY AS TO WHETHER OR NOT TO APPROVE OR TO DENY AN AMENDMENT TO THE LOCAL GOVERNMENT COMPREHENSIVE PLAN FOR PURPOSES OF SIGHTING A SCHOOL. ANOTHER SIGNIFICANT ASPECT OF THE LEGISLATION IS THAT IT RECOGNIZES THAT ANY EXISTING LAND, ANY EXISTING SCHOOL SITE IS ALREADY ESSENTIALLY GRANDFATHERED IN FOR PURPOSES OF CONSTRUCTION OR EXPANSION OF SCHOOLS, SO THAT IF YOU ALREADY HAVE LAND THAT IS OWNED BY THE SCHOOL BOARD WHERE THERE IS A SCHOOL, THEN YOU CAN ADD ON IT. YOU CAN PUT A 100 STORY SCHOOL THERE, AS FAR AS I READ THE STATUTE, SO I DON'T BELIEVE THERE IS ANY MERIT TO THE VIEW THAT THE SIMPLE CHANGE TO THE STATUTE IS AN EXTRAORDINARY CIRCUMSTANCE TO WARRANT THIS COURT, THEN, GOING BACK AND EVALUATING WHETHER OR NOT THERE IS A SINGLE SUBJECT VIOLATION. IF YOU LOOK TO THE AMENDMENTS THAT ARE ALLEGEDLY IMPLEMENTED BY THE SCHOOL CONSUMERS I LEGISLATION -- CONCURRENCY LEGISLATION, ARTICLE II SECTION 7, OBVIOUSLY, WHICH REQUIRES THAT WE HAVE LAND USE PLANS TO PROTECT THE NATURAL RESOURCES AND SCENIC BEAUTY OF THE STATE, BUT ALSO THE PROVISIONS REGARDING SCHOOL BOARDS, PARTICULARLY THE CLASS SIZE AMENDMENT, THERE IS SIMPLY NO JURISPRUDENTIAL BASIS FOR SAYING THAT THE CLASS SIZE REQUIREMENT BE CONSTRUCTED. IN FACT, IN PASSING ON THE SINGLE SUBJECT REVIEW OF THE CLASS SIZE AMENDMENT, THE COURT SPECIFICALLY RECOGNIZED THAT, AND I HAVE CITED THAT IN MY BRIEF TO YOU, SO TURNING TO THE BALLOT TITLE AND SUMMARY, THE WORD LIMITATIONS ARE BOTH SATISFIED, 15 AND 75 RESPECTIVELY. THE COURT'S PREVIOUSLY DETERMINED THAT THE BALLOT TITLE FAIRLY INFORMS THE VOTERS, AND THE COURT HAS PREVIOUSLY ADJUDICATED THE CHIEF PURPOSE OF THE AMENDMENT. AND SO THERE HAS BEEN NO CHANGE TO THAT, SO WE WOULD JUST RESPECTFULLY ASK THE COURT TO ISSUE AN ADVISORY OPINION ALLOWING US TO PROCEED TOWARD THE BALLOT. THANK YOU VERY MUCH FOR YOUR CONSIDERATION.

CHIEF JUSTICE: MS. O'HARA.

MAY IT PLEASE THE COURT. I AM REBECCA O'HARA ON BEHALF OF THE FLORIDA LEAGUE OF CITIES, AND WITH ME AT THE COUNSEL TABLE IS ROBERT NABORS ON BEHALF OF THE FLORIDA SCHOOL BOARD ASSOCIATION. I WOULD LIKE TO RESERVE TEN MINUTES OF MY TIME FOR VIRGINIA DELEGOTT TO PRESENT ON COMPLIANCE OF THE FLORIDA STATUTES.

CHIEF JUSTICE: WE WILL ASK YOU TO KEEP TRACK OF YOUR TIME BUT I WILL ALERT YOU IN THE MIDDLE.

THANK YOU . THE INIT IATIVE VIOLATES THE SINGLE SUBJECT FOR AT LEAST THREE REAS ONS. F IRST IT SUBSTANTIALLY ALTER S THE FU NCTIONS OF MULTIPLE BRANCHES OF STATE GOVERNMENT TO COMPLY WITH THE ADEQUACY REQUIREMENT OF ARTI CLE IX SECTION 1. SECONDLY IT ALTERS THE FUNCTIONS OF SCHOOL DISTRICTS TO CONSTRUCT AND PLAN FOR NEW PUBLIC SCHOOLS AND THIRDLY IT SUBSTANTIALLY AFFECTS MULTIPLE L E VELS AND FUNCTIONS OF LOCAL GOVERNMENTS BY REQUIRING REFERENDA ON LEGISLATIVE AND FOR QUASI-JUDICIAL DECI SION.

CHIEF JUSTICE: JUST SO I UNDERSTAND AS WE DID LAST TIME THAT , THE PROPONENTS SAY THAT , WHAT THISAMENDMENT DOES IS IT SIMPLY INJECTS AN ADDITIONAL STEP BEFORE AN AMENDMENT TO A L OCAL COMPREHENSIVE LAND USEPLAN CAN BE ADOPTED , W HICH IS THAT THE VOTER S NE ED TO M AKE THAT DECISION. IS THAT NOT CORRECT? THAT NOT WHAT, ALTHOUGH WE CAN TALK ABOUT ALL OF THESE OTHER POTENTIAL E FFECTS ON IT , AS WE CAN POINT OUT THERE IS ALR EADY A COMPREHENSIVE PROCESS AND AGOAL IN T HIS STATE TO PREVENT LAND FROM BEING DEVELOPED THAT W A SN'T SUPPOSED TO BE DEVELOPED OR REZONING, SO WHAT IS IT A BOUT, WHAT IS IT ABOUT THAT WHICH IS THAT , WHICH IS PUTTING AN EX TRA STREP STEP THAT HAS ALL OF THIS -- AN EXTRA STEP THAT HAS ALL OF THIS CATACLYSMIC EF FECT ON EVERYTHING ELSE?

IT IS THE CONSEQUENCES OF THAT STEP THAT IS SIGNIFICANT FOR THIS COURT'S REVIEW, SIMILAR TO THE EFFECT OF THE PROPOSED REFERENDA ON MILLAGE INCREASES THAT WAS CONSIDERED IN THE PROP ERTY RIGHTS CASE AS WELL AS THE T AX LIM I TATIONS CASE. THE POTE NTIAL FOR VOTERS TO REJECT A PROPOSED PLAN AMENDMENT THAT IS NE CCESSARY TO IM PLEMENT SCHOOL CONCURRENCY WOULD SIGNIFICANTLY LIMIT THE STATE'S DISCRETION IN HOW IT HAS CH OSEN TO COMPLY WITH THE ADE QUACY REQUIREMENTS AND THE PARAMOUNT D UTIES UNDER ARTICLE IX S E CTION 1 , SO IT IS THIS CONSEQUENCE OF THE ACTION THAT IS REQUIRED . THE CONSEQ UENCE OF A REFERENDUM THAT IS SIGNIFICANT AND THAT WILL IMPACT THESE MULT IPLE FUNCTIONS OF GOVERNMENT.

ON THAT BASIS, IT WOULD REQUIRE THAT WE ACTUALLY J UST THEN REC EDE OR REV ERSE THE VIEW OF THE COURT FROM BEFORE. CORRECT?AS FAR AS YOUR F IRST PO INT.

WELL , AS FA R AS , Y ES .

THE ONLY NEW THING THAT SEEMS TO BE ON THE HORIZON IS THIS THE ISSUE OF THIS BEING REASSERTED WITH RE GARD TO SCHOOL BOARDS , IT NOT?

YES , JUSTICE LE WI S , THE ISSUE IS WITH THE PAS SAGE OF 2005 290 LAWS OF FLORIDA LAST YEA R, FOR THE FIRST TIME SCHOOL CONC URRENCY WAS IMP OSED, MAP DATE ODD A STATEWIDE -- MANDATED ON A STATEWIDE BASIS. IT PREVIOUSLY WAS OPTIONAL AND IN FACT HAD ONLY BEEN IMPLEMENTED IN ONE COUNTY OF THIS STATE BEFORE. THIS HIGHLIGHTS AND UNDERSCORES THE IMP ACT OF THIS AMENDMENT ON SCHOOL DISTRICTS , ON LOCALGOVERNMENTS , AND ON THE STATE WITH RESPECT TO ADEQUATE PUBLIC FACILITIES .

JUSTICE: WELL, THE STATUTE CURRENTLY ALLOWS LOCAL GOVERNMENTS T O TAKE THIS TO REFERENDUM , IF A COMPREHENSIVE PLAN AMENDMENT W OULD AFFECT MORE THAN , I THINK , FIVE PARCELS ? SO IT ALRE ADY KNOWS, EVEN WITH THIS CONCURRENCY , WITH THIS NEW REQUIREMENT, THERE ALREADY IS THE AB ILITY OF LOCAL GOVERNMENTS TO TAKE THIS TO REFERENDUM , SO ALL THIS DOES IS SAY, WELL , EVEN I F IT IS FIVE OR F EWER PARCELS , YOU STILL HAVE TO GO TO A REFERENDUM. SO HOW DOES THIS CATACLYSMIC CHANGE I N THE RESPECTIVE RESPONSIBILITIES OF THEBRANCHES?

JUSTICE CANTERO , THE EXI STING REQUIREMENT IN CHAPTER 1 63 , ACTU ALLY IT IS NOT A REQUIREMENT. IT IS ACTUALLY COU CHED IN PARTICULAR LANGUAGE THAT SAYS THAT THE ABI LITY TO REQUIRE A REFERENDUM BY LOCAL OPTION IS NOT PROHIBITED , BUT IT CERTAINLY ISN'T

A REQUIREMENT OF CURRENT LAW THAT A REFERENDUM BE HELD IN THOSE CIRCUMSTANCES , AND IN FACT , IT WAS NOT A REQUIREMENT AND CONSIDERED WHEN THE LEGISLATURE WAS IMPLEMENTING THESE NEW CONCURRENCY REQUIREMENTS IN LAW . IT IS MY UNDERSTANDING THAT THAT PROVISION HAS BEEN IN THE LAW RIGHT AROUND THE TIME WHERE THERE IS A TREMENDOUS AMOUNT OF UNCERTAINTY ABOUT WHETHER COMPREHENSIVE PLAN AMENDMENTS, THEMSELVES , WERE LEGISLATIVE OR WERE QUASI-JUDICIAL, AND SOME BELIEVE AT THE TIME , THERE WAS GOING TO BE A DISTINCTION MADE AS TO THE SIZE OF THE PARCEL THAT WAS UNDER CONSIDERATION.

I AM STILL HAVING TROUBLE WITH THIS . YOU SEEM TO SUGGEST THAT , IF THE SCHOOL, THE ISSUE OF BUILDING A SCHOOL IS THE FACTOR IN SEEKING A PLAN AMENDMENT , AND IT COULD BE A SCHOOL, THEY DECIDE WE ARE GOING TO PUT SCHOOL RIGHT ON THIS BEAUTIFUL PIECE OF WATERFRONT PROPERTY. THAT IS WHERE WE ARE DECIDING TO DO IT , AND THE STATE APPROVES IT . THAT, BY PUTTING THAT TO THE VOTERS , THAT IS SUBSTANTIALLY INTERFERING WITH ANOTHER BRANCH OF GOVERNMENT. AND I AM STILL HAVING TROUBLE UNDERSTANDING SINCE THERE IS LOTS OF CHOICES ABOUT WHERE YOU CAN BUILD SCHOOLS , AS WAS APPOINTED OUT. YOU CAN EXPAND ON THE EXISTING SCHOOL THAT EXISTS, AND IT MAY NOT EVEN BE THE REQUIREMENT THAT YOU NEED TO BUILD ADDITIONAL SCHOOLS. HOW DOES THAT INTERFERE SUBSTANTIALLY , WITH ANOTHER BRANCH OF GOVERNMENT ? YOU JUST HAVE TO HELP ME WITH THAT BECAUSE I AM JUST NOT SEEING IT .

YES. CHIEF JUSTICE , IT WILL INTERFERE WITH THE ABILITY OF A SCHOOL BOARD TO SITE AND LOCATE A NEW PUBLIC SCHOOL, BECAUSE THE NEED FOR NEW PUBLIC SCHOOLS IS NOT REALLY A QUESTION OF IF BUT OF WHEN IN THIS STATE. WE ARE A GROWING STATE, AND THE PUBLIC SCHOOL, THE NEED FOR PUBLIC SCHOOLS CAN 'T BE SATISFIED SIMPLY BY RELYING ON EXISTING FACILITIES , AND IN FACT , IN COUNTIES THAT ARE MORE BUILT OUT THAN OTHERS , YOUR CHOICE IN WHERE TO PUT SCHOOLS IS PRETTY SEVERELY LIMITED , SO IF A SCHOOL BOARD HAS DECIDED THAT IT NEEDS TO PUT A SCHOOL IN A PARTICULAR LOCATION IN ORDER TO SATISFY THE DEMANDS CAUSED BY THE RESIDENTIAL DEVELOPMENT IN THAT AREA AND THEY REALLY DON'T HAVE A LOT OF CHOICE IN WHERE THAT SCHOOL GOES, THE ABILITY OF VOTERS THROUGH A REFERENDUM , TO REJECT THAT PROPOSED SITE WILL AFFECT THE SCHOOL BOARD'S ABILITY .

CHIEF JUSTICE: BUT THE STATE COULD REJECT IT BECAUSE IT IS INCONSISTENT WITH THE DEVELOPMENT IN THE OVERALL PLAN? THE LOCAL GOVERNMENT ENTITY COULD REJECT IT. THE SCHOOL BOARD DOESN'T HAVE AN ABSOLUTE RIGHT UNDER ANY OF THESE AMENDMENTS , TO JUST BUILD A SCHOOL WHEREVER THEY DECIDE IT IS NECESSARY TO BUILD ONE. YOU STILL HAVE THESE STEPS, AND ALL THIS AMENDMENT IS DOING IS PUT AN ADDITIONAL STEP, A CHECK ON THE ABILITY OF GOVERNMENT TO JUST BUILD WHEREVER THEY DECIDE ON A GIVEN DATE.

CHIEF JUSTICE , THERE ARE ACTUALLY SOME SAFEGUARDS IN CURRENT LAW TO PREVENT THE CONFLICTS THAT YOU DESCRIBE . THERE ARE INTERLOCAL AGREEMENT REQUIREMENTS BETWEEN LOCAL GOVERNMENTS AND SCHOOL BOARDS. THERE ARE REQUIREMENTS, A BUNCH OF REQUIREMENTS ON THE FRONT END , TO COORDINATE THE SITING AND LOCATION OF PUBLIC SCHOOL FACILITIES. ALL OF THESE THINGS ARE DESIGNED TO AVOID THE VERY CONFLICT THAT YOU DESCRIBE, SO THAT THE IDEA THAT SOMETHING COULD BE REJECTED BY THE STATE IS EXTREMELY MINIMAL AT THAT POINT . ALL OF THAT WOULD GO OUT THE WINDOW, IF REFERENDA WERE REQUIRED, BECAUSE THE VOTERS DON'T HAVE TO CONSIDER ALL OF THE FRONT END PREPARATION AND COORDINATION THAT WERE TO GO INTO EFFECT, AND IN FACT THERE IS NO SAFETY VALVE TO PREVENT VOTERS FROM HAVING SECRETARIES ENTIRELY, THE LOCATION OF A PUBLIC SCHOOL IN THEIR JURISDICTION .

CHIEF JUSTICE: JUSTICE QUINCE HAS A QUESTION.

JUSTICE: I AM STILL CONCERNED ABOUT THE QUESTION THAT JUSTICE CANTERO ASKED. I REALLY WASN'T WIDE SATISFIED WITH YOUR ANSWER. THAT IS IF A LOCAL GOVERNMENT CHOOSES, UNDER PRESENT LAW , TO HAVE A REFERENDUM , THEY COULD HAVE IT EVERY TIME THERE IS A PARCEL, A SITUATION THAT IS OVER FIVE PARCELS , SO HOW , REALLY, DOES THIS SUBSTANTIALLY DIFFER FROM THAT? NOW THEY ARE SIMPLY REQUIRED TO DO IT , WHEREAS BEFORE THEY HAD THE OPTION OF DOING IT OR NOT DOING IT. SO I AM STILL HAVING A HARD TIME SEEING HOW THIS AMENDMENT REALLY SUBSTANTIALLY CHANGES WHAT IS ALREADY IN PRESENT LAW . EXCEPT NOW YOU HAVE TO DO IT AS OPPOSED TO HAVING THE OPTION.

JUSTICE WINS , THE REQUIREMENT IN LAW TO DAY THAT YOU ARE DESCRIBING DOESN'T IMPACT THE FACT THAT THE SINGLE SUBJECT HAS INITIATIVE PROBLEMS. THE FACT THAT A LOCAL GOVERNMENT MAY, BY ITS OPTION, AMEND ITS CHARTER TO PROVIDE FOR A REFERENDUM FOR CERTAIN COMPREHENSIVE PLAN AMENDMENTS, THAT , IF THAT IS DONE, THEN THE LOCAL GOVERNMENT AND THAT AMENDMENT TO THAT CHARTER , WOULD BE SUBJECT TO THE SAME CONSIDERATIONS , SIMILAR CONSIDERATIONS AS THE INITIATIVE BEFORE YOU. BUT, AGAIN, THE FACT THAT EXISTS --

JUSTICE: YOU ARE SAYING EVEN IF A LOCAL GOVERNMENT CHOOSES THAT OPTION THAT YOU WOULD STILL HAVE A PROBLEM WITH WHERE , IT WOULD STILL CONFLICT WITH HOW SCHOOLS WOULD BE BUILT AND WHETHER OR NOT THE SCHOOL BOARDS WOULD HAVE THE OPTION OF PUTTING SCHOOLS IN PARTICULAR AREAS?

NO. JUSTICE QUINCE , WE BELIEVE THAT THE LOCAL GOVERNMENT WOULD HAVE THE OPTION TO PROBABLY DESCRIBE WITH MORE PARTICULARITY , THE PARAMETERS AND PROVIDE SOME SAFEGUARDS, IF THEY CHOSE TO GO THAT ROUTE. I STATE MY TIME IS UP AND I AM GOING TO TURN TO MY CO-COUNSEL. THANK YOU.

MAY IT PLEASE THE COURT. MY NAME IS VIRGINIA DELEGAL, AND I AM HERE FOR FLORIDA COUNTIES IN THE INITIATIVE PROPOSED TO YOU. THIS IS NOT A PREREQUISITE TO THE COMP PLAN AMENDMENT AND ADOPTION PROCESS. RATHER IT ALTERS ONE OF THE MOST EXPANSIVE FUNCTIONS IN GOVERNMENT, HORIZONTALLY AND VERTICALLY AND SUBSTANTIALLY BALANCES THE GOVERNMENT IN THE COMPREHENSIVE PLAN PROCESS.

HAVEN'T WE ALREADY ANSWERED THOSE QUESTIONS? ISN'T THE ONLY CHANGE THE SCHOOL BOARD ISSUE?

I WOULD AGREE JUSTICE LEWIS , THAT THE SCHOOL BOARD ISSUE --

JUSTICE: WE WOULD HAVE TO REcede FROM THE PRIOR OPINION TO SATISFY YOUR ARGUMENT. THAT IS CORRECT?

YOU WOULD , EXCEPT THAT WE WOULD RESPECTFULLY SUGGEST THAT THE CHIEF PURPOSE THAT WAS IDENTIFIED BY THIS COURT IN ITS FIRST OPINION ON THIS AMENDMENT DID NOT EXAMINE THE FULL SCOPE OF THE AMENDMENT ITSELF , AND THAT THE LANGUAGE THAT IS ACTUALLY PRESENTED TO THE VOTER IN THE BALLOT TITLE AND SUMMARY , ALSO DOES NOT ACCURATELY REFLECT THE FULL SCOPE OF THIS PARTICULAR CHANGE. THAT A REFERENDUM REQUIREMENT DOES ALTER THE BALANCE OF ALL OF THE INTEREST THAT IS HAVE BEEN TAKEN INTO ACCOUNT IN THE COMPREHENSIVE PLAN PROCESS , FROM THE STATE ALL THE WAY DOWN TO THE LOCAL LEVEL , BALANCING PRIVATE PROPERTY INTERESTS , BALANCING GOVERNMENTAL INTERESTS, BALANCING THE SCHOOL BOARD INTERESTS AND THE STATE COMPREHENSIVE PLANNING PROCESS AS WELL , THAT THAT SCOPE IS NOT GIVEN TO THE VOTER IN THE LANGUAGE THAT IS PRESENTED IN THE BALLOT TITLE AND SUMMARY.

BUT IS THIS AMENDMENT REALLY ADDING IN THE INTEREST OF THE PUBLIC AT LARGE HERE ?

THAT IS WHAT --

JUSTICE QUINCY AGR EE . IN THE AMENDMENT PROCESS. THE PROBLEM WITH THE BALLOT TITLE AND SUMM ARY IS IT DOE SN'T GIVE THE VOTER IN ENOUGH INFOR MATION TO VOTEON WHAT THEY ARE VOTING ON. THESE ARE LEGAL T ERMS. LOCAL GOVERNMENT. COMPREHENSIVE LAND USE PLAN .

JUSTICE: AREN'T THESEWORDS ALREADY IN COMMON USAGE WITH RE GARD TO THE CURRENT STATUTORY SCHEME? IT IS NOT CREATING ANYTHING , IS IT?

I AGREE , JUSTICE LE WIS. THE PROBLEM IS THE DEFINITION IN CHA PTER 163 IS OF COMPREHE NSIVE PLAN. THE DEFINITION THAT? THE AMENDMENT TE XT ITSE LF , IS MU CH, MUCH BROADER THAN THE STATUTORY DEFINITION, SO IF A VOTER HAS ANY IDEA AT ALL ABOUT WHAT IT IS THAT THEY ARE BEING PRESENTED TO VOTE UPON , THE DEFINITION IN THE AMENDMENT TEXT ITSELF IS DIFFERENT THAN THE STATUTORY DEFINITION, AND IN FACT IT IS MUCH B ROADER . IT IS DEFINED TO MEAN --

J USTICE: THERE IS N O CHANGE IN THIS PROPOSAL FROM BEFORE WITH REGARD TO THAT ASPECT. CORRECT?

NO , JUSTICE LEWIS . THAT PART DID NOT CHANGE BUT JUST ONE OFFENDING SE NTENCE WAS REMOVED, IT DID NOT C URE THE REMAINING DEFECTS THAT STILL STA YED WITH THE BALLOT TITLE AND SUMMARY.

CHIEF JUSTICE: LET ME MAKE SU RE. THE DEFECT S THAT YOU SAY EXIST, BUT THE COURT POINTED OUT ONE DEFECT INDICATING THEREFORE, THAT THERE WERE NO OTHER DEFECTS. NOW , IF WE GOT IT W RONG WHEN WE SAID THAT WHAT IT DOES IS ADDS A , ALTERS ONLY ONE STE P IN AN ALREADY ESTABLISHED PROCESS , YOU ARE, AGAIN , ASKING US TO REC EDE FROM OUR PRIOR OPI NION , BASICALLY SAYING WE DIDN'T REALLY GETTHE FULL SCOPE OF THIS AMENDMENT BY SAYING IT IS ONLY ONE STEP.

YES , MADAM CHIEF JUSTICE , AND WE ARE SUGGESTING THAT LAST YEAR'S CHANGE IN THE STATUTORY SCHEME FOR THE GROWTH MANA GEMENT LAWS BRINGS TO LIGHT THE SCOP E OF THE CHANGE OF THE CONSTITUTIONAL AMENDMENT THAT IS BEING PUT BEFORE THE VOTERS. IF A VOTER HAS ANY IDEA AT ALL FROM WHAT IS BEING P LACED IN FRONT OF THEM OF WHAT THE LOCAL GOVERNMENT COMPREHENSIVE LAND USE PLAN IS, ONE OF THE ADJECTIVES THAT IS IN THERE IS LAND USE, BUT, AGAI N, THAT IS A TERM OF ART THAT A VOTER MIGHT ASSUME IF THEY KNOW ANYTHING AT ALL ABOUT THE COMPREHENSIVE PLAN PROCESS , THAT IT IS SIMPLY THE F U TURE LAND USE ELEMENT, WHICH IS JUST ONE PIECE OF THE COMPREHENSIVE PLAN PROCESS . O RANGE COU NTY HAS O VER 19 ELEMENTS IN ITS COMPREHENSIVE PLAN .

CHIEF JUSTICE: WHAT YOUARE SAYING , WHICH I THI NK WAS PART AND PARCEL LAST TIME, IS THAT A LOT OF ISSUES MAKE COME BEFO RE THE VOTERS THAT THE VOTERS REALLY DON'T CARE TO VOTE ON , BECAUSE THEY ARE NOT REALLY ALTERING THE USE OF LAND , BUT THAT IS THE FACT THAT THERE MAY B E MORE REFERENDA ON A BALLOT , ISN'T REALLY SOMETHING , I ME AN, I AM NOT SURE , SHOULD THAT BE SET FORTH IN THE BALLOT SUMMAR Y? IS THAT WHAT YOU ARE SAYING? WASN'T THAT AR GUMENT MADE LAST TIME?

MADAM CHIEF JUSTICE , I THINK I AM ASSERTING THAT WHAT IS PRESENTED TO THE VOTER IN THE BALLOT TITLE AND SUMMARY , IS INSUFFICIENT IN PROV IDING ANYT HING MEANINGFUL TO THE VOTER ASTO WHAT IT IS THEY ARE BEING GIVEN THE RIGHT IN THE F UTURE TO VOTE ON , BECAUSE THESE ARE TERMS OF ART THAT ARE BEING PRESENTED TO THE VOTER IN THE BALLOT BO X, WITHOUT DEFINITIONS, AND IF THEY ACTU ALLY LOOK AT THE TEXT OF THE AMENDMENT ITSELF, THE FACT THAT THOSE DEFINITIONS CONFLICT WITH CURRENT LAW , DOESN'T PROVIDE ANY AN SWERS FOR THE VOTER, WHEN THEY ARE IN THE VOTING BOOTH , A BOUT WHAT THEY

ARE BEING GIVEN THE RIGHT TO VOTE UPON IN THE FUTURE .

BUT AREN'T THERE LIMITATIONS AS TO THE SUMMARY AND TO THE WORDS THAT CAN BE USED , AND YOU ARE MENTIONING THAT THERE IS 19 DIFFERENT FUNCTIONS, IF ONE ATTEMPTED TO DEFINE 19 FUNCTIONS , HOW ARE THEY GOING TO MEET THE WORD LIMITATIONS FOR BOTH THE BALLOT SUMMARY AND THE TITLE? YOU ARE ASKING THAT THIS WHOLE THING BE OUTLINED. I SUPPOSE THAT IF THE LEGISLATURE PROVIDED , THEY COULD PUT THE WHOLE THING ON THE BALLOT , ARE YOU BUT AREN'T YOU ASKING FOR SOMETHING THAT REALLY IS NOT ATTAINABLE IN A SUMMARY FASHION?

JUSTICE LEWIS THAT , MIGHT BE THE CASE. HOWEVER , THE SPONSORS NEEDED TO BRING FORWARD TO THE VOTER, WHAT IT IS THAT THEY ARE PROPOSING THAT THE VOTER HAVE THE RIGHT TO VOTE ON IN THE FUTURE. IF IT IS THE LAND USE COMPREHENSIVE, THE LOCAL GOVERNMENT LAND USE COMPREHENSIVE PLAN THAT IS IN THE TEXT AMENDMENT ITSELF, THAT IS A DIFFERENT PLAN THAN WHAT EXISTS IN CURRENT LAW, AND THE VOTER DOESN'T HAVE ANY WAY OF KNOWING WHICH PLAN IT IS. OUR BRIEF POINTED OUT THAT THE DEFINITION IN THE AMENDMENT TEXT COULD ACTUALLY INCLUDE AS MANY AS 16 OTHER STATUTORILY RECOGNIZED PLANS THAT ARE --

CHIEF JUSTICE: DIDN'T WE ADDRESS THAT, WHEN WE SAID THAT AT LEAST THE MAJORITY , THE FIRST SENTENCE OF THE BALLOT SUMMARY WAS MISLEADING BECAUSE IT FOCUSED THE VOTER ON SCENIC BEAUTY AND NATURAL RESOURCES WHILE LOCAL COMPREHENSIVE PLANS INCLUDE MULTIPLE COMPONENTS, MANY OF WHICH DO NOT INVOLVE STRICTLY ENVIRONMENTAL OR AESTHETIC CONSIDERATIONS, AND THEN WE WENT ON TO ALL THE DIFFERENT THINGS THAT WOULD BE INCLUDED IN THAT , AND SO I AM NOT, AGAIN , SURE IF YOU ARE SAYING VOTERS REALLY , WHAT THE ARGUMENT SHOULD BE , YOU ARE REALLY NOT GOING TO WANT TO VOTE ON THIS BECAUSE THERE IS A LOT OF BORING THINGS THAT YOU ARE GOING TO HAVE TO VOTE ON THAT YOU COULDN'T CARE LESS ABOUT. BUT, HOW IS THAT -- BUT HOW IS THAT MISLEADING ?

IT IS MISLEADING , MADAM CHIEF JUSTICE , BECAUSE THE VOTER DOESN'T HAVE ANYTHING IN FRONT OF THEM IN THE BALLOT BOX THAT TELLS THEM THE LIMITS OR THE SCOPE OF WHAT THIS THING IS THAT IS IN THE AMENDMENT. WHAT IS THE LOCAL GOVERNMENT COMPREHENSIVE LAND USE PLAN? THAT IS A TERM OF ART , AND THERE ARE NO DEFINITIONS THAT ARE GIVEN TO THE VOTER , WHEN THEY ARE IN THE BALLOT BOX .

JUSTICE: BUT ISN'T THAT THE SAME THING YOU COULD SAY , A LOT OF THESE PROPOSED AMENDMENTS ARE MULTIPAGE AMENDMENTS, AND YOU CANNOT , IN 75 WORDS , PUT EVERYTHING IN THAT IS ACTUALLY IN THE PROPOSED AMENDMENT? AND SO ISN'T THAT THE PURPOSE OF THE WHOLE DISCUSSION THAT GOES ON PRIOR TO PEOPLE VOTING ON THESE AMENDMENTS? THAT IS THE PURPOSE OF THE PROPONENTS AND THE OPPONENTS DISCUSSING THIS PRIOR TO THE ELECTION DAY.

JUSTICE QUINCE , I ABSOLUTELY AGREE WITH YOU EXCEPT THAT THIS COURT , IN TERMS OF ITS PLEDGE, HAS ALREADY SAID THAT, WHEN THE BALLOT TITLE AND SUMMARY THAT IS PRESENTED TO THE VOTER , DOES NOT CLEARLY ARTICULATE THE FULL SCOPE OF THE AMENDMENT THAT IS BEING VOTED UPON, THEN THE BALLOT TITLE AND SUMMARY MUST FAIL.

JUSTICE: HAVEN'T WE ALSO SAID THAT THESE SUMMARIES CANNOT INCLUDE EVERY RAMIFICATION OF A PROPOSED AMENDMENT?

YES, MA'AM. THE PROBLEM WITH THE BALLOT TITLE AND SUMMARY IN THIS CASE IS THAT IT TELLS THE VOTER NOTHING THAT IS MEANINGFUL. THESE ARE TERMS OF ART. THESE ARE TECHNICAL LEGAL TERMS , AND THERE ARE NO DEFINITIONS PROVIDED , AND THIS COURT HAS ON MANY INDICATIONS WHEN TERMS OF ART OR OTHER LEGAL TECHNICAL TERMS HAVE BEEN PRESENTED TO THE VOTER WITHOUT DEFINITION , WITHOUT GUIDANCE , WITHOUT GIVING THE

VOTER ANYTHING MEANINGFUL TO PLACE A VOTE ON, HAS STRUCK THOSE FROM THE BALLOT, BECAUSE IT DOESN'T TELL THE VOTER WHAT IT IS THAT THE AMENDMENT IS ACTUALLY GOING TO DO, AND THAT IS PRECISELY THE PROBLEM IN THIS CASE. THE, WHILE THE FIRST SENTENCE WAS ACTUALLY REMOVED, SINCE THIS COURT ISSUED ITS FIRST ADVISORY OPINION, THIS AMENDMENT IS STILL IN THE NATURAL RESOURCES SECTION OF THE CONSTITUTION, AND SO IF A VOTER, AGAIN, HAS ANY IDEA THAT LAND USE MIGHT BE INVOLVED OR THAT NATURAL RESOURCES MIGHT BE INVOLVED, THOSE ITEMS ARE NOT INFORMATIVE TO THE VOTER AND ACTUALLY MISLEAD THE VOTER AND DIVERT THEIR ATTENTION AWAY FROM THE PURPOSE OF THE AMENDMENT. THANK YOU.

CHIEF JUSTICE: THANK YOU. REBUTTAL.

JUST VERY BRIEFLY BY WAY OF REBUTTAL. THE PROPERTY RIGHTS CASE CITED, IN THE FLORIDA HOPE TOWN DEMOCRACY OPINION ONE, SPECIFICALLY NOTICED THAT, QUOTE, THE LEGISLATURE IS REQUIRED BY ARTICLE II SECTION 7 OF THE FLORIDA CONSTITUTION, TO REGULATE THE USE OF LAND TO PROTECT FLORIDA'S NATURAL BEAUTY AND SCENIC RESOURCES, UNQUOTE, NATURAL RESOURCES AND SCENIC BEAUTY. PARDON ME. I AM NOT QUITE SURE HOW THE ARGUMENT GOES THAT VOTERS WOULD BE CONFUSED ABOUT THAT. WE HAVE ARTICLE II SECTION 7 ON THE BOOKS. WE HAVE A LONG ESTABLISHED PRECEDENT FROM THIS COURT, RECOGNIZING THAT THAT CONSTITUTIONAL PROVISION REQUIRES THE LEGISLATURE TO HAVE COMPREHENSIVE PLANNING. NOW --

YOUR OPPONENTS SAY THAT THE DEFINITION IN THE PROPOSED AMENDMENT IS BROADER THAN THE DEFINITION IN THE STATUTES. IS THAT TRUE, NUMBER ONE, AND DID WE SPECIFICALLY SAY ANYTHING IN OUR PRIOR OPINION ABOUT THE DIFFERING DEFINITIONS?

WELL, JUSTICE CANTERO, THERE IS NO SUBSTANTIVE DEFINITION IN CHAPTER 163 OF LOCAL GOVERNMENT COMPREHENSIVE PLAN, AND I BELIEVE JUSTICE WELLS ASKED ME ABOUT THAT DURING THE ORAL ARGUMENT IN THE PREVIOUS INITIATIVE. THERE IS A DEFINITION THAT REFERS ONE TO TWO STATUTORY SECTIONS THAT ARE, I DON'T KNOW, 20 OR 25 PAGES LONG. I BELIEVE THAT THE DEFINITION OF LOCAL GOVERNMENT COMPREHENSIVE LAND USE PLAN IN OUR INITIATIVE IS SOMETHING THAT EVERY VOTER IN FLORIDA CAN UNDERSTAND. AS YOU RECALL IN OUR PRIOR BRIEF, I CITED TO NUMEROUS LEGISLATIVE APPALACHIANS OF DIFFERENT -- APPELLATIONS OF DIFFERENT PLANS AND THE WAY THEY HAVE BEEN CHARACTERIZED. I ALSO CITED TO A PLETHORA OF APPELLATE DECISIONS FROM FLORIDA COURTS, WHICH DIDN'T USE THE LOCAL GOVERNMENT COMPREHENSIVE PLAN. THEY USED COMPREHENSIVE PLAN, LOCAL GOVERNMENT COMPREHENSIVE PLAN, SO JUST AS THE OPPONENTS WOULD HAVE THE COURT BELIEVE THAT VOTERS DON'T KNOW WHAT A LOCAL GOVERNMENT IS, THEY WOULD LIKE TO TRY TO HAVE THE COURT NIBBLE ON THE BAIT THAT VOTERS DON'T KNOW WHAT A LOCAL GOVERNMENT COMPREHENSIVE LAND USE PLAN IS. THEY ARE FREQUENTLY IN THE NEWSPAPER. I THINK EVERY CITIZEN IN FLORIDA HAS A GOOD IDEA ABOUT WHAT THOSE ARE.

YOU THINK THAT THE AVERAGE CITIZEN THAT IS NOT INVOLVED IN ZONING ISSUES KNOWS THE DIFFERENCE BETWEEN A COMPREHENSIVE LAND USE PLAN AND A ZONING CODE?

I BELIEVE THAT THE COURT HAS PREVIOUSLY SAID THAT VOTERS ARE REQUIRED TO HAVE A FAIR AMOUNT OF WISDOM AND UNDERSTANDING OF THE LAWS OF THE STATE, AND SO JUSTICE CANTERO, I DO BELIEVE THAT MOST CITIZENS UNDERSTAND THE DISTINCTION BETWEEN --

JUSTICE: I THINK THE COURT ACTUALLY SAID THAT VOTERS ARE ASSUMED RATHER THAN REQUIRED.

THE OPPONENTS WOULD HAVE THE COURT IMPOSE A DIE COTMILE BETWEEN -- A DICHOTOMY BETWEEN THE CITIZENS OF THE STATE AND THE ELECTED LOCAL GOVERNING BODIES IN ARTICLE

I SECTION ONE IT RECOGNIZES THAT ALL POLITICAL POWERS ARE INHERENT IN THE PEOPLE. THE COURT HAS PREVIOUSLY RECOGNIZED, JUSTICE CANTERO YOU RECOGNIZED THAT THERE IS AN EXISTING STATUTORY PROVISION DEALING WITH FIVE OR MORE PARCELS OF LAND THAT ALLOWS FOR REFERENDA, SO WE ARE ONLY PROPOSING TO CHANGE THE ADOPTION PROCESS BY ADDING ONE INCREMENTAL STEP AT THE END, AND THAT IS A VOTER REFERENCE PREPARED FOR MEAN. WE HAVE -- REFERENCE MEAN. WE HAVE FULLY -- REFERENDUM. WE HAVE FULLY COMPLIED WITH THE SINGLE SUBJECT AND BALLOT TITLE AND SUMMARY REQUIREMENT. WE WOULD ASK THE COURT TO INCLUDE THE LANGUAGE FOR PLACEMENT ON THE BALLOT. UNLESS THERE ARE ANY OTHER QUESTIONS I WOULD YIELD.

CHIEF JUSTICE: JUST ONLY, THE QUESTION IS, JUST TO MAKE SURE WE UNDERSTAND THE EFFECT, LAST TIME WHEN WE STRUCK IT, WE SAID THAT IF IT, THE AMENDMENT WERE ADOPTED, THERE WOULD BE A SUBSTANTIAL NUMBER OF REFERENDA EACH YEAR INVOLVING ISSUES OTHER THAN SCENIC -- SCENIC BEAUTY OR NATURAL RESOURCES. GOING THROUGH ALL OF THESE OTHER AREAS THAT MIGHT NOT BE THOUGHT OF BY THE PUBLICS BEING PART OF A COMPREHENSIVE LAND USE PLAN, DO YOU AGREE WITH THAT, THAT IS THAT THE EFFECT WILL BE, IF IT IS ADOPTED BY THE VOTERS, THAT THEY WILL HAVE TO BE VOTING ON A LOT OF CHANGES THAT MIGHT NOT BE, AGAIN, OTHER THAN NATURAL BEAUTY AND SCENIC RESOURCES.

NO YOU ARE REPEATING MY CONFUSION, CHIEF JUSTICE PARIENTE I. NO. I DON'T AGREE WITH THAT. WHAT ARE NATURAL RESOURCES? AIR? WATER? LAND? WHAT POSSIBLY COULD WE DO IN OUR COMMUNITIES, TO BUILD SOMETHING OR DEVELOP SOMETHING THAT DIDN'T AFFECT A NATURAL RESOURCE OF THE STATE?

CHIEF JUSTICE: I UNDERSTAND. IT IS GOING, BUT MY QUESTION IS THEY WILL HAVE TO BE VOTING ON THINGS THAT MIGHT BE SEEN AS MUCH MORE ATTENUATED EFFECT ON THE SCENIC BEAUTY AND NATURAL RESOURCES, AND THAT THIS WILL REQUIRE A LOT OF REFERENDA EACH YEAR, AND THAT IS EITHER GOOD OR BAD BUT IS THAT CORRECT?

WELL, I DON'T KNOW IF IT WILL REQUIRE A LOT OF REFERENDA OR NOT. WHEN THE GROWTH MANAGEMENT ACT WAS PROPOSED IN 1985, THAT IS THE MAJOR REVISIONS, THE DRAFTER ENVISIONED ONE CHANGE PER YEAR EXCEPT FOR EMERGENCIES OR FOR DEVELOPMENTS OF REGIONAL IMPACT. IT IS ONLY SINCE 1985 THAT THE ACT HAS BEEN DILUTED TO PROVIDE FOR A NUMBER OF EXCEPTIONS TO THE TWICE A YEAR LIMIT THAT THE LEGISLATURE ENDED UP WITH IN 1985, SO I CAN'T ANSWER THAT QUESTION. HOPEFULLY THERE WILL BE FEWER AMENDMENTS TO THE PLAN, IF IT HAS TO GO TO THE BALLOT, BUT THAT IS SOMETHING THAT JUST CALLS FOR SPECULATION. THE FUNDAMENTAL PART IS THAT THE COURT --

CHIEF JUSTICE: THE GOAL IS BY HAVING THIS, TO GO BEFORE THE VOTERS, THE HOPE IS THAT THERE WILL BE LESS LIKELIHOOD OF LOCAL GOVERNMENT BASICALLY TINKERING WITH THE LAND USE PLAN? I JUST WANT TO UNDERSTAND, SO WE, THAT IS GOING TO HAVE TO BE A PART OF THE CAMPAIGN, BUT JUST SO WE UNDERSTAND.

WELL, THE PREMISE IS THAT PUBLIC PARTICIPATION IN THE PROCESS BENEFITS THE STATE. THAT BY HAVING MORE CITIZENS UNDERSTAND WHAT THE LONG-TERM FUTURE PLAN FOR THEIR CITY OR COUNTY IS, THAT THEY WILL BE MORE INFORMED AND THAT THEY WILL BE MORE ENGAGED IN ACTING TO PROTECT THEIR COMMUNITIES. SO THAT IS THE PREMISE, AND I UNDERSTAND THE COURT STRUCK THE LANGUAGE IN THE BALLOT SUMMARY PREVIOUSLY, ABOUT PUBLIC PARTICIPATION BENEFITTING THE NATURAL RESOURCES AND SCENIC BEAUTY, BUT THAT STILL IS IN THE TEXT OF THE AMENDMENT AS THE PREDICATE, IF YOU WILL, FOR HAVING THE REFERENDUM REQUIREMENT, AND THE VOTER CAN EITHER AGREE OR DISAGREE WITH THAT PROPOSITION. I THINK IT IS SELF-EVIDENT, BUT WE WILL LET THE OPPONENTS IN THE, SHOULD APPEAR ON THE BALLOT AND WE WILL LET THEM HASH THAT OUT, BUT THE COURT DID RECOGNIZE IN THE PROPERTY RIGHTS CASE, THAT ARTICLE II SECTION 7 REQUIRES IN ESSENCE,

THAT WE HAVE COMPREHENSIVE LAND USE PLANS , SO THE , NOT ONLY ARE THE OPPONENTS ASKING THE COURT TO RECEDE FROM THE PRIOR HOMETOWN DEMOCRACY OPINION , BUT THEY ARE ALSO ASKING YOU TO RECEDE FROM THE PROPERTY RIGHTS DECISION , AND ONE LAST POINT AND I WILL SIT DOWN. THAT IS THAT THE OPPONENTS SAY THAT THE , JUSTICE LEWIS , THAT THE COURT GOT IT WRONG LAST TIME. WELL , WE HAVE ASKED FOR JUDICIAL NOTICE OF THE BRIEFS THAT WERE FILED BY THE LEAGUE OF CITIES AND BY THE ASSOCIATION OF COUNTIES , AND I WOULD COMMEND TO YOU THAT THEY GOT IT WRONG, TOO , APPARENTLY, BECAUSE THEY STATED WHAT THE CHIEF PURPOSE OF THE AMENDMENT WAS IN THEIR BRIEF LAST TIME, AND THAT IS EXACTLY WHAT THE COURT FOUND TO BE THE CHIEF PURPOSE OF THE AMENDMENT , SO

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CHIEF JUSTICE: JUST ONE LAST THING AS YOU SIT DOWN TO CLARIFY. YOU DO THAT NOT HAVE THE -- YOU DO NOT HAVE THE VOTES FOR THIS TO GO IN THE BALLOT IN 2006 , CORRECT?

WE DON'T HAVE A SUFFICIENT NUMBER TO SATISFY THE SECRETARY OF STATE BUT THAT IS IN LITIGATION , AS I POINTED OUT IN MY RESPONSE TO THE COURT IN THE SHOW CAUSE ORDER. THANK YOU.

CHIEF JUSTICE: THANK YOU VERY MUCH. THE COURT WILL TAKE THIS UNDER ADVISEMENT AND WE WILL HEAR THE NEXT CASE .