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IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT,
IN AND FOR FLAGLER COUNTY, FLORIDA

ALAN LOWE,

Plaintiff,

v.

CITY OF PALM COAST, a Florida Municipal corporation, and KAITI LENHART, her official capacity as Supervisor of Elections of Flagler County,

Defendants.

_____/

CASE NO: CA24-0488

NOTICE OF FILING

In addition to those relevant statutes and cases cited in Plaintiff's First Amended Complaint, Motion for Temporary Injunction and Request for Hearing, and Plaintiff's Memorandum of Law in Support of First Amended Complaint and Motion for Expedited Hearing, and pursuant to this Court's Civil 49 Division Procedures, the Plaintiff hereby files this Notice of Authorities and would draw the Court's particular attention to the attached selected cases for review in advance of the November 1, 2024 hearing scheduled at 11:30 a.m.

ST. JOHNS LAW GROUP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served this 2th day of October, 2024, via the Florida Court E-Filing Portal to the following:

/s/ Alex Nunchuck
ALEX NUNCHUCK

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT,
IN AND FOR FLAGLER COUNTY, FLORIDA

ALAN LOWE,

Plaintiff,

v.

CITY OF PALM COAST, a Florida Municipal corporation, and KAITI LENHART, her official capacity as Supervisor of Elections of Flagler County,

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_____/

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INDEX

Detzner v. League of Women Voters

Supreme Court of Florida

October 15, 2018, Decided

No. SC18-1368

Reporter
256 So. 3d 803 *; 2018 Fla. LEXIS 1881 **; 43 Fla. L. Weekly S 445; 2018 WL 5075253

KENNETH J. DETZNER, etc., Appellant, vs. LEAGUE OF WOMEN VOTERS OF FLORIDA, et al., Appellees.

Prior History: [**1] Certified Judgments of Trial Courts in and for Leon County — John C. Cooper, Judge - Case No. 372018CA001523XXXXXX — An Appeal from the District Court of Appeal, First District, Case No. 1D18-3529.

Detzner v. League of Women Voters of Fla., 2018 Fla. LEXIS 1598, 2018 WL 4275905 (Fla., Sept. 7, 2018)

Counsel: Pamela Jo Bondi, Attorney General, Daniel W. Bell, Deputy Solicitor General, Edward M. Wenger, Chief Deputy Solicitor General, and Blaine H. Winship, Special Counsel, Tallahassee, Florida, for Appellant.

Ronald G. Meyer and Lynn C. Hearn of Meyer, Brooks, Demma and Blohm, P.A., Tallahassee, Florida; Scott D. McCoy of Southern Poverty Law Center, Tallahassee, Florida; Zoe M. Savitsky of Southern Poverty Law Center, New Orleans, Louisiana; and Sam Boyd of Southern Poverty Law Center, Miami, Florida, for Appellees.

Edward J. Pozzuoli, Stephanie Alexander, and Jeffrey S. Wood of Tripp Scott, P.A., Fort Lauderdale, Florida, for Amici Curiae The Urban League of Miami and The Central Florida Urban League.

Benjamin J. Gibson and Amber Stoner of Shutts & Bowen, LLP, Tallahassee, Florida, for Amici Curiae Florida Consortium of Public Charter Schools and Florida Charter School Alliance.

Judges: PARIENTE, LEWIS, QUINCE, and LABARGA, JJ., concur. PARIENTE, J., concurs with an opinion, in which LEWIS, J., concurs. [**2] LEWIS, J., concurs with an opinion. CANADY, C.J., dissents with an opinion, in which POLSTON and LAWSON, JJ., concur.

Opinion

[*805] PER CURIAM.

Appellant, Kenneth Detzner, Secretary of the Florida Department of State, seeks review of *League of Women Voters of Florida, Inc. v. Detzner*, No. 2018-CA-001523 (Fla. 2d Cir. Aug. 20, 2018). The circuit court granted summary judgment in favor of the League of Women Voters (LWV) and enjoined Detzner from placing Revision 8 on the ballot for the November 2018 general election. Detzner appealed the decision to the First District Court of Appeal, which certified to this Court that the judgment is of great public importance and requires immediate resolution by this Court. We have jurisdiction. *See* art. V, § 3(b)(5), Fla. Const.

This Court considered this cause at oral argument on September 5, 2018, and on September 7, 2018, issued an order affirming the decision of the circuit court. This opinion provides the reasons for our decision.

Background

Article XI, section 2, of the Florida Constitution establishes the Constitution Revision Commission (CRC) to convene every twenty years to propose revisions to the Florida Constitution. *See* Art. XI, § 2, Fla. Const. Then, the proposed constitutional amendment must be "submitted to the electors at the next general election." Art. XI, § 5(a), Fla. Const.

[**3] On March 21, 2018, the Constitution Revision Commission (CRC), approved Proposal 71, which would have made the following revision to Article IX, Section 4(b):

[EDITOR'S NOTE: THE ORIGINAL SOURCE CONTAINED ILLEGIBLE WORDS AND/OR MISSING TEXT. THE LEXIS SERVICE WILL PLACE THE CORRECTED VERSION ON-LINE UPON RECEIPT.]

> (b) The school board shall operate, control, and supervise all free public schools *established by*
> within the school district and determine the rate of school district taxes within the limits prescribed herein. Two or more school districts may operate and finance joint educational programs.

The sponsor of the proposal stated during debate that the revision was intended to overrule *Duval County School Board v. State Board of Education*, 998 So. 2d 641 (Fla. 1st DCA 2008), and to allow the power to authorize new charter schools to be assigned to any of a variety of potential public or private entities.

The CRC combined Proposal 71 with Proposal 43 and Proposal 10, which also included changes to Article IX of the Florida Constitution. Later, the language was revised to read:

> (b) The school board shall operate, control, and supervise all free public schools *established by the district school* board within the school district and determine the rate of school district taxes within the limits prescribed herein. Two [*806] or more school districts [**4] may operate and finance joint educational programs.

A motion to unbundle the three proposals was unsuccessful.

The CRC drafted and approved the following title and summary for inclusion on the ballot:

> CONSTITUTIONAL AMENDMENT
>
> ARTICLE IX, SECTION 4, NEW SECTION
>
> ARTICLE XII, NEW SECTION
> SCHOOL BOARD TERM LIMITS AND DUTIES; PUBLIC SCHOOLS.—Creates a term limit of eight consecutive years for school board members and requires the legislature to provide for the promotion of civic literacy in public schools. Currently, district school boards have a constitutional duty to operate, control, and supervise all public schools. The amendment maintains a school board's duties to public schools it establishes, but permits the state to operate, control, and supervise public schools not established by the school board.

On July 12, 2018, LWV filed a complaint seeking to enjoin Detzner, in his capacity as Secretary of State, from placing Revision 8 to the Florida Constitution on the November 2018 general election ballot. LWV argued that the revision could not be lawfully submitted to Florida voters because the ballot title and summary fail to inform voters of the chief purpose of the revision and are affirmatively misleading as [**5] to the true purpose and effect of the revision. The parties agreed to an expedited procedure through cross-motions for summary judgment, the trial court heard arguments on August 17, 2018, and, on August 20, 2018, granted summary judgment in favor of LWV and denied Detzner's motion.

In its order granting summary judgment to LWV, the circuit court determined that the ballot summary "invents a category of school . . . undefined in Florida law." Therefore, the court reasoned, "both the text and the summary are entirely unclear as to which schools will be affected by the revision." "The failure to use the term voters would understand, 'charter schools,' as well as the use of a phrase that has

no established meaning under Florida law, fails to inform voters of the chief purpose and effect of this proposal." The court found that the deficiencies here were similar to those discussed in *Florida Department of State v. Florida State Conference of NAACP Branches*, 43 So. 3d 662 (Fla. 2010), stating, "[N]owhere does the ballot summary inform the voter of the essential role school boards play in authorizing new schools, and nowhere does the language inform the voter that this role is intended to be diluted by Revision 8."

Additionally, the circuit court determined that the title was misleading through [**6] omission, stating that "the vague reference to 'school board . . . duties' is presumably intended to allude to Proposal 71[1] [but] a voter could easily believe . . . that it consists solely of a proposal to limit the term limits for school boards." The circuit court also found the ballot summary affirmatively misleading, stating that it "is conspicuously silent about who or what would undertake these responsibilities for schools not established by the school board." In conclusion, the circuit court found:

> Because the ballot summary for Revision 8 clearly and conclusively fails to adequately inform the voter of the chief purposes and effects of the revision, and is affirmatively misleading, placement of [*807] Revision 8 on the ballot would violate Article XI, Section 5, Florida Constitution, and Section 101.161(1), Florida Statutes.

On August 20, 2018, Detzner filed a notice of appeal with the First District Court of Appeal. On August 22, 2018, the First District certified the case for pass-through jurisdiction, finding that the appeal involves a question of great public importance that requires immediate resolution by this Court.

Standard of Review

Section 101.161(1), Florida Statutes (2018), is a "codification of the accuracy requirement implicit in article XI, section 5 of the Florida Constitution." *Advisory Op. to Att'y Gen. re Referenda Required for Adoption & Amendment Local Gov't Comprehensive Land Use Plans*, 902 So. 2d 763, 770 (Fla. 2005). Section 101.161(1) provides:

> Whenever a constitutional amendment or other [**7] public measure is submitted to the vote of the people, a ballot summary of such amendment or other public measure shall be printed in clear and unambiguous language on

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[1] Proposal 71 refers to the CRC proposal restricting the duties of the district school boards that was one of three proposals included in Revision 8.

> the ballot after the list of candidates, followed by the word "yes" and also by the word "no," and shall be styled in such a manner that a "yes" vote will indicate approval of the proposal and a "no" vote will indicate rejection. The ballot summary of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. The ballot summary 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. In addition, for every amendment proposed by initiative, the ballot shall include, following the ballot summary, a separate financial impact statement concerning the measure prepared by the Financial Impact Estimating Conference in accordance with s. 100.371(5). The ballot title shall consist of a caption, not exceeding 15 words in length, [**8] by which the measure is commonly referred to or spoken of. This subsection does not apply to constitutional amendments or revisions proposed by joint resolution.

§ 101.161(1), Fla. Stat. (2018). "Implicit in this provision is the requirement that the proposed amendment be *accurately* represented on the ballot; otherwise, voter approval would be a nullity." *Armstrong v. Harris*, 773 So. 2d 7, 12 (Fla. 2000). The accuracy requirement in article XI, section 5, functions as truth-in-packaging law for the ballot. *Id.* at 13. The accuracy requirement applies to all proposed constitutional amendments. *Id.* at 16. We have explained "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 must, however, give the voter fair notice of the decision he or she must make. *Armstrong*, 773 So. 2d at 15 ("Although the ballot summary faithfully tracked the text of the proposed amendment, the summary failed to explain that the amendment would supersede an already existing constitutional provision . . . ."). The purpose of section 101.161 is to ensure that voters are advised of [**9] the amendment's true meaning. *Advisory Op. [*808] to Att'y Gen. re Indep. Nonpartisan Comm'n to Apportion Legislative & Cong. Dists. Which Replaces Apportionment by Legislature*, 926 So. 2d 1218, 1228 (Fla. 2006).

> A court may declare a proposed constitutional amendment invalid only if the record shows that the proposal is clearly and conclusively defective; the standard of review [in such cases] is de novo. Proposed amendments to the

> Florida Constitution may originate in any of several sources, including the Legislature, revision commission, citizen initiative, or constitutional convention. Regardless of source, a proposed amendment ultimately must be submitted to the electors for approval at the next general election.

Armstrong, 773 So. 2d at 11 (footnotes omitted).

> The accuracy requirement in article XI, section 5, imposes a strict minimum standard for ballot clarity. This requirement plays no favorites—it applies across-the-board to *all* constitutional amendments . . . . The purpose of this requirement is above reproach—it is to ensure that each voter will cast a ballot based on the *full* truth. To function effectively—and to remain viable—a constitutional democracy must require no less.

Id. at 21.

We have stressed that a proposed amendment "must stand on its own merits and not be disguised as something else." *Askew*, 421 So. 2d at 156. "A ballot title and summary cannot either 'fly under false colors' or 'hide the ball' as to the amendment's [**10] true effect." *Armstrong*, 773 So. 2d at 16. In assessing the ballot title and summary for compliance with section 101.161(1), the reviewing court should ask two questions: first, whether the ballot title and summary "fairly inform the voter of the chief purpose of the amendment," and second, "whether the language of the title and summary, as written, misleads the public." *Advisory Op. to Atty. Gen. re Fla. Marriage Protection Amendment*, 926 So. 2d 1229, 1236 (Fla. 2006). However, this Court does not consider the substantive merit of the proposed amendment. *Dep't of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008).

The title and summary must also be accurate and informative. *See Advisory Opinion to the Att'y Gen. re Term Limits Pledge*, 718 So. 2d 798, 803 (Fla. 1998). These requirements make certain that the "electorate is advised of the true meaning, and ramifications, of an amendment." *Advisory Opinion to the Attorney Gen. re Tax Limitation*, 644 So. 2d 486, 490 (Fla. 1994) (quoting *Askew*, 421 So. 2d at 156). A proposed amendment must be removed from the ballot when the summary does not accurately describe the scope of the text of the amendment, because it has failed in its purpose. *See Term Limits Pledge*, 718 So. 2d at 804.

Finally, we have held that the ballot title and summary must be read together in determining whether the ballot information properly informs the voters. *See Advisory Opinion to the Att'y Gen. re Voluntary Universal Pre-Kindergarten Educ.*, 824 So. 2d 161, 166 (Fla. 2002). This Court will presume that the average voter has a certain amount of common understanding and knowledge. *See Advisory*

Opinion to AG re: Protect People from the Health Hazards of Second-Hand Smoke by Prohibiting Workplace Smoking, 814 So. 2d 415 (Fla. 2002).

Analysis

This case presents two issues for our consideration: (1) whether [**11] Revision 8's ballot title and summary is clearly and conclusively defective because it fails to inform voters of its effect and (2) whether [*809] the ballot title and summary are misleading. We conclude that because the ballot summary fails to include a clear statement of the chief purpose of the revision and fails to inform voters of its true meaning and ramifications, the ballot language is defective. That the ballot summary is unclear is best demonstrated by the proponents of the proposed revision, who each give different meaning to the language of the revision, its title, and its summary. We therefore affirm the decision of the circuit court.

Since 1998, the Florida Constitution has provided, "Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education . . . ." Art. IX, § 1(a), Fla. Const. Also since then, section 4 has provided:

> SECTION 4. School districts; school boards.—
>
> (a) Each county shall constitute a school district; provided, two or more contiguous counties, upon vote of the electors of each county pursuant to law, may be combined into one school district. In each school district there shall be a school [**12] board composed of five or more members chosen by vote of the electors in a nonpartisan election for appropriately staggered terms of four years, as provided by law.
>
> (b) The school board shall operate, control and supervise all free public schools within the school district and determine the rate of school district taxes within the limits prescribed herein. Two or more school districts may operate and finance joint educational programs.

In relevant part, the most recent CRC proposed the following revision to section 4(b) to be included on the ballot in the November 2018 general election:

> (b) The school board shall operate, control, and supervise all free public schools *established by the district school board* within the school district and determine the rate of school district taxes within the limits prescribed herein. Two or more school districts may operate and finance joint educational programs.

Because section 101.161(1) requires a ballot summary to state "the chief purpose" of the proposed amendment, we look to objective criteria, like the amendments' main effect to determine whether a ballot summary complies with the statute. *Armstrong*, 773 So. 2d at 18. Here, the ballot summary provides, "Currently, district school boards have a constitutional [**13] duty to operate, control, and supervise all public schools. The amendment maintains a school board's duties to public schools it establishes, but permits the state to operate, control, and supervise public schools not established by the school board."

While the ballot summary informs voters that district school boards will no longer have the authority to operate, control, and supervise public schools that they do not establish, the summary fails to explain who or what, other than district school boards, currently has the authority to establish public schools, which categories of public schools will be affected, and who or what will have the authority to establish future public schools if voters approve the revision. Failure to explain this key component of the revision is exacerbated by the fact that the phrase "established by" is not one that is consistently used in Florida Statutes, when addressing public schools. *Compare* § 1002.32, Fla. Stat. (2018) ("establish[ing] a category of public schools to be known as developmental research (laboratory) schools (lab schools)"), *with* § 1002.33, Fla. Stat. (2018) (explaining how a charter school may be "formed"). Because it is a phrase that is neither commonly [*810] nor consistently used, [**14] it cannot be commonly understood by voters.

Further, the ballot summary fails to explain which public schools or categories of schools will be affected. Currently, in addition to the general provision for K-12 education in section 1003.02, Florida Statutes (2018), providing that schools boards "must establish, organize, and operate their public K-12 schools and educational programs," the Florida Statutes provide for five additional public schools or categories of public schools.[2] It is entirely unclear from both the text of

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[2] One of these categories and one of these schools is said to be "established" by the statutory provision and one additional school is "created." The public schools and categories of public schools specified in the Florida Statutes are as follows:

1. Development research (laboratory) schools. § 1002.32, Fla. Stat. (2018). "There is *established* a category of public schools to be known as developmental research (laboratory) schools (lab schools)." § 1002.32(2), Fla. Stat. (2018) (emphasis added).

2. Charter schools. § 1002.33, Fla. Stat. (2018). "All charter schools in Florida are public schools and shall be part of the state's [**15] program of public education. A charter school may be formed by creating a new school or converting an existing public school to charter status."§ 1002.33(1), Fla. Stat. (2018).

3. New World School of the Arts. § 1002.35, Fla. Stat. (2018). "The New World School of the Arts is *created* as a center of excellence for the performing and visual arts, to serve all of the State of Florida." § 1002.35(1), Fla. Stat. (2018) (emphasis added).

4. Florida School for the Deaf and the Blind. § 1002.36, Fla. Stat. (2018).

the amendment and the ballot language which of these public schools, or categories of public schools, would be affected. Therefore, the problem "lies not with what the summary says, but, rather, with what it does not say." *Askew*, 421 So. 2d at 156. Because voters will simply not be able to understand the true meaning and ramifications of the revision, the ballot language is clearly and conclusively defective.

That the voters will not be informed as to the true meaning and ramifications of the revision is evinced by the varying explanations offered by the proponents. For example, Detzner argues that local school boards have no constitutional authority to establish or authorize public schools and asserts that the revision would not change the status quo. Meanwhile, the Florida Consortium of Public Charter Schools and Florida Charter School Alliance, as amici curiae, argue that the proposed revision would affect all public schools. Further, they argue that the proposed revision serves to "eliminate the constitutional [**16] barrier to school choice." On the other hand, the Urban League of Miami and the Central Florida Urban League, amici curiae, argue that Revision 8 presents a much needed change by stripping the local school boards of their ability to continue their hostility towards public charter schools.

Because proponents of the proposed revision each give different meaning to the "clear and unambiguous" language of the revision, its title, and its summary, logic dictates that the language is neither clear nor unambiguous. Accordingly, the voters cannot be said to have fair and sufficient notice to intelligently cast his or her vote.

In *Duval County School Board v. State Board of Education*, 998 So. 2d 641 (Fla. 1st DCA 2008), the First District found that section 1002.335, Florida Statutes (2006), was facially unconstitutional. The Legislature, in 2006, enacted section 1002.335 [*811] to create the "Florida Schools of Excellence Commission" as an independent body with the power to authorize charter schools throughout the State of Florida. *Id.* at 642. Prior to its enactment, the First District held, "only district school boards could authorize charter schools." *Id.* Under the statute, district school boards had to seek approval from the State Board of Education to exercise that power. Relying on this Court's reasoning in its decision in *Bush v. Holmes*, 919 So. 2d 392, 398 (Fla. 2006), the First District [**17] found that the statute removed constitutional authority from the school boards and relegated them to essentially ministerial functions. Accordingly, the First District found that

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5. Florida Virtual School. § 1002.37, Fla. Stat. "The Florida Virtual School is *established* for the development and delivery of online and distance learning education."§ 1002.37(1)(a), Fla. Stat. (2018) (emphasis added).

section 1002.335 "pose[d] a present total and fatal conflict with article IX, section 4 of the Florida Constitution." *Duval Cty.*, 998 So. 2d at 644.

The decision in *Duval County* demonstrates that, as currently interpreted, the Florida Constitution provides that only district school boards may authorize charter schools. *Id.* at 642. *Duval County* belies Detzner's argument that the Legislature currently has that authority and that the Revision does not alter the status quo. Therefore, it appears that the circuit court correctly determined that the ballot title and summary fly under false colors. As stated by this Court in *Armstrong*, it is not sufficient for a ballot summary to faithfully track the text of a proposed amendment, *Armstrong*, 773 So. 2d at 15, a proposed amendment "must stand on its own merits and not be disguised as something else." *Askew*, 421 So. 2d at 156. "A ballot title and summary cannot either 'fly under false colors' or 'hide the ball' as to the amendment's true effect." *Armstrong*, 773 So. 2d at 16.

As demonstrated by the arguments of the Revision 8 proponents, this language either does nothing or changes everything. Considered within the context of the Constitution as a [**18] whole, which provides for a State Board of Education that regulates public education at the state level, and the Florida Statutes, which provide five distinct types of public schools, the ballot title and summary to Revision 8 do not ensure that the "electorate is advised of the true meaning, and ramifications, of [the] amendment." *Advisory Opinion to the Attorney Gen. re Tax Limitation*, 644 So. 2d at 490 (quoting *Askew*, 421 So. 2d at 156).

Conclusion

For the foregoing reasons, we previously affirmed the judgment of the circuit court enjoining Detzner from placing Revision 8 on the ballot for the November 2018 general election. No motion for rehearing will be entertained.

It is so ordered.

PARIENTE, LEWIS, QUINCE, and LABARGA, JJ., concur.

PARIENTE, J., concurs with an opinion, in which LEWIS, J., concurs.

LEWIS, J., concurs with an opinion.

CANADY, C.J., dissents with an opinion, in which POLSTON and LAWSON, JJ., concur.

Concur by: PARIENTE; LEWIS

Concur

PARIENTE, J., concurring.

I fully concur with the majority opinion. To be clear, our role at this stage is not to address the merits of the proposed constitutional amendment.[3] Rather, our role is to ensure that the ballot language accurately advises voters "of the true meaning, and ramifications, of an amendment." *Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982). Because the ballot title and summary for [**19] Revision 8 fail to explain to voters that [*812] approval of the amendment would significantly alter the ability of local district school boards to approve the establishment of free public schools within their district, specifically but not limited to charter schools, we had no choice but to strike the amendment from the ballot.[4]

Article IX, section 4(b), of the Florida Constitution presently empowers local school boards with operating, controlling, and supervising "all free public schools within the school district." Art. IX, § 4(b), Fla. Const. Section 1003.02, Florida Statutes (2018), builds on this constitutional authority, stating that "district school boards must *establish*, organize, and operate their public K-12 schools." § 1003.02, Fla. Stat. (2018) (emphasis added). Public K-12 schools in Florida include, for example, charter schools. *Id.* § 1002.33(1). Currently, a charter school is not "created" until the district school board approves the application. *See* Fla. Dep't of Educ., *Frequently Asked Questions, How Are Charter Schools Created, Organized, and Operated?*, http://www.fldoe.org/schools/schoolchoice/charter-schools/charter-school-faqs.stml (last visited Sept. 29, 2018).

By limiting a district school board's authority to operate, control, and supervise to only those public schools it *establishes*, a somewhat indirect—but [**20] significant—limitation is also placed on the authority of district school boards to *establish*, or approve the creation of, public schools within their districts. It is this significant but undisclosed effect of the amendment that had the fervent support of charter school advocates. *See* Br. of Amici Curiae the Urban League of Miami & the Cent. Fla. Urban League, at 7 (explaining that the "ballot proposal was designed, in material part, to eliminate local school boards' virtual monopoly over new public schools").

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[3] *See Fla. Dep't of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008).

[4] *See Roberts v. Doyle*, 43 So. 3d 654, 659 (Fla. 2010) ("A proposed amendment must be removed from the ballot when the title and summary do not accurately describe the scope of the text of the amendment, because it has failed in its purpose."); *Advisory Op. to Att'y Gen. re Term Limits Pledge*, 718 So. 2d 798, 804 (Fla. 1998) ("When the summary of a proposed amendment does not accurately describe the scope of the text of the amendment, it fails in its purpose and must be stricken.").

Rather than advise voters of this critical change—which would have allowed a debate on the merits of centralized, uniform control of the establishment of charter schools—the ballot summary fails to explain the true effect of the amendment. In fact, the ballot summary disguises this monumental change to our state constitution by vaguely referring to school board "duties" and using terms that voters would not easily understand, such as "established by" and "not established by"—terms not previously used in the Florida Constitution.

It is true that a ballot summary need not "resolve all questions concerning its implementation." Dissenting op. at 32 (Canady, C.J.). But a change of this magnitude to the way public schools, including charter schools, are established [**21] throughout the state is not one that should be hidden from voters. This is particularly so when the change pertains to a subject that is of great importance to voters, such as public education.[5]

Interestingly, the initial version of this proposal clearly articulated the change sought. It would have added the following to article IX, section 4(b):

> [*813] Nothing herein may be construed to limit the legislature from creating alternative processes to authorize the establishment of charter schools within the state by general law.

App'x Resp's Mot. for Summary J. at App'x 2. For whatever reason, the sponsor subsequently "filed a delete-all amendment" in the form ultimately approved by the Constitution Revision Commission (CRC), explaining that "the delete-all amendment [would] achieve the exact same outcome." CRC 2017-2018, transcript of meeting at 55 (Mar. 21, 2018).

The dissent complains that "[t]he people should not be prevented from making their own decision concerning the merits of the proposed amendment." Dissenting op. at 34-35 (Canady, C.J.). I agree. However, it is impossible for voters to make their own decision about [**22] the merits of the amendment when the ballot language fails to clearly explain the true effect of the proposal.

Finally, I agree with Justice Lewis that the manner in which Revision 8 was bundled would confuse voters as to its true purpose and effect. *See* concurring op. at 22 (Lewis, J.). Indeed, the positioning of the three separate proposals in the ballot summary added to the misleading nature of the amendment by explaining term limits and civic literacy before the ambiguous and cursory explanation of the change to the operation and establishment of free public schools. As the summary

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[5] *See generally* Kyra Gurney & Kristen M. Clark, *Here's How the Controversial New Schools Law Will Impact South Florida*, Miami Herald (June 15, 2017), https://www.miamiherald.com/news/local/education/article156444609.html.

was written, voters would have been presented with "two . . . proposals that are popular and easily understood" before getting to the "vague but significant proposal" relegated to the end of the ballot summary. Br. of League of Women Voters, at 28.

Further, as CRC Commissioner Joyner argued in opposition to the bundling of the proposals, as a result of the bundling, voters who really wanted term limits and civic literacy would be forced "to give up control of [their] local schools." CRC 2017-2018, transcript of meeting at 163 (Apr. 16, 2018). She went on to explain:

> This gift to the charter school industry [**23] is cobbled — cobbled with School Board term limits and civics education to make it more palatable. Kind of like taking a spoonful of cod liver oil and figuring out how to make it easier to swallow.
>
> . . . .
>
> And at the end of the day, should you decide stripping local controls belongs in the State Constitution, why hitch it to anything? Why doesn't it stand alone?
>
> If it is so worthy and so good that it has your endorsement and your name behind it, then let this charter school measure stand on its own merit and let the people decide. Let it be local control. Let it be the people's vote.
>
> I can't support this [proposal]. The other measures, they're up for grabs. Term limits, civic literacy, they're appealing, but this one is the overriding game-changer that will forever make education different in the State of Florida because someone who has—some entity, no accountability to the people, they don't elect them, if we put this in the Constitution, we are giving away local control and our ability to have the major say in the education system of the State of Florida.

Id. at 180-83. Commissioner Martinez echoed this sentiment:

> But [this proposal] is a big deal. It is a game-changer. . . .
>
> The public should be entitled [**24] to vote on that issue. Let's debate the idea, up or down, as to whether or not they want [it], but don't put it together with civic literacy and term limits. They're just not related. They may be dealing with education [*814] generally, but they are very different parts of our educational system.

Id. at 178.

Although the CRC is not bound by a single-subject requirement, at least one CRC commissioner supported bundling the three separate proposals to "help" the other education-related proposals pass. *See* concurring op. at 22 (Lewis, J.). Combining popular and non-controversial proposals with a vaguely worded but ultimately

controversial proposal is the very essence of logrolling. *See In re Advisory Op. to the Att'y Gen.*, 636 So. 2d 1336, 1339 (Fla. 1994) (explaining that logrolling is "a practice wherein several separate issues are rolled into a single initiative in order to aggregate votes or secure approval of an otherwise unpopular issue"). While nothing prevents the CRC from doing this, the CRC may not do so in a way that, as here, misleads voters as to the amendment's true effect.

For these reasons, I fully concur with the majority opinion striking the amendment from the November 2018 general election ballot.

LEWIS, J., concurs.

LEWIS, J., concurring.

I concur with the [**25] majority that Revision 8 should not be placed on the ballot for the November 2018 general election because it fails to clearly state the chief purpose of the revision and it fails to inform voters of its true meaning and ramifications. I also write separately because I believe that there is an additional reason Revision 8 must be stricken—namely, the proposed revision bundles multiple issues into one amendment, which causes confusion and ambiguity as to the chief purpose of the proposal.

Revision 8 attempts to bundle three issues affecting the Florida public school system: (1) school board member term limits, (2) the Legislature's promotion of civic literacy in public schools, and (3) the State's ability to operate, control, and supervise public schools not established by the district school boards—i.e., charter schools, *see* per curiam op. at 10-14. While all three of these matters concern the public school system on a general level, each targets and affects very specific—and very different—issues within that public school system, which only serves to confuse and distract the public as to the revision's true purpose and effect. In fact, at the March 20, 2018, Constitution Revision Commission [**26] (CRC) Session, Revision 8's sponsor, Commissioner Gaetz, explicitly acknowledged that the bundling would "help some of those other education issues pass. I don't think you are going to get too many people in the state of Florida who are going to look at a ballot that says our children ought to be civically literate and say we are sure as heck against that." However, bundling controversial issues into an amendment containing a widely popular issue to trick the voters is precisely the type of misleading language expressly forbidden under section 101.161(1), Florida Statutes (2018).

This Court has from time immemorial warned against bundling multiple issues into one constitutional amendment due to the inherently misleading nature of combining multiple subjects and the problematic choice it requires voters to make.

See City of Coral Gables v. Gray, 154 Fla. 881, 19 So. 2d 318, 322 (Fla. 1944) ("Yet, if required to vote upon the proposed amendment as presently framed the electors will be put to it to accept, or reject, all subject matters contained therein, in toto, without the opportunity for discrimination. . . . [T]he elector would be put in the position where, in order to aid in carrying a proposition which he considered good or wise, he would be obliged to vote [*815] for another which he would otherwise [**27] reject as bad or foolish. It would sanction the practice of combining meritorious and vicious legislation in one proposal, so that the former could not be secured without submitting to the latter."); *see also Antuono v. City of Tampa*, 87 Fla. 82, 99 So. 324, 326 (Fla. 1924). Nevertheless, the constitutional scheme under which the Court operated when announcing these warnings was vastly different than the one under which the Court today operates.

Currently, the Florida Constitution describes four procedures through which the Constitution can be amended or revised: (1) a joint resolution by the Legislature, Art. XI, § 1, Fla. Const., (2) a proposal by a constitution revision commission, Art. XI, § 2, Fla. Const., (3) a citizens' initiative process, Art. XI, § 3, Fla. Const., and (4) the establishment of a constitutional convention, Art. XI, § 4, Fla. Const. Out of these four procedures, only the citizens' initiative contains the restriction that a proposed amendment be limited to one subject. Art. XI, § 3, Fla. Const. As this Court has explained,

> It is apparent that the authors of article XI realized that the initiative method did not provide a filtering legislative process for the drafting of any specific proposed constitutional amendment or revision. The legislative, revision commission, and constitutional convention processes of sections 1, 2 and 4 all afford an opportunity for public hearing [**28] and debate not only on the proposal itself *but also in the drafting of any constitutional proposal. That opportunity for input in the drafting of a proposal is not present under the initiative process and this is one of the reasons the initiative process is restricted to single-subject changes in the state constitution*.

Fine v. Firestone, 448 So. 2d 984, 988 (Fla. 1984) (emphasis added); *see also Charter Review Comm'n of Orange Cty. v. Scott*, 647 So. 2d 835, 837 (Fla. 1994) ("[O]ur state Constitution Revision Commission process . . . embodies a number of procedural safeguards that reduce the danger of logrolling and diminish the possibility of deception.").

The safeguards we announced allowing public input in the drafting of a constitutional amendment pursuant to sections 1, 2, and 4, however, do not foreclose the possibility that a proposed revision under one of these "safer" constitutional sections might nonetheless impermissibly bundle multiple unrelated

issues into one general amendment.[6] Within the context of article XI, section 2, the inquiry turns on whether the bundling of multiple issues within one amendment results in a misleading ballot summary and title. *Cty. of Volusia v. Detzner*, 253 So. 3d 507, 2018 Fla. LEXIS 1592, *11, 43 Fla. L. Weekly S355, S356 (Fla. Sept. 7, 2018) ("It follows that the bundling of measures creates a defect only if the measures are presented [**29] on the ballot in a misleading way."). As discussed by the majority at length, Revision 8's ballot summary language is defective, misleading, and unclear. *See* per curiam op. at 9. In addition to the already-ambiguous language contained within the ballot summary with regard to charter schools, muddling multiple subjects in this proposed revision makes it very difficult—if not impossible—for a voter to fully understand the chief purpose of the measure, as required by section 101.161(1).

[*816] A voter cannot intelligently cast his or her ballot if multiple issues of varying complexity and clarity are lumped together under one general amendment—especially when presented through defective ballot summary language. Instead, the bundling in Revision 8 results in voter confusion and serves to disguise the revision's true purpose and effect. *See Armstrong v. Harris*, 773 So. 2d 7, 16 (Fla. 2000) ("A ballot title and summary cannot either 'fly under false colors' or 'hide the ball' as to the amendment's true effect.").

For the foregoing reasons, I would strike Revision 8 from the November 2018 general election ballot due to the improper bundling, in addition to the reasons expressed within the majority opinion.

Dissent by: CANADY

Dissent

CANADY, C.J., dissenting.

Because I conclude that [**30] the appellees have failed to show that the ballot summary for Revision 8 is clearly and conclusively defective, I dissent from the majority's decision to strike this proposal from the ballot. The majority goes astray by invalidating the proposal on the basis of supposed deficiencies in the text of the proposed amendment itself. Under the standards required by our decisions, the ballot summary here correctly identifies the chief purpose of the proposed

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[6] It is also worth noting that the safeguard enunciated in *Fine* was absent in this case. Although the CRC did hold public hearings on each revision, these hearings concluded before the CRC began drafting Revision 8, bundling the three individual issues under one proposal. Thus, the public was not afforded any input or opportunity to be heard during the drafting of the bundled revision.

amendment. And the summary in no way either affirmatively misleads or misleads by omission. The people of Florida should have the opportunity to vote on this proposal to amend the Constitution.

The challenged portion of the ballot summary, which the majority declares to be defective, relates to a proposed change in article IX, section 4(b) regarding the scope of the duty (and concomitant authority) of school boards to "operate, control, and supervise" free public schools. This constitutional provision currently provides that each school board "shall operate, control and supervise all free public schools within the school district." The proposed amendment limits the scope of this provision to schools "established by the district school board." So under [**31] the proposed amendment, each "school board shall operate, control, and supervise all free public schools *established by the district school board* within the school district." (Emphasis added.)

From this proposed change in the text of article IX, section 4(b), five unmistakable and interrelated points emerge. (1) Under the proposed amendment, constitutional room will exist not only for school-board-established schools but also for a category of free public schools that are *not* "established by the district school board." (2) The existing constitutional duty of school boards to "operate, control and supervise" all free public schools will be curtailed by the proposed amendment. (3) Under the proposed amendment, school boards will have the constitutional duty (and concomitant authority) to "operate, control, and supervise" the schools they establish. (4) School boards will not, however, have any such constitutional duty (and authority) regarding schools they do not establish. (5) Understood in the context of the "paramount duty of the state" regarding public education established in article IX, section 1, the "operat[ion], control, and supervis[ion]" of public schools not established by a school board will [**32] necessarily be under the purview of the state. Anyone who understands these five points will necessarily understand the chief purpose of this proposed amendment and will not be misled concerning its effect. And anyone who reads the text of the summary will readily be led to an understanding of each basic point.

The summary contains three basic elements regarding this proposed change in the Constitution. These three elements in [*817] combination elegantly explain what the amendment does. In the first element, the summary discloses the crucial fact regarding the existing constitutional provision: "Currently, district school boards have a constitutional duty to operate, control, and supervise all public schools." This disclosure of the constitutional status quo provides the necessary basis for understanding the effect of the proposed amendment in curtailing the scope of school board duties. The second and third elements are contained in a

single sentence that sets up a contrast: "The amendment *maintains* a school board's duties to public schools it establishes, *but permits* the state to operate, control, and supervise public schools not established by the school board." (Emphasis added.) Thus, [**33] the second element of the summary points out that the proposed amendment "*maintains* a school board's duties to public *schools it establishes*." (Emphasis added.) Third, the summary—having identified the scope of the duties of school boards that are maintained—specifies what the proposal changes by stating that the amendment "permits the state to operate, control, and supervise public schools not established by the school board."

The five points that emerge from the text of the amendment are all made evident by these disclosures contained in the summary. The summary brings home the distinction made in the text of the amendment between school-board-established schools and non-school-board-established schools. In doing so, the summary makes clear both that the duty of school boards to "operate, control, and supervise" currently extends to all public schools and that the duty of school boards will be curtailed by the proposed amendment. Explaining the effect of the amendment, the summary identifies the category of school-board-established schools as falling within the scope of the school board's duty to "operate, control, and supervise." It similarly identifies the category of non-school-board-established [**34] schools as falling outside the scope of the school board duty to "operate, control, and supervise." And it recognizes the authority of the State regarding the operation, control, and supervision of public schools not established by a school board that necessarily follows from the elimination of the school board duty to "operate, control, and supervise" such schools.

The majority does not—because it cannot—effectively dispute any of this. Instead, it attempts to change the subject. Rather than focusing on whether the text of the summary accurately discloses the substance of the proposed amendment, the majority—staying on the path blazed by the trial court—assails the text of the proposed amendment itself. The majority jumps to the conclusion that the summary is misleading because certain questions about how the amendment would be implemented are left open by the text of the amendment and therefore not addressed in the summary. The majority's opinion thus repeatedly reveals that the summary is condemned not because it is misleading, but because of what the majority views as deficiencies in the proposed constitutional amendment itself. This is a clear departure from the fundamental principle [**35] of our jurisprudence that in determining the adequacy of a ballot summary, we do not review the merits of the proposed constitutional amendment. *Fla. Dep't of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008).

The majority cites the trial court's conclusion that "both the *text* and the summary are entirely unclear as to which schools will be affected by the revision." Majority op. at 4 (emphasis added). The majority also repeats the trial court's criticism that the ballot summary fails to "inform the voter of the essential role school [*818] boards play in authorizing new schools." *Id.* The majority also refers to the trial court's conclusion that the summary is misleading because it "is conspicuously silent about who or what would undertake the[] responsibilities [to operate, control, and supervise] for schools not established by the school board." Majority op. at 5.

Although the majority acknowledges that "we look to objective criteria" in evaluating the sufficiency of a ballot summary, majority op. at 10, it nonetheless focuses on subjective matters by asserting that the deficiency of the summary "is best demonstrated by the proponents of the proposed revision, who each give different meaning to the language of the revision, its title, and its summary." [**36] Majority op. at 9-10. Such subjective matters concerning what various proponents have said about a proposal are beside the point. The majority's line of analysis flies in the face of the principle established in our case law—to which the majority thoughtfully and meaninglessly tips its hat—that in determining whether a summary accurately describes a proposed amendment, "a court must look not to subjective criteria espoused by the amendment's sponsor but to *objective criteria inherent in the amendment itself*." *Armstrong v. Harris*, 773 So. 2d 7, 18 (Fla. 2000) (emphasis added).

Of course, the majority discusses the text of the amendment. But it does so not to determine if the summary accurately reflects the substance of the amendment. Instead, the majority—like the trial court—zeros in on perceived flaws in the amendment. The majority complains that the summary fails to explain "which categories of public schools will be affected, and who or what will have the authority to establish future public schools if voters approve the revision." Majority op. at 11. The majority also faults the use of "the phrase 'established by'" as one that is not "consistently used in Florida Statutes." *Id.* The majority sums up: "It is entirely unclear from [**37] both the *text of the amendment* and the ballot language which of these public schools, or categories of public schools, would be affected. Therefore, the problem 'lies not with what the summary says, but, rather, with what it does not say.'" Majority op. at 12-13 (emphasis added) (quoting *Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982)).

From all this it is clear that the majority is condemning the summary because the text of the amendment leaves open certain questions. The summary thus is rejected because of what the text of the amendment "does not say." Majority op. at 13 (quoting *Askew*, 421 So. 2d at 156). There is no requirement that a

constitutional amendment resolve all questions concerning its implementation. And it is obvious that a proposed constitutional amendment is not bound by existing statutory terms. Here, as in the case of many constitutional provisions, space is established for the Legislature—which promulgates state policy through laws consistent with the Constitution—to make various policy choices related to implementation of the amendment. As the summary discloses, the amendment clearly affects schools not established by a school board. The policy choices related to such schools are properly left by the amendment to the Legislature. To [**38] conclude otherwise—as the majority does—is to attack the substance of the amendment itself.

The majority also concludes that the proposed amendment flies "under false colors," majority op. at 15, because the summary fails to inform the voters that currently "only district school boards may *authorize charter schools*." Majority op. at 14 (emphasis added). In support of this conclusion, the majority cites *Duval County [*819] School Board v. State Board of Education*, 998 So. 2d 641, 642 (Fla. 1st DCA 2008), a decision that invalidated "section 1002.335, Florida Statutes, which established the 'Florida Schools of Excellence Commission' as an independent, state-level entity with the power to authorize charter schools throughout the State of Florida." To begin with, the term "authorize" (or any cognate term) is not found in the text of either the current constitutional provision or the proposed amendment. Reference to "charter schools" is likewise absent. And the *Duval County* decision does not establish an unfettered constitutional right of school boards to authorize charter schools.

The *Duval County* court recognized that the challenged statute "relegat[ed] local boards to essentially ministerial functions" concerning certain charter schools. *Id.* at 644. In invalidating the statute, the court stated: "This statute permits and encourages [**39] the creation of a parallel system of free public education escaping the *operation and control* of local elected school boards." *Id.* at 643 (emphasis added) (footnote omitted). The focus of the ruling was the removal from local school boards of "all the powers of *operation, control and supervision* of free public education specifically reserved in article IX, section 4(b) of the Florida Constitution . . . with regard to charter schools sponsored by the [Excellence] Commission." *Id.* (emphasis added). Nowhere does this decision establish the unfettered right of school boards to authorize or not authorize charter schools that is suggested by the majority opinion. Indeed, no such right currently exists under Florida law. *See* § 1002.33(6)(c)(3)(a), Fla. Stat. (2018) (providing process for appeal of school board denial of charter school application, authorizing State Board of Education to "remand the application to the sponsor with its written decision that the sponsor [school board] approve or deny the application" and

providing that the school board "sponsor shall implement the decision of the State Board of Education"); *see also Sch. Bd. of Palm Beach Cty. v. Fla. Charter Educ. Found., Inc.*, 213 So. 3d 356, 359 (Fla. 4th DCA 2017) (rejecting challenge to constitutionality of the charter school statute's appeal provision based on school board argument that the statute "empowers the [**40] State Board, and not the School Board, to determine the creation of a charter school"). The decision concerning the "authorization" of charter schools thus ultimately rests in the State Board of Education. So the disclosure the majority says should be made concerning the current state of the law would itself be misleading. The summary cannot be judged defective for failing to include a misleading statement.

In sum, the majority has failed to identify any defect in the summary.[7] The people should not be prevented from making their [*820] own decision concerning the merits of the proposed amendment. I strongly dissent from the decision to remove this proposed amendment from the ballot.

POLSTON and LAWSON, JJ., concur.

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[7] I also reject the view expressed in the concurring opinions that Revision 8 is defective because it bundles three issues into one proposed amendment. The Court recently rejected a similar argument regarding "bundling" in *County of Volusia v. Detzner*, 253 So. 3d 507, 2018 Fla. LEXIS 1592, 2018 WL 4272435, 43 Fla. L. Weekly S355 (Fla. Sept. 7, 2018). Here, as in *County of Volusia*, "there is no basis for concluding" either "that the relationship between the issues addressed in separate measures identified in the ballot summary results in deception of the voters" or that "the structure of the ballot summary misleads the voters concerning what [**41] the proposal will do." 2018 Fla. LEXIS 1592 at *12, [Fla. L. Weekly] at S356. The Constitution contains an anti-bundling provision—known as a single subject requirement—in article XI, section 3, which governs certain amendments proposed through the initiative process. No similar requirement is contained in article XI, section 2, which governs proposals advanced by the Constitution Revision Commission. In the absence of such a requirement in the text of section 2, we should not impose one under a different label.

Dep't of State v. Hollander

Supreme Court of Florida

October 25, 2018, Decided

No. SC18-1366, No. SC18-1367

Reporter
256 So. 3d 1300 *; 2018 Fla. LEXIS 2050 **; 2018 WL 5289530

DEPARTMENT OF STATE, etc., et al., Appellants, vs. LEE HOLLANDER, etc., et al., Appellees.DEPARTMENT OF STATE, etc., et al., Appellants, vs. AMY KNOWLES, Appellee.

Prior History: [**1] Certified Judgments of Trial Courts in and for Leon County — Karen Gievers, Judge - Case Nos. 372018CA001525XXXXXX and 372018CA001740XXXXXX — An Appeal from the District Court of Appeal, First District, Case Nos. 1D18-3644 and 1D18-3643.

Dep't of State v. Hollander, 2018 Fla. LEXIS 1599, 2018 WL 4275904 (Fla., Sept. 7, 2018)

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Harvey J. Sepler of Rimon, P.C., Coral Gables, Florida, for Appellee Amy Knowles.

Philip J. Padovano and Thomas J. Seider of Brannock & Humphries, on behalf of The Criminal Law Section of The Florida Bar, Tallahassee, Florida, for Amicus Curiae The Criminal Law Section of The Florida Bar.

Justin F. Karpf and Barbara J. Busharis, Assistant Public Defenders, Second Judicial Circuit, on behalf [**2] of The Florida Public Defenders Association, Tallahassee, Florida; Michael Ufferman of Michael Ufferman Law Firm, P.A., on behalf of Florida Association of Criminal Defense Lawyers, Tallahassee Florida; Seth Miller, on behalf of Innocence Project of Florida, Inc., Tallahassee, Florida;

Nancy Abudu and Kara Gross, on behalf of American Civil Liberties Foundation of Florida, Miami, Florida, for Amici Curiae The Florida Public Defender Association, The Florida Association of Criminal Defense Lawyers, The Innocence Project of Florida, and the American Civil Liberties Foundation of Florida.

Judges: CANADY, C.J., and POLSTON, LABARGA, and LAWSON, JJ., concur. PARIENTE, J., dissents with an opinion, in which QUINCE, J., concurs. LEWIS, J., dissents.

Opinion

[*1302] PER CURIAM.

The Florida Department of State, Secretary of State Ken Detzner, and Marsy's Law of Florida, LLC appeal a judgment of the circuit court invalidating and enjoining the Constitutional Revision Commission's (CRC) Revision 1, designated as Amendment 6 and titled "Rights of Crime Victims; Judges," from placement on the ballot. The First District Court of Appeal certified the judgment to be of great public importance and to require immediate resolution. [**3] [1] Because it has not been clearly and conclusively demonstrated that the ballot title and summary are misleading and do not reasonably inform voters of the chief purpose of the proposal, we reverse the circuit court's judgment and vacate the injunction.[2]

I. BACKGROUND

Amendment 6 would amend section 16 of article I, amend section 8 of article V, add section 21 to article V, and add a new section to article XII of the Florida Constitution. [*1303] Specifically, the CRC's proposal is as follows, with the additions underlined and the deletions stricken:

Section 16 of Article I of the State Constitution is amended to read:

ARTICLE I

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[1] We have jurisdiction. *See* art. V, § 3(b)(5), Fla. Const.

[2] After holding oral argument on Wednesday, September 5, 2018, we issued the following order on Friday, September 7, 2018:

> [W]e hereby reverse the circuit court's judgment and vacate the injunction prohibiting the Secretary of State from action to place the Constitutional Revision Commission's Revision 1, designated as Amendment 6 and titled "Rights of Crime Victims; Judges," on the ballot. No motions for rehearing will be permitted. Full opinion to follow.

This is the full opinion.

DECLARATION OF RIGHTS
SECTION 16. Rights of accused and of victims.—

(a) In all criminal prosecutions the accused shall, upon demand, be informed of the nature and cause of the accusation, and shall be furnished a copy of the charges, and shall have the right to have compulsory process for witnesses, to confront at trial adverse witnesses, [**4] to be heard in person, by counsel or both, and to have a speedy and public trial by impartial jury in the county where the crime was committed. If the county is not known, the indictment or information may charge venue in two or more counties conjunctively and proof that the crime was committed in that area shall be sufficient; but before pleading the accused may elect in which of those counties the trial will take place. Venue for prosecution of crimes committed beyond the boundaries of the state shall be fixed by law.

(b) To preserve and protect the right of crime victims to achieve justice, ensure a meaningful role throughout the criminal and juvenile justice systems for crime victims, and ensure that crime victims' rights and interests are respected and protected by law in a manner no less vigorous than protections afforded to criminal defendants and juvenile delinquents, every victim is entitled to the following rights, beginning at the time of his or her victimization:

(1) The right to due process and to be treated with fairness and respect for the victim's dignity.

(2) The right to be free from intimidation, harassment, and abuse.

*(3) The right, within the judicial process, to be [**5] reasonably protected from the accused and any person acting on behalf of the accused. However, nothing contained herein is intended to create a special relationship between the crime victim and any law enforcement agency or office absent a special relationship or duty as defined by Florida law*.

(4) The right to have the safety and welfare of the victim and the victim's family considered when setting bail, including setting pretrial release conditions that protect the safety and welfare of the victim and the victim's family.

(5) The right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information of the victim.

(6) A victim shall have the following specific rights upon request:

*a. The right to reasonable, accurate, and timely notice of, and to be present at, all public proceedings involving the criminal conduct, including, but not limited to, trial, plea, sentencing, or adjudication, even if the victim will be a witness at the proceeding, notwithstanding any rule to the contrary. A victim shall also be provided reasonable, accurate, and timely notice of any release [**6] or escape of the defendant or delinquent, and any proceeding during which a right of the victim is implicated.*

b. The right to be heard in any public proceeding involving pretrial or other release from any form of legal constraint, plea, sentencing, adjudication, or parole, and any proceeding during which a right of the victim is implicated.

*c. The right to confer with the prosecuting attorney concerning any plea agreements, participation in pretrial diversion programs, release, restitution, [*1304] sentencing, or any other disposition of the case.*

d. The right to provide information regarding the impact of the offender's conduct on the victim and the victim's family to the individual responsible for conducting any presentence investigation or compiling any presentence investigation report, and to have any such information considered in any sentencing recommendations submitted to the court.

e. The right to receive a copy of any presentence report, and any other report or record relevant to the exercise of a victim's right, except for such portions made confidential or exempt by law.

*f. The right to be informed of the conviction, sentence, adjudication, place and time of incarceration, or other [**7] disposition of the convicted offender, any scheduled release date of the offender, and the release of or the escape of the offender from custody.*

g. The right to be informed of all postconviction processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender. The parole or early release authority shall extend the right to be heard to any person harmed by the offender.

h. The right to be informed of clemency and expungement procedures, to provide information to the governor, the court, any clemency board, and other authority in these procedures, and to have that information considered before a clemency or expungement decision is made; and to be notified of such decision in advance of any release of the offender.

(7) The rights of the victim, as provided in subparagraph (6)a., subparagraph (6)b., or subparagraph (6)c., that apply to any first appearance proceeding are satisfied by a reasonable attempt by the appropriate agency to notify the victim and convey the victim's views to the court.

*(8) The right to the [**8] prompt return of the victim's property when no longer needed as evidence in the case.*

(9) The right to full and timely restitution in every case and from each convicted offender for all losses suffered, both directly and indirectly, by the victim as a result of the criminal conduct.

(10) The right to proceedings free from unreasonable delay, and to a prompt and final conclusion of the case and any related postjudgment proceedings.

a. The state attorney may file a good faith demand for a speedy trial and the trial court shall hold a calendar call, with notice, within fifteen days of the filing demand, to schedule a trial to commence on a date at least five days but no more than sixty days after the date of the calendar call unless the trial judge enters an order with specific findings of fact justifying a trial date more than sixty days after the calendar call.

*b. All state-level appeals and collateral attacks on any judgment must be complete within two years from the date of appeal in non-capital cases and within five years from the date of appeal in capital cases, unless a court enters an order with specific findings as to why the court was unable to comply with this subparagraph and [**9] the circumstances causing the delay. Each year, the chief judge of any district court of appeal or the chief justice of the supreme court shall report on a case-by-case basis to the speaker of the house of representatives and the president of the senate all cases where the court entered an order [*1305] regarding inability to comply with this subparagraph. The legislature may enact legislation to implement this subparagraph.*

(11) The right to be informed of these rights, and to be informed that victims can seek the advice of an attorney with respect to their rights. This information shall be made available to the general public and provided to all crime victims in the form of a card or by other means intended to effectively advise the victim of their rights under this section.

(c) The victim, the retained attorney of the victim, a lawful representative of the victim, or the office of the state attorney upon request of the victim, may assert and seek enforcement of the rights enumerated in this section and any other right afforded to a victim by law in any trial or appellate court, or before any

*other authority with jurisdiction over the case, as a matter of right. The court or other authority [**10] with jurisdiction shall act promptly on such a request, affording a remedy by due course of law for the violation of any right. The reasons for any decision regarding the disposition of a victim's right shall be clearly stated on the record.*

(d) The granting of the rights enumerated in this section to victims may not be construed to deny or impair any other rights possessed by victims. The provisions of this section apply throughout criminal and juvenile justice processes, are self-executing, and do not require implementing legislation. This section may not be construed to create any cause of action for damages against the state or a political subdivision of the state, or any officer, employee, or agent of the state or its political subdivisions.

*(e) As used in this section, a "victim" is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed. The term "victim" includes the victim's lawful representative, the parent or guardian of a minor, or the next of kin of a homicide victim, except upon a showing that the interest [**11] of such individual would be in actual or potential conflict with the interests of the victim. The term "victim" does not include the accused. The terms "crime" and "criminal" include delinquent acts and conduct*

Victims of crime or their lawful representatives, including the next of kin of homicide victims, are entitled to the right to be informed, to be present, and to be heard when relevant, at all crucial stages of criminal proceedings, to the extent that these rights do not interfere with the constitutional rights of the accused.

Section 8 of Article V of the State Constitution is amended, and section 21 is added to that article, to read:

ARTICLE V

JUDICIARY

SECTION 8. Eligibility.—No person shall be eligible for office of justice or judge of any court unless the person is an elector of the state and resides in the territorial jurisdiction of the court. No justice or judge shall serve after attaining the age of *seventy-five*
seventy years except upon temporary assignment

or to complete a term, one-half of which has been served. No person is eligible for the office of justice of the supreme court or judge of a district court of appeal unless the person is, and has been for the preceding ten years, a member of the bar of Florida. [**12] No person is eligible for the office of circuit judge unless the person is, and has been for the preceding five years, a member of the bar of Florida. Unless otherwise provided by general law, no person is eligible for the [*1306] office of county court judge unless the person is, and has been for the preceding five years, a member of the bar of Florida. Unless otherwise provided by general law, a person shall be eligible for election or appointment to the office of county court judge in a county having a population of 40,000 or less if the person is a member in good standing of the bar of Florida.

SECTION 21. Judicial interpretation of statutes and rules.—In interpreting a state statute or rule, a state court or an officer hearing an administrative action pursuant to general law may not defer to an administrative agency's interpretation of such statute or rule, and must instead interpret such statute or rule de novo.

A new section is added to Article XII of the State Constitution to read:

ARTICLE XII

SCHEDULE

*Eligibility of justices and judges.—The amendment to Section 8 of Article V, which increases the age at which a justice or judge is no longer eligible to serve in judicial office except upon temporary assignment, shall [**13] take effect July 1, 2019*.

The CRC proposed that the following ballot title and summary be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE I, SECTION 16

ARTICLE V, SECTIONS 8, 21

ARTICLE XII, NEW SECTION

RIGHTS OF CRIME VICTIMS; JUDGES.—Creates constitutional rights for victims of crime; requires courts to facilitate victims' rights; authorizes victims to enforce their rights throughout criminal and juvenile justice processes.

> Requires judges and hearing officers to independently interpret statutes and rules rather than deferring to government agency's interpretation. Raises mandatory retirement age of state justices and judges from seventy to seventy-five years; deletes authorization to complete judicial term if one-half of term has been served by retirement age.

Lee Hollander, the League of Women Voters of Florida, Inc., and Patricia Brigham filed a complaint in circuit court alleging that the CRC's ballot title and summary for Amendment 6 are misleading. Marsy's Law of Florida, LLC intervened. In a separate case, Amy Knowles filed a complaint alleging that the same ballot title and summary are misleading and that the CRC proposal violates a single-subject requirement. On August 27, 2018, after holding [**14] a hearing on cross-motions for summary judgment in both cases, the circuit court struck Amendment 6 from the ballot.

II. ANALYSIS

Article XI, section 2 of the Florida Constitution provides that a constitution revision commission shall be established and convened every 20 years to "examine the constitution of the state, hold public hearings, and, not later than one hundred eighty days prior to the next general election, file with the custodian of state records its proposal, if any, of a revision of this constitution or any part of it." *Id.* § 2(c).

Section 101.161(1), Florida Statutes (2018), provides the following ballot title and summary requirements "[w]henever a constitutional amendment or other public measure is submitted to the vote of the people[:]"

> The ballot summary of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the constitutional revision commission proposal . . . . The ballot summary of the amendment or other public measure shall be an explanatory [*1307] 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 subsection does not apply to constitutional [**15] amendments or revisions proposed by joint resolution.

The purpose of these clarity requirements 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." *Advisory Op. to Att'y Gen. re Term Limits Pledge*, 718 So. 2d 798, 803 (Fla. 1998) (quoting *Advisory Op. to Att'y Gen.*

re Right of Citizens to Choose Health Care Providers, 705 So. 2d 563, 566 (Fla. 1998)).

This Court's review of the validity of a ballot title and summary under section 101.161(1) involves two inquiries:

> First, the Court asks whether "the ballot title and summary . . . fairly inform the voter of the chief purpose of the amendment." *Right to Treatment and Rehabilitation for Non-Violent Drug Offenses*, 818 So. 2d [491, 497 (Fla. 2002)]. Second, the Court asks "whether the language of the title and summary, as written, misleads the public." *Advisory Op. to Att'y Gen. re Right of Citizens to Choose Health Care Providers*, 705 So. 2d 563, 566 (Fla. 1998).

Advisory Op. to Att'y Gen. re Fairness Initiative Requiring Leg. Determination that Sales Tax Exemptions & Exclusions Serve a Public Purpose, 880 So. 2d 630, 635-36 (Fla. 2004). As this Court has explained, "a ballot title and summary cannot 'fly under false colors' or 'hide the ball' with regard to the true effect of an amendment." *Fla. Dep't of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008). "When the summary of a proposed amendment does not accurately describe the scope of the text of the amendment, it fails in its purpose and must be stricken." *Term Limits Pledge*, 718 So. 2d at 804. However, "the title and summary need not explain every detail or ramification of the proposed amendment." *Advisory Op. to Att'y Gen. re Prohibiting Pub. Funding of Political Candidates' Campaigns*, 693 So. 2d 972, 975 (Fla. 1997).

This Court has detailed the following deferential standard of review:

> "The [**16] Court must act with extreme care, caution, and restraint before it removes a constitutional amendment from the vote of the people," and thus must approve an initiative unless it is clearly and conclusively defective. *Askew v. Firestone*, 421 So. 2d 151, 154, 156 (Fla. 1982); *see also Smith v. Coalition to Reduce Class Size*, 827 So. 2d 959, 963 (Fla. 2002) (stating that if the initiative meets constitutional requirements, "then the sponsor of an initiative has the right to place the initiative on the ballot"). Finally, the Court does not review the merits or the wisdom of the proposed amendment. *Advisory Op. to the Att'y Gen. re Right of Citizens to Choose Health Care Providers*, 705 So. 2d 563, 565 (Fla. 1998).

Advisory Op. to Att'y Gen. re Authorizes Miami-Dade & Broward Cty. Voters to Approve Slot Machines in Parimutuel Facilities, 880 So. 2d 522, 523 (Fla. 2004). This Court reviews the trial court's ruling regarding the validity of the ballot language de novo. *Slough*, 992 So. 2d at 147.

In this case, the ballot title and summary comply with the statutory word limitations. Additionally, the title and summary inform voters of the chief purpose of the proposal and do not mislead regarding its scope and effect.

The CRC chose the title "RIGHTS OF CRIME VICTIMS; JUDGES," and the summary states that the amendment:

> [*1308] Creates constitutional rights for victims of crime; requires courts to facilitate victims' rights; authorizes victims to enforce their rights throughout criminal and juvenile justice processes. Requires judges and hearing officers to independently interpret statutes and rules rather than deferring [**17] to government agency's interpretation. Raises mandatory retirement age of state justices and judges from seventy to seventy-five years; deletes authorization to complete judicial term if one-half of term has been served by retirement age.

Read together, the title and summary reasonably inform voters of the chief purpose and effect of the proposed amendment, namely that it would create victims' rights, would require de novo review of agency interpretations of statutes and rules, would raise judges' and justices' mandatory retirement age from 70 to 75, and would no longer allow completion of a judicial term if one-half of the term had already been served by retirement age. *See Advisory Op. to Att'y Gen. re 1.35% Prop. Tax Cap, Unless Voter Approved*, 2 So. 3d 968, 974 (Fla. 2009) ("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.").

Regarding victims' rights, the ballot title and summary explain that the amendment would create victims' rights, would require the judiciary to facilitate these rights, and that the victims would be authorized to enforce their rights. While the title and summary do not enumerate the [**18] specific victims' rights that are created and do not mention defendants' rights, the title and summary are not misleading because the actual text of the proposed amendment does not restrict any existing defendants' or victims' rights or subordinate any existing defendants' or victims' rights to the newly created victims' rights. *See Advisory Op. to Att'y Gen. re Fla. Growth Mgmt. Initiative Giving Citizens Right to Decide Local Growth Mgmt. Plan Changes*, 2 So. 3d 118, 123 (Fla. 2008) ("Because the Smarter Growth amendment will not conflict with or restrict any existing rights to subject local growth management plans to local referenda, the lack of detail concerning the petition process does not render the title and summary misleading."); c*f. Fla. Dep't of State v. Fla. State Conference of NAACP Branches*, 43 So. 3d 662, 668 (Fla. 2010) (invalidating an amendment proposed by the Legislature and explaining that "the ballot language did not inform the voters that the amendment would allow the

existing mandatory constitutional requirement in article III, section 16(a), requiring that districts be contiguous to be subordinated to the discretionary standards" for redistricting outlined in the proposed amendment).

More specifically, the proposed victims' right to a speedy trial would not affect defendants' rights. Subsection (b)(10) of the amendment's text would create a victims' "right to proceedings free from unreasonable delay, and to a prompt and final conclusion [**19] of the case and any related postjudgment proceedings." And subsection (b)(10) a. provides that "[t]he state attorney may file a good faith demand for a speedy trial and the trial court shall hold a calendar call, with notice, within fifteen days of the filing demand, to schedule a trial to commence on a date at least five days but no more than sixty days . . . unless the trial judge enters an order with specific findings of fact justifying a trial date more than sixty days after the calendar call." However, the defendant would still retain a right to a speedy trial that would not be subordinated to the newly created victims' right. Moreover, if the amendment passes, the defendant may still waive his or her right to a speedy trial, and a trial court could extend holding the [*1309] trial beyond the 60 days by entering an order with a justification for doing so even though the victim has demanded a speedy trial. A defendant does not have a right to "unreasonable delay" that would conflict with the newly created victims' "right to proceedings free from unreasonable delay."

Similarly, the time constraints and reporting requirements for appeals and collateral attacks that the text of subsection (b)(10) b. would impose do not restrict, [**20] conflict with, or subordinate any rights of defendants. Defendants do not have a right to unreasonable delay in these proceedings. And the language of the proposed text would allow proceedings to extend beyond the time periods with an explanation from the appellate courts as to why they were unable to meet the time constraints.

Furthermore, while the title and summary do not reference the victims' rights that were added to the constitution in 1988, those already existing victims' rights are incorporated in the proposed text of subsection (b)(6) but with more specificity. Specifically, the text of proposed Amendment 6 would retain subsection (a) of article I, section 16 (pertaining to defendants' rights) and strike the existing subsection (b) (pertaining to victims' rights), but replace the stricken victims' "right to be informed, to be present, and to be heard when relevant, at all crucial stages of criminal proceedings, to the extent these rights do not interfere with the constitutional rights of the accused" with more specific language regarding the victims' right to be informed, present, and heard. Subsection (b)(6) of the proposed amendment's text states the following:

A victim shall have the following specific rights upon request:

a. The right to reasonable, [**21] accurate, and timely notice of, and to be present at, all public proceedings involving the criminal conduct, including, but not limited to, trial, plea, sentencing, or adjudication, even if the victim will be a witness at the proceeding, notwithstanding any rule to the contrary. A victim shall also be provided reasonable, accurate, and timely notice of any release or escape of the defendant or delinquent, and any proceeding during which a right of the victim is implicated.
b. The right to be heard in any public proceeding involving pretrial or other release from any form of legal constraint, plea, sentencing, adjudication, or parole, and any proceeding during which a right of the victim is implicated.
c. The right to confer with the prosecuting attorney concerning any plea agreements, participation in pretrial diversion programs, release, restitution, sentencing, or any other disposition of the case.

d. The right to provide information regarding the impact of the offender's conduct on the victim and the victim's family to the individual responsible for conducting any presentence investigation or compiling any presentence investigation report, and to have any such information considered [**22] in any sentencing recommendations submitted to the court.
e. The right to receive a copy of any presentence report, and any other report or record relevant to the exercise of a victim's right, except for such portions made confidential or exempt by law.
f. The right to be informed of the conviction, sentence, adjudication, place and time of incarceration, or other disposition of the convicted offender, any scheduled release date of the offender, and the release of or the escape of the offender from custody.

g. The right to be informed of all postconviction processes and procedures, [*1310] to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender. The parole or early release authority shall extend the right to be heard to any person harmed by the offender.

h. The right to be informed of clemency and expungement procedures, to provide information to the governor, the court, any clemency board, and other authority in these procedures, and to have that information considered before a clemency or expungement decision is made; and to be notified [**23] of such decision in advance of any release of the offender.

Importantly, no existing victims' rights would be eliminated or restricted by the text of the proposed Amendment 6.

In its order striking Amendment 6, the circuit court stated that "[n]either the title nor summary reveals that the 2018 revision 6 expands the scope of Article I, Section 16(b) beyond criminal proceedings to include the delinquency system." The circuit court was mistaken. The ballot summary expressly explains that the scope of the amendment's text includes the juvenile system with its statement that Amendment 6 "authorizes victims to enforce their rights throughout criminal *and juvenile justice processes*." (Emphasis added.) There is no omission, much less a material omission, regarding the application of victims' rights in juvenile justice processes.

Additionally, the circuit court stated that "Revision 6 contains language that modifies the existing pretrial release section [of the Florida Constitution], with neither the title or summary disclosing the impact on Article I, Section 14 to voters." Amendment 6's text states the following regarding pretrial release: "(4) The right to have the safety and welfare of the victim and the victim's [**24] family considered when setting bail, including setting pretrial release conditions that protect the safety and welfare of the victim and the victim's family." Article I, section 14 of the Florida Constitution (emphasis added) provides the following:

Pretrial release and detention.—

> Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on *reasonable conditions*. If no conditions of release can reasonably protect *the community* from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

Because "the community" that must be reasonably protected for an accused to receive pretrial release under article I, section 14 includes "the victim and the victim's family" entitled to reasonable protection under the text of proposed Amendment 6, defendants' pretrial release rights under the constitution would not be restricted or subordinated by Amendment 6. Moreover, the text of the proposed amendment does nothing to change section 14 or impose more restrictive conditions [**25] than a court can currently impose. Therefore, the ballot title and summary are not misleading for failing to mention the unaltered pretrial release right of article I, section 14.

Further, the circuit court's order mentioned the Appellees' argument that the title, "RIGHTS OF CRIME VICTIMS; JUDGES," is incomplete and misleading because

it does not mention the proposed amendment's text that would alter the standard for reviewing agency interpretations of statutes and rules. However, this [*1311] Court has explained that "the ballot title and summary may not be read in isolation, but must be read together in determining whether the ballot information properly informs the voters." *Advisory Op. to Att'y Gen. re Voluntary Universal Pre-Kindergarten Education*, 824 So. 2d 161, 166 (Fla. 2002). And, here, the summary clearly explains that Amendment 6 "[r]equires judges and hearing officers to independently interpret statutes and rules rather than deferring to government agency's interpretation." Therefore, the ballot information is not incomplete or misleading regarding the proposed text's elimination of the so-called *Chevron*[3] doctrine.

Before this Court, Appellees argue that the ballot summary and title are misleading because they do not inform voters that the term "victims" could possibly be construed to include corporations. [**26] However, this is a complaint about an ambiguity of the text of Amendment 6 rather than a complaint regarding the nature of the summary. Nothing in Amendment 6 states whether or not crime victims includes corporations; therefore, the summary accurately reflects the text of Amendment 6. And this Court has held that it will not strike a proposal from the ballot based upon an argument concerning "the ambiguous legal effect of the amendment's text rather than the clarity of the ballot title and summary." *Advisory Op. to Att'y Gen. re Voter Control of Gambling*, 215 So. 3d 1209, 1216 (Fla. 2017).

Accordingly, it has not been clearly and conclusively demonstrated that the ballot title and summary are misleading and do not reasonably inform the voters of the chief purpose of Amendment 6.

Finally, Appellee Knowles argues that the proposed amendment should not be allowed to appear on the ballot because it violates a single-subject or anti-bundling requirement. But no such requirement exists for CRC proposals. As this Court has explained,

> [u]nder article XI, Florida Constitution, a thirty-seven member Constitution Revision Commission is required to convene, adopt rules of procedure, examine the constitution, hold public hearings, and prepare a report on proposed revisions. The report is published to the electorate prior to election. No [**27] single-subject requirement is imposed because this process embodies adequate safeguards to protect against logrolling and deception. *See Fine v. Firestone*, 448 So. 2d 984 (Fla. 1984).

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[3] *Chevron, USA, Inc. v. Nat'l Res. Def. Council, Inc.*, 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984).

Charter Review Comm. of Orange County v. Scott, 647 So. 2d 835, 837 (Fla. 1994); *see Term Limits Pledge*, 718 So. 2d at 801 ("The single-subject requirement applies *only* to the citizen initiative method of amending the constitution."). Consequently, because CRC proposals are not required to comply with a single-subject requirement, Amendment 6 cannot be stricken for encompassing more than one subject.[4]

III. CONCLUSION

For the reasons explained above, we reverse the circuit court's judgment and vacate the injunction prohibiting the Secretary of State from action to place the CRC's Revision 1, designated as Amendment 6 and titled "Rights of Crime Victims; Judges," on the ballot. We order [*1312] Amendment 6 to appear on the ballot for the November 2018 general election. No motions for rehearing will be permitted.

It is so ordered.

CANADY, C.J., and POLSTON, LABARGA, and LAWSON, JJ., concur.

PARIENTE, J., dissents with an opinion, in which QUINCE, J., concurs.

LEWIS, J., dissents.

Dissent by: PARIENTE

Dissent

PARIENTE, J., dissenting.

Despite the enticing ballot title and summary for "rights of crime victims," this proposal[5] has the potential to affect all criminal and juvenile proceedings in this State. [**28] Further, Amendment 6 bundles totally unrelated constitutional proposals, which in itself is problematic for voters.

While the notion that crime victims should have "rights" in criminal proceedings is itself non-controversial, the ballot language for Amendment 6 fails to tell voters the

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[4] Amici argue that the CRC's bundling of multiple subjects into one proposed amendment violates voters' federal right to vote. However, Amici do not cite, and we could not locate, any reported Florida or federal case holding that the First Amendment protects voters from having to make a choice regarding a measure that potentially includes both desired and undesired outcomes.

[5] This proposal is known as Revision 1 or Amendment 6 on the November 2018 ballot.

full story. The ballot summary conspicuously fails to tell voters that victims' rights already exist in the Florida Constitution and, rather than "creating" rights, Amendment 6 actually defines and expands these existing rights into a laundry list of rights that are to be placed on equal footing with the constitutional rights of the accused.

While generally every person can see herself as a victim, our constitutional system rests on the very fundamental precept that those accused of crimes are "innocent until proven guilty."[6] That principle is the cornerstone of our criminal justice system and the foundation for many of the rights set forth in the Bill of Rights.

The ballot summary for Amendment 6 is misleading in numerous ways, the most concerning of which is that the proposal "hide[s] the ball"[7] as to its chief purposes—expanding victims' existing rights into a comprehensive manual of specific rights, incomparable [**29] to any other list in the Florida Constitution, and deleting important, existing constitutional language that ensures that victims' rights do not interfere with the constitutional rights of the accused in criminal proceedings. *See* art. I, § 16(b), Fla. Const.

In addition to failing to explain the constitutional status quo, the proposal presents voters with numerous, completely unrelated proposals in addition to the victims' rights amendment: (1) article V, section 8, which sets a new mandatory retirement age of seventy-five for judges and justices; (2) article V, section 21, directing how judges should interpret statutes and rules; and (3) article XII, directing that the increased retirement age for judges and justices shall be effective only prospectively as of July 1, 2019, and therefore will not affect judges and justices who already face mandatory retirement before that date.

This bundling, which was not subjected to procedural safeguards in the Constitutional Revision Commission (CRC) hearing process, creates a misleading ballot summary and forces voters to cast one vote for multiple, independent and unrelated proposals. Thus, because the ballot title and summary for Amendment 6 are misleading and fail to give voters fair notice [**30] of the all-important decision to amend several articles of the Florida Constitution, I dissent.

[*1313] I. What the Ballot Language for Amendment 6 Fails to Tell Voters

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[6] *State v. Blair*, 39 So. 3d 1190, 1192 (Fla. 2010); *Fla. Bar v. Rose*, 823 So. 2d 727, 732 (Fla. 2002) ("[A] defendant is innocent until proven guilty, no matter what the charge and no matter how insidious the allegations."); *see* art. I, § 14, Fla. Const.

[7] *Armstrong v. Harris*, 773 So. 2d 7, 16 (Fla. 2000).

First, I agree with the circuit court that the problem is not what the ballot language says but "what the ballot summary (and actual language of the amendment) *fails* to say."[8] The ballot language excludes significant information regarding its changes, specifically (A) the existing balance between victims' rights and defendants' constitutional rights, and (B) that the change in the mandatory retirement age for judges and justices will apply only prospectively.

A. Changes to the Existing Balance Between Victims' and Defendants' Constitutional Rights

The ballot language for Amendment 6 conspicuously leaves out the fact that victims' rights already exist in article I, section 16(b), of the Florida Constitution, which currently provides: "Victims of crime or their lawful representatives . . . are entitled to the right to be informed, to be present, and to be heard when relevant, at all crucial stages of criminal proceedings." Art. I, § 16(b), Fla. Const.

The ballot language also fails to tell voters that article I, section 16(b) currently includes the critical caveat that these rights exist "to the extent [they] do not interfere [**31] with the constitutional rights of the accused," art. I, § 16(b), Fla. Const., and that Amendment 6 deletes this "30 year old existing constitutional provision,"[9] which ensures balance between victims' and defendants' rights. In fact, Amendment 6 replaces this existing language with the following: "[V]ictims' rights and interests are [to be] respected and protected by law in a manner no less vigorous than protections afforded to criminal defendants and juvenile delinquents." Thus, Amendment 6 seeks to underhandedly uproot the long-standing balance between the constitutional rights of the accused and victims. *See* Final J., at 6; Amici FPDA Br. at 5.[10]

Instead of clearly explaining these changes, the ballot summary for Amendment 6 merely states that the proposal "[c]reates constitutional rights for victims of crime; requires courts to facilitate" these rights; and "authorizes victims to enforce" such

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[8] *Advisory Op. to Att'y Gen. re Rights of Electricity Consumers re Solar Energy Choice*, 188 So. 3d 822, 837 (Fla. 2016); *accord Hollander v. Dep't of State*, Nos. 2018-CA-1525 & 2018-CA-1740, Final Judgment at 4 (Fla. 2d Cir. Ct. Aug. 27, 2018) [hereinafter Final J.]; *see Armstrong*, 773 So. 2d at 12 ("[A] proposed [constitutional] amendment [must] be accurately represented on the ballot; otherwise, voter approval would be a nullity."); *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982) (citing *Miami Dolphins, Ltd. v. Metro. Dade Cty.*, 394 So. 2d 981 (Fla. 1981)) ("Simply put, the ballot must give the voter fair notice of the decision he must make.").

[9] Final J., at 7; *see Advisory Op. to Att'y Gen. re 1.35% Prop. Tax Cap, Unless Voter Approved*, 2 So. 3d 968, 976 (Fla. 2009) (citing § 101.161(1), Fla. Stat. (2007)).

[10] Amici Curiae The Florida Public Defender Association (FPDA), the Florida Association of Criminal Defense Lawyers, the Innocence Project of Florida, and the American Civil Liberties Union Foundation of Florida are referred to collectively herein as "FPDA."

rights "throughout criminal and juvenile justice processes." However, Amendment 6 actually (a) expands victims' existing rights, (b) applies victims' rights for the first time to juvenile delinquency proceedings, (c) grants victims rights that, in the sheer breadth of the amendment, are more extensive [**32] than the rights listed in the Florida Constitution for defendants,[11] and (d) places victims' rights on "equal footing" with the rights of the accused. [*1314] Indeed, the majority states that the "already existing victims' rights are incorporated in the proposed text . . . but with more specificity." Majority op. at 14. Thus, it is clear that the ballot summary's use of "create" is misleading, and the ballot language for Amendment 6 fails to explain the full scope and effect of the proposal, making it difficult for voters to "comprehend the sweep of [the] proposal." *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982) (quoting *Smathers v. Smith*, 338 So. 2d 825, 829 (Fla. 1976)).

In fact, the majority recognizes that the ballot title and summary "do not mention defendants' rights." Majority op. at 12. On one hand, the majority attempts to explain that the proposal will not affect defendants' constitutional rights. *Id.* at 13-14. However, this discussion is not only speculative but, more significantly, inappropriate at this stage of review. As the majority acknowledges in another portion of its discussion, we should not address the "legal effect" of the proposal at this stage but, rather, limit our analysis to "the clarity of the ballot title and summary." *Id.* at 18 (quoting *Advisory Op. to Att'y Gen. re Voter Control of Gambling*, 215 So. 3d 1209, 1216 (Fla. 2017)).

Nevertheless, because the majority asserts [**33] that the proposal will not affect defendants' constitutional rights, I have genuine concerns that the new, comprehensive manual of victims' rights created by Amendment 6 would, in fact, impact our criminal justice system and the rights of the accused. At the least, these changes will likely cause a wave of litigation in which the courts will be asked to resolve conflicts between victims' and defendants' enumerated constitutional rights—including defendants' constitutional rights to speedy trial, due process, and confrontation. *See* art. I, §§ 9, 16(a), Fla. Const.; *see also* Answer Br. of Appellees, at 20-21.

Because the voters are not informed of the amendment's removal of the existing constitutional provision that states that victims' rights exist "to the extent [they] do not interfere with the constitutional rights of the accused," art. I, § 16(b), Fla. Const., in exchange for "victims' rights and interests are [to be] respected and protected by law in a manner no less vigorous than protections afforded to criminal

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[11] The rights the proposal "creates" for victims constitute 5 pages and 146 lines of new constitutional text—the most comprehensive constitutional text in our state constitution.

defendants and juvenile delinquents," it is inevitable that the constitutional rights of the accused will be adversely affected.

B. Increased Retirement Age for Judges and Justices Applies Only Prospectively

The ballot language also [**34] fails to tell voters that its change to the mandatory retirement age for judges and justices—increased from 70 to 75—does not go into effect until July 1, 2019. As a result, a voter who may be inclined to vote "yes" on Amendment 6 to approve this proposal in hopes that a sitting judge's term will be extended—perhaps at the cost of his or her views on another proposal in the amendment[12]—would cast an uninformed vote. Thus, it is clear that the ballot language does not tell voters the full story.

II. Misleading Bundling of Unrelated Constitutional Amendments

In addition to "hiding the ball" as to its true effect, the ballot language for Amendment 6 puts voters in a difficult position by bundling multiple, separate and unrelated proposals. *See Detzner v. Anstead*, No. SC18-1513, 2018 Fla. LEXIS 1919 at *13 (Fla. Oct. 17, 2018) (Pariente, J., concurring in result); *City of Coral [*1315] Gables v. Gray*, 154 Fla. 881, 19 So. 2d 318, 322 (Fla. 1944). As I explained in *Anstead*, the justification for not requiring the CRC to meet the single-subject requirement was an assumption that the CRC's process embodies "adequate safeguards to protect against logrolling and deception." 2018 Fla. LEXIS 1919 at *4 (Pariente, J., concurring in result); *accord Charter Rev. Comm'n of Orange Cty. v. Scott*, 647 So. 2d 835, 837 (Fla. 1994). "However, as CRC Commissioner Roberto Martinez, one of this Court's three appointees, explained, the[se] safeguards . . . do not exist." *Anstead*, 2018 Fla. LEXIS 1919 at *10 (Pariente, [**35] J., concurring in result).

In addition to the significant changes regarding victims' and defendants' constitutional rights, Amendment 6 will (1) impose new obligations on the judiciary in statutory interpretation by eliminating the long-standing *Chevron*[13] doctrine and (2) prospectively increase the mandatory retirement age of appellate judges and justices. In other words, with this proposal, the CRC bundled amendments to completely separate parts of the Constitution—not only to Article I but to Article V.

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[12] *See Detzner v. Anstead*, No. SC18-1513, 256 So. 3d 820, 2018 Fla. LEXIS 1919 at *8 (Fla. Oct. 17, 2018) (Pariente, J., concurring in result).

[13] *Chevron U.S.A., Inc. v. Nat'l Res. Def. Counsel, Inc.*, 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984).

In fact, Commissioner Martinez made a motion to unbundle these unrelated revisions, explaining:

> Do [the three proposals in Amendment 6] all deal with the courts? They do. *But are they really related? They're not*. One deals with the retirement age, one deals with judicial deference, and one deals with the victims of crimes. They are not related. They are separate proposals. *By grouping these separate proposals together, effectively what we've done is we're log rolling*.
>
> . . . .
>
> . . . *At no time have we had any public hearing on any of the groupings. The public has not had an opportunity to tell us whether or not they understand the grouping*. There has been no process with regards to having [**36] a public hearing on whether or not the grouping, in fact, complies with the purpose of the—what we asked our legal experts to do, which is does the grouping fairly inform the voters as to what it is that they're voting for or does it mislead.
>
> And I submit to you that by grouping, what we have done, by bundling different proposals together, . . . is *we have undermined the work that we have undertaken to make sure that each one of the ballot summaries is clear and fairly informs the voters*.

Constitution Revision Comm'n, Transcript, Full Comm'n Meeting, at 70-72 (April 16, 2018) (emphasis added). Commissioner Martinez further explained how the CRC's unilateral decision to bundle individual amendments undermines the CRC's "paramount objective" of giving voters a "very clear choice," stating:

> [A]s we have done it . . . we're undermining the work that we have spent months doing in making sure that each proposal is clear and the voters have an opportunity to clearly vote for what it is to be informed, to be clear as to what it is they are voting for.

Id. at 73-74.

I agree with Commissioner Martinez that the bundling in Amendment 6 is improper and serves to only confuse and mislead voters, which should have [**37] required this Court to strike the proposal from the ballot. *See Anstead*, 2018 Fla. LEXIS 1919 at *14 (Pariente, J., concurring in result). As I explained in *Anstead*:

> [*1316] Bundling multiple, independent and unrelated proposals in this way makes the task of voting significantly more difficult for Florida's citizens, requiring them to decide—in addition to weighing the independent merits of each proposal—whether voting in favor of one proposal they approve of is worth also approving a proposal they do not favor. Voters should not be

> required to exercise their all-important authority to amend the constitution under these restrictions.

2018 Fla. LEXIS 1919 at *14. Likewise, Hank Coxe, one of this Court's three appointees to the CRC, wrote: "[A]ny voter would prefer to be asked 15 true or false questions as opposed to struggling with multiple choices where none is the correct one." *Letter from Hank Coxe at the Conclusion of His Service on the Constitution Revision Commission*, Fla. Supreme Ct. Historical Soc'y Magazine 20 (Summer/Fall 2018), https://flcourthistory.org/resources/Documents/2018%20Magazine/FSCHS_Historical_Review2018_web.pdf . Indeed, absent this improper bundling, the CRC could have presented to voters three separate, adequately explained amendments [**38] and minimized voter confusion—devoting all 75 words of each ballot summary to each proposal to ensure voters received the full story on each amendment. *See Anstead*, 2018 Fla. LEXIS 1919 at *15 (Pariente, J., concurring in result).

CONCLUSION

Amendment 6 repeals existing constitutional language—that victims' rights exist "to the extent [they] do not interfere with the constitutional rights of the accused," art. I, § 16(b), Fla. Const.—and replaces it with language that places victims' rights on equal footing with the constitutional rights of the accused. Yet, the deceivingly favorable ballot language and improper bundling in Amendment 6 hides this reality from voters.

Thus, I agree with the circuit court that the ballot language for Amendment 6 is "misleading, not a fair and accurate summary and do[es] not provide voters with the truth in packaging to which they are entitled." Final J. at 10. In other words, the ballot language for Amendment 6 does not "enable [each voter] intelligently to cast his ballot," *Armstrong v. Harris*, 773 So. 2d 7, 13 (Fla. 2000) (quoting *Askew*, 421 So. 2d at 155), and should have been stricken from the ballot.

Accordingly, I dissent.

QUINCE, J., concurs.

Fla. Dep't of State v. Fla. State Conf. of NAACP Branches

Supreme Court of Florida

August 31, 2010, Decided

No. SC10-1375

Reporter
43 So. 3d 662 *; 2010 Fla. LEXIS 1449 **; 35 Fla. L. Weekly S 475

FLORIDA DEPARTMENT OF STATE, etc., et al., Appellants, vs. FLORIDA STATE CONFERENCE OF NAACP BRANCHES, et al., Appellees.

Prior History: [**1] Certified Judgments of Trial Courts in and for Leon County -- James Oliver Shelfer, Judge, Case No. 2010-CA-001803 -- An Appeal from the District Court of Appeal, First District, Case No. 1D10-3676.

Fla. Dep't of State v. Fla. State Conf. of NAACP Branches, 38 So. 3d 770, 2010 Fla. LEXIS 1231 (Fla., July 19, 2010)

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Ronald G. Meyer, Jennifer S. Blohm, and Lynn C. Hearn of Meyer, Brooks, Demma and Blohm, P.A., Tallahassee, Florida, Mark Herron and Robert J. Telfer, III of Messer, Caparello and Self, P.A., Tallahassee, Florida, for Appellees.

Erik M. Figlio, J. Andrew Atkinson, and Simonne Lawrence, Executive Office of The Governor, Tallahassee, Florida, on behalf of Governor Charlie Crist, as Amicus Curiae.

Judges: PARIENTE, LEWIS, QUINCE, LABARGA, and PERRY, JJ., concur. PARIENTE, [**2] J., concurs with an opinion, in which PERRY, J., concurs. CANADY, C.J., dissents with an opinion, in which POLSTON, J., concurs.

Opinion

[*664] PER CURIAM.

The Florida Department of State, Dawn K. Roberts in her official capacity as the Secretary of State, the Florida Senate, and the Florida House of Representatives ("Roberts and the Legislature"), appealed to the First District Court of Appeal from a July 12, 2010, judgment of the circuit court striking a legislatively proposed constitutional amendment from the November 2010 general election ballot. The First District certified to this Court that the judgment is of great public importance and that the appeal requires immediate resolution by this Court under our jurisdiction set forth in article V, section 3(b)(5), of the Florida Constitution. We agreed and granted expedited review to decide the question of great public importance--whether proposed Amendment 7, amending article III of the Florida Constitution, meets the requirements of Florida law for inclusion on the November 2010 ballot. As further explained below, we affirm the judgment of the circuit court striking proposed Amendment 7 from the ballot because the ballot language fails to inform [**3] the voter of the chief purpose and effect the amendment will have on existing, mandatory constitutional provisions in article III.

1. FACTS

On May 18, 2010, the Florida Legislature filed with the Florida Secretary of State a joint legislative resolution, Fla. H.J. Res. 7231 (2010) (HJR 7231), proposing an amendment to article III of the Florida Constitution. The amendment, designated Amendment 7 for the November 2010 general election ballot, would add section 20 to article III of the constitution as follows:

> **SECTION 20. Standards for establishing legislative and congressional district boundaries**.--In establishing congressional and legislative district boundaries or plans, the state shall apply federal requirements and balance and implement the standards in this constitution. The state shall take into consideration the ability of racial and language minorities to participate in the political process and elect candidates of their choice, and communities of common interest other than political parties may be respected and promoted, both without subordination to any other provision of this article. Districts and plans are valid if the balancing and implementation of standards is rationally [**4] related [*665] to the standards contained in this constitution and is consistent with federal law.

Section 101.161, Florida Statutes (2009), provides that whenever a constitutional amendment is proposed for submission to a vote of the people, the substance of the amendment shall be printed in clear and unambiguous language on the ballot.

[1] *See* § 101.161(1), Fla. Stat. (2009). We have held that "[t]he purpose of section 101.161(1) is to assure that the electorate is advised of the true meaning, and ramifications, of an amendment." *Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982). In HJR 7231, the Legislature adopted the following statement, which essentially mirrors the language contained in proposed Amendment 7, and resolved that it be placed on the ballot as follows:

> BE IT FURTHER RESOLVED that the following statement be placed on the ballot:
> CONSTITUTIONAL AMENDMENT
> ARTICLE III, SECTION 20
>
> **STANDARDS FOR LEGISLATURE TO FOLLOW IN LEGISLATIVE AND CONGRESSIONAL REDISTRICTING**.--In establishing congressional and legislative district boundaries or plans, the state shall apply federal requirements and balance and implement the standards in the State Constitution. The state shall take into consideration [**5] the ability of racial and language minorities to participate in the political process and elect candidates of their choice, and communities of common interest other than political parties may be respected and promoted, both without subordination to any other provision of article III of the State Constitution. Districts and plans are valid if the balancing and implementation of standards is rationally related to the standards contained in the State Constitution and is consistent with federal law.

On May 21, 2010, a complaint for declaratory and injunctive relief was filed in the circuit court seeking to prevent placement of proposed Amendment 7 on the November ballot. The suit was filed against the Florida Department of State and Secretary of State Dawn K. Roberts by plaintiffs Florida State Conference of NAACP Branches; Adora Obi Nweze; The League of Women Voters of Florida, Inc.; Deirdre Macnab; Robert Milligan; Nathaniel P. Reed; Democracia Ahora; and Jorge Mursuli. After the complaint [**6] was filed, Governor Charlie Crist was allowed to intervene as amicus curiae in support of plaintiffs, and the Florida House of Representatives and the Florida Senate were allowed to intervene as defendants in the circuit court.

The complaint alleged, inter alia, that the ballot title and summary for Amendment 7 fail to inform the voters that the amendment (1) would limit the mandatory application of constitutional standards and allow the Legislature to subordinate existing standards in article III to permissive and vague standards in the

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[1] Section 101.161(1) also provides that for amendments and ballot language not proposed by joint legislative resolution, the explanatory statement included on the ballot shall not exceed 75 words in length.

amendment; (2) would allow the Legislature to consider but not implement specific protections for minority voters contained in proposed constitutional Amendments 5 and 6, also slated for the November ballot; [2] (3) would [*666] allow the Legislature to "balance" standards in such a way as to create districts favoring or disfavoring incumbents; and (4) is intended to require validation of any district or plan that is related to nonmandatory standards in Amendment 7. The plaintiffs also alleged that the ballot title is misleading in that it purports to provide "standards" for redistricting while actually eliminating them.

The plaintiffs filed a motion for summary judgment seeking a judgment that the proposed amendment fails to advise voters of its chief purpose and true effect. Defendants Roberts and the Legislature filed cross motions for summary judgment. The parties agreed that there existed no disputed issues of material fact, and a final hearing was held on July 8, 2010. On July 12, 2010, the circuit court entered its order granting the plaintiffs' motion for summary final judgment and denying the defendants' motions for summary judgment. The circuit court's order found that the ballot language does not meet the requirements of section 101.161(1) in that it does not fairly advise the voters of the ramifications of the amendment. As a result, the circuit court enjoined the Department of State from placing Amendment 7 on the November 2010 ballot. In so ruling, the trial judge made the following pertinent findings:

> Apart from the number of districts to be drawn, the Florida [**8] Constitution currently contains only one requirement binding on the legislature when they meet every ten years to draw districts. That one mandatory requirement is that each district be contiguous. Amendment 7, if it were to pass, would make that one mandatory requirement aspirational only and would subordinate contiguity to the other aspirational goals or "standards" contained in Amendment 7.
>
> . . . .
>
> To be clear, there is nothing unlawful or improper about what the legislative proposal seeks to do. The wisdom of a proposed amendment is not a matter of concern for this Court. But to be legally entitled to a place on the ballot, the summary and title must be fair and must advise the voter sufficiently to enable the voter to intelligently vote for or against the amendment. . . . Requiring that all districts be contiguous is a valuable right afforded to all citizens of Florida. A citizen cannot, and should not, be asked to give up that right without being fully informed and making an intelligent decision to do so.

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[2] *See Advisory Op. to Att'y Gen. re Standards for Establishing Legislative District Boundaries*, 2 So. 3d 175, 191 (Fla. 2009) [**7] (approving ballot title and summary); *Advisory Op. to Att'y Gen. re Standards for Establishing Legislative District Boundaries (FIS)*, 24 So. 3d 1198, 1202 (Fla. 2009) (holding that the financial impact statements comply with statute).

> Amendment 7, if passed, would allow this or any future legislature, if it chose to do so, to gerrymander districts guided by no mandatory requirements or standards and subject [**9] to no effective accountability so long as its decisions were rationally related to, and balanced with, the aspirational goals set out in Amendment 7 and the subordinate goal of contiguity.

Thus, the primary basis on which the circuit court invalidated the ballot language was that it failed to inform the voters that article III of the Florida Constitution currently contains a mandatory contiguity requirement which, if Amendment 7 is adopted, could be subordinated to the other considerations set forth in proposed Amendment 7. [3]

[*667] II. ANALYSIS

The standard of review of the validity of a proposed [**10] constitutional amendment is de novo. *Armstrong v. Harris*, 773 So. 2d 7, 11 (Fla. 2000). We are ever mindful that "[t]he Court must act with extreme 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). "A court may declare a proposed constitutional amendment invalid only if the record shows that the proposal is clearly and conclusively defective . . . ." *Armstrong*, 773 So. 2d at 11 (citing *Askew*, 421 So. 2d at 154).

A. Requirement that Ballot Language Inform Voters of Legal Effect and Ramifications of a Proposed Amendment

In reviewing the validity of ballot language submitted to the voters for a proposed constitutional amendment, we do not consider or review the substantive merits or the wisdom of the amendment. *See Standards For Establishing Legislative District Boundaries*, 2 So. 3d at 184; *Fla. Dep't of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008); *In re Advisory Op. to Att'y Gen. re Med. Liab. Claimant's Comp. Amendment*, 880 So. 2d 675, 677 (Fla. 2004); *Askew*, 421 So. 2d at 155. Our sole task is to determine whether the ballot language sets forth the substance of the amendment [**11] in a manner that satisfies the requirements of section 101.161, Florida Statutes (2009). Section 101.161(1) expressly requires that "[w]henever a

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[3] Article III, section 16(a), of the Florida Constitution, titled "Senatorial and Representative Districts," requires that in the second year following each decennial census, the Legislature shall apportion the state in accordance with the constitutions of the State and the United States "into not less than thirty nor more than forty consecutively numbered senatorial districts of either contiguous, overlapping or identical territory, and into not less than eighty nor more than one hundred twenty consecutively numbered representative districts of either contiguous, overlapping or identical territory."

constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot." § 101.161(1), Fla. Stat. "Section 101.161(1) is a codification of the accuracy requirement implicit in article XI, section 5 of the Florida Constitution." *Advisory Op. to Att'y Gen. re Referenda Required for Adoption & Amendment of Local Government Comprehensive Land Use Plan*, 902 So. 2d 763, 770 (Fla. 2005).

To conform to section 101.161(1), the ballot language "must state 'the chief purpose' of the proposed amendment. In evaluating an amendment's chief purpose, a court must look not to subjective criteria espoused by the amendment's sponsor but to objective criteria inherent in the amendment itself, such as the amendment's main effect." *Armstrong*, 773 So. 2d at 18 (footnote omitted). In this analysis, we consider two questions: "(1) whether the ballot title and summary, in clear and unambiguous language, fairly inform the voter of [**12] the chief purpose of the amendment; and (2) whether the language of the title and summary, as written, misleads the public." *Standards for Establishing Legislative District Boundaries*, 2 So. 3d at 184 (quoting *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, 213-14 (Fla. 2007)). This evaluation also includes consideration of the amendment's "true meaning, and ramifications." *Armstrong*, 773 So. 2d at 16 (quoting *Askew*, 421 So. 2d at 156). "In practice, the accuracy requirement in article XI, section 5, functions as a kind of 'truth in packaging' law for the ballot." *Armstrong*, 773 So. 2d at 13. The proposed change in the constitution must "stand on its own merits and not be disguised as something else." *Askew*, 421 So. 2d at 156. "Reduced to colloquial terms, a ballot title and summary cannot 'fly under false colors' or 'hide the ball' [*668] with regard to the true effect of an amendment." *Slough* 992 So. 2d at 147; *see also Armstrong*, 773 So. 2d at 16.

Moreover, we have consistently adhered to the principle "that lawmakers who are asked to consider constitutional changes, and the people who are [**13] asked to approve them, must be able to comprehend the sweep of each proposal from a fair notification in the proposition itself that it is neither less nor more extensive than it appears to be." *Smathers v. Smith*, 338 So. 2d 825, 829 (Fla. 1976). It is by these basic and longstanding principles that we must measure the ballot language presented to the voter for Amendment 7.

We do not ignore the fact that HJR 7231, proposing Amendment 7, was the product of a joint resolution passed by a three-fifths vote of the Legislature. While we traditionally accord a measure of deference to the Legislature, "[t]his deference

. . . is not boundless, for the constitution imposes strict minimum requirements that apply across-the-board to all constitutional amendments, including those arising in the Legislature." *Armstrong*, 773 So. 2d at 14. We also recognize that section 101.161(1), which places strict requirements on ballot language presented for any constitutional amendment or other public measure, is also a legislative enactment entitled to this Court's deference. [4]

B. The Ballot Language for Proposed Amendment 7

With these principles in mind, we turn to the question before the Court--whether the ballot language proposed for Amendment 7 comports with the requirements of section 101.161, the Florida Constitution, and our case law governing placement of proposed constitutional amendments on the ballot. The ballot language for proposed Amendment 7 states in pertinent part that in redistricting, "[t]he state shall take into consideration the ability of racial and language minorities to participate in the political process and elect candidates of their choice, and communities [**15] of common interest other than political parties may be respected and promoted, *both without subordination to any other provision of article III* of the State Constitution." *See* HJR 7231 (emphasis added).

In this case, the circuit court struck Amendment 7 from the ballot because the court concluded the ballot language did not inform the voters that the amendment would allow the existing mandatory constitutional requirement in article III, section 16(a), requiring that districts be contiguous to be subordinated to the discretionary standards contained in Amendment 7. We agree with this finding. Under the text of Amendment 7, if the discretionary considerations in Amendment 7 are not to be subordinated to any other provisions of article III, then it must follow that other provisions of article III may be subordinated to the discretionary considerations in the balancing process set forth in Amendment 7. This clearly alters the nature of the contiguity requirement currently [*669] contained in article III, section 16(a), of the constitution. Unfortunately, neither the text of the amendment nor the explanatory statement proposed by the Legislature makes this fact clear. Nowhere does the ballot language [**16] inform the voter that there is currently a mandatory contiguity requirement in article III, and nowhere does the language inform the voter that the contiguity requirement could be diluted by Amendment 7.

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[4] Contrary to the suggestion in the dissent that we have overlooked important precedent on constitutional construction, we are not unmindful [**14] of the rule of construction that requires a court to interpret an ambiguous constitutional provision, if possible, in such a manner as to harmonize it with existing constitutional provisions. However, as the authority cited in the dissent demonstrates, this rule of construction applies to existing constitutional provisions, not to proposed amendments. Our duty under section 101.161(1), Florida Statutes, and article XI, section 5, of the Florida Constitution is to assure that the chief purpose and effect of *proposed* amendments be presented to the voter in clear and unambiguous language.

In *Armstrong* we invalidated a constitutional amendment because the ballot language failed to inform the voters that the provision would alter an existing provision in the Florida Constitution. We stated:

> In the present case, as explained above, the main effect of the amendment is simple, clear-cut, and beyond dispute: The amendment will nullify the Cruel or Unusual Punishment Clause. This effect far outstrips the stated purpose (i.e., to "preserve" the death penalty), for the amendment will nullify a longstanding constitutional provision that applies to *all* criminal punishments, not just the death penalty. Nowhere in the summary, however, is this effect mentioned--or even hinted at. The main effect of the amendment is *not* stated anywhere on the ballot. (The voter is not even told on the ballot that the word "or" in the Cruel or Unusual Punishment Clause will be changed to "and"--a significant change by itself.)

Armstrong, 773 So. 2d at 18 (footnote omitted). In the present case, Amendment [**17] 7 would allow the Legislature to nullify the currently mandatory nature of the contiguity requirement, placing it on par with the other discretionary considerations in the redistricting process--considerations that are subject to discretionary balancing by the Legislature. This is a matter that should have been clearly and unambiguously stated in the ballot language. Failing this clear explanation, the voters will be unaware of the valuable right--the right to have districts composed of contiguous territory--which may be lost if the amendment is adopted. For all these reasons, we agree with the well-reasoned judgment of the circuit court and affirm the judgment striking proposed Amendment 7 from the ballot because the ballot language fails to inform the voter of the chief purpose of Amendment 7 and the effect it will have on the existing, mandatory constitutional provisions in article III.

Although the circuit court did not reach the question of whether the ballot title is invalid as being misleading, we also find that the ballot title is misleading and precludes placement of Amendment 7 on the ballot. The ballot title states "Standards for Legislature to Follow in Legislative and Congressional [**18] Redistricting." While purporting to create and impose standards upon the Legislature in redistricting, the amendment actually eliminates actual standards and replaces them with discretionary considerations. Thus, we conclude that the title is misleading as to the true purpose and effect of the amendment.

III. CONCLUSION

Based upon the provisions of section 101.161(1), Florida Statutes, article XI, section 5, of the Florida Constitution, and our precedent, we hold that the ballot

language setting forth the substance of Amendment 7 does not inform the voter of the true purpose and effect of the amendment on existing constitutional provisions and, further, is misleading. Accordingly, the judgment of the circuit court is affirmed and Amendment 7 may not be placed on the general election ballot for November 2010.

It is so ordered.

[*670] PARIENTE, LEWIS, QUINCE, LABARGA, and PERRY, JJ., concur.

PARIENTE, J., concurs with an opinion, in which PERRY, J., concurs.

CANADY, C.J., dissents with an opinion, in which POLSTON, J., concurs.

NO MOTION FOR REHEARING WILL BE ALLOWED.

Concur by: PARIENTE

Concur

PARIENTE, J., concurring.

While this Court is reluctant to interfere with the people's right to vote on a proposed constitutional [**19] amendment, the Court has an obligation to strike a ballot proposal that does not clearly and unambiguously inform the voter of the impact of the amendment. It should hardly be a controversial proposition that voters must be able to cast an intelligent and informed vote on the proposed constitutional amendment and understand whether the proposed amendment adds to their existing rights, alters existing rights, or dilutes existing rights provided to them by their constitution.

We must be always mindful that the "Constitution of Florida is a document of limitation by which the people of the state have restricted the forces of government in the exercise of dominion and power over their property, their rights and their lives." *Smathers v. Smith*, 338 So. 2d 825, 827 (Fla. 1976). Although the Florida Constitution sets forth the structure of state government, its essential purpose is to protect the rights of the people and to restrict the exercise of power by the government.

Of course, the people of this State also have a right to amend the constitution, and the voters have the right to decide to adopt a proposed amendment that provides the Legislature with greater authority, alters existing [**20] rights already guaranteed in the constitution, or restricts the effect of other proposed

amendments. The unifying principle for all proposed constitutional changes is that the voters "must be able to comprehend the sweep of each proposal from a fair notification in the proposition itself that is neither less nor more extensive than it appears to be." *Smathers*, 338 So. 2d at 829. The "accuracy requirement in Article XI, section 5, functions as a kind of 'truth in packaging' law for the ballot" and applies "across-the-board to all constitutional amendments." *Armstrong v. Harris*, 773 So. 2d 7, 13-14 (Fla. 2000).

The Legislature asserts that in proposing this amendment, it was motivated by its interest in providing our citizens with greater protection when it comes to redistricting. If in fact the Legislature's intent was to provide the citizens with additional rights concerning redistricting, that purpose is not clearly and unambiguously conveyed. The proposed amendment appears to actually have the opposite effect. In this case, because the ballot summary fails to explain its chief purpose and the title misleadingly sets forth that the amendment is creating "Standards for the Legislature [**21] to Follow," we are obligated to strike the initiative from the ballot.

PERRY, J., concurs.

Dissent by: CANADY

Dissent

CANADY, C.J., dissenting.

The basis for the majority's decision to preclude the people of Florida from voting on proposed amendment 7 is the assertion that the amendment is misleading because it fails to disclose that it would nullify the contiguity requirement currently in the Florida Constitution. But nothing about amendment 7 is misleading. The amendment, by its own plain terms, does not nullify the contiguity requirement but mandates the implementation of that requirement. I therefore dissent from the majority's ruling that the text of amendment 7 and its ballot title are defective and [*671] from the decision to remove the amendment from the ballot.

Article III, section 16(a) of the Florida Constitution provides that the Legislature "shall apportion the state . . . into not less than thirty nor more than forty consecutively numbered senatorial districts of either contiguous, overlapping or identical territory, and into not less than eighty nor more than one hundred twenty consecutively numbered representative districts of either contiguous, overlapping or identical territory." Contrary to the [**22] majority's assertion, nothing in amendment 7 would nullify, dilute, or alter this provision of the Florida Constitution.

Amendment 7 provides that in establishing district boundaries or plans, "the state shall . . . *balance and implement* the standards in this constitution." H.J. Res. 7231, 2010 Leg. (Fla. 2010) (emphasis added). Amendment 7 further provides that "[t]he state shall take into consideration the ability of racial and language minorities to participate in the political process and elect candidates of their choice, and communities of common interest other than political parties may be respected and promoted, *both without subordination to any other provision of this article*." *Id.* (emphasis added). Finally, amendment 7 also states that "[d]istricts and plans are valid if the *balancing and implementation* of standards is rationally related to the standards contained in this constitution." *Id.* (emphasis added).

The majority's reading of the amendment fails to give full effect to these provisions. That reading is based on the inference that the references in the text of amendment 7 to "balance" and "balancing" and the "without subordination to" clause vest the Legislature with a [**23] wholly discretionary power to ignore the contiguity requirement of article III, section 16(a). But the inference relied on by the majority is rendered wholly untenable by the express requirement in the amendment that the State "balance *and implement* the standards in this constitution" and by the express provision that the "balancing *and implementation* of standards" must be "rationally related" to the constitutional standards. The majority's interpretation of amendment 7 effectively reads the words "*and implement*" together with "*and implementation*" out of the text of the amendment.

"Implement" means "to carry out: accomplish, fulfill." *Webster's Third New Int'l Dictionary of the English Language, Unabridged* 1134 (1993). More particularly, "implement" means "to give practical effect to and ensure of actual fulfillment by concrete measures." *Id.* It is impossible to implement a requirement or standard if the requirement or standard is disregarded. A standard which must be implemented has not been nullified.

Contrary to the majority's suggestion, the standard at issue--contiguity--is not a standard that is subject to dilution.

> This Court has defined "contiguous" as "being in actual contact: [**24] touching along a boundary or at a point." A district lacks contiguity "when a part is isolated from the rest by the territory of another district" or when the lands "mutually touch only at a common corner or right angle."

In re Constitutionality of House Joint Resolution 1987, 817 So. 2d 819, 827-28 (Fla. 2002) (citation omitted) (quoting *In re Senate Joint Resolution 2G*, 597 So. 2d 276, 279 (Fla. 1992)). A district either meets the contiguity requirement or fails to meet that requirement. Contiguity is thus a determinate requirement and not a

vague standard that may be applied in varying degrees. In this respect, contiguity is like the constitutional requirement that there be between thirty and forty senatorial districts [*672] and between eighty and 120 representative districts.

The direction to "balance and implement" standards does not--as the majority contends--grant discretion to not implement the contiguity standard. If the Legislature adopted a plan with districts that did not meet the contiguity requirement, the Legislature would have failed to "balance and implement the standards of the constitution" and the "balancing and implementation of standards" would not be "rationally related" [**25] to the standards of the constitution. Under amendment 7, the Legislature would have no more discretion to adopt a plan with districts not satisfying the contiguity requirement than it would have to adopt a plan with fifty senatorial districts and 150 representative districts. In short, the majority's reading of amendment 7 cannot be reconciled with the plain meaning of "implement."

Nor does the "without subordination to" clause justify the majority's conclusion that amendment 7 would nullify, dilute, or alter the contiguity requirement. Based on that clause, the majority reasons that the other requirements of the constitution "may be subordinated to the discretionary considerations in the balancing process set forth in Amendment 7." Majority op. at 11. The majority equates "without subordination to" with "superior to" or "without regard to." *Id*. In the full context of amendment 7, this interpretation is not plausible. The clause must be understood in conjunction with the provision that all of the constitutional standards must be implemented. H.J. Res. 7231, 2010 Leg. (Fla. 2010). In context, "without subordination to" can only mean "not inferior to." It cannot be understood to suggest [**26] that the Legislature can fail to implement the other constitutional standards of article III.

The majority's interpretation is not rescued by the assertion that the phrase "balance and implement the standards," the phrase "balancing and implementation of standards," and the "without subordination to" clause leave open the possibility that not every standard must necessarily be implemented. The assertion springs from an inappropriate focus on the "without subordination to" clause and the references to "balance" and "balancing" in isolation from the full context of amendment 7. This assertion thus attempts to tease an ambiguity out of a text that unequivocally directs that "the state *shall . . . balance and implement* the standards in this constitution."

But even if disbelief could be suspended and the ambiguity could be found, the majority's position would nonetheless founder on the rule that "[a] construction that nullifies a specific clause will not be given to a constitution unless absolutely

required by the context." *Gray v. Bryant*, 125 So. 2d 846, 858 (Fla. 1960). Since amendment 7 does not expressly repeal the contiguity requirement now in the constitution, any ambiguity in amendment [**27] 7 should be resolved to harmonize the amendment with the existing contiguity provision. *See Jackson v. Consol. Gov't of Jacksonville*, 225 So. 2d 497, 500-01 (Fla. 1969). The majority's analysis simply fails to take into account this cardinal rule of constitutional interpretation. [5]

[*673] The chief purpose of amendment 7 is clearly articulated and presented to the voters in the ballot summary, which sets forth verbatim the operative text of the amendment. The text of the amendment speaks for itself, and it conceals nothing from the voters. There is nothing about the ballot [**28] title or the ballot summary that is inaccurate or misleading. Instead, the inaccuracy lies in the majority's unwarranted interpretation of amendment 7, an interpretation which cannot be reconciled with the amendment's plain meaning and which violates fundamental principles of constitutional interpretation. The people are thus denied the right to vote on amendment 7 based on an interpretation of the amendment which cannot withstand scrutiny.

The Constitution of Florida belongs to the people of Florida. Under our system of democratic governance, the people have the fundamental right to amend the constitution, which includes the right to consider constitutional amendments proposed to them by their representatives in the Legislature. The decision to remove amendment 7 from the ballot unjustifiably denies the people of Florida the opportunity to vote on this amendment to the constitution properly proposed to them by their elected representatives. The majority's decision unduly interferes with a process that is fundamental to our constitutional system of democratic governance.

POLSTON, J., concurs.

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[5] The majority's justification for this failure is not cogent. The majority asserts that the rule of construction does not apply to proposed constitutional amendments. This misses the point that the question here is the effect the proposed amendment, if adopted, would have on the existing constitutional provision. To decide if the proposal is defective because it fails to disclose to the voters that it would alter, nullify, or dilute the existing contiguity provision, the interplay of the proposal and the existing provision must be determined. The rule of constitutional construction obviously is relevant to that determination.

Armstrong v. Harris

Supreme Court of Florida

September 7, 2000, Decided

No. SC95223

Reporter
773 So. 2d 7 *; 2000 Fla. LEXIS 1764 **; 25 Fla. L. Weekly S 656

REV. DR. JAMES ARMSTRONG, et al., Appellants, vs. KATHERINE HARRIS, etc., et al., Appellees.

Subsequent History: Certiorari Denied April 2, 2001, Reported at: 2001 U.S. LEXIS 2741.

Prior History: [**1] Appeal of Judgment of Circuit Court, in and for Leon County, Terry P. Lewis, Judge, Case No. 98-5826 - Certified by the District Court of Appeal, First District, Case No. 1D99-989.

Disposition: Proposed Amendment No. 2 must be stricken.

Counsel: Randall C. Berg, Jr., Peter M. Siegel, and JoNel Newman of the Florida Justice Institute, Inc., Miami, Florida, for Appellants

Robert A. Butterworth, Attorney General, Louis F. Hubener, Assistant Attorney General, James A. Peters, Special Counsel, and Richard B. Martell, Assistant Attorney General, Tallahassee, Florida, for Appellees.

Tom Warner, Solicitor General of Florida, Tallahassee, Florida, on behalf of Robert A. Butterworth, Attorney General, and the State of Florida, and on behalf of Appellees Katherine Harris, et al.

Judges: SHAW, J. HARDING, ANSTEAD and PARIENTE, JJ., concur. HARDING, J, concurs specially with an opinion, in which PARIENTE, J., concurs. PARIENTE, J., concurs specially with an opinion. WELLS, C.J., dissents with an opinion. LEWIS, J., dissents with an opinion. QUINCE, J., dissents with an opinion.

Opinion by: SHAW

Opinion

[*9] SHAW, J

We have [**2] on appeal a judgment certified by the district court to be of great public importance requiring immediate resolution by this Court. We have jurisdiction. Art. V, § 3(b)(5), Fla. Const.

I. FACTS

The Florida Legislature filed with the Florida Secretary of State ("Secretary") a joint resolution (No. 3505) of the House of Representatives of the Florida Legislature proposing an amendment to article I, section 17, Florida Constitution, relating to excessive punishments (May 5, 1998). The proposed amendment was designated Amendment No. 2. Dr. Armstrong and other citizens filed a petition for writ of mandamus in this Court challenging the validity of the proposed amendment (October 9), but the Court by a four-to-three vote declined to exercise jurisdiction "without prejudice to Armstrong to file an appropriate action in circuit court" (October 19). [1] Armstrong then filed a complaint in circuit court seeking mandamus, injunctive, and declaratory relief (October 20), and the court ruled thusly: It dismissed the claim for mandamus relief, denied injunctive relief, and withheld ruling on the claim for declaratory relief (October 26). Armstrong sought certiorari review in the district court [**3] (October 26); that court certified the issue to this Court (October 28). On the day preceding the general election, this Court unanimously dismissed the appeal for technical reasons, without prejudice (November 2). [2] Voters at the general [*10] election approved the amendment (November 3).

[**4] Armstrong filed a motion in this Court asking the Court to remand the case to the district court (November 11). He then filed in circuit court the present

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[1] This Court's order stated in full: "We decline to exercise jurisdiction without prejudice to file an appropriate action in the circuit court." *Armstrong v. Mortham*, 727 So. 2d 902 (Fla. 1998) (unpublished order).

[2] This Court's order stated in full:

> The Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, by order dated October 26, 1998, dismissed appellants' claim for mandamus relief, denied injunctive relief, and withheld ruling on the claim for declaratory relief. A petition for writ of certiorari from the dismissal of the claim for mandamus relief was filed with the district court and treated as an appeal. By order dated October 28, 1998, the First District Court of Appeal certified to this Court the denial of injunctive relief as an issue of great public importance requiring immediate resolution. On October 27, 1998, the appellants voluntarily dismissed their counts for injunctive and declaratory relief.
>
> Under the circumstances, we dismiss this appeal without prejudice.
>
> No motion for rehearing will be entertained by the Court.

Armstrong v. Mortham, 719 So. 2d 892 (Fla. 1998) (unpublished order).

amended petition claiming that the ballot title and summary are inaccurate and again seeking mandamus, injunctive, and declaratory relief (December 3). The Secretary filed an answer in circuit court conceding that this claim is justiciable in an action for injunctive or declaratory relief [3] but asserting that the ballot title and summary are accurate (December 28). Armstrong sought summary judgment, contending that the ballot title and summary are misleading as a matter of law (January 4, 1999). The Secretary filed a cross-motion for summary judgment, arguing that the ballot title and summary are adequate (January 27). The circuit court's authority to decide the matter was not challenged or raised as an issue. This Court then issued an order formally remanding the case to the circuit court, without prejudice, to resolve the pending issues (February 2, 1999). [4] The circuit court reviewed the respective arguments in the summary judgment motions and granted summary judgment in favor of the Secretary, concluding that the Secretary's [**5] legal argument was more persuasive (February 25). [5] Armstrong appealed (March 15). The district court certified the case to this Court via "pass through" jurisdiction (March 31). [6]

[**6] Armstrong contends that both the ballot title and summary to Amendment No. 2 are defective for several reasons: They fail to disclose that the current prohibition against "cruel *or* unusual punishment" would be changed to "cruel *and* unusual punishment"; they give the false impression that the death penalty is in danger of being abolished and needs to be "preserved"; and they fail to give notice that the amendment would alter the separation of powers between the branches of government by giving the Legislature unfettered discretion to establish both the method of execution and the crimes susceptible to the death penalty.

II. STANDING

In her answer brief before this Court, the Secretary argued-as she did below-that the ballot title and summary are accurate. She never argued or suggested that

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[3] The Secretary averred the following in her Answer: She "[d]enied this [Circuit] Court has jurisdiction to issue a writ of mandamus under the circumstances at bar"; and she "[a]dmitted" that the court has authority to issue injunctive and declaratory relief in the case at bar.

[4] This Court's order stated in full: "We remand this case, without prejudice, to the Second Judicial Circuit for resolution of all issues that are pending in that court." *Armstrong v. Mortham*, 719 So. 2d 892 (Fla. 1999).

[5] The order stated in relevant part: "Suffice it to say that I find the argument advanced by the [the Secretary] to be more persuasive on each point and accordingly, it is ORDERED AND ADJUDGED that [Armstrong's] Motion for Summary Judgment is denied. [Armstrong's] Cross Motion for Summary Judgment is granted and Final Summary Judgment is hereby entered in favor of [the Secretary]."

[6] *See* Art. V., § 3(b)(5), Fla. Const. (stating that the Supreme Court "[m]ay review any order or judgment of a trial court certified by the district court of appeal in which an appeal is pending to be of great public importance, or to have a great effect on the proper administration of justice throughout the state, and certified to require immediate resolution by the supreme court").

Armstrong lacks standing to pursue this action. Following oral argument [*11] before this Court, the Secretary submitted a supplemental brief [7] in which she now contends that Armstrong cannot pursue this appeal because the general election already has taken place, the voters have approved the amendment, and Armstrong's action was dilatory. We disagree.

[**7]

Article XI, section 5, Florida Constitution, contains a pre-election notice requirement which provides that a proposed constitutional amendment must be published in newspapers of general circulation throughout the state at both ten and six weeks prior to the election. [8] The purpose of this requirement is to avoid a "November surprise" in which voters are taken unawares in the voting booth by a proposed amendment. If citizens are given adequate pre-election notice, those who object to the substance of an amendment can voice their views in the public forum, and those who object to the regularity of the ballot title and summary can challenge the amendment in court.

[**8] Assuming that Armstrong received constructive notice of the present amendment in conformity with article XI, section 5, his failure to file the initial petition until several weeks later (i.e., three and a half weeks before the election) does not appear dilatory. Nothing in the record reveals that, prior to obtaining constructive notice, Armstrong, et al., constituted a formal political apparatus or an established special interest group with clear pre-publication knowledge of the amendment. Rather, appellants appear to be an ad hoc group of concerned citizens who, upon receiving notice, required a reasonable period of time in which to exercise their electoral prerogative-i.e., to meet and discuss the matter; to organize; to chart a course of action; to fund their organization, if necessary; to employ counsel; to research the issues, and to file suit. Given the pre-election publication schedule set forth in article XI, section 5, appellants filed their petition within a reasonable time after receiving constructive notice of the proposed amendment.

III. THE ACCURACY REQUIREMENT

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[7] The brief was submitted by the Florida Solicitor General on behalf of the Secretary and others.

[8] Article XI, section 5, Florida Constitution, provides in relevant part:

> (b) 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.

A court may declare a proposed constitutional amendment invalid only if the record shows that the proposal [**9] is clearly and conclusively defective; [9] the standard of review for a pure question of law is de novo. [10] Proposed amendments to the Florida Constitution may originate in any of several sources, including the Legislature, [11] [**10] revision commission, [12] citizen initiative, [13] or constitutional convention. [14] [*12] Regardless of source, a proposed amendment ultimately must be submitted to the electors for approval at the next general election. Article XI, section 5, Florida Constitution, states:

> 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 proposing it is filed with the custodian of state records, unless, pursuant to law enacted by the affirmative vote of three-fourth 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.

Art. XI, § 5, Fla. Const. (emphasis added). Implicit in this provision is the requirement that the proposed amendment be *accurately* represented on the ballot; otherwise, voter approval would be a [15]

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[9] *Askew v. Firestone*, 421 So. 2d 151, 154 (Fla. 1982).

[10] *See*, *e.g.*, *id.* at 156 (applying a de novo standard of review to the trial court's order: "Nevertheless, it is clear and convincing to us that the ballot language . . . is so misleading to the public . . . that this remedial action must be taken."); *see also* Philip J. Padovano, *Florida Appellate Practice* 148 (2nd ed. 1997) ("Summary judgments present a classic example of the type of decisions that are subject to the *de novo* standard of review.").

[11] Article XI, section 1, Florida Constitution, provides:

> Section 1. Proposal by legislature.-- Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the legislature. The full text of the joint resolution and the vote of each member voting shall be entered on the journal of each house.

[12] Art. XI, § 2, Fla. Const.

[13] Art. XI, § 3, Fla. Const.

[14] Art. XI, § 4, Fla. Const.

[15] *See generally Askew*, 421 So. 2d at 155 ("The *Constitution* requires . . . that the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot." (quoting *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954) (emphasis added));

[**11] This accuracy requirement, which applies to all proposed constitutional amendments, has been codified by the Legislature in chapter 101, Florida Statutes (1997). Because the text of a proposed amendment oftentimes is detailed and lengthy, section 101.161 provides that only a title and brief summary of the amendment's "chief purpose" may be listed on the ballot. The actual text of the amendment does not appear:

> 101.161 Referenda; ballots.--
>
> (1) Whenever a constitutional amendment or other public measure is submitted to the vote of the people, *the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot* after the list of candidates, followed by the word "yes" and also by the word "no," and shall be styled in such a manner that a "yes" vote will indicate approval of the proposal and a "no" vote will indicate rejection. The wording of the substance of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the joint resolution, constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution [**12] or ordinance. *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), Fla. Stat. (1997) (emphasis added). Significantly, both the ballot title and summary are prepared by the amendment's sponsor. [16]

Because voters will not have the actual text of the amendment before them in the [*13] voting booth when they enter their votes, the accuracy requirement is of paramount importance for the ballot title and summary:

> As previously stated, section 101.161 requires that the ballot title and summary for a proposed constitutional amendment state in clear and unambiguous

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Smathers v. Smith, 338 So. 2d 825, 829 (Fla. 1976) ("[L]awmakers who are asked to consider constitutional changes, and the people who are asked to approve them, must be able to comprehend the sweep of each proposal from a fair notification in the proposition itself that it is neither less nor more extensive than it appears to be."); *Crawford v. Gilchrist*, 64 Fla. 41, 54, 59 So. 963, 968 (1912) (noting that the "proposal of amendments to the Constitution is a highly important function of government, that should be performed with the greatest certainty, efficiency, care and deliberation"); *see also* James Bacchus, *Legislative Efforts to Amend the Florida Constitution: The Implications of Smathers v. Smith*, 5 Fla. St. U. L. Rev. 747(1977) (decrying the lack of adequate judicial control over legislatively proposed amendments and calling for adoption of an explicit accuracy requirement in article XI, section 1).

[16] *See* § 101.161(2), Fla. Stat. (1997).

language the chief purpose of the measure. *The requirement for proposed constitutional amendment* [**13] *ballots is the same as for all ballots*, i.e.,

> that the voter should not be misled and that he have an opportunity to know and be on notice as to the proposition on which he is to cast his vote. . . . *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.*
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> *Askew v. Firestone*, 421 So. 2d 151, 154-55 (Fla. 1982) (emphasis added).

In practice, the accuracy requirement in article XI, section 5, functions as a kind of "truth in packaging" law for the ballot.

IV. LEGISLATIVELY PROPOSED AMENDMENTS

The Secretary in her supplemental brief argues that the Court should adopt a special standard for evaluating the validity of constitutional amendments proposed by the Legislature. She does not contend that all legislatively proposed amendments are automatically exempt from the accuracy requirement or that the courts have no authority to review such amendments. Rather, she claims that the accuracy requirement is applicable to legislatively proposed [**14] amendments only if a party can show conclusively that the Legislature engaged in fraud, deceit, or trickery. [17] We disagree.

Article XI, section 1, Florida Constitution, sets forth the procedure for amending the constitution via legislative resolution:

> Section 1. Proposal by legislature.-- Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the legislature. The full text of the joint resolution and the vote of each member voting shall be entered on the journal of [**15] each house.

Art. XI, § 1, Fla. Const.

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[17] The Secretary argues: "Absent a conclusive demonstration that the manner in which the Legislature has prepared a ballot title and summary in a joint resolution demonstrates fraud, deceit or trickery in violation of the federal constitution or the fundamental constitutional political rights of the electorate, the courts must defer to the Legislature's determination that its ballot title and summary is valid."

Although the constitution does not expressly authorize judicial review of amendments proposed by the Legislature, [18] [**16] this Court long ago explained that the courts [*14] are the proper forum in which to litigate the validity of such amendments:

> Under our system of constitutional government regulated by law, a determination of whether an amendment to the Constitution has been validly proposed and agreed to by the Legislature depends upon the fact of substantial compliance or noncompliance with the mandatory provisions of the existing Constitution as to how such amendments shall be proposed and agreed to, and *such determination is necessarily required to be in a judicial forum where the Constitution provides no other means of authoritatively determining such questions.*

Crawford v. Gilchrist, 64 Fla. 41, 50, 59 So. 963, 966 (1912) (emphasis added). This Court has reviewed legislatively proposed amendments throughout this century, and we have evaluated amendments' validity on various grounds, including ballot accuracy. [19]

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[18] The constitution expressly authorizes judicial review of only those amendments proposed by citizen initiative. *See* Art. IV, § 10, Fla. Const.; *see generally* Art. V, § 3(10), Fla. Const; Art XI, § 3, Fla. Const. (explaining that the sponsor of an initiative petition must obtain signatures of eight percent of electors statewide in order to place the amendment on the ballot); §§ 15.21 (explaining that judicial review may be sought when the sponsor has obtained one-tenth of the signatures necessary for placement on the ballot), 16.061, Fla. Stat. (1997). This provision was adopted in 1986 in response to the Court's striking of two initiative amendments from the ballot *after* the sponsors had obtained the requisite number of signatures for placement on the ballot. *See Evans v. Firestone*, 457 So. 2d 1351 (Fla. 1984); *Fine v. Firestone*, 448 So. 2d 984 (Fla. 1984). The purpose of this provision is to allow the Court to rule on the validity of an initiative petition *before* the sponsor goes to the considerable effort and expense of obtaining the required number of signatures for placement on the ballot. *See* William A. Buzzett & Deborah K. Kearney, *Commentary (1986 House Joint Resolution 71)*, 26 Fla. Stat. Ann., Art. IV, § 10, Fla. Const. (West Supp. 2000). Obviously, no such provision is necessary for amendments originating from other sources.

[19] *See*, *e.g.*, *Grose v. Firestone*, 422 So. 2d 303 (Fla. 1982) (finding no violation of the accuracy requirement in a legislatively proposed amendment requiring courts to interpret the Florida Unreasonable Searches and Seizures Clause in conformity with its federal counterpart); *Askew v. Firestone*, 421 So. 2d 151 (Fla. 1982) (finding a violation of the accuracy requirement in a legislatively proposed amendment ending an absolute two-year ban on lobbying by former legislators); *Smathers v. Smith*, 338 So. 2d 825 (Fla. 1976) (finding no violation of either the "germaneness" doctrine or the accuracy requirement in a legislatively proposed amendment giving the Legislature the power to nullify administrative rules); *Rivera-Cruz v. Gray*, 104 So. 2d 501 (Fla. 1958) (finding that a legislatively proposed amendment revising the Preamble and every article in the constitution violated the then-current provision that limited an amendment to a single article); *Gray v. Golden*, 89 So. 2d 785 (Fla. 1956) (finding that a legislatively proposed amendment authorizing home rule for Dade County did not violate the single-article provision); *Sylvester v. Tindall*, 154 Fla. 663, 18 So. 2d 892 (1944) (finding no violation of the accuracy requirement in a legislatively proposed amendment creating the Game and Fresh Water Fish Commission); *Collier v. Gray*, 116 Fla. 845, 157 So. 40 (1934) (finding that a legislatively proposed amendment delineating judicial circuits throughout the state could be voted upon by electors despite "a clerical misprision" in copying the resolution in the House journal); *Crawford v. Gilchrist*, 64 Fla. 41, 59 So. 963 (1912) (finding that a legislatively proposed amendment was invalid because it was not signed by the presiding officer of the House or Senate and was never intended to function as an amendment).

In conducting this review, we traditionally have accorded a measure of deference to the Legislature:

> Another thing we should keep in mind is that we are dealing with a constitutional democracy in which sovereignty resides in the people. It is their Constitution that we are construing. They have a right to change, abrogate or modify it in any manner they see fit so long as they keep within the confines of the Federal Constitution. The legislature which approved and submitted the proposed amendment took the same oath to protect and defend the Constitution that we did and our first duty is to uphold their action if there is any reasonable theory under which it can be done. This is the first rule we are required to observe when considering acts of the legislature and it is even more impelling when considering a proposed constitutional amendment which goes to the people for their approval or disapproval.

Gray v. Golden, 89 So. 2d 785, 790 (Fla. 1956). This deference, however, is not boundless, for the constitution imposes strict minimum requirements that apply across-the-board to all constitutional amendments, including those arising in the Legislature. [20]

[**18] Several modern cases involving legislatively proposed amendments illustrate the applicability of the accuracy requirement in article XI, section 5. The Court in *Smathers v. Smith*, 338 So. 2d 825 (Fla. [*15] 1976), reviewed a proposed amendment that gave the Legislature the power to nullify any administrative rule of any executive agency. Preliminarily, the Court noted the need for accuracy:

> [L]awmakers who are asked to consider constitutional changes, and the people who are asked to approve them, must be able to comprehend the sweep of each proposal from a fair notification in the proposition itself that it is neither less nor more extensive than it appears to be.

Smathers, 338 So. 2d at 829. [21] [**19] Recognizing the deference due legislative acts in general, the Court evaluated the amendment under an implicit "germaneness" theory and approved it, concluding that the proposed amendment was minimally germane to the provision it amended. The Court further ruled that

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[20] *See*, *e.g.*, *Smathers v. Smith*, 338 So. 2d 825, 829 (Fla. 1976) ("With these minimal requirements for clear expression and locational specificity in mind, we turn to the proposal before us.").

[21] *See also Smathers*, 338 So. 2d at 828 (referring to "the even more compelling notice-giving needs which legislators should have for constitutional amendments").

the amendment comported with the requirements of section 101.161 and was not misleading. [22]

In *Grose v. Firestone*, 422 So. 2d 303 (Fla. 1982), the Court reviewed a legislatively proposed amendment that required courts to construe the Unreasonable Searches and Seizures Clause in the Florida Constitution in conformity with its federal counterpart. Again, the Court stressed the need for accuracy:

> What the law requires is that the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot.

Grose, 422 So. 2d at 305 (quoting *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954)) (emphasis omitted). The Court then conducted an analysis under section 101.161 and approved the amendment, concluding that "the wording of the ballot summary of proposed Amendment 2 is unambiguous and clearly states the amendment's chief purpose." [23]

[**20] And finally, the Court in *Askew v. Firestone*, 421 So. 2d 151 (Fla. 1982), reviewed a legislatively proposed amendment that banned former legislators from lobbying for a two-year period after leaving office unless the legislator made full disclosure of his or her financial interests. [24] Again, the Court noted the need for accuracy on the ballot:

> Simply put, the ballot must give the voter fair notice of the decision he must make.

Askew, 421 So. 2d at 155. Although the ballot summary faithfully tracked the text of the proposed amendment, the summary failed to explain that the amendment would supersede an already existing constitutional provision that imposed an

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[22] *See Smathers*, 338 So. 2d at 827 n.2 ("We have considered all of the points raised by Smith [including his accuracy claim under section 101.161] and find that . . . they are without merit . . . . ").

[23] *Grose*, 422 So. 2d at 305.

[24] The ballot title and summary read as follows:

> FINANCIAL DISCLOSURE REQUIRED BEFORE LOBBYING BY FORMER LEGISLATORS AND STATEWIDE ELECTED OFFICERS
>
> Prohibits former legislators and statewide elected officers from representing other persons or entities for compensation before any state government body for a period of 2 years following vacation of office, unless they file full and public disclosure of their financial interests.

Askew, 421 So. 2d at 153.

absolute two-year ban on lobbying by former legislators (i.e., regardless of financial disclosure). The Court concluded that the summary was misleading because it failed to tell voters that the amendment was intended to end the existing ban:

> The problem . . . lies not with what the summary says, but, rather, with what it does not say
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> .. . . .
>
> If the legislature feels that the present prohibition against appearing before [*16] one's former colleagues is wrong, it is appropriate for that [**21] body to pass a joint resolution and to ask the citizens to modify that prohibition. But such a change must stand on its own merits and not be disguised as something else. The purpose of section 101.161 is to assure that the electorate is advised of the true meaning, and ramifications, of an amendment. *A proposed amendment cannot fly under false colors; this one does. The burden of informing the public should not fall only on the press and opponents of the measure--the ballot title and summary must do this.*

Askew, 421 So. 2d at 156 (emphasis added). The Court struck the proposed amendment because it was misleading.

[**22] As these cases illustrate, the gist of the constitutional accuracy requirement is simple: A ballot title and summary cannot either "fly under false colors" or "hide the ball" as to the amendment's true effect. The applicability of this requirement also is simple: It applies across-the-board to all constitutional amendments, including those proposed by the Legislature.

V. THE PRESENT CASE

Pursuant to Florida's statutory scheme, the text of the proposed amendment in the present case did not appear on the ballot; [25] only the following language appeared:

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[25] The full text of the proposed amendment as it appears in Joint Resolution No. 3505 reads as follows:

> FULL TEXT OF PROPOSED AMENDMENT:
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> [EDITOR'S NOTE: TEXT WITHIN THESE SYMBOLS [O><O] IS OVERSTRUCK IN THE SOURCE. TEXT IN ITALICS IS UNDERLINED IN THE SOURCE.]
>
> SECTION 17. Excessive punishments.--Excessive fines, cruel *and* [O>or<O] unusual punishment, attainder, forfeiture of estate, indefinite imprisonment, and unreasonable detention of witnesses are forbidden. *The death penalty is an authorized punishment for capital crimes designated by the Legislature. The prohibition against cruel or unusual punishment, and the prohibition against cruel and unusual punishment, shall be construed in conformity with decisions of the United States*

NO. 2
CONSTITUTIONAL AMENDMENT
ARTICLE 1, SECTION 17
(Legislative)
BALLOT TITLE: PRESERVATION OF THE DEATH PENALTY; UNITED STATES SUPREME COURT INTERPRETATION OF CRUEL AND UNUSUAL PUNISHMENT

BALLOT SUMMARY: Proposing an amendment to Section 17 of Article I of the State Constitution preserving the death penalty, and permitting any execution method unless prohibited by the Federal Constitution. Requires construction of the prohibition against cruel and/or unusual punishment to conform to United States Supreme Court interpretation of the Eighth Amendment. Prohibits reduction of a death sentence based on invalidity [**23] of execution method, and provides for continued force of sentence. Provides for retroactive applicability.

Supervisor of Elections, Leon County, Fla., "Official Sample Ballot, 1998 General Election" 4 (Nov. 3, 1998). This ballot title and summary are deficient under article XI, section 5, for several reasons.

[**24] A. "*Flying Under False Colors*"

The ballot title and summary are misleading because the latter portion of the [*17] title ("UNITED STATES SUPREME COURT INTERPRETATION OF CRUEL AND UNUSUAL PUNISHMENT") and the second sentence in the summary ("Requires construction of the prohibition against cruel and/or unusual punishment to conform to United States Supreme Court interpretation of the Eighth Amendment.") imply that the amendment will promote the rights of Florida citizens through the rulings of the United States Supreme Court.

Florida's Cruel or Unusual Punishment Clause was adopted in 1838 by the Founding Fathers at the first constitutional convention in Port St. Joe and provided as follows:

Supreme Court which interpret the prohibition against cruel and unusual punishment provided in the Eighth Amendment to the United States Constitution. Any method of execution shall be allowed, unless prohibited by the United States Constitution. Methods of execution may be designated by the Legislature, and a change in any method of execution may be applied retroactively. A sentence of death shall not be reduced on the basis that a method of execution is invalid. In any case in which an execution method is declared invalid, the death sentence shall remain in force until the sentence can be lawfully executed by any valid method. This section shall apply retroactively.

H.J.Res. 3505, Regular Session (Fla. 1998) (words stricken are deletions; words underlined are additions).

> That the great and essential principles of liberty and free government, may be recognized and established, we declare:. . . .
>
> 12. That excessive bail shall in no case be required; nor shall excessive fines be imposed; *nor shall cruel or unusual punishments be inflicted*

.Art. 1, § 12, Fla. Const. of 1838 (emphasis added). The Clause has remained an integral part of our state constitution ever since and today provides:

> Excessive punishments.--Excessive fines, *cruel or unusual punishment*, [**25] attainder, forfeiture of estate, indefinite imprisonment, and unreasonable detention of witnesses *are forbidden*

.Art. 1, § 17, Fla. Const. Use of the word "or" instead of "and" in the Clause indicates that the framers intended that both alternatives (i.e., "cruel" and "unusual") were to be embraced individually and disjunctively within the Clause's proscription. [26]

This Court in *Traylor v. State*, 596 So. 2d 957 (Fla. 1992), explained that our system of constitutional government in Florida is grounded on a principle of "robust individualism" and that our state constitutional rights thus provide greater [**26] freedom from government intrusion into the lives of citizens than do their federal counterparts:

> Federal and state bills of rights thus serve distinct but complementary purposes. The federal Bill of Rights facilitates political and philosophical homogeneity among the basically heterogeneous states by securing, as a uniform minimum, the highest common denominator of freedom that can prudently be administered throughout all fifty states. The state bills of rights, on the other hand, express the ultimate breadth of the common yearnings for freedom of each insular state population within our nation.

Id. at 962. In short: "The federal Constitution . . . represents the floor for basic freedoms; the state constitution, the ceiling." *Id.*

In the present case, by changing the wording of the Cruel or Unusual Punishment Clause to become "Cruel *and* Unusual" and by requiring that our state Clause be interpreted in conformity with its federal counterpart, the proposed amendment effectively strikes the state Clause from the constitutional scheme. Under such a scenario, the organic law governing either cruel or unusual punishments in Florida

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[26] *See*, *e.g.*, *Allen v. State*, 636 So. 2d 494, 497 n.5 (Fla. 1994) ("Unlike the federal Constitution, the Florida Constitution prohibits 'cruel or unusual punishment.'. . . This means that alternatives were intended."); *Tillman v. State*, 591 So. 2d 167, 169 n.7 (Fla. 1991) ("The use of the word 'or' indicates that alternatives were intended.").

would consist of a floor [**27] (i.e., the federal constitution) and nothing more. The Court in *Traylor* addressed precisely this scenario:

> Under the federalist principles expressed above, *where a proposed constitutional revision results in the loss or restriction of an independent fundamental state right, the loss must be made known to each participating voter at the time of the general election. Cf. People Against Tax Revenue Mismanagement v. County of Leon*, 583 So. 2d 1373, 1376 (Fla. 1991) ("*This is especially* [*18] *true if the ballot language gives the appearance of creating new rights or protections, when the actual effect is to reduce or eliminate rights* or protections already in existence.").

Traylor at 962-63 n.5 (emphasis added). In the present case, a citizen could well have voted in favor of the proposed amendment thinking that he or she was protecting state constitutional rights when in fact the citizen was doing *the exact opposite*-i.e., he or she was voting to nullify those rights. [27]

[**28] B. "*Hiding The Ball*"

To conform to section 101.161(1), a ballot summary must state "the chief purpose" of the proposed amendment. [28] [**29] In evaluating an amendment's chief purpose, a court must look not to subjective criteria espoused by the amendment's sponsor but to objective criteria inherent in the amendment itself, such as the amendment's main effect. [29] In the present case, as explained above, the main effect of the amendment is simple, clear-cut, and beyond dispute: The amendment will nullify the Cruel or Unusual Punishment Clause. This effect far outstrips the stated purpose (i.e., to "preserve" the death penalty), for the amendment will nullify a longstanding constitutional provision that applies to *all* criminal punishments, not just the death penalty. Nowhere in the summary, however, is this effect mentioned-or even hinted at. The main effect of the amendment is *not* stated anywhere on the ballot. (The voter is not even told on the ballot that the word "or"

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[27] The Secretary points out that the Court in *Grose v. Firestone*, 422 So. 2d 303 (Fla. 1982) (addressing an amendment to the state Unreasonable Searches and Seizures Clause), upheld the ballot summary in another "conformity amendment" case. At that time, however, the conformity issue was one of first impression and the Court was asked to rule on short notice (i.e., the case was submitted to the Court less than a week before the general election) without extensive briefing by the parties. In the years following *Grose*, the issue has been widely debated and has been the focus of intensive and spirited discourse. *See, e.g., Perez v. State*, 620 So. 2d 1256 (Fla. 1993); *Bernie v. State*, 524 So. 2d 988 (Fla. 1988).

[28] *See* § 101.161(1), Fla. Stat. (1997) ("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.") (emphasis added).

[29] *See, e.g., Evans v. Firestone*, 457 So. 2d 1351, 1355 (Fla. 1984) ("The ballot summary should tell the voter *the legal effect* of the amendment . . . .") (emphasis added); *Askew*, 421 So. 2d at 156 ("The purpose of section 101.161 is to assure that the electorate is advised of *the true meaning, and ramifications*, of an amendment.") (emphasis added).

in the Cruel or Unusual Punishment Clause will be changed to "and" [30] -- a significant change by itself.)

VI. POST-ELECTION INVALIDATION

The Secretary in her supplemental brief claims that Armstrong cannot proceed with this suit because the election already has taken place and voters have approved the amendment. The favorable vote of the electors, she contends, cleansed the amendment of any defect. We disagree.

Where a proposed constitutional amendment contains a defect in form, a vote of approval by the electorate may in some cases cleanse the amendment of the defect. This [**30] Court in *Sylvester v. Tindall*, 154 Fla. 663, 18 So. 2d 892 (1944), stated the general rule:

> [O]nce an amendment is duly proposed and is actually published and submitted to a vote of the people and by them adopted without any question having been raised prior to the election as to the method by which the amendment gets before them, the effect of a favorable [*19] vote by the people is to cure defects in the form of the submission.

Sylvester, 154 Fla. at 669, 18 So. 2d at 895. [31] This rule, however, is subject to a caveat: The defect in form must be technical and minor, which was the case in *Sylvester*:

> [We] are satisfied that *if there was any irregularity* in the form of the ballot with reference to the amendment now before us, *it was not a serious one* and was cured by the adoption of the amendment by the people at the General Election in November, 1942.

Sylvester, 154 Fla. at 669, 18 So. 2d at 896 (emphasis added). Where the defect goes to the heart of the amendment, on the other hand, the flaw may be fatal.

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[30] The ballot summary simply states: "Requires construction of the prohibition against cruel *and/or* unusual punishment to conform to United States Supreme Court interpretation of the Eighth Amendment." (Emphasis added.)

[31] *See also State ex rel. Landis v. Thompson*, 120 Fla. 860, 874-75, 163 So. 270, 276 (1935) ("In ruling upon the validity of constitutional changes after the popular voice has been expressed in favorably voting upon such changes proposed in the form of constitutional amendments agreed to by the Legislature, the popular voice is the paramount act, and . . . mere formal or procedural irregularities in the framing, manner, or form of submission or balloting, will not be held fatal to the validity of such amendment after it has been actually agreed to by three-fifths vote of all the members elected to each House, and such amendment thereafter duly published submitted to and affirmatively approved by a majority vote of the electors cast thereon."). *Cf. Collier v. Gray*, 116 Fla. 845, 858, 157 So. 40, 45 (1934) ("The substance more than the form is to be regarded in considering whether the complete system prescribed by . . . the Constitution for submitting proposals to amend the Constitution has been observed.").

[**31] In *Wadhams v. Board of County Commissioners*, 567 So. 2d 414 (Fla. 1990), the Board of County Commissioners of Sarasota County (the "Commissioners") sought to amend a provision of the county charter governing the Charter Review Board (the "Board"), which is charged with reviewing the charter on a regular basis and recommending changes directly to the people. The text of the proposed amendment was printed in full on the ballot and provided *inter alia* that the Board would meet every four years. [32] The Commissioners, however, neglected to mention on the ballot that the amendment would supersede an existing charter provision that allowed the Board to conduct *unlimited* meetings-

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[32] The ballot entry as reprinted in *Wadhams* read as follows:

OFFICIAL BALLOT

SPECIAL ELECTION ON AMENDING ARTICLE II

SECTIONS 2.11.A AND 2.11.B OF THE

SARASOTA COUNTY CHARTER

NOVEMBER 6, 1984

Shall Article II, Sections 2.11.A and 2.11.B of the Sarasota County Charter be amended as proposed by Sarasota county Ordinance No. 84-72 to read:

"Section 2.11.A Composition, Election and Term of Members. There shall be a Charter Review Board which shall by 1984 be composed of ten (10) members who shall serve without compensation and who shall be elected in the following manner: five (5) members, one residing in each of the five County Commission districts, shall be elected by the voters of Sarasota County at the general election to be held in 1982, and every four (4) years thereafter; five (5) members, one residing in each of the five County Commission districts, shall be elected by the voters of Sarasota County at the general election to be held in 1984, and every four (4) year thereafter. Members shall take office on the second Tuesday following the general election."

"Section 2.11.B Purpose, Jurisdiction and Meetings of Review Board. The Charter Review board shall hold meetings to organize, elect officers, and conduct business only during the year, and prior to that time, in which a general election is held in 1988, and each four (4) years thereafter. The Review Board shall review the operation of the County government, on behalf of the citizens and recommend changes for improvement of this Charter. Such recommendations shall be subject to referendum in accordance with the provisions of Section 6 herein. An affirmative vote of two-thirds [] of the members elected or appointed to the Review Board shall be required to recommend amendments for referendum. The Board of County Commissioners shall pay reasonable expenses of the charter review Board."

YES (Punch Card Number) NO (Punch Card Number)

Wadhams, 567 So. 2d at 415.

i.e., the proposal was intended to curtail the Board's right to meet. The proposal [*20] was approved by electors at a special election, and a group of citizens subsequently challenged the amendment's validity.

[**32] Both the trial and district courts approved the amendment; this Court quashed the district court decision. The Court flatly rejected the Commissioners' argument that even though the ballot did not explain the amendment's chief purpose, that information had been sufficiently disseminated via public hearings, pre-election publication, and other means:

> *The [Commissioners argue] that the majority in the decision below correctly concluded that there was no reason to invalidate the amendment[] based on voter confusion because the voters were afforded ample opportunity to become informed on the issue before the election by public hearings, advance publication of the proposal, and media publicity. We reject this argument.* As this Court stated in *Askew*, "the burden of informing the public should not fall only on the press and opponents of the measure-the ballot . . . summary must do this."

Wadhams, 567 So. 2d at 417 (emphasis omitted). [33] The Court also rejected the Commissioners' argument that the voters' approval of the amendment cleansed it of any defect:

> We also reject the [Commissioners'] argument that the favorable vote cured any defects in the [**33] form of the submission. This defect was more than form; it went to the very heart of what section 101.161(1) seeks to preclude. Moreover, *it is untenable to state that the defect was cured because a majority of the voters voted in the affirmative on the proposed amendment when the defect is that the ballot did not adequately inform the electorate of the purpose and effect of the measure upon which they were casting their votes. No one can say with any certainty what the vote of the electorate would have been if the voting public had been given the whole truth, as mandated by the statute, and had been told " the chief purpose of the measure."*

Wadhams, 567 So. 2d at 417 (emphasis added).

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[33] *See also* James Bacchus, *Legislative Efforts to Amend the Florida Constitution: The Implications of Smathers v. Smith*, 5 Fla. St. U. L. Rev. 747, 802 (1977) ("It is hardly necessary to document the conclusion that a constitution which relies exclusively on legislative journals and legal advertisements to publicize proposed constitutional amendments guarantees little in the way of actual notice to a vast majority of the electorate.").

[**34] And finally, the Court rejected the Commissioners' contention that the challenge should be rejected because it was filed too late:

> Finally, we reject the [Commissioners'] argument that the present case is distinguishable from *Askew* because *Askew* dealt with a preelection challenge to the ballot and that the petitioners should be foreclosed from relief because the present action was not instituted until after the special election. *The [Commissioners] in effect argue[] that hoodwinking the voting public is permissible unless the action is challenged prior to the election*. We perceive no basis for the [Commissioners'] conclusion that the holding of this Court in *Askew* applies only if the challenge is made prior to the election. We agree with the dissent below that although there would come a point where laches would preclude an attack on the ordinance, such is not the situation in the present case where the suit was filed only a few weeks after the election.
>
> *Deception of the voting public is intolerable and should not be countenanced*. The purpose of section 101.161(1) is to assure that the electorate is advised of the meaning and ramifications of the proposed [**35] amendment. Because the ballot at issue failed to comply with . . . section 101.161(1), the proposed amendments must be stricken.

[*21] *Wadhams*, 567 So. 2d at 417-18 (emphasis added).

Like the ballot language in *Wadhams*, the ballot language in the present case is defective for what it does *not* say: It does not tell voters the "chief purpose" of the amendment. The present case, however, is even more compelling than *Wadhams* for several additional reasons. First, unlike the situation in *Wadhams*, the challenge here was initiated nearly a month before the election took place, rather than after the election. Second, unlike the situation in *Wadhams*, the text of the present amendment did not appear on the ballot, and the title and summary-which did appear-were misleading because they implied that the amendment would promote the rights of Florida citizens [34] [**36] and they contained several factual inaccuracies. [35]

Accordingly, we reaffirm our holding in *Wadhams* that a favorable popular vote standing alone does not confer automatic validity on a defective amendment.

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[34] As noted above, the ballot title and summary indicated that the amendment would foster the rights of Florida citizens through the rulings of the United States Supreme Court.

[35] As noted above, the ballot title and summary claim to "preserve" the death penalty, when the text in fact "authorizes" it. Also, the summary refers to the prohibition against "cruel and/or unusual" punishment, when in fact no such phrase is mentioned in the text. Finally, the ballot title and summary do not mention the fact that the amendment would change the word "or" in the phrase "cruel or unusual" to the word "and."

When a defect goes to the very heart of the amendment, as it did in both *Wadhams* and the present case, it is impossible to say with any certainty what the vote of the electorate would have been "if the voting public had been given the whole truth." *Wadhams*, 567 So. 2d at 417. In such a case, the popular vote was based not on the whole truth but on part-truth.

VII. CONCLUSION

Although this Court traditionally has accorded a measure of deference to constitutional amendments proposed by the Legislature, [**37] our discretion is limited by the constitution itself. The accuracy requirement in article XI, section 5, imposes a strict minimum standard for ballot clarity. This requirement plays no favorites-it applies across-the-board to *all* constitutional amendments, including those proposed by the Legislature. The purpose of this requirement is above reproach-it is to ensure that each voter will cast a ballot based on the *full* truth. To function effectively-and to remain viable-a constitutional democracy must require no less.

Amendment No. 2 fails under article XI, section 5, for several reasons. First, the amendment "flies under false colors." Citizens may well have voted in favor of the amendment based on the false premise that the amendment will promote the basic rights of Florida citizens. Under such circumstances, the true merits of the amendment will have been overlooked or misconstrued. Second, the proposed amendment "hides the ball" from the voter. The ballot title and summary give no hint of the radical change in state constitutional law that the text actually foments.

It is beyond dispute that the amendment's main effect is to nullify a fundamental state right that has existed [**38] in the Declaration of Rights *since this state's birth* over a century and a half ago. This Court long ago noted the venerable role the Declaration of Rights (i.e., article I, sections 1-25, Florida Constitution) plays in our tripartite system of government in Florida:

> It is significant that our Constitution thus commences by specifying those things which the state government must not do, before specifying certain things that it may do. These Declarations of Rights . . . have cost much, and breathe the spirit of that sturdy and self-reliant philosophy of individualism which underlies and supports our entire system of government. No race of hothouse [*22] plants could ever have produced and compelled the recognition of such a stalwart set of basic principles, and no such race can preserve them. They say to arbitrary and autocratic power, from whatever official quarter it may advance to invade these vital rights of personal liberty and private property, "Thus far

> shalt thou come, but no farther." They constitute a limitation upon the powers of each and all the departments of the state government. Thus no department, not even the legislative, has unlimited power under our system of government

. [**39] *State ex rel. Davis v. City of Stuart*, 97 Fla. 69, 102-03, 120 So. 335, 347 (1929). Courts must attend with special vigilance whenever the Declaration of Rights is in issue. [36]

Under our constitutional form of government in Florida, the Legislature is authorized to enact statutory laws and the courts can define the common law, but only the people-by direct vote-can delineate the organic law. The constitution is the one abiding voice of the body politic and encompasses the collective wisdom and counsel of our forebears, recorded verbatim throughout the ages. While any successive legislature is free to question the wisdom of the Founding Fathers and propose the striking of the Cruel or Unusual Punishment Clause, the Due Process Clause, the Right to Bear Arms Clause, the Freedom of Speech Clause, the Freedom of [**40] Religion Clause, or any other basic right enumerated in the Declaration of Rights, that legislature must do so plainly, in clear and certain terms. When Florida citizens are being called upon to nullify an original act of the Founding Fathers, each citizen is entitled-indeed, each is duty-bound-to cast a ballot with eyes wide open.

Based on the foregoing, we hold that proposed Amendment No. 2 clearly and conclusively violates the accuracy requirement in article XI, section 5, Florida Constitution. The ballot title and summary "fly under false colors" and "hide the ball" as to the amendment's true effect. Most important, voters were not told on the ballot that the amendment will nullify the Cruel or Unusual Punishment Clause, an integral part of the Declaration of Rights since our state's birth. Voters thus were not permitted to cast a ballot with eyes wide open on this issue. Because the validity of the electoral process was fundamentally compromised, we conclude that proposed Amendment No. 2 must be stricken.

It is so ordered.

HARDING, ANSTEAD and PARIENTE, JJ., concur.

HARDING, J, concurs specially with an opinion, in which PARIENTE, J., concurs.

PARIENTE, J., concurs [**41] specially with an opinion.

WELLS, C.J., dissents with an opinion.

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[36] *See*, *e.g.*, *Traylor*, 596 So. 2d at 963 ("Special vigilance is required where the fundamental rights of Florida citizens . . . are concerned . . . .").

LEWIS, J., dissents with an opinion.

QUINCE, J., dissents with an opinion.

Concur by: HARDING, J.; PARIENTE. J

Concur

HARDING, J., specially concurring.

I agree with the majority's conclusion that proposed Amendment No. 2 must be stricken because the ballot title and summary are inaccurate and misleading.

Article XI, section 5 of the Florida Constitution sets forth the procedures for submitting a proposed constitutional amendment to the electors for a vote. This section provides when a proposed amendment or revision to the constitution must be submitted to the voters, [37] [**42] the method for providing public notice of the proposed amendment or revision, [38] and when an approved amendment or revision becomes effective. [39] However, this section contains [*23] no explicit requirements as to the language or wording of a proposed amendment. I agree with the majority that the constitutional requirement that a proposed amendment be submitted to the electors for approval contains an *implicit* requirement that the proposed amendment be *accurately* represented on the ballot; otherwise voter approval would be a nullity.

I reach this conclusion for two reasons: (1) the legislative intent expressed in section 101.161, Florida Statutes (1999), that the language of constitutional amendments and other public measures submitted to the vote of the people be clear and unambiguous; and (2) the long history of judicial review of ballots for clarity and lack of ambiguity.

In 1980, the Legislature amended section 101.161 to require that the substance of a constitutional amendment or other public measure submitted to the vote of the people be printed on the ballot in "clear and unambiguous language." *See* ch. 80-305, § 2, at 1342, Laws of Fla. Section 101.161 relates to "Referenda; ballots" and is contained in chapter 101, which governs "Voting Methods and Procedures." As amended by the legislature, section 101.161(1) provides that "*whenever* a *constitutional amendment* or other public measure is submitted to the vote of the

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[37] Art. XI, § 5(a), Fla. Const.

[38] *Id.* § 5(b).

[39] *Id.* § 5(c).

people, the substance of such amendment or other public measure shall be printed in *clear and unambiguous language*." [**43] (Emphasis added.) Nothing in subsection 1 limits this requirement to citizen-initiated amendments. In contrast, subsection 2 specifically pertains to "the substance and ballot title of a constitutional amendment proposed by initiative." *Id.* Thus, I conclude that the standards of accuracy and clarity apply with equal force to *all* constitutional amendments and other public ballot measures, whatever the method by which they are initiated. I believe that section 101.161 was simply a codification of the implicit authority of Florida courts to review ballot measures for accuracy and clarity and a legislative statement that such clarity and accuracy is especially important when the voters are being asked to change the basic legal framework of the state. "Nothing in the government of this state or nation is more important than amending our state and federal constitutions. The law requires that before voting a citizen must be able to learn from the proposed question and explanation what the anticipated results will be." *Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982) (Boyd, J., specially concurring).

However, long before the Legislature applied this requirement [**44] to constitutional amendment ballots, this Court held that *all* ballots must meet certain accuracy requirements. *See Hill v. Milander*, 72 So. 2d 796 (Fla. 1954) (addressing validity of ballot in city election). As this Court explained:

> The voter should not be misled and [should] have an opportunity to know and be on notice as to the proposition on which he is to cast his vote. . . . 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.*

Id. at 798 (emphasis added); *accord Askew v. Firestone*, 421 So. 2d at 155 (applying same criteria to ballot containing legislatively proposed constitutional amendment). As explained in *Smathers v. Smith*, 338 So. 2d 825, 829 (Fla. 1976), this Court has historically reviewed proposed amendments to ensure that they meet "minimal requirements for clear expression." The Court has even struck down a legislatively proposed amendment on the basis that the ballot [**45] summary was misleading. *See Askew v. Firestone*. Moreover, this Court has certainly scrutinized other legislatively proposed amendments on this basis. *See Grose v. Firestone*, 422 So. 2d 303 (Fla. 1982) (finding no violation of the ballot accuracy requirement in a legislatively proposed amendment requiring courts to [*24] interpret Florida's constitutional guarantee to be free from unreasonable searches and seizures in conformity with the federal constitutional counterpart);

Rivera-Cruz v. Gray, 104 So. 2d 501 (Fla. 1958) (finding that legislatively proposed amendment was actually improper "daisy chain" revision of entire Constitution); *Sylvester v. Tindall*, 154 Fla. 663, 668, 18 So. 2d 892, 895 (1944) (stating that "the form of the ballot pertaining to [the legislatively proposed] amendment [creating the Game and Fresh Water Fish Commission] was sufficient to put the electorate on notice as to the amendment they were voting upon").

While this Court's review is implicit in the Constitution and legislatively endorsed, I agree that the Court, as explained in *Smith*, has a more "limited role in reviewing constitutional proposals [**46] which have been adopted by the Legislature for direct submission to the people." 338 So. 2d at 826. However, in *Smith*, this Court *did* review the legislatively proposed amendment and determined that because there was doubt as to whether the Legislature violated the "strictures on their amendatory powers," the legislative action must be sustained. *Id.* at 827.

Chief Justice Wells suggests that the ballot box, and not judicial review, is the proper remedy for a legislatively proposed constitutional amendment. *See* dissenting op. at 8 (Wells, C.J., dissenting). I do not believe this is an adequate remedy where the voters are not clearly informed as to the effect of the amendment they have endorsed. Voting legislators out of office will not remove from the Constitution an amendment that was passed because of a misleading ballot summary. Instead, the proper and most expedient remedy is to strike a proposed constitutional amendment where "the record . . . shows that the proposal is clearly and conclusively defective." *Askew v. Firestone*, 421 So. 2d at 154.

Nor do I believe that a legislatively proposed amendment would necessarily [**47] supersede a prior legislative enactment with which it did not comply. *See* dissenting op. at 7 (Wells, C. J., dissenting). I would agree that a constitutional amendment would supersede a prior statute dealing with the same *subject matter*. For example, if the instant proposed amendment related to the accuracy requirements of ballot summary and titles, then it would supersede section 101.161(1). In the instant case, however, the proposed amendment does not deal with the same subject matter as section 101.161. Therefore, the proposed amendment would not supersede section 101.161.

For these reasons and those expressed in the majority opinion, I conclude that the instant challenge is properly before this Court and that Amendment No. 2 should be stricken because the ballot title and summary are misleading.

PARIENTE, J., concurs.

PARIENTE, J. specially concurring.

I agree with the majority that the accuracy requirement of article XI, section 5 "applies across-the-board to *all* constitutional amendments, including those proposed by the Legislature." (Majority op. at 30; *see also* majority op. at 14, 17). I further agree with the majority that in this case, neither [**48] the ballot title nor the summary complies with the accuracy requirements that are vital for the constitutional amendment process to function fairly. When a constitutional amendment changes the wording of a basic state constitutional right, the electorate must be clearly advised of that change.

As for the question of the timeliness of the petitioners' challenge, it is disconcerting to me that the striking of this amendment comes after the election. [40] However, [*25] when the petitioners first filed their petition for writ of mandamus *before* the election, we declined to exercise jurisdiction by order issued on October 19, 1998. Our order declining jurisdiction stated that our decision was "without prejudice to Armstrong to file an appropriate action in circuit court." I joined in the majority opinion at that time. If there had been any question that the petitioners would be unable to challenge the amendment after the election, I would have joined with the dissenters in a decision to strike the amendment from the ballot at the time of the petitioners' pre-election challenge. [41] Further, as pointed out both by the majority and by Justice Harding's specially concurring opinion, to [**49] deny the petitioners' challenge at this time because the election has already taken place would be a departure from both the precedent and practice of this Court.

[**50] Indeed, no party to this action questioned the petitioners' right to file the challenge after the election until after oral argument was held, when the Secretary of State filed a supplemental brief belatedly contending that Armstrong could not pursue this appeal because the general election had taken place, the voters had approved the election and the petitioners' actions were dilatory. While we always have the ability to address jurisdictional issues, any claim that the challenge was barred by laches or the dilatory actions of the petitioners should have been raised in the circuit court and not in this Court after oral argument. Moreover, there has

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[40] Interestingly, however, one of the apparent purposes of the amendment, which was to ensure that if electrocution was declared unconstitutional as a method of execution that no death sentence would become invalid, has become moot. The Legislature enacted lethal injection into law and when this Court unanimously upheld the constitutionality of the Legislature's decision to switch to lethal injection without invalidating any existing death penalty, we did not rely on our state constitution. *See Sims v. State*, 754 So. 2d 657, 663 n.10 (Fla. 2000) (concluding that "in light of our holding that the new law may constitutionally apply to Sims, we need not determine the applicability of the 1998 amendments to article I, section 17 of the constitution.").

[41] Although this Court declined to exercise its mandamus jurisdiction, I note that this Court has clearly stated that the procedure the petitioners chose--a mandamus petition in this Court--has explicitly been approved of by this Court. *See Florida League of Cities v. Smith*, 607 So. 2d 397, 399 (Fla. 1992) ("Our precedent clearly holds that a petition for mandamus is an appropriate method for challenging an allegedly defective proposed amendment to the Constitution."). In hindsight, it now appears that it was inadvisable of this Court to decline to exercise its mandamus jurisdiction in this case at that time.

been no evidence in this case that the timing and posture of the challenge was a ploy or that it was the result of any type of legal maneuvering.

Although I recognize that we have the obligation to review this petition on the merits, I remain very concerned with the fact that currently no time limits or established procedures exist for a challenge to the ballot title and summary for legislatively approved constitutional amendments. I cannot fault the petitioners in this case with the manner by which they challenged the amendment, [**51] [42] but I wholeheartedly agree with Justice Overton's concerns expressed nearly twenty years' ago that "the public is being denied the opportunity to vote because no process has been established to correct misleading ballot [*26] language in sufficient time to change the language." *Askew v. Firestone*, 421 So. 2d 151, 157 (Fla. 1982) (Overton, J., concurring specially). Thus, I join Justice Overton's repeated calls for the Legislature and this Court to "devise a process whereby misleading language can be challenged and corrected in sufficient time to allow a vote on the proposal." *Id.*; *see also Advisory Op. to the Att'y Gen. re Tax Limitation*, 644 So. 2d 486, 497 (Fla. 1994) (Overton, J., concurring specially); *Florida League of Cities*, 607 So. 2d at 401-02 (Overton, J., dissenting); *Evans v. Firestone*, 457 So. 2d 1351, 1356 (Fla. 1984) (Overton, J. concurring). If the Legislature will not act to do so, then I believe it is incumbent on this Court to establish procedures for future challenges to constitutional amendments so that there is an adequate opportunity to correct inaccurate and misleading ballot titles and summaries [**52] before the election. The procedural history of this case clearly points out the necessity for developing such procedures for the future. I thus urge this Court to establish appropriate procedures, but conclude that any decision to establish such procedures must apply prospectively and should not affect the petitioners' challenge in this case.

[**53]

Dissent by: WELLS; LEWIS; QUINCE

Dissent

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[42] Certainly, there is some question as to the proper procedure for raising these types of challenges as is evident by our own Court's prior opinions. In the past, these cases have been brought to this Court in a variety of ways. *See e.g.*, *Florida League of Cities v. Smith*, 607 So. 2d 397 (Fla. 1992) (original mandamus petition in Florida Supreme Court); *Grose v. Firestone*, 422 So. 2d 303, 304 (Fla. 1982) (request for preliminary injunction in the trial court and certified question to Florida Supreme Court); *Askew v. Firestone*, 421 So. 2d 151, 154 (Fla. 1982) (suit seeking injunctive and declaratory relief in the trial court and certified question to Florida Supreme Court); *Sylvester v. Tindall*, 154 Fla. 663, 18 So. 2d 892, 894 (Fla. 1944) (habeas corpus proceeding in the trial court and appeal to the Florida Supreme Court). The number of different ways in which these claims have been raised further shows the need for uniformity in not only the timing of these ballot summary challenges, but also uniformity in the procedures to be followed in these challenges in order to facilitate review in this Court and provide for expedited review.

WELLS, C.J., dissenting.

I have a fundamental difference with the majority concerning whether the Florida Constitution grants this Court the power to strike from the Constitution a constitutional amendment that the Legislature proposed and the voters approved based on a conclusion that the amendment's ballot title and summary were misleading. [43] [**54] This amendment was proposed in accord with the procedures set forth in article XI, section 1. [44] There is no assertion that those procedures were not followed when both houses of the Legislature voted unanimously to propose the amendment. The proposed amendment was placed on the ballot pursuant to article XI, section 5. [45] There is no assertion that procedures for submitting the amendment to the voters were not followed. The amendment was approved by well in excess of a majority of the electorate: 72.8 percent voted in favor of the amendment. I read no basis in the Constitution under these circumstances to find that this Court has the power to strike this amendment.

In order to find that it has this extraordinary power, the majority writes into article XI, section 5, an "accuracy requirement" [46] and then holds that the judicially-created requirement provides a basis for [*27] this Court to review legislatively-proposed amendments to the Constitution. Language to support this is simply nonexistent in the express language of article XI, section 5. Next, relying upon the created language, the majority finds that this judicially-grafted requirement is breached by coming to the subjective conclusion that the ballot summary (also unmentioned in article XI, section 5) does not meet this [**55] requirement.

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[43] I also disagree with the majority's finding that petitioner was not dilatory in bringing this action. This proposed amendment was adopted in the general election on November 3, 1998. Petitioner first filed this action on October 9, which was three and a half weeks prior to the election and five months after legislative officers on May 5 signed their joint resolution and filed the proposed amendment with the Secretary of State.

Certainly, article XI, section 5, is not intended to provide a time period within which a citizen can challenge an amendment's placement on a statewide ballot. That provision clearly exists for the purpose of having the amendment published and available for complete reading prior to the election. The majority's interpretation seems to legitimize last-minute litigation which throws ballots into chaos.

[44]

> Article XI, section 1 of the Florida Constitution provides in relevant part:
>
> **Proposal by legislature.**-- Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the legislature.

[45] Article I, section 5 of the Florida Constitution provides procedures for submitting a proposed constitutional amendment to the voters of the State of Florida.

[46] Obviously, "accuracy" is a necessary goal to be striven for on all ballots. However, I cannot agree that there is any language in article XI, section 5, that gives the Court the power to make subjective judgments as to whether language appearing on a ballot is "misleading" for the purposes of assuring accuracy. The present majority opinion appears to concede there is no express constitutional basis for this by saying that this is "implicit in this provision."

The majority cites *Askew v. Firestone*, 421 So. 2d 151 (Fla. 1982), [47] as precedent for the Court's striking from the ballot a legislatively proposed amendment on the basis that the Court concluded the ballot summary for the proposed amendment was misleading. The majority is correct that the Court did this in *Askew*. However, neither *Askew* nor the present majority opinion provide any analysis as to the constitutional basis of that power. Whereas, six years earlier, in dealing with the same section of the Constitution [**56] and with considerably more analysis, this Court in *Smathers v. Smith*, 338 So. 2d 825 (Fla. 1976), had denied a request for such an exercise of power in respect to a legislatively proposed amendment. In *Smith*, this Court determined in an opinion written by Justice England that the Court had limited power of review in respect to a legislatively proposed amendment. The broad attack upon the proposed amendment rejected in *Smith* was similar to the attack the majority approves in this case:

> Smith asserts several reasons why the proposed amendment is improper. *He suggests that its language is unclear, its meaning obscure and its purpose too vague; that the Legislature lacks power to propose as a constitutional amendment a revision of governmental powers as sweeping and broad as he contends this amendment contains*; that the amendment would violate the "one person-one vote" guarantee of the Fourteenth Amendment of the United States Constitution; *that the notice of the contents of the amendment which would appear on the ballot violates Section 101.161, Florida Statutes (1975)*; and that the amendment is inadequate to inform the public [**57] of the substantial shift in governmental power which it would effect. Smith also contends that the amendment in reality alters the separation of powers guaranteed in Article II, Section 3 of the Florida Constitution, in that it gives to the Legislature authority to exercise an interpretive power previously reposed exclusively in the judiciary.
>
> The Attorney General, of course, refutes all of Smith's contentions, and further suggests that the defects alleged are in any event not the proper subject for judicial intervention at this stage. *This admonition cannot be ignored, and we approach the subject matter of the case mindful of our limited role in reviewing constitutional proposals which have been adopted* [**58] *by the Legislature for direct submission to the people*

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[47] In its footnote 19, the majority references other cases. A review of these cases demonstrates that in not a single one did this Court strike from the ballot a legislatively initiated amendment on the basis that the ballot summary adopted by the Legislature was "misleading" or in violation of a statute.

> .Another thing we should keep in mind is that we are dealing with a constitutional democracy in which sovereignty resides in the people. It is their Constitution that we are construing. They have a right to change, abrogate or modify it in any manner they see fit so long as they keep within the confines of the Federal Constitution. The legislature which approved and submitted the proposed amendment took the same oath to protect and defend the Constitution that we did and our first duty is to uphold their action if there is any reasonable theory under which it can be done. This is the first rule we are required to observe when considering acts of the legislature and it is even [*28] more impelling when considering a proposed constitutional amendment which goes to the people for their approval or disapproval.

[*Gray v. Golden*, 89 So. 2d 785, 790 (Fla. 1956).] *It is in that framework that we limit our discussion to the critical issue which is here presented by the parties, and we rest our decision solely on the question of whether the amendment was proposed by the Legislature in conformity with Article XI, Section* [**59] *1 of the Constitution.* That section provides:

> Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the legislature. The full text of the joint resolution and the vote of each member voting shall be entered on the journal of each house.

Because there is doubt as to whether the Legislature has violated what appear to be strictures on their amendatory powers, *we are compelled to sustain this legislative action*. *Smith*, 338 So. 2d at 826-27 (footnote omitted) (emphasis added). The *Smith* decision was thoroughly reviewed in a law review article written by James Bacchus, [48] who explained:

> Justice England quoted this admonition at the outset in *Smith* [quoting *Gray v. Golden*, 89 So. 2d at 790]. Undoubtedly, he sought to convey the court's awareness of the need for judicial restraint in reviewing the actions of the

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[48] James Bacchus, *Legislative Efforts to Amend the Florida Constitution: The Implications of Smathers v. Smith*, 5 Fla. St. U. L. Rev. 747 (1977) (hereinafter Bacchus). Bacchus was an aide to Governor Reubin O'D. Askew during the events described in this law review article. Thereafter, he was a member of the United States House of Representatives. Bacchus is now Managing Shareholder in the Orlando office of the law firm of Greenberg Traurig and is also a member of the Appellate Body of the World Trade Organization in Geneva, Switzerland.

In its footnote 15, the majority acknowledges Bacchus' conclusion "decrying the lack of adequate judicial control over legislatively proposed amendments and calling for adoption of an explicit accuracy requirement in article XI, section 1", but then the majority proceeds to assume judicial control even though the Constitution has not been changed.

> legislature. This was the framework the court used to justify its decision to limit the discussion in *Smith* to whether the proposed amendment complied with the procedures set forth [**60] in article XI, section 1. And this narrow notion of the judicial role in the amendatory process was mirrored in the *Smith* decision.

Id. at 769 (footnote omitted). The Bacchus article goes on to note the distinct power given to the Legislature in the amendatory process, which this Court had described earlier in *Crawford v. Gilchrist*, 64 Fla. 41, 59 So. 963 (1912), and *Collier v. Gray*, 116 Fla. 845, 157 So. 40 (1934). Concerning article XI, section 1, Bacchus wrote:

> Adopted in 1968, this provision resembles its counterpart in the 1885 constitution. To the extent that the two sections are identical, the judicial constructions of the 1885 provision should apply as well to article XI, section 1. Thus, the constitution clearly contemplates that proposed amendments shall be agreed to by a deliberate, final, and affirmative vote of the required members in each house. Likewise, procedural rules for acting on such proposals may be adopted and employed by each house if they are not in conflict with the constitution. Furthermore, the legislative power to propose constitutional changes includes the right to reconsider action taken on an amendment [**61] when no constitutional provision is violated.
>
> The legislative authority in article XI is not limited in the same [**62] ways as the legislative authority in article III. The act of proposing constitutional amendments is not perceived as an ordinary legislative function. Such proposals are not subject to the constitutional provisions [*29] regulating the introduction and passage of ordinary legislative enactments. For instance, "the constitutional requirements that bills shall be read on different days or at different times do not apply." And, while a proposal to change the constitution may have a title, it is not required. Perhaps most important, the Governor's approval is not required.

Bacchus at 775-76 (footnote omitted) (quoting *Collier*, 116 Fla. at 857, 157 So. at 44). In *Collier*, this Court specifically stated:

> While the procedure prescribed by the Constitution for proposals to amend the Constitution must be duly followed and none of the requisite steps may be omitted, *yet unless the courts are satisfied that the Constitution has been violated in the submission of a proposed amendment they should uphold it.*

116 Fla. at 857-58, 157 So. at 45 (emphasis added). Although the majority here first refers to article I, section 5, as having an "implicit accuracy [**63] requirement," the majority basically justifies its power to strike the constitutional amendment on the basis that the Legislature's ballot title and summary are misleading, in violation of section 101.161, Florida Statutes. I believe it is illogical and contradictory for the Court to conclude that a legislatively proposed amendment fails because it violates a statute. Obviously, a legislatively proposed amendment would supersede a prior legislative enactment with which it did not comply. I conclude that this is the very reason that this Court's precedent has historically required, in respect to legislatively proposed amendments, compliance with constitutionally mandated procedures but not statutory requirements. *Collier*, 116 Fla. at 857-58, 157 So. at 45.

Likewise, it is contrary to the separation of powers requirements of article II, section 3, for the Court to strike a provision from the Constitution because the Court concluded that the Legislature's presentation of the amendment to the voters was "misleading." This was the proper cautionary warning in this Court's 1956 opinion quoted in *Smith*, which stated:

> We should keep in mind [**64] that we are dealing with a constitutional democracy in which sovereignty resides in the people. It is their Constitution we are construing. . . . . The legislature which approved and submitted the proposed amendment took the same oath to protect and defend the Constitution that we did and our first duty is to uphold their action if there is any reasonable theory under which it can be done.

Smith, 338 So. 2d at 826-27 (quoting *Gray*, 89 So. 2d at 790).

If the Legislature misled the voters, I conclude that the remedy is at the ballot box-not in the Court. There is simply no constitutional authority for a judicial veto of a legislatively proposed amendment, just as there is no gubernatorial veto. I believe it is crucial to always keep in mind that the very first sentence of article 1, section 1, of the Florida Constitution is, "All political power is inherent in the people." I do not find in article V, which is the article of the Constitution which provides to the Court its power, any basis to conclude that the people have given to the Court the power to intercede between the people and their elected representatives when the Legislature proposes [**65] amending the Constitution by the constitutionally required supermajority.

In respect to legislatively proposed amendments, I conclude that the supermajority requirement in the Constitution for the Legislature's placing a proposed

amendment on the ballot is a constitutional intent for the legislative branch to perform its own review and censorship of what is to be placed before the people for a vote. This Court has previously acknowledged the distinction in the methods of amending the Constitution:

> It is apparent that the authors of article XI realized that the initiative method did not provide a filtering legislative [*30] process for the drafting of any specific proposed constitutional amendment or revision. The legislative, revision commission, and constitutional convention processes of sections 1, 2 and 4 all afford an opportunity for public hearing and debate not only on the proposal itself but also in the drafting of any constitutional proposal.

Fine v. Firestone, 448 So. 2d 984, 988 (Fla. 1984).

My view is further bolstered by the express provision in the Constitution for this Court to review citizens' initiatives. The Constitution in article XI provides five [**66] methods of amending the Constitution: (1) proposal by Legislature, section 1; (2) revision commission, section 2; (3) initiative, section 3; (4) constitutional convention, section 4; and (5) taxation and budget reform commission, section 6. Only in respect to citizens' initiatives does the Constitution give to this Court express power to review amendments. Article V, section 3(b)(10), does provide, in respect to this method of amending the Constitution, that this Court

> Shall, 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.

Article IV, section 10, provides:

> 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 expeditiously.

Article XI, section 3, pertains to citizen initiatives. In respect to amendments proposed by a constitutional [**67] revision commission or a constitutional convention or by the Legislature, the Constitution is silent as to any power given to the Court for review. Since the Constitution does not expressly give the Court this power, I must conclude that the Court should not assume it by implication. Rather, the Court should respect the distinctions between the methods of amending the

Constitution which this Court acknowledged in *Fine*. [49] I agree with respondent that the exception to this would only be if there was evidence of fraud, which is clearly not present in this case.

Furthermore, I disagree with the majority's reliance upon *Wadhams v. Board of County Commissioners*, 567 So. 2d 414 (Fla. 1990). [**68] I find that case to be distinguishable because it did not involve a legislatively proposed amendment pursuant to article XI, section 1. *Wadhams* involved a proposal by a board of county commissioners to amend a county charter. I conclude that the rule to be applied in a case in which a legislatively proposed amendment has been approved by the voters was set forth by this Court in *Sylvester v. Tindall*, 154 Fla. 663, 18 So. 2d 892 (1944):

> While it is true that the procedure set forth in Section 1 of Art. XVII is mandatory and should be followed, this Court has recognized the almost universal rule that once an amendment is duly proposed and is actually published and submitted to a vote of the people and by them adopted without any question having been raised prior to the election as to the method by which the amendment gets before them, the effect of a favorable vote by the people is to cure defects in the form of the submission.

Id. at 669, 18 So. 2d at 895 (citations omitted).

I recognize that petitioners sought to have this matter canceled from the ballot [*31] by a late filing just prior to the election. However, the fact is that this attempt [**69] did not succeed. The voters approved the amendment by 72.8 percent of those voting. The majority's post-election analysis as to why the amendment so overwhelmingly succeeded is merely speculation and conjecture, which the rule provided in *Sylvester* correctly avoids. The record contains no data whatever to support a finding by the majority that the people were misled by an inaccurate ballot summary.

There is also the fact that the remedy here does not flow from any acceptable legal analysis of the remedies that the petitioners originally sought. The action was originally brought in this Court as a petition for writ of mandamus or, in the alternative, for injunctive relief or a declaratory judgment. The trial court correctly rejected the petitions for mandamus and injunctive relief but certified the issue to the district court of appeal as a declaratory judgment action. However, chapter 86,

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[49] In its footnote 18, the majority attempts to explain this express difference between judicial control over citizen initiatives and legislative amendments on another basis, which simply does not comport with this obvious reason explained in *Fine*. The reasoning in *Fine* supports the logic of my conclusions.

Florida Statutes (Declaratory Judgments), grants to circuit and county courts the jurisdiction to interpret statutes, county or municipal charters, ordinances, contracts, deeds, wills, franchises, or other articles, memoranda, or instruments in writing. *See* § 86.021, [**70] Fla. Stat. (1997). The statute does not mention legislatively proposed constitutional amendments. Mandamus did not lie because there was no clear legal right.

Finally, though in my view we do not reach the issue, I do not agree with the subjective conclusion of the majority that a unanimous Legislature "clearly and conclusively" misled Florida voters. Rather, I agree with the subjective conclusion of the trial judge that respondent's argument is more persuasive. I conclude that the ballot title and summary do inform that the state constitutional provision against cruel or unusual punishment is to be construed in accord with decisions of the United States Constitution. This is similar to the provision which voters of the state earlier adopted in respect to search and seizure in article I, section 12, which this Court upheld in *Grose v. Firestone*, 422 So. 2d 303 (Fla. 1982), and which the present majority does not and cannot adequately distinguish. Also, respondent is correct that it has never been determined that there is a material difference between the phrases "cruel or unusual" and "cruel and unusual" for purposes of the application of capital punishment. I find [**71] it to be a particularly strained interpretation where the majority construes that "legislative designation" eliminates a veto by the Governor. "Designated by the Legislature" is already in article X, section 17(b) of the Constitution without controversy. I believe it is significant that the record in this case contains nothing in the way of factual evidence to support the majority's subjective conclusion that misleading language misled the voters. Thus, even if I found in the Constitution the power to review legislatively-proposed amendments, I would not, on the basis of the present record, join in striking from the Constitution what the Legislature and the people themselves have put into the Constitution by such substantial votes.

For the foregoing reasons, the decision of the circuit court should be affirmed and the petitions denied

.LEWIS, J. dissenting.

Once again, the judicial system is being asked not only to intervene in a matter that addresses the intent and understanding of Florida voters in connection with the performance of the most basic function in the democratic process, but in so doing, to invalidate the result of a vote after the citizens of Florida have already [**72] exercised their franchise and voiced a decision. I am troubled that challenges to matters that are to be submitted to the people for determination fall victim to strategies that produce judicial reversals in matters that have already

been submitted to the electorate, when any challenge or controversy could and should have been submitted for judicial determination in a timely manner, providing sufficient time for full [*32] review and resolution prior to the day of decision for Florida voters. While I agree that much of the reasoning expressed by Justice Shaw is certainly intellectually arguable, my analysis of the legal maneuvering by the appellants here compels a different conclusion with regard to the issue of delay and laches. I must note that this is at least the third occasion within a very short period of time that a request, with very questionable timing, to invalidate action taken by voters has been submitted to this Court for resolution. [50]

[**73] First, it is clear that the power of the Legislature to propose amendments to the Florida Constitution arises from article XI, section 1, and submission of such proposed amendments to the electorate for consideration is addressed in article XI, section 5 of the Florida Constitution. Interestingly, the Florida Constitution does not contain a provision which describes the form in which the proposed amendment must be submitted to Florida citizens for consideration, nor is there any constitutional immunity for misleading or ambiguous titles or summaries of such amendments. Thus, the form in which the present issue appeared on the ballot finds no specific constitutional provision for its foundation and, therefore, has no constitutional basis. With this predicate, it seems clear that any alteration in the form of a proposed constitutional amendment as it will appear on a ballot for consideration by Florida citizens has its foundation in the judicial concept that our fundamental law requires that the form of a proposed amendment to the Constitution as it appears on the ballot be fair and advise the voters of sufficient information to permit intelligent voting. This is further codified through [**74] the intent expressed in section 101.161, Florida Statutes, which requires that public measures submitted to popular vote be clear and unambiguous.

Here, the form of the proposed amendment as it appeared on the ballot (which was represented to be a summary) was something other than a verbatim recitation of the actual amendment itself. Since that which was submitted to the voters was merely an interpretation of the amendment itself, I cannot accept the logic which suggests immunity from review with regard to that which is merely an interpretation of what the organic law will be. Therefore, I concur with the views of Justices Shaw and Harding with regard to the role of the judicial system in connection with proposed constitutional amendments.

I depart, however, from the views of my brothers and sisters in the majority, with regard to application of existing standards under the circumstances in this case

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[50] *See Ray v. Mortham*, 742 So. 2d 1276 (Fla. 1999); *Garvin v. Jerome*, No. SC94751 (Fla. notice filed Jan. 22, 1999).

with particular reference to the timing and sequence of events. Here, those who have challenged the validity of the proposed amendment took no action until less than thirty days prior to the general election, and then sought to circumvent multiple levels of [**75] the Florida judicial system by filing directly with this Court. As reflected in the majority opinion, (majority op. at 2), the challengers next sought mandamus, injunctive and declaratory relief in the circuit court--which dismissed the claim for mandamus, denied injunctive relief and withheld determination with regard to declaratory relief. As the files of this Court reflect, by October 28, 1998, the District Court of Appeal had certified to this Court review of the denial of injunctive relief as an issue of great public importance requiring immediate resolution. However, in the interim, the challengers had voluntarily dismissed all claims for injunctive and declaratory relief (majority op. at 3). The dismissal of both claims for injunctive relief and declaratory relief while the issue concerning injunctive relief was pending before this Court prior to the election terminated the judicial activity [*33] and permitted the election to proceed. As recognized by this Court in *Florida League of Cities v. Smith*, 607 So. 2d 397 (Fla. 1992), the only remaining claim was for mandamus which had *not* been certified to this Court. Further, such remedy could not be used to establish [**76] the existence of the right asserted, but only to enforce a right already recognized by clear and certain established law. As recognized and stated in *Florida League of Cities*, where there is no clear law requiring a certain result and mere ministerial application of such law, a claim for mandamus relief cannot be used as the mechanism to create a controversy, to resolve the controversy and thereby establish the clear and certain legal right, all in the same proceeding in which mandamus is granted. Thus, in this case, the challengers themselves had taken strategic moves to eliminate review by this Court prior to the general election. It was this maneuvering and untimely challenge by the appellants that precluded full judicial review and resolution prior to the general election. It was not until after the general election had been completed and the results known that a claim for injunctive and declaratory relief was again submitted to the judicial system some thirty days after the election.

In my view, critical review and strict scrutiny of the ballot title and summary of a proposed amendment must be tempered and balanced with the interest of upholding the results of the democratic [**77] process and not depriving voters of their franchise by invalidating the decision made at the ballot box when those challenging the ballot language have failed to timely present the dispute to the judicial system so that it may be thoughtfully analyzed and carefully considered for a determination to be made prior to election day. These competing interests must, I suggest, be balanced under the circumstances in this case particularly when both the timing of the challenge and the ballot language are so very similar in concept

to those considered and approved by this Court in *Grose v. Firestone*, 422 So. 2d 303 (Fla. 1982).

While I would never condone or support a legal analysis that would, in effect, permit the voting public to be "hoodwinked" or defrauded by application of the concept of laches or delay, I conclude that a far better approach here in balancing the respective interests is to analyze whether the asserted defects in the form of the submission to the voters are of such significance as to prohibit or prevent the legitimate expression of the intent of the people as evidenced through the favorable vote of the electorate. Misrepresentations and fraudulent behavior [**78] may never be cured by affirmative votes; however, I would not place the asserted ambiguity involved in this case in such category. With the summary here being very similar in concept to that approved in connection with a similar amendment proposed in *Grose*,I would apply the principle of law that, once an election has been concluded and the result determined, it is the duty of the judicial system to uphold that result, if possible, if the process has been essentially free and fair, the voters have not been essentially deprived of their right to vote due to the alleged defect, and the result has not been so tainted by irregularities as to suggest that the result is not the intent of the electorate. *See*, *e.g.*, *Winterfield v. Town of Palm Beach*, 455 So. 2d 359 (Fla. 1984).

It is my view that if one perceives a ballot matter to be deficient with regard to adequate summaries or titles, it is essential that any challenge be instituted in a timely fashion, so that the entire review process by the courts can be completed before an election. This Court has noted in *Sylvester v. Tindall*, 154 Fla. 663, 18 So. 2d 892 (1944), that, where it is contended [**79] only after the actual vote that the form of a ballot is not sufficient to properly advise the electorate as to what is being voted upon, the required publication and submission to a vote of the people of this State, and the adoption of such provision by the electorate, has the effect of curing minor defects in the form of submission. I [*34] do not believe that an allegedly aggrieved party should be permitted to simply await the eve of an election and then challenge an asserted deficiency which could and should have been resolved prior to the election, if timely pursued.

Although there may be no particular statutory time provision or other specific rules of procedure applicable to the timing of challenges to matters that are to be submitted to the voting public, I believe that the doctrine of laches and delay must be applied here in the balancing of competing interests. If we do not require timely challenges, it is conceivable that parties could simply wait for a controversy to arise with regard to the interpretation of an amended constitutional provision and, if the ultimate judicial resolution of such dispute were contrary to the ballot

summary as presented to Florida voters, seek to [**80] invalidate the amended section of the Constitution many years later. We must find some balance achieved between demanding integrity of ballot titles and summaries and supporting the integrity of the democratic process by upholding the results of general elections. I would join the suggestion of former Justice Overton that it is imperative that the Legislature and this Court develop rules and procedures by and through which challenges to ballot titles and summaries and challenges to other matters submitted for public vote can be timely and properly judicially reviewed, resolved, and any defects corrected, to allow the citizens of Florida to vote on a proper proposal and not suffer the consequences of lingering after-the-fact litigation. [51] I suggest that these types of challenges should be initiated in the trial court for full factual development with an expedited trial process followed by meaningful review with resolution of the issues concluded so that the matter could be submitted to the voting public at the time originally contemplated by our Constitution.

[**81] QUINCE, J., dissenting.

I agree with that portion of Chief Justice Wells' dissent wherein he concludes the Legislature did not mislead the Florida voters. The ballot title and summary are not misleading but do in fact inform the public that this state constitutional provision is to be construed in conformity with the United States constitutional provision on cruel or unusual punishment and in conformity with the United States Supreme Court decisions construing the federal provision. As Chief Justice Wells points out, this is the same type of provision approved by the people of Florida in regards to the search and seizure provision of our State constitution. *See* art. I, § 12, Fla. Const.; *Grose v. Firestone*, 422 So. 2d 303 (Fla. 1982).

Therefore, I would affirm the decision of the circuit court.

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[51] Justice Overton announced this philosophy on repeated occasions: *Advisory Op. to the Att'y Gen. re Tax Limitation*, 644 So. 2d 486 (Fla. 1994) (Overton, J., concurring); *Florida League of Cities v. Smith*, 607 So. 2d 397 (Fla. 1992)(Overton, dissenting); *Evans v. Firestone*, 457 So. 2d 1351 (Fla. 1984)(Overton, J., concurring); *Askew v. Firestone*, 421 So. 2d 151 (Fla. 1982)(Overton, J., concurring).

People Against Tax Revenue Mismanagement v. County of Leon

Supreme Court of Florida

May 30, 1991

No. 77,572

Reporter
583 So. 2d 1373 *; 1991 Fla. LEXIS 888 **; 16 Fla. L. Weekly S 403; 16 Fla. L. Weekly S 579

PEOPLE AGAINST TAX REVENUE MISMANAGEMENT, INC., et al., Appellants, v. COUNTY OF LEON, FLORIDA, Appellee

Subsequent History: [**1] Released for Publication August 22, 1991. Rehearing Denied August 22, 1991, Reported at 1991 Fla. LEXIS 1267.

Prior History: An Appeal from the Circuit Court in and for Leon County - Bond Validations.

Counsel: N. Sanders Sauls, Judge - Case No. 91-92.

Kenneth Muszynski, Tallahassee, Florida, for Appellants.

Herbert W. A. Thiele, County Attorney, Tallahassee, Florida; and Michael L. Rosen and Susan L. Turner of Holland & Knight, Tallahassee, Florida, for Appellee.

Judges: Kogan, J. Shaw, C.J. and Overton, McDonald, Barkett, Grimes and Harding, JJ., concur.

Opinion by: KOGAN

Opinion

[*1374] [Corrected Opinion]

We have on appeal on order of the Circuit Court of the Second Judicial Circuit validating a $ 60 million bond issue for construction of a new jail and other infrastructure improvements in Leon County. Jurisdiction is mandatory. Art. V, § 3(b)(2), Fla. Const.

This case comes to Court after much earlier litigation. The People Against Tax Revenue Mismanagement, Inc. (PATRM), is a corporation created about two weeks after passage of an optional sales tax in a local referendum in 1989 in Leon

County. In this referendum, the voters approved a local-option sales tax as the revenue source securing [**2] the $ 60 million bond issue. PATRM's purpose is to scrutinize the workings of Leon County government, including matters associated with the local-option tax and the referendum election.

The day of its formation in 1989, PATRM filed suit against the Leon County Canvassing Board seeking an order setting aside the result of the referendum. PATRM alleged that Leon County officials and others had engaged in a variety of improprieties, including the misuse of public funds, employees, and facilities to support passage of the local-option tax, and the use of misleading ballot language. However, the trial court entered a summary judgment against PATRM on grounds it had failed to name the proper party. [1] This holding was upheld on appeal, and PATRM did not seek further review. *People Against Tax Revenue Mismanagement, Inc. v. Leon County Canvassing Bd.,* 573 So.2d 31 (Fla. 1st DCA 1990).

Subsequently, PATRM amended the petition [**3] to name the City of Tallahassee and the County of Leon as defendants. However, PATRM voluntarily dismissed its complaint and then filed a "Motion for Writ of Certiorari as Ancillary Relief" in its then-pending appeal from the canvassing-board case. The First District characterized this document in the following terms:

In broad terms, appellants take issue with the trial court's attempt to schedule pretrial proceedings and to set the case for trial on the issues raised against the City and the County, who are neither parties to this appeal, nor parties to any action now pending below. After review, we find the motion to be totally frivolous . . . . We grant appellee's motion for an award of attorney fees and costs.

Id. at 33-34. PATRM also filed a suggestion that the judges of the First District should recuse themselves from the case, which was denied. *Id.* at 32.

During the course of the proceedings, PATRM filed a long series of motions and related papers attempting to disqualify judges of the Second Circuit from hearing the trial-level proceedings. These acts culminated in a petition for writ of prohibition filed in the First District. This [**4] petition was denied after the First District found the claims legally insufficient. *People Against Tax Revenue Mismanagement, Inc. v. Reynolds,* 571 So.2d 493 (Fla. 1st DCA 1990).

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[1] This conclusion was undeniably correct. *See* § 100.321, Fla. Stat. (1989).

When the bond validation proceedings below were commenced, Leon County named PATRM as a defendant. [2] In this role, PATRM again raised many of the claims it previously had argued in the earlier proceedings discussed above. These form the central issues in this appeal.

[**5] PATRM argues that this Court cannot now validate the $ 60 million bond issue [*1375] because of "serious questions over the validity of the sales tax election." However, this argument rests on two assumptions not supported by either the law or the record of this case. First, PATRM's brief consistently assumes that a bond validation proceeding is not a proper vehicle for addressing the validity of a bond referendum. For the reasons expressed more fully below, we do not agree with this assumption.

Second, while there are many vague allegations of impropriety, we find that most are very poorly substantiated in this record. Even in their totality, the facts supporting these allegations clearly are insufficient to require invalidation of the bond issue.

The most weighty of PATRM's allegations appears to be the fact that local governmental agencies used public funds and public resources to mount an informational campaign regarding the referendum. In this campaign, the agencies advocated that the optional tax was needed to remedy problems at the county jail and to meet local infrastructure needs such as the building of new or widened roadways. One county commissioner gave the following statement [**6] under cross-examination by PATRM's attorney:

There were some critical issues facing this community that needed to be addressed, the community needed to know what those issues were, and it was important that we got that information out to the community and that we made the choices clear to the community.

Other witnesses testified that county office equipment was used in this campaign and that many county employees assisted. At the proceeding below, PATRM's counsel argued that such acts were improper because they violated the "neutral forum" of the election.

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[2] As PATRM itself notes, the plaintiffs named PATRM as a defendant because at least some of the legal claims PATRM has raised against the bond issue remained unresolved. Although PATRM's briefs view the plaintiffs' actions in a very sinister light, we see nothing improper with the decision to join PATRM as a defendant. Chapter 75, Florida Statutes, clearly contemplates that a bond validation proceeding is a proper vehicle for quieting *all* legal and factual issues that may cast doubt on the legal validity of a bond issue. To this end, the statute makes *all* taxpayers and property owners of the jurisdiction necessary defendants in the bond validation action, including those who happen to be members of political action committees. § 75.02, Fla. Stat. (1989). Nothing in the statutes forbids the county from joining as a defendant any corporation such as PATRM that publicly announces its belief that a bond referendum was unlawfully conducted.

Such a position, however, is tantamount to saying that governmental officials may never use their offices to express an opinion about the best interests of the community simply because the matter is open to debate. A rule to that effect would render government feckless. One duty of a democratic government is to lead the people to make informed choices through fair persuasion. We recently saw an example of such persuasion in President Bush's arguments to the American people and his lobbying efforts regarding the war with Iraq. These acts came at a time of intense controversy, when Congress was preparing to take a crucial vote [**7] either to support or condemn the use of military force in the Middle East.

In much the same sense, local governments are not bound to keep silent in the face of a controversial vote that will have profound consequences for the community. Leaders have both a duty and a right to say which course of action they think best, and to make fair use of their offices for this purpose. [3] The people elect governmental leaders precisely for this purpose. While we agree with PATRM that such acts must not be abusive or fraudulent, we find nothing in the record to show that the limit was crossed here.

Similarly, we do not agree that the wording of the ballot language unfairly biased the electorate. According to the documents submitted by PATRM, the following statement appeared on the ballot:

OFFICIAL BALLOT

SALES TAX REFERENDUM

LEON COUNTY, FLORIDA

September 19, 1989

"TAKE CHARGE . . . IT'S YOUR [**8] FUTURE"

(LOCAL GOVERNMENT INFRASTRUCTURE SALES TAX)

Shall a one-cent local option sales tax for capital improvements be levied in Leon [*1376] County for a period of 15 years in order to construct critical capital improvements; specifically: a court-ordered jail, law enforcement capital projects, road and traffic improvements identified in the Tallahassee-Leon County Year 2010 Transportation Plan, and other road and traffic improvements?

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[3] "Fair use," of course, does not imply a right to ignore the requirements of other law, especially Florida's governmental ethics code.

PATRM notes that the phrase "TAKE CHARGE . . . IT'S YOUR FUTURE" was the campaign slogan used by persons who favored the tax. We agree that the use of a campaign slogan and the word "critical" reflect a slight lack of neutrality that should not be encouraged in ballot language. Government should never appear to be "shading" a ballot summary to favor one position or another.

However, the fact that some questionable language appears on the ballot is not itself enough to invalidate an entire referendum. Rather, the reviewing court must look to the *totality* of the ballot language, as such language would be construed by a reasonable voter. We have held that a court may interfere with the right of the people to vote on referendum issues only if the language [**9] in the proposal is clearly and conclusively defective. *Askew v. Firestone,* 421 So.2d 151, 154 (Fla. 1982). Typically we have overturned an election because of defective ballot language where the proposal itself failed to specify exactly what was being changed, thereby confusing voters. *Id.; Wadhams v. Board of County Comm'rs,* 567 So.2d 414, 416-17 (Fla. 1990). This especially is true if the ballot language gives the appearance of creating new rights or protections, when the actual effect is to reduce or eliminate rights or protections already in existence. *Askew,* 421 So.2d at 154.

Here, we see no similar defect. The ballot language clearly and unambiguously stated that the voters were imposing upon themselves "a one-cent local option sales tax for capital improvements" in Leon County.

The campaign slogan appearing on the ballot does no more than urge voters to "take charge . . . it's your future." Some voters might "take charge" by voting yes; others easily might "take charge" by voting no. Thus, this particular language lacks neutrality only implicitly, because it was the campaign slogan of persons favoring the tax. Moreover, [**10] identifying capital projects as "critical" in no sense renders this ballot so confusing or imprecise as to be clearly and conclusively defective. It is not reasonable to conclude that the voters of Leon County were so easily beguiled by a few arguably non-neutral words, when the remainder of the ballot plainly stated that a "yes" vote meant new taxes would be imposed.

We therefore are constrained to approve the trial court's finding that there was nothing in "the referendum election with respect to the sales tax that constituted any breach of public trust nor was any action by those public bodies affirmed by any fraud on the electorate or gross wrongdoing or with any substantial violations of law."

PATRM also contends that the trial judge below erred in not joining the Leon County Canvassing Board as a defendant. This argument is wholly without merit.

Nothing in the relevant bond validation statutes or the relevant election laws requires the canvassing board to be a party to this proceeding. §§ 75.02, 100.321, Fla. Stat. (1989).

Next, PATRM argues that the proceedings below were too summary in nature and failed to meet the requirements of due process. However, the record discloses [**11] that PATRM made virtually no argument in the trial court below that the proceedings had deprived it of a meaningful opportunity to participate in the proceedings, present evidence, and make argument. Indeed, when PATRM filed a belated request for continuance, the trial court denied the request in part because PATRM had received almost a month's advance notice. If PATRM legitimately needed more time to prepare its argument and evidence, it should have so informed the trial court and placed on the record the specific reasons why the time already given was not sufficient.

[*1377] Here, no such showing was made. The notice and other procedural requirements of sections 75.05 and 75.07, Florida Statutes (1989), were clearly met, as were the requirements of Florida law governing taxpayer challenges to referenda of the type at issue here. § 100.321, Fla. Stat. (1989). The trial court's judgment, which we sustain today, thus is "forever conclusive as to all matters adjudicated against plaintiff and all parties affected thereby." § 75.09, Fla. Stat. (1989).

In its next argument, PATRM contends that the only proper method of resolving the election dispute in this instance was the procedure established [**12] by section 102.168, Florida Statutes (1989). This statute requires the county canvassing board to be the named defendant in taxpayer lawsuits challenging elections. Thus, PATRM argues that Leon County lacks standing to litigate the merit's of PATRM's challenge to the referendum election. [4]

This argument is wholly meritless. Section 102.168 on its face is a general statute creating a procedure by which taxpayers (as plaintiffs) may challenge a disputed [**13] referendum by suing canvassing boards. Other more specific statutes, [5] however, address the question of bond validation proceedings and referenda in which voters have approved a tax to secure the bond issue in

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[4] Obviously, the doctrine of res judicata applies to the extent that PATRM is attempting to argue that the canvassing board is a proper opposing party. This issue was resolved against PATRM in an unappealed opinion of the First District. People Against Tax Revenue Mismanagement, Inc. v. Leon County Canvassing Bd., 573 So.2d 31 (Fla. 1st DCA 1990). However, PATRM now argues the somewhat different issue that the county lacks standing in the present case because of section 102.168, Florida Statutes (1989). We therefore proceed to the merits of the issue.

[5] A specific statute always prevails over a general statute to the extent of any irremediable inconsistency. Adams v. Culver, 111 So.2d 665 (Fla. 1959). In effect, the former is construed as an exception to the latter.

question. By their own terms, these other statutes grant standing to the county *and* create the exclusive remedy available to taxpayers in cases of this type.

Under section 75.02, the county (as a plaintiff) has express standing to litigate "its authority to incur bonded debt or issue certificates of debt and the legality of *all proceedings* in connection therewith, *including assessment of taxes levied or to be levied."* § 75.02, Fla. Stat. (1989) (emphasis added). The validity of a bond referendum is an issue inseparable from the validity of the tax assessment itself. [**14] Thus, chapter 75 is a proper vehicle for the issues presented in this case.

More to the point, section 100.321 clearly provides the exclusive remedies available to anyone wishing to challenge a referendum of the type at issue here. Under this statute, a taxpayer may file an action in the circuit court of the county where the vote was held, within sixty days after the posting of election results. The only necessary defendants are any county commission or municipal government that authorized the referendum, *not* the canvassing board. § 100.321, Fla. Stat. (1989). Thus, PATRM's argument that it was required to sue the canvassing board is not well taken.

Moreover, the statute plainly states that the opportunity for taxpayers to file a lawsuit challenging the referendum is closed as soon as a bond validation proceeding is filed in the same matter:

In the event proceedings shall be filed in any court to validate the bonds, which have been voted for, then any such taxpayer *shall be bound* to intervene in such validation suit and contest the validity of the holding of the referendum or the declaration of the results thereof, in which event the *exclusive* jurisdiction to determine [**15] the legality of such referendum or the declaration of the results thereof shall be vested in the court hearing and determining said validation proceedings. . . . The judgment in said validation proceedings shall be final and conclusive as to the legality and validity of the referendum and of the declaration of the results thereof, and no separate suit to test the same shall be thereafter permissible.

[*1378] § 100.321, Fla. Stat. (1989) (emphasis added).

It could not be plainer that the county had standing to bring this suit, that the court below had exclusive jurisdiction over questions regarding the referendum, and that PATRM's sole remedy was to intervene in the validation proceeding once it had commenced. Even if PATRM had continued its earlier lawsuit against the city and county, the court hearing that suit would have been required to dismiss the action as soon as the validation complaint was filed; and PATRM then could have continued its separate legal challenge only by intervening in the validation

proceedings. *Id.* Once the plaintiffs joined PATRM or any other taxpayer as a defendant, [6] that taxpayer was under an obligation to advance all objections to the validity of the referendum [**16] in the proceeding below or be forever barred from raising them again. *Id.*

Next, PATRM argues that the public notice for the bond validation was inadequate because it failed to tell the public that "any issues over the validity of the sales tax election remained outstanding." We find this argument utterly without merit. Leon County clearly complied with the bond validation and election statutes.

Next, PATRM raises a variety of issues regarding the propriety of the referendum election, some of which partially duplicate its earlier arguments. However, the new allegations of impropriety raised by PATRM either are trivial or have absolutely no bearing on the overall validity of the referendum. Nor can we agree that any sort of "cumulative error" occurred that [**17] would invalidate the referendum vote.

As its final issue, PATRM argues that the trial judge should have disqualified himself from hearing this case because of alleged bias. We find PATRM's argument without merit.

For the foregoing reasons, the order of the court below validating a $ 60 million bond issue for improvements in Leon County is affirmed in all respects. We specifically affirm the trial court's conclusion that the bond issue is for a proper and lawful purpose fully authorized by law. The building of a jail, the construction and renovation of roads, and the financing of infrastructure clearly are valid public purposes justifying the issuance of these bonds.

It is so ordered.

ON DENIAL OF REHEARING

In its petition for rehearing, PATRM calls to this court's attention the technical fact that its members had organized themselves as a political action committee prior to the referendum, and only as a corporation afterward. We have corrected the opinion to reflect this fact. Obviously, this factual error in no sense changes the result of the opinion above.

PATRM also argues on rehearing that the referendum was not a "bond referendum" within the meaning of section 100.321, Florida [**18] Statutes (1989). It is true that the Leon County referendum was organized under authority of section 212.055(2), Florida Statutes (1989). However, there is no question that the

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[6] Section 100.321 does not foreclose the possibility of the plaintiff joining specific taxpayers as defendants. It merely specifies that the taxpayers sole remedy is to intervene in the validation proceeding once it has commenced. § 100.321, Fla. Stat. (1989).

purpose of this referendum was to approve or disapprove a source of funds to secure a bond issue. Whenever this is the case, section 100.321 applies.

Finally, we are mindful of PATRM's argument that its members have been "singled out" as defendants, unlike other taxpayers. Clearly, local government cannot engage in such practices if the purpose is merely to harass or "punish" a particular taxpayer or group of taxpayers. In such instances, the trial court on a proper motion should impose appropriate sanctions on the local government. However, we find no such purpose here. PATRM itself was the one that initiated the complicated series of lawsuits and court petitions described above. Whenever a party initiates litigation, that party assumes the risks associated with that decision.

[*1379] Finally, PATRM argues that the "petition for ancillary relief" it filed with this Court constitutes an attempt to seek review of the two earlier district court opinions (described above) involving the issues of this case. Any such "petition [**19] for ancillary relief "--even if it were authorized by the rules of procedure--is not a proper vehicle for appealing a lower court decision. Even a cursory review of the rules shows this to be the case. Counsel's argument on this point is utterly without merit. By choosing not to appeal the lower court opinions in the proper manner, counsel has bound his client to the full legal effect of those opinions, under the doctrine of res judicata.

Petition for rehearing is denied. The petition for ancillary relief is unauthorized by the rules of court, is a nullity, and thus is stricken from this record.

It is so ordered.

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Wadhams v. Bd. of County Comm'Rs

Supreme Court of Florida

August 30, 1990

No. 70,078

Reporter
567 So. 2d 414 *; 1990 Fla. LEXIS 1001 **; 15 Fla. L. Weekly S 421

SAMUEL C. WADHAMS, et al., Petitioners, v. BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA, Respondents

Prior History: [**1] Application for Review of the Decision of the District Court of Appeal - Direct Conflict of Decisions; Second District - Case No. 85-2957; (Sarasota County).

Counsel: Daniel Joy, Sarasota, Florida, for Petitioner.

Richard E. Nelson and Richard L. Smith of Nelson, Hesse, Cyril, Smith, Widman & Herb, Sarasota, Florida, for Respondent.

Judges: Ehrlich, J. Shaw, C.J., and McDonald and Barkett, JJ., concur. Kogan, J., dissenting with an opinion, in which Overton, J., concurs. Grimes, J., recused.

Opinion by: EHRLICH

Opinion

[*415] EHRLICH, Justice.

We have for review *Wadhams v. Board of County Commissioners,* 501 So.2d 120 (Fla. 2d DCA 1987), due to express and direct conflict with *Askew v. Firestone,* 421 So.2d 151 (Fla. 1982). We have jurisdiction. Art. V, § 3(b)(3), Fla. Const.

The Board of County Commissioners of Sarasota County (Board) proposed amendments to the county charter concerning meetings of the county's Charter Review Board. A special election was held on the proposed amendments on November 6, 1984. The ballot appeared as follows:

OFFICIAL BALLOT

SPECIAL ELECTION ON AMENDING ARTICLE II SECTIONS 2.11.A AND 2.11.B OF THE SARASOTA COUNTY CHARTER [**2] NOVEMBER 6, 1984

Shall Article II, Sections 2.11.A and 2.11.B of the Sarasota County Charter be amended as proposed by Sarasota County Ordinance No. 84-72 to read:

"Section 2.11.A Composition, Election and Term of Members. There shall be a Charter Review Board which shall by 1984 be composed of ten (10) members who shall serve without compensation and who shall be elected in the following manner: five (5) members, one residing in each of the five County Commission districts, shall be elected by the voters of Sarasota County at the general election to be held in 1982, and every (4) four years thereafter; five (5) members, one residing in each of the five County Commission districts, shall be elected by the voters of Sarasota County at the general election to be held in 1984, and every four (4) years thereafter. Members shall take office on the second Tuesday following the general election."

"Section 2.11.B Purpose, Jurisdiction and Meetings of Review Board. The Charter Review Board shall hold meetings to organize, elect officers, and conduct business only during the year, and prior to that time, in which a general election is held in 1988, and each four (4) years thereafter. [**3] The Review Board shall review the operation of the County government, on behalf of the citizens and recommend changes for improvement of this Charter. Such recommendations shall be subject to referendum in accordance with the provisions of Section 6 herein. An affirmative vote of two-thirds (2/3) of the members elected or appointed to the Review Board shall be required to recommend amendments for referendum. The Board of County Commissioners shall pay reasonable expenses of the Charter Review Board."

YES (Punch Card Number) NO (Punch Card Number)

The proposal received an affirmative vote from a majority of the voters.

Subsequent to the election, petitioners filed a complaint challenging the amendment to section 2.11 of the county charter, alleging that the referendum placed on the special election ballot by the Board failed to comply with the essential requirements of the general law of Florida. Specifically, petitioners challenged the fact that the Board, based upon the advice of its legal counsel, did not provide a summary of the proposed changes as required by section 101.161(1), Florida Statutes (Supp. 1984). The trial court concluded that the section was mandatory and was not [**4] substantially complied with by the Board. The trial court refused, however, to invalidate the results of the referendum. The Second District Court of Appeal affirmed, stating that "the purpose of the

amendment was shown to have been widely disseminated by public hearing, advance publication, and media publicity," and "[t]he fact that a ballot may be confusing to some does not mandate a court to invalidate the results of an otherwise properly conducted election." 501 So.2d at 123 (citations omitted).

[*416] Section 101.161(1) provides, in relevant part:

> Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure *shall* be printed in clear and unambiguous language on the ballot. . . . 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.

(Emphasis added.) Petitioners argue that the lower courts erred in upholding the election result despite finding that the Board had failed to comply with the requirements of section 101.161(1). We agree. The above provisions of section 101.161(1) [**5] are mandatory. As this Court stated in *Askew*: "The purpose of section 101.161 is to assure that the electorate is advised of the true meaning, and ramifications, of an amendment." 421 So.2d at 156. "[S]ection 101.161 *requires* that the ballot title and summary for a proposed constitutional amendment [or other public measure] state in clear and unambiguous language the *chief purpose* of the measure." *Id*. at 154-55 (emphasis added).

In *Askew*, the plaintiffs appealed a trial court order validating the caption and summary of a proposed constitutional amendment scheduled to appear on the November 1982 general election ballot. The proposed amendment at issue was to remove the absolute two-year ban on lobbying by former legislators and elected officers before their former governmental bodies or agencies, as set forth in the "Sunshine Amendment" to article II of the Florida Constitution. Under the proposed amendment, the two-year ban would apply only if an affected person failed to make financial disclosure. The proposed summary of the amendment for the ballot stated that the amendment "'[p]rohibits former legislators and statewide elected officers from representing other persons or [**6] entities for compensation before any state government body for a period of 2 years following vacation of office, unless they file full and public disclosure of their financial interests.'" *Id*. at 153. This Court held that the joint resolution proposing the amendment was invalid and must be stricken from the ballot because the summary was "misleading to the public concerning material changes to an existing constitutional provision." *Id*. at 156. The problem with the summary was that it failed to inform the public that

there was presently a *total* ban on lobbying before one's agency for two years, regardless of financial disclosure. Stated alternatively, the summary did not adequately reflect the chief purpose of the joint resolution, which was to remove the two-year absolute ban on certain lobbying activities.

The problem with the ballot in the present case is much the same as the problem with the ballot in *Askew*. By containing the entire section as it would actually appear subsequent to amendment, rather than a summary of the amendment to the section, the ballot arguably informed the voters that the Charter Review Board would only be permitted to meet once every four [**7] years. By failing to contain an *explanatory statement* of the amendment, however, the ballot failed to inform the public that there was presently no restriction on meetings and that the *chief purpose* of the amendment was to curtail the Charter Review Board's right to meet. Similar to the ballot summary at issue in *Askew*, the present ballot "is deceptive, because although it contains an absolutely true statement, it omits to state a material fact necessary in order to make the statement made not misleading." *Askew*, 421 So.2d at 158 (Ehrlich, J., concurring). The only way a voter would know what changes were being effected by an affirmative vote on the ballot would be to know what section 2.11 of the county charter provided prior to amendment. As then Judge Grimes noted in his dissent below: "[T]here was nothing on the ballot to inform the voter of the change to be accomplished by the amendment, which is the very reason why section 101.161(1) requires an explanatory statement." 501 So.2d at 124 (Grimes, J., dissenting). *See also Kobrin v. Leahy,* 528 So.2d 392 (Fla. 3d DCA) [*417] (placement on ballot of proposition to provide that the board of county commissioners shall be [**8] the governing board of the fire and rescue service district, but making no mention of the elimination of the existing governing body of the Fire and Rescue District, was misleading to voters and violated section 101.161(1), especially in light of simultaneously conducted election of persons to the existing governing board), *review denied,* 523 So.2d 577 (Fla. 1988). *Cf. Miami Dolphins, Ltd. v. Metropolitan Dade County,* 394 So.2d 981, 987 (Fla. 1981) (ballot was not misleading and gave voters fair notice of the decision to be made where it "contained a brief description of the tax plan, i.e., the rate, the group on whom it would be imposed, the expected revenues, and the planned expenditure of those revenues").

The Board argues that the majority in the decision below correctly concluded that there was no reason to invalidate the amendments based on voter confusion because the voters were afforded ample opportunity to become informed on the issue before the election by public hearings, advance publication of the proposal, and media publicity. We reject this argument. As this Court stated in *Askew*, "[t]he

burden of informing the public should not fall only on the press and [**9] opponents of the measure -- the ballot . . . *summary must do this."* 421 So.2d at 156 (emphasis added). *See also Evans v. Firestone,* 457 So.2d 1351, 1355 (Fla. 1984) ("[T]he voter must be told clearly and unambiguously . . . what the amendment does. . . . The ballot summary should tell the voter the legal effect of the amendment. . . ."). [1]

We also reject the Board's argument that the favorable vote cured any defects in the form of the [**10] submission. This defect was more than form; it went to the very heart of what section 101.161(1) seeks to preclude. Moreover, it is untenable to state that the defect was cured because a majority of the voters voted in the affirmative on a proposed amendment when the defect is that the ballot did not adequately *inform* the electorate of the purpose and effect of the measure upon which they were casting their votes. No one can say with any certainty what the vote of the electorate would have been if the voting public had been given the whole truth, as mandated by the statute, and had been told "the chief purpose of the measure." As this Court has previously stated: "[T]he voter should not be misled and . . . [should] have an opportunity to know and be on notice as to the proposition on which he is to cast his vote. . . . What the law requires is that the *ballot* be fair and advise the voter sufficiently to enable him *intelligently* to cast his ballot." *Hill v. Milander,* 72 So.2d 796, 798 (Fla. 1954) (emphasis added).

Finally, we reject the Board's argument that the present case is distinguishable from *Askew* [**11] because *Askew* dealt with a preelection challenge to the ballot and that the petitioners should be foreclosed from relief because the present action was not instituted until after the special election. The Board in effect argues that hoodwinking the voting public is permissible unless the action is challenged prior to the election. We perceive no basis for the Board's conclusion that the holding of this Court in *Askew* applies only if the challenge is made prior to the election. We agree with the dissent below that although there would come a point where laches would preclude an attack on the ordinance, such is not the situation in the present case where the suit was filed only a few weeks after the election. 501 So.2d at 124. [2]

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[1] Rowe v. Pinellas Sports Authority, 461 So.2d 72 (Fla. 1984), relied upon by the Board as support for this argument, is not applicable. In *Rowe*, the ballot summary adequately gave the voters fair notice of the question to be decided. The statement in *Rowe* that "[b]efore this election, the full text of the ordinance had been advertised and debated at a public hearing called to consider it," 461 So.2d at 77, was made in the context of explaining why Florida law does not require that every substantive provision of a proposed ordinance be reflected on a referendum ballot.

[2] The fact that some of the petitioners in the present case may have been aware of the form of the ballot or the chief purpose of the proposed amendment prior to the election does not change our conclusion. The Board fails to explain why the fact that some of the petitioners may have been aware precludes the present action by all of the petitioners. As noted in the dissent below, "[t]he question is not whether the plaintiffs knew of the purpose of the amendment but whether the voters of Sarasota County

[**12] [*418] Deception of the voting public is intolerable and should not be countenanced. The purpose of section 101.161(1) is to assure that the electorate is advised of the meaning and ramifications of the proposed amendment. Because the ballot at issue failed to comply with the mandate of the legislature expressed in section 101.161(1), the proposed amendments must be stricken. [3] Accordingly, the decision of the district court below is quashed.

[**13] It is so ordered.

Dissent by: KOGAN

Dissent

Shaw, C.J., and McDonald and Barkett, JJ., concur.

KOGAN, Judge, dissenting.

I respectfully dissent.

I disagree with the majority's contention that the election results should be invalidated because the ballot did not comply with section 101.161, Florida Statutes (Supp. 1984). I recognize that in our opinion in *Askew v. Firestone,* 421 So.2d 151 (Fla. 1982), we held that section 101.161 is mandatory. In *Askew*, we considered a preelection challenge to the validity of an explanatory statement which was to appear on the ballot summarizing a constitutional amendment concerning restrictions on lobbying by former legislators and statewide elected officers. The amendment was struck from the ballot because the Court determined the explanatory statement did not adequately inform the public of the true purpose

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were apprised of its purpose through an explanatory statement." Wadhams v. Board of County Commissioners, 501 So.2d 120, 124 (Fla. 2d DCA 1987).

[3] Subsequent to oral argument before this Court, article II, section 2.11.B of the Sarasota County Charter was again amended in the November 8, 1988 election. A majority of the voters affirmatively approved the following referendum which appeared on the ballot:

> Shall Article II, section 2.11.B, of the Sarasota County Charter be amended to provide the following:
>
> "To allow the Charter Review Board to hold meetings, conduct business, and review the operation of County Government during every other calendar year, beginning in 1988, rather than once every four years. In odd-numbered years the Board shall be in recess. The Board will be allowed to call a meeting during odd-numbered years by unanimous concurrence of all members then elected or appointed."

In effect, the voters of Sarasota County have readopted, but modified the results of the invalid 1984 election. Our conclusion that the 1984 amendment was a nullity because the ballot failed to comply with section 101.161(1), Florida Statutes (Supp. 1984), does not lead to the conclusion that the 1988 amendment is also invalid. The 1988 amendment is not an issue in the case at bar.

of the amendment as required by section 101.161. Here we are presented with a postelection challenge to the validity of an amendment appearing on the ballot which contained no explanatory statement. While we have declared the ballot requirements of section 101.161 to be mandatory, this is not to say that the absence of strict compliance with the statute constitutes a fatal defect necessitating invalidation [**14] of the results of an otherwise properly conducted election, particularly under the circumstances of this case.

The purpose of section 101.161 is to assure that the electorate is advised of the meaning and ramifications of the amendment. *Grose v. Firestone,* 422 So.2d 303 (Fla. 1982). I believe the ballot in question carried out the intent of the statute. First, while the ballot contained no summary stating the purpose of the amendment, the actual language of the amendment appeared on the ballot. Moreover, the provisions of the amendment were clearly stated. Additionally, the record reflects that the public was made aware of the purpose of the amendment by public hearing, advance publication of the proposal and media publicity. Thus, I agree with the trial court's conclusion "that the voters were afforded ample opportunity to become informed on the issue before the election and [*419] that the ballot gave the voters fair notice of the decision they were called on to make." *Wadhams v. Board of County Comm'rs,* 501 So.2d 120, 123 (Fla. 2d DCA 1987). The ballot complied with the essential requirements of law "that the ballot be fair and advise the voter sufficiently to enable him intelligently [**15] to cast his ballot." *Hill v. Milander,* 72 So.2d 796, 798 (Fla. 1954). Therefore, I can see no reason to invalidate the amendments to the county charter after a valid election was held on the ground that the voters were misled by the ballot language.

Had the petitioners brought the appropriate action challenging the language on the ballot before the election, the Board, under the dictates of *Askew*, would have been required to submit the amendment to the voters in summary form. However, once an election has been held and the results proclaimed it is the duty of the courts to uphold those results provided the election has "been free and fair, and it is clear that the voters have not been deprived of their right to vote, and the result has not been changed by irregularity." *Winterfield v. Town of Palm Beach*, 455 So.2d 359, 361 (Fla. 1984) (quoting *State ex rel. Smith v. Burbridge,* 24 Fla. 112, 130, 3 So. 869, 877 (1888)). When it becomes apparent to an individual that a ballot is deficient under section 101.161 because it contains no explanatory statement, the burden is on him or her to institute a timely challenge. The district court noted that evidence was presented [**16] that one of the petitioners, Mr. Wadhams, was aware before the election that there was no summary. He was present at the September 11, 1984 public hearing when ordinance 84-72, which included an official sample ballot of the proposed amendment, was adopted. The

amendment was also printed in full in the local newspaper on October 1 and 15. Furthermore, the record discloses that five of the petitioners, including Mr. Wadhams, were members of the Charter Review Board that met on September 27, 1984 and discussed ordinance 84-72. Mr. Wadhams testified that the general opinion of the members was that the amendment would not be approved, and it appears no action was taken prior to the election because of this belief.

This Court has previously held that defects in the form of the ballot are not fatal if an amendment which was duly proposed was actually published and submitted to a vote of the people and adopted by them without any question raised prior to the election. *Sylvester v. Tindall,* 154 Fla. 663, 18 So.2d 892 (1944). The effect of the favorable vote is to cure any defects in the form of the submission. *Id*. "The aggrieved party cannot await the outcome of the election and then [**17] assail preceding deficiencies which he might have complained of to the proper authorities before the election." *Pearson v. Taylor,* 159 Fla. 775, 776, 32 So.2d 826, 827 (1947). Moreover,

> [r]epublics regard the elective franchise as sacred, and the courts should not set aside an election because some official has not complied with the law governing elections, where the voter has done all in his power to cast his ballot honestly and intelligently, unless fraud has been perpetrated or corruption or coercion practiced to a degree to have affected the result.

Carn v. Moore, 74 Fla. 77, 88-89, 76 So. 337, 340 (1917). Thus, once a party has been put on notice that a ballot is deficient under the requirements of section 101.161, the defect must be challenged before the election has taken place and the outcome of the vote has been determined. I believe the record supports the trial court's conclusion that the petitioners had sufficient advance notice of the proposed ballot to have challenged the form of the ballot before the election. Furthermore, nothing in the record indicates that this was anything but a properly conducted election. As the district court observed, no fraud was [**18] charged and no one was denied the right to vote or was prevented from voting. Accordingly, I would approve the decision of the second district.

Evans v. Firestone

Supreme Court of Florida

October 3, 1984 and October 11, 1984

No. 65898

Reporter
457 So. 2d 1351 *; 1984 Fla. LEXIS 3717 **; 9 Fla. L. Weekly S 429; 9 Fla. L. Weekly S 438

Lorean S. EVANS; Henry McDermott; Lucille McDermott; and Cheryl Lee Harrison, Appellants, v. George FIRESTONE, as Secretary of State of Florida; and Reason '84: the Committee For Citizens Rights In Civil Actions, a political action committee, Appellees

Counsel: [**1] Barry Richard of Roberts, Baggett, La-Face, Richard & Wiser, Tallahassee, and Arthur England of Fine, Jacobson, Block, England, Klein, Colan & Simon, Miami, for Appellants.

Jim Smith, Atty. Gen., Mitchell D. Franks, Chief Trial Counsel and Eric J. Taylor, Asst. Atty. Gen., Tallahassee, Chesterfield Smith, Julian Clarkson and Lynn M. Dannheisser of Holland & Knight, Tallahassee, Robert L. Shevin and James A. Minix of Sparber, Shevin, Shapo & Heilbronner, Miami, and Donald W. Weidner, Reason '84: The Committee for Citizen's Rights, Jacksonville, for Appellees.

Karen A. Gievers of Anderson, Moss, Russo & Gievers, Miami, Amicus Curiae, for Florida Consumers Federation, Inc.

Judges: Boyd, C.J., and Adkins, Overton, Alderman, McDonald, Ehrlich and Shaw, JJ., concur. Overton, J., concurs with an opinion. McDonald, J., concurs with an opinion in which Ehrlich J., concurs. Ehrlich and Shaw, JJ., concur specially with an opinion.

Opinion by:

Opinion

[*1352] The declaratory judgment entered in this cause September 14, 1984 by the Honorable Ben C. Willis, Circuit Judge for the Second Judicial Circuit of Florida is hereby reversed and proposed amendment nine, titled Citizen's Rights in Civil [**2] Actions, is stricken from the November ballot. An opinion setting forth our reasons for this decision will issue at a later date.

BOYD, C.J., and ADKINS, OVERTON, ALDERMAN, McDONALD, EHRLICH and SHAW, JJ., concur.

PER CURIAM.

This cause is before the Court for review of a declaratory judgment rendered September 14, 1984, in which the Honorable Ben C. Willis found the proposed amendment to the Florida Constitution, Amendment 9: Citizen's Rights in Civil Actions, and its ballot summary were constitutionally valid. Appellants filed an appeal to the First District Court of Appeal which, upon motion by both parties, certified the question to this Court as being of great public importance, without passing on the merits. We have jurisdiction pursuant to article V, section 3(b)(5), Florida Constitution. [*1353] In the circuit court, appellants challenged the validity of appellee Firestone's placing on the November ballot the following amendment:

> CITIZEN'S RIGHTS IN CIVIL ACTIONS
>
> In civil actions: a) no party can be found liable for payment of damages in excess of his/her percentage of liability; b) the Court shall grant a summary judgment on motion of any party, when the [**3] Court finds no genuine dispute exists concerning the material facts of the case; c) noneconomic damages such as pain and suffering, mental anguish, loss of consortium, and loss of capacity for the enjoyment of life shall not be awarded in excess of $100,000 against any party.

which would actually appear on the ballot in guise of the following title and summary, pursuant to section 101.161, Florida Statutes (1983):

> CITIZEN'S RIGHTS IN CIVIL ACTIONS
>
> Amendment establishes citizen's rights in civil actions: provides a party in a lawsuit shall not be required to pay more damages than the jury found him/her responsible for personally; requires courts to dispose of lawsuits when no dispute exists over the material facts thus avoiding unnecessary costs; and allows full recovery of all actual expenses such as lost wages, accident costs, medical bills, etc., but limits non-economic damages to a maximum of $100,000.

Appellants' challenge alleged that the amendment violates the one subject limitation imposed in article XI, section 3, Florida Constitution and that the title and summary are deceptive and ambiguous, thus failing to give the notice required by section [**4] 101.161, Florida Statutes (1983). Additionally, appellants raised a federal constitutional issue, claiming that the amendment's facial invalidity violated the due process clause of the fourteenth amendment of the federal constitution.

Judge Willis held that the amendment embraced only one subject and matter directly connected thereto and that the title and summary were neither ambiguous nor misleading. He declined to reach the due process issue, finding it not to be ripe for adjudication at that point in the amendment process.

After this Court accepted jurisdiction, the cause was fully briefed and orally argued. Our order striking the amendment from the ballot issued October 3, 1984. This opinion follows to explain our earlier decision.

We find the amendment clearly and conclusively defective on both grounds considered by the circuit court: it embraces more than one subject, and the ballot summary fails to satisfy the notice requirements of Florida Statute 101.161 as construed in *Askew v. Firestone*, 421 So.2d 151 (Fla.1982). As these holdings dispose of the case, we do not reach the due process claims raised in appellants' brief.

I. Single-Subject Requirement.

The [**5] power of the citizens of the state of Florida to amend their state constitution by initiative, set forth in article XI, section 3, Florida Constitution, is subject to only one rule of restraint -- that the "revision or amendment shall embrace but one subject and matter *directly connected* therewith." (Emphasis supplied.) Proponents of the amendment have identified the single subject involved as "citizen's right in civil actions" and distinguished this amendment from the multi-subject amendment which was stricken in *Fine v. Firestone*, 448 So.2d 984 (Fla.1984), by pointing out that amendment 9 is self-contained and would create no conflict with any other existing constitutional provision.

Fine stands for the axiomatic proposition that enfolding disparate subjects within the cloak of a broad generality does not satisfy the single-subject requirement. There we held that the single subject "revenue" encompassed at least three subjects. Similarly "citizen's rights in civil actions" is so broad as to fail to delineate the subject or subjects of this amendment in any meaningful [*1354] way. As in *Fine*, we must look to the functional effect of amendment 9 to determine [**6] whether it satisfies the single subject requirement.

In *Fine*, we receded from earlier language indicating that conflict with multiple sections of the existing constitution has no place in determining multiplicity of subject in initiative amendments, 448 So.2d at 990 (expressly receding from *Floridians Against Casino Takeover v. Let's Help Florida*, 363 So.2d 337 (Fla.1978)), and found Citizen's Choice defective in part because of its multiple conflicts. We did not, however, establish that as the exclusive test for the single-subject requirement. In *Fine* we also discussed the primary and fundamental

concern of the one-subject restriction -- the prevention of logrolling. Where separate provisions of a proposed amendment are an "aggregation of dissimilar provisions [designed] to attract support of diverse groups to assure its passage," 448 So.2d at 988, the defect is not cured by either application of an over-broad subject title or by virtue of being self-contained.

The test, as set forth in *Fine*, is functional and not locational, and where a proposed amendment changes more than one government function, it is clearly multi-subject. In *Fine*, we found multiplicity [**7] of subject matter because the proposed amendment would have affected several *legislative* functions. The proposed amendment now before us affects the function of the legislative and the judicial branches of government. Provisions a and c of the amendment, which limit a defendant's liability, are substantive in nature and therefore perform an essentially legislative function. On the other hand, provision b, elevating the summary judgment rule currently contained in Florida Rule of Civil Procedure 1.510, is procedural and embodies a function of the judiciary. We recognize that *all* power for each branch of government comes from the people and that the citizens of the state have retained the right to broaden or to restrict that power by initiative amendment. But where such an initiative performs the functions of different branches of government, it clearly fails the functional test for the single-subject limitation the people have incorporated into article XI, section 3, Florida Constitution.

Nor can we hold that the summary judgment provision is "directly connected" to the other two provisions. The general effect of provisions a and c is to limit the amount of damages for [**8] which any defendant will be liable. A summary judgment is a procedural mechanism whereby liability and damages may be adjudicated when material facts are undisputed. The existence of this mechanism in no way limits the generalized concepts of liability or damages. Furthermore, the provision would reach far beyond those civil actions in which liability and damages are at issue, *e.g.* declaratory judgments, mortgage foreclosures, dissolution proceedings. The ballot summary reveals that the purpose for including subsection b is that it would, arguably, lower litigation costs. Those costs, however, are qualitatively different from liability for damages and cannot be held to be "directly connected" for purposes of curing a "single subject" defect.

We hold therefore, that "Citizen's Rights in Civil Actions" does not delineate a single subject such that all three provisions are directly connected therewith. Within the broad generality of the amendment title we find provisions which effect both legislative and judicial functions.

II. Legal Sufficiency of the Ballot Summary

Section 101.161, Florida Statutes (1983) provides, in pertinent part:

> Whenever a constitutional amendment [**9] or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot . . . . 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 [*1355] caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

In *Askew v. Firestone*, 421 So.2d 151 (Fla. 1982), we construed this provision, holding that "the law required . . . that the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot." *Id.* at 155 (quoting *Hill v. Milander*, 72 So.2d 796, 798 (Fla.1954)). In *Askew* we held clearly and conclusively defective a ballot summary which represented an amendment as granting citizens greater protection against conflicts of interest in government without revealing that it also removed an established constitutional protection. Appellants contend that the ballot summary now before us is similarly misleading. We agree.

The summary states [**10] that it "establishes" citizen's rights in civil actions. This is clearly inaccurate as applied to provision b, relating to summary judgment. This provision has long been established in Florida. The effect of the amendment is to elevate this procedural rule to the status of a constitutional right, protected in the same manner and to the same degree as are other constitutional rights. We do not pass on the merits of the effect nor do we question the citizens' right to do exactly this. We do find, however, that the voter must be told clearly and unambiguously that this is what the amendment does.

The summary for that same subsection, after describing the legal effect of summary judgment, ends with the editorial comment, "thus avoiding unnecessary costs." We note in passing that the validity of this statement was hotly contested. But whether it be accurate or not, no logical explanation was given of how a constitutional summary judgment rule would be more effective in avoiding costs than is the existing summary judgment rule. Moreover, the ballot summary is no place for subjective evaluation of special impact. The ballot summary should tell the voter the legal effect of the amendment, [**11] and no more. The political motivation behind a given change must be propounded outside the voting booth.

Even more disturbing, and more obviously analogous to *Askew*, is the material recasting of provision c from language of limitation in the amendment to language of affirmation in the ballot summary. Nothing in the amendment "establishes" the citizen's right to "full recovery of all actual expenses such as lost wages, accident costs, medical bills, etc." These damages are neither enumerated nor alluded to in the language of the amendment. To the extent a citizen's right is established in the amendment, it is the right to have his liability for "noneconomic damages such as pain and suffering, mental anguish, loss of consortium, and loss of capacity for enjoyment of life" capped at $100,000.

This limitation is clearly the chief purpose of provision c within the meaning of section 101.161, Florida Statutes. Just as it is clearly misleading to reveal only one half of a constitutional "trade off" in the ballot summary, *Askew*, 421 So.2d at 157 (Ehrlich, J., concurring), so is it fatally misleading to imply a constitutional trade-off where none is, in fact, contemplated. The [**12] only constitutional protection proposed here is for the benefit of the defendant in civil actions. No constitutional protection is added to the rights of the plaintiff. Again, this is not a criticism of the merits of the amendment nor a diminution of the citizens' right to afford this protection to defendants. We merely stand firm on the fundamental right of the voter to be given fair notice so that *he* or *she* may make an informed decision on the merits of the provision.

Because of the ballot summary here was clearly and conclusively defective and because the amendment embraced more than one subject, we have ordered the amendment stricken from the ballot.

NO MOTION FOR REHEARING WILL BE ALLOWED.

BOYD, C.J., and ADKINS and ALDERMAN, JJ., concur. [*1356] OVERTON, J., concurs with an opinion.

McDONALD, J., concurs with an opinion in which EHRLICH J., concurs.

EHRLICH and SHAW, JJ., concur specially with an opinion.

Concur by: OVERTON; McDONALD; EHRLICH; SHAW

Concur

OVERTON, Justice, concurring.

I write this concurring opinion to emphasize my strong belief that the ballot language in the instant case is clearly misleading. I believe, however, that the

problem of misleading [**13] ballot language on future proposals can and should be corrected by the legislature. I also wish to emphasize that the initiative petition process, when used properly, is a viable alternative means to amend our constitution. Contrary to some assertions, I find that our decisions in this area are consistent.

It would be easy, from a political standpoint, to ignore the one-subject restraint in the constitution, which is not fully understood by the public, and take the populist view that all initiative petitions should be allowed to remain on the ballot for the vote of the people. To do so, however, would not only violate our judicial oath of office but would also place in jeopardy the right of the people to be knowledgeable about how the proposed amendment would affect the constitution.

It is totally incomprehensible to me that proponents of a constitutional amendment can freely admit that they do not know how important parts of the proposal should be applied and that it should be left to the discretion of this Court to make this determination. Such admissions were made in *Fine v. Firestone*, 448 So.2d 984 (Fla.1984), by the Citizens' Choice proponents, who did not know which [**14] constitutional provisions were amended by the proposal and left to this Court the responsibility of identifying and redrafting those provisions by judicial construction after the initiative proposal's adoption by the people. In the present case, the proponents of Reason '84 admitted in oral argument that they do not know whether the $100,000 limitation on non-economic damages, as contained in the proposal, applies for each individual litigant or whether that limitation applies to one incident, regardless of how many individuals are involved. They want to leave this important choice regarding the application of the proposal to the total discretion of this Court.

The ballot summary language compounds the amendment's problems by implying that this proposed constitutional provision "establishes" certain rights that previously did not exist in civil lawsuits. The ballot summary language conveniently leaves out any reference to existing rights that are "changed" by the proposed constitutional provision. This may meet advertising criteria for the marketing of a product, but it cannot be tolerated for constitutional ballot language that is intended to inform the voter of what changes [**15] in the constitution are being proposed. We emphatically stated in *Askew v. Firestone*, 421 So.2d 151, 155 (Fla.1982), that the ballot language must be objective and fair and must sufficiently advise the voter so as to permit a knowledgeable decision on the merits of the proposal. In my view, the ballot language in the instant case appears to have been intentionally drawn to create an erroneous perception of the effect of

this constitutional proposal. I am at a loss to understand why the proponents of this amendment did not take heed of the *Askew v. Firestone* decision.

With regard to misleading ballot language, I again reiterate my comment in *Askew v. Firestone* that "the legislature and this Court should devise a process whereby misleading language can be challenged and corrected in sufficient time to allow a vote on the proposal." 421 So.2d at 157 (Overton, J., concurring specially). Devising such a process does not require a constitutional change but only necessitates a statutory enactment and possibly some court rule changes to allow for an expedited court proceeding. The state of Oregon has such a process which directs the attorney general to prepare a ballot summary [**16] that is "a concise and impartial statement of not more than 75 words of the chief purpose of the measure" for constitutional [*1357] proposals from both the legislature and the initiative process. § 250.075, Or.Rev.Stat. (1983). The language can be challenged in the Supreme Court of Oregon whose role is to determine whether the language is "insufficient or unfair." *See Zajonc v. Paulus*, 292 Or. 19, 636 P.2d 417 (1981); *Priestley v. Paulus*, 287 Or. 141, 597 P.2d 829 (1979). If it so finds, that court has the authority to modify and correct the language to reflect the chief purpose of the proposal and then have the constitutional proposal properly presented to the people for their vote. *See Zajonc*. The problem of misleading ballot language which now results in the removal of a constitutional proposal from the ballot is correctable by legislative action and it should be accomplished at the next legislative session.

Further, I agree that the single-subject requirement has been violated in this case. The single-subject requirement serves two important functions. First, the requirement is intended to guard against "logrolling." *See Fine v. Firestone*, 448 So.2d [**17] at 989. Second, it directs the electorate's attention to only one functional addition or change to the constitution because, unlike other means for amending the constitution, the initiative process does not provide for a filtering mechanism for the drafting of a proposal through amendments, public debate, and legislative vote. This lack of input in the drafting of an initiative proposal is an important reason for the single-subject limitation. *Id.*

I conclude that our decisions in *Weber v. Smathers*, 338 So.2d 819 (Fla.1976), *Floridians Against Casino Takeover v. Let's Help Florida*, 363 So.2d 337 (Fla.1978), *Fine v. Firestone*, and the instant case are totally consistent in their application of the single-subject requirement. I recognize that our *Floridians* decision has caused confusion, but find that the result reached in that case is consistent with our other decisions interpreting the single-subject requirement.

In *Weber*, we approved as a single subject the ethics-in-government provision, which set forth the standards of conduct for governmental officials and employees, and concluded that it did not affect other constitutional provisions and was complete [**18] in itself. 338 So.2d at 822.

In *Floridians*, we approved as a single subject the legalization of casino gambling and determined that the provision for the distribution of tax revenue from such casinos was "directly connected" to the legalization of casino gambling. 363 So.2d at 340.

In *Fine*, we found that the Citizens' Choice amendment violated the single-subject requirement in that it substantially affected at least three distinct functions of government. Specifically, we found that the proposal limited (1) all tax revenue available for governmental operations, *e.g.*, police, fire, health, education, and roads; (2) the operation and expansion of all governmental user-fee services, *e.g.*, electric, water, gas, garbage collection, and transportation services, where the user pays for the services he receives; and (3) the funding of capital improvements through revenue bonds which are repaid from revenue generated by the capital improvements. 448 So.2d at 990-92. There was no dispute that the Citizens' Choice proposal substantially affected multiple provisions of the constitution.

In the instant case, we have found that the single-subject requirement has again been [**19] violated because, as explained in the majority opinion, this proposal affects two distinct functions of government.

In my view, this Court has set down understandable guidelines for the preparation of an initiative proposal that will meet the single-subject requirement. It is important to note that, although we have receded from certain language in *Floridians*, we have not retreated from our decision in *Floridians* determining that the casino gambling proposal meets the single-subject requirement, nor have we receded from our decision in *Weber* determining that the ethics-in-government proposal meets the single-subject requirement.

Hopefully, with these guidelines, and legislation that would allow the correction of [*1358] misleading ballot language, this Court will not again be faced with the problem of having to remove a constitutional amendment from the ballot because of inartful drafting.

McDONALD, Justice, concurring.

I concur. In doing so I reiterate the views I expressed in my concurring opinion in *Fine v. Firestone*, 448 So.2d 984 (Fla. 1984). The most restrictive and most

difficult method of amendment to the constitution is the initiative process. [**20] The one subject restriction placed in the initiative process is deliberate. Such amendments must be specific, well-defined in scope, and limited to one subject and matter directly connected therewith. The 1885 constitution became larded with special interest amendments; the framers of the 1968 Constitution and the 1972 amendment sought to minimize the possibility of that recurring. It was neither envisioned nor contemplated that the initiative process would be used for multiple subject special interest legislation.

The amendment under consideration does not trespass the one subject matter rule to the same degree that the one in *Fine* did. The question, however, is not one of degree but whether or not the rule is violated. More than one subject is plainly evidenced in this amendment. Thwarted multiple subject matter legislation cannot be imposed in the guise of a constitutional amendment. Our state constitution needs to be constant, viable, and subject to limited modification.

I thought, when we announced *Askew v. Firestone*, 421 So.2d 151 (Fla.1981), that proponents of constitutional amendments would fairly and accurately summarize them without any misleading comments. [**21] My faith was ill placed because this summary clearly is both misleading and uncertain of effect if enacted. * Because the ballot summary is defective, the amendment must be struck.

EHRLICH, J., concurs.

EHRLICH, Justice, specially concurring.

I concur in the second portion of the Court's opinion, designated "Legal Sufficiency of the Ballot Summary." I concur in the result only in the first portion, "Single-Subject Requirement," for the reasons I set forth in my concurring opinion in *Fine*.

The Supreme Court of Florida has a fundamental responsibility to determine the constitutionality of all laws enacted by the legislature as well as the constitutional sufficiency of amendments proposed to the constitution whether by the legislature or by citizens' initiative. The people of Florida have provided [**22] in their constitution that the legislature may propose the amendment of a section or revision of one or more articles of the whole constitution. From 1885 until 1968, the people of Florida did not permit amendment of the constitution by initiative. The 1968 revision of the constitution for the first time permitted the people themselves to propose amendment of a section of the constitution. In 1972, after this Court's opinion in *Adams v. Gunter*, 238 So.2d 824 (Fla.1970), the constitution

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* The thought occurs to me that to avoid this in the future the legislature might consider placing the responsibility of the preparation of a ballot summary on a third party, such as the Secretary of State.

was amended to permit the revision or amendment by citizens' initiative of any portion or portions of the constitution, provided that, "any such revision or amendment shall embrace but one subject and matter directly connected to therewith." In short, the people of Florida, providently declining to reserve to themselves the unbridled freedom to propose constitutional amendments granted to the legislature, imposed a rule of restraint, limiting constitutional initiative proposals to the "one-subject" rule. Only the judiciary has the authority or the obligation to enforce this vital one-subject rule. Unless we fulfill our duty, the protection the people enacted [*1359] in the one-subject [**23] rule is illusory and meaningless.

I say again, as I did in my concurring opinion in *Askew*, that the people ought to be able to vote on amendments to their constitution. But at the same time we dare not ignore our sworn duties as justices of the Supreme Court by closing our eyes to the obvious constitutional deficiencies in any proposed amendment to the constitution of Florida. *Fine* laid out in clear language the guidelines for determining compliance with the one-subject requirement. If drafters of an initiative petition nonetheless choose to violate the one-subject requirement, this Court has no alternative but to strike it from the ballot. To do less is to violate our oath of office and to betray the trust the people of Florida have reposed in this Court since the founding of this state.

A proposed constitutional amendment, whether proposed by the legislature or by the citizens' initiative, does not appear on the ballot. Instead, the legislature has provided in section 101.161, Florida Statutes, that the substance of the proposed amendment "shall be printed in clear and unambiguous language on the ballot" and that such substance shall be "an *explanatory statement* [**24] , not exceeding seventy-five words in length, of the *chief purpose of the measure*." (Emphasis supplied.) Again, it is the sole responsibility of the judiciary to make certain that the legislative mandate is followed.

The ballot summary now before us is nothing more than a blatant attempt to violate the unequivocal legislative mandate of the people of Florida that the explanatory statement set forth the chief purpose of the proposal in clear and unambiguous language. How easy it is to comply with the terms of section 101.161, Florida Statutes! For example, taking the proposal in question, compliance with the statute could be achieved as follows:

> Provides that a party in a law suit shall not be required to pay more damages than a jury found him/her responsible for personally, places in the constitution the present rule that courts dispose of law suits where no dispute exists over

> the material facts, and limits non-economic damages to a maximum of $100,000

all in fifty-three words.

However, the Court's ability to draft a constitutionally adequate summary does not itself confer the authority to place that summary on the ballot. The legislature, in spite of [**25] the strong recommendation of Justice Overton in a special concurrence to *Askew* (in which Justice McDonald and I joined), has not revisited section 101.161 to permit judicial correction of a defective summary. We must fulfill our responsibility, but we must not exceed the authority vested in us.

The drafters of the ballot summary in question have not simply set forth the chief purposes of the sections of the proposed amendment. Instead, the proponents have led the voters to believe that part b, dealing with the summary judgment, is something new which will reduce costs, whereas in actual fact the summary judgment provision has been a rule of court at least since the adoption of the Common Law Rules (a precursor of our current rules) in 1950. Any avoidance of costs attributable to this provision occurs whether or not the provision is adopted. All that part b would do is constitutionalize the current rule of procedure. The people of Florida have the right to put such a provision in the constitution, but they have demanded through legislative enactment to be told the chief purpose in clear and unambiguous language. This was not done.

Provision c is relatively simple. It places [**26] a cap of $100,000 on non-economic damages assessable against a party, and nothing more. There is not one word in provision c that deals with the recovery of actual expenses such as lost wages, accident costs, medical bills, etc., but the proponents would have the voters believe that the proposal deals with these items of damages. The proponents could just as easily -- and with as little justification -- have added that the proposal would allow filing for one's [*1360] homestead exemption. Without impugning the drafters' motives, I fear it could be easily concluded that the summary of provision c was purposefully misleading. If *Askew* had been read and followed, this danger and this aspect of this litigation would have been avoided.

Again, we could have closed our eyes to these misrepresentations and violations of the statute. But in so doing we would have betrayed our oaths of office and our duties as justices of this Court. The popularity of a decision is not our lodestar. We would be undeserving of the public trust if ever we succumbed to any temptation to compromise our oaths of office and our duty to the people of Florida in order to gain the favor of a litigant, [**27] to appeal to the prevailing sentiment of the moment, or to try to curry favor with a special interest.

The decisions which determine compliance with the requirements of the constitution and the Florida Statutes rest with the proponents. This Court should not be charged with the inevitable result of their choice.

SHAW, Justice, specially concurring.

I am persuaded that the ballot summary of amendment nine is sufficiently misleading as to require removal of the amendment from the November 1984 ballot for the reasons articulated by the majority in Part II.

In *Fine v. Firestone*, 448 So.2d 984 (Fla. 1984) (Shaw, J., concurring in result only), I expressed concern that as a practical matter the function of government test would make the one-subject limitation of the constitution practically insurmountable. This test apparently has now been canonized in Part I of the majority opinion which states that "where a proposed amendment changes more than one function of government, it is clearly multi-subject." This overbroad statement is unnecessary, as was the similar statement in *Fine*. Even more seriously, there is nothing in the constitution to warrant this interpretation of the [**28] one-subject limitation.

In *Fine*, I stated that I saw the one-subject limitation as serving two purposes:

1. Ensuring that initiatives are sufficiently clear so that the reader, whether layman or judge, can understand what it purports to do and perceive its limits.
2. Ensuring that there is a logical and natural unity of purpose in the initiative so that a vote for or against the initiative is an unequivocal expression of approval or disapproval of the entire initiative.

Id. at 998. Applying this two prong test, I find that the initiative amendment itself passes muster. The amendment, unlike the ballot summary, is sufficiently clear so that a reader, whether layman or judge, can understand that it purports to limit defendant liability. In my view there is a natural and logical unity of purpose to the three provisions of the amendment so that a voter can unequivocally express either approval or disapproval of the entire initiative proposal. The obvious purpose of provisions (a) and (c) is to limit damages paid by defendants in civil suits. While provision (b) benefits both plaintiffs and defendants by raising to constitutional status the current rule [**29] on summary judgments, the rule is more frequently beneficial to defendants in summarily disposing of nuisance suits where a cause of action is unsupported by evidence. *Food Fair Stores, Inc. v. Patty*, 109 So.2d 5 (Fla.1959); *Connolly v. Sebeco, Inc.*, 89 So.2d 482 (Fla. 1956); *Anderson v. Maddox*, 65 So.2d 299 (Fla.1953). At least in theory, this limits the

exposure of defendants to time-consuming and expensive nuisance suits. Summary judgments also, again in theory, offer a speedy vindication of the defendant's reputation when the suit is in professional malpractice or negligence. * The fact that [*1361] summary judgments may sometimes benefit plaintiffs offers insufficient grounds to strike the amendment from the ballot. The majority's analytical approach to the single-subject issue is hypertechnical and fails to show that the amendment is "clearly and conclusively defective." *Askew v. Firestone*, 421 So.2d 151, 154 (Fla.1982).

[**30] In contrast to the amendment itself, the ballot summary is a misleading and inaccurate description of what the amendment purports to do. It is for this reason that I concur in striking the petition from the November ballot.

I concur with Justice McDonald's suggestion in his concurring opinion to consider placing the responsibility for preparing the ballot summary on a disinterested third party, such as the Secretary of State, thus removing the inclination to politicize the amendment in the ballot summary.

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* I recognize that because summary judgments bypass the constitutional right to a trial by jury they are strongly disfavored. *Yost v. Miami Transit Co.*, 66 So.2d 214 (Fla.1953). Consequently, particularly in negligence suits, summary judgments are in practice difficult to sustain and may well result in prolonging rather than shortening litigation. *Holl v. Talcott*, 191 So.2d 40 (Fla.1966). The critical question is not whether there is a right to summary judgment *when there is no genuine issue of material fact*. That is the current law and no one suggests that there should be trials when there are no issues. The critical and difficult question is always whether there is a genuine issue of material fact. Provision (b) does not contribute to the resolution of that question.

Askew v. Firestone

Supreme Court of Florida

October 21, 1982.

No. 62719.

Reporter
421 So. 2d 151 *; 1982 Fla. LEXIS 2575 **

Reubin ASKEW, et al., Appellants, v. George FIRESTONE, as Secretary of State, Appellee.

Counsel: [**1] Albert J. Hadeed, John K. McPherson, and Terri Wood of Southern Legal Counsel, Inc., Gainesville, for appellants.

Jim Smith, Atty, Gen., and Eric J. Taylor, Asst. Atty. Gen., Tallahassee, for appellee.

Judges: Before McDONALD, Justice. ALDERMAN, C.J., concurs.

Opinion by: McDONALD

Opinion

[*152] McDONALD, Justice.

Reubin Askew, Common Cause, and the League of Women Voters of Florida, Inc., appeal a trial court order validating the caption and summary of a proposed constitutional amendment scheduled to appear on the November 1982 general election ballot. Acceding to the parties' joint suggestion, the First District Court of Appeal certified the trial court order to be of great public importance and to require immediate resolution by the Supreme Court. We have jurisdiction pursuant to article V, section 3(b)(5), Florida Constitution, and reverse the trial court order.

In the November 1976 general election the electorate of Florida approved adding section 8, the "Sunshine Amendment," to article II of the state constitution. Section 8 [*153] declares a public office a public trust which should be secure against abuse. To that end, the section requires full, public financial [**2] disclosure by elected officers and candidates for elected offices, provides for loss of pension or retirement benefits if a public officer or employee is convicted of a felonious breach of the public trust, and, central to this appeal, prohibits members of the legislature and statewide elected officers from lobbying their former governmental

bodies or agencies for two years following vacation of office. As this Court has previously stated: "Clearly the primary purpose for which the Sunshine Amendment was adopted was to impose stricter standards on public officials so as to avoid conflicts of interest." *Plante v. Smathers,* 372 So.2d 933, 936-37 (Fla. 1979).

[EDITOR'S NOTE: TEXT WITHIN THESE SYMBOLS [O><O] IS OVERSTRUCK IN THE SOURCE.]

On the next to the last day of the 1982 regular session the legislature passed Senate Joint Resolution 1035, the title of which reads: "A joint resolution proposing an amendment to Section 8 of Article II of the State Constitution relating to lobbying by former legislators and statewide elected officers." [1] SJR 1035 would amend the first sentence of subsection 8(e) as follows:

[**3]

> (e) No member of the legislature or statewide elected officer shall personally represent another person or entity for compensation before <u>any state</u> [O>the<O] government body or agency, <u>unless such person files full and public disclosure of his or her financial interests pursuant to subsection (a),</u> [O>of which the individual was an officer or member<O] for a period of two years following vacation of office.

(Material to be added underlined, material to be deleted struck through.) The proposed amendment, therefore, would remove the absolute two-year ban on lobbying by former legislators and elected officers, retaining that ban only if an affected person failed to make financial disclosure.

Section 101.161, Florida Statutes (1981), provides for submission to popular vote of constitutional amendments and other public measures. The wording of the substance of the amendment and the ballot title must be included in the joint resolution and must be prepared by the amendment's sponsor and approved by the secretary of state. § 101.161, Fla.Stat.

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[1] The legislature can propose amendments to the state constitution. Art. XI, § 1, Fla.Const. Subsection 8(e) currently provides as follows:

> (e) No member of the legislature or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of two years following vacation of office. No member of the legislature shall personally represent another person or entity for compensation during term of office before any state agency other than judicial tribunals. Similar restrictions on other public officers and employees may be established by law.

SJR 1035 would amend only the first sentence of subsection 8(e), leaving the rest of the paragraph intact.

> 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 [**4] consist of a caption, not exceeding 15 words in length, *by which the measure is commonly referred to or spoken of.*

Id. (emphasis supplied). Section 101.161 also requires that the substance of a proposed amendment be in "clear and unambiguous language." In response to these requirements SJR 1035 includes the following proposed title and substance:

FINANCIAL DISCLOSURE REQUIRED BEFORE LOBBYING BY FORMER LEGISLATORS AND STATEWIDE ELECTED OFFICERS

> Prohibits former legislators and statewide elected officers from representing other persons or entities for compensation before any state government body for a period of 2 years following vacation of office, unless they file full and public disclosure of their financial interests.

[*154] The appellants sued Secretary of State Firestone, in his official capacity, seeking injunctive and declaratory relief, to prevent inclusion of the proposed title and substance on the November ballot. They alleged, among other things, that: 1) the ballot summary is required to be an explanatory statement of the chief purpose of the proposed amendment, written in clear and unambiguous language; 2) the instant summary discloses only the proposed [**5] addition of financial disclosure as a condition to after-term lobbying and fails to reveal that the proposal would repeal the existing, more stringent after-term prohibition on lobbying; and 3) the instant summary creates the impression that adopting the proposal would fill a void in conflict of interest protections instead of diluting them. The appellee answered that the language is clear and unambiguous, giving fair notice of the intent and purpose of the proposed amendment, and that the proposal will, in fact, bring former state officials into line with the true intent of the Sunshine Amendment.

After receiving the complaint and the parties' joint stipulation, Judge Willis, in an extensive and thoughtful order, found that the proposed ballot title and summary meet the requirements of section 101.161. Among others, the court made the following finding:

> 20. As previously noted, SJR 1035 would achieve two purposes. First, it would eliminate the limited lobbying prohibition against a former legislator from lobbying in the legislature, and a former statewide officer from lobbying in the body or agency of which he was an officer or member for a period of two years following his [**6] leaving office. Second, it would impose an absolute prohibition to those officers from lobbying in any government body or agency for the two-year period following vacation of the office, unless such persons filed the financial disclosure required of incumbents or candidates. Under the present law, a former legislator could lobby in any state agency or body except the legislature without financial disclosure during the two years following vacation of his office. If the amendment is adopted, he could lobby in the legislature or elsewhere if he files the necessary financial disclosure.

Askew v. Firestone, case no. 82-2371 (Fla. 2d Cir. Ct. Oct. 6, 1982), slip op. at 8-9. The court went on to state that the

> *inquiry of this Court is limited to whether or not the "substance" has clearly missed the mark of furnishing the electorate of an explanatory statement in clear and unambiguous language of the chief purpose of the measure. I do not find that this is clearly and conclusively shown.* It is quite true that the Sunshine Amendment sought and achieved more than financial disclosure of public officials. It deals with deterrence of corruption and conflicting interest. Subsection [**7] (e) is directed toward curbing of so-called influence peddling, by setting a limited lobbying quarantine on former officers for a two-year period following their leaving office. However, it was not general quarantine, but it permitted uninhibited lobbying in most areas without disclosure of interests which might be conflicting. *The amendment is not a repeal, but a modification of those regulations, relaxing some requirements and imposing others not previously made. I do not find that the failure to state the relaxation of the absolute limited ban on lobbying has rendered the substance inadequate to explain the chief purpose of the measure.*

Id. at 9-10 (emphasis supplied). After careful deliberation, we find no factual basis for the trial court's ruling and hold that he reached the wrong conclusion and that his order must be reversed.

In order for a court to interfere with the right of the people to vote on a proposed constitutional amendment the record must show that the proposal is clearly and conclusively defective. *Weber v. Smathers,* 338 So.2d 819 (Fla. 1976), *disapproved on other grounds sub nom Floridians Against Casino Takeover v.*

Let's Help Florida, [**8] 363 So.2d 337 (Fla. 1978). As previously stated, section 101.161 requires that the ballot title and summary for a proposed constitutional [*155] amendment state in clear and unambiguous language the chief purpose of the measure. The requirement for proposed constitutional amendment ballots is the same as for all ballots, i.e.,

> that the voter should not be misled and that he have an opportunity to know and be on notice as to the proposition on which he is to cast his vote.... 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.*

Hill v. Milander, 72 So.2d 796, 798 (Fla. 1954) (emphasis supplied).

Simply put, the ballot must give the voter fair notice of the decision he must make. *Miami Dolphins, Ltd. v. Metropolitan Dade County,* 394 So.2d 981 (Fla. 1981). We find that the proposed title and substance do not set out the chief purpose of the amendment so as to give the electorate fair notice of the actual change in subsection 8(e) wrought by SJR [**9] 1035. While the wisdom of a proposed amendment is not a matter for our review, *Weber v. Smathers,* we are reminded that the "proposal of amendments to the Constitution is a highly important function of government, that should be performed with the greatest certainty, efficiency, care and deliberation." *Crawford v. Gilchrist,* 64 Fla. 41, 54, 59 So. 963, 968 (1912). [2] We reiterate that "law-makers who are asked to consider constitutional changes, and the people who are asked to approve them, must be able to comprehend the sweep of each proposal from a fair notification in the proposition itself that it is neither less nor more extensive than it appears to be." *Smathers v. Smith,* 338 So.2d 825, 829 (Fla. 1976).

[**10] Section 8 embodies four important state concerns: The public's right to know an official's interest, the deterrence of corruption and conflicting interest, the

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[2] The appellants quote Justice Roberts in dissent to *Weber v. Smathers,* 338 So.2d at 824: "Where an amendment is by Legislative Resolution... there are always public hearings, committee studies, and public debate in developing the format of the proposal...." They charge that the legislature violated the virtues of legislatively proposed amendments, as described by Justice Roberts, by passing SJR 1035 on the next to the last day of the session "without prior public notice, without opportunity for public input, without reference to legislative committees for study, and with less than five minutes of deliberation and debate in each chamber." The trial court found SJR 1035 to have been properly passed, and we do not disturb that finding.

creation of public confidence in state officials, and assistance in detecting and prosecuting officials who have violated the law. *Plante v. Gonzalez,* 575 F.2d 1119, 1134 (5th Cir. 1978), *cert. denied,* 439 U.S. 1129, 99 S. Ct. 1047, 59 L. Ed. 2d 90 (1979). Subsection 8(e)

> was designed specifically to prevent those who have plenary budgetary and statutory control over the affairs of public agencies from potentially influencing agency decisions (or giving the appearance of having an influence) when they appear before the agencies as compensated advocates for others.

Myers v. Hawkins, 362 So.2d 926, 930 (Fla. 1978). [3] As it stands, subsection 8(e) precludes lobbying a former body or agency for two years after an affected person leaves office. The ballot summary neglects to advise the public that there is presently a complete two-year ban on lobbying before one's agency and, while it does require the filing of financial disclosure before anyone may appear before *any* agency for the two years after leaving [**11] office, the amendment's chief effect is to abolish the present two-year total prohibition. Although the summary indicates that the amendment is a restriction on one's lobbying activities, the [*156] amendment actually gives incumbent office holders, upon filing a financial disclosure statement, a right to immediately commence lobbying before their former agencies which is presently precluded. [4] The problem, therefore, lies not with what the summary says, but, rather with what it does not say.

Had SJR 1035 not been an amendment to an existing provision, if it had been a totally new provision, its ballot [**12] summary and title would probably have been permissible. The change to subsection 8(e) is as stated, but the stated change is only incidental to the true purpose and meaning of section 8 in its entirety. Public financial disclosure is needed to assure the accountability of state officers and is the heart of section 8. But, in subsection (e), section 8 also expresses another vital concern -- the ban on lobbying. The ballot summary fails to give fair notice of an exception to a present prohibition.

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[3] We note the house debate where Representative Batchelor made an eloquent plea for not passing the joint resolution, reminding his colleagues of the public's interest in the Sunshine Amendment and warning them about the importance of appearances. Transcript of Tape of House Debate on SJR 1035, Mar. 17, 1982, at 3-4. In response Representative Richmond stated that the legislature was more concerned with righting wrongs than with appearances. *Id.* at 4.

[4] We note that § 11.045, Fla.Stat. (1981), sets requirements on those who would lobby the legislature itself.

If the legislature feels that the present prohibition against appearing before one's former colleagues is wrong, it is appropriate for that body to pass a joint resolution and to ask the citizens to modify that prohibition. But such a change must stand on its own merits and not be disguised as something else. The purpose of section 101.161 is to assure that the electorate is advised of the true meaning, and ramifications, of an amendment. A proposed amendment cannot fly under false colors; this one does. The burden of informing the public should not fall only on the press and opponents of the measure -- the ballot title and summary must do this.

Fair notice in terms of a ballot [**13] summary must be actual notice consisting of a clear and unambiguous explanation of the measure's chief purpose. The chief purpose of SJR 1035 is to remove the two-year ban on lobbying by former legislators and elected officers. The ballot summary, however, does not adequately reflect that purpose and, therefore, does not satisfy the requirements of section 101.161. The Court must act with extreme care, caution, and restraint before it removes a constitutional amendment from the vote of the people. Nevertheless, it is clear and convincing to us that the ballot language contained in SJR 1035 is so misleading to the public concerning material changes to an existing constitutional provision that this remedial action must be taken. We therefore find SJR 1035 invalid. The trial court order is reversed, and we order that the ballot caption and summary included in SJR 1035 be stricken from the November 1982 general election ballot.

It is so ordered.

NO MOTION FOR REHEARING WILL BE ALLOWED.

ALDERMAN, C.J., concurs.

BOYD, J., concurs with an opinion.

OVERTON, J., concurs with an opinion with which McDONALD and EHRLICH, JJ., concur.

EHRLICH, J., concurs with an opinion with [**14] which ALDERMAN, C.J., and McDONALD, J., concur.

ADKINS, J., dissents with an opinion.

Concur by: BOYD; OVERTON; EHRLICH

Concur

BOYD, Justice, concurring specially.

Nothing in the government of this state or nation is more important than amending our state and federal constitutions. The law requires that before voting a citizen must be able to learn from the proposed question and explanation what the anticipated results will be.

In the proposed amendment considered here a voter would think a limitation is to be placed upon legislators for the first time to prohibit lobbying that body for two years after leaving office and permitting it if they file financial disclosure. In fact, the present Florida Constitution prohibits lobbying the Legislature for two years after leaving office. A person who may vote to adopt the amendment for the purpose of [*157] limiting lobbying by legislators will actually achieve directly opposite results in removing the present lobbying ban.

When questions are presented to voters courts should not remove such issues from the ballot without compelling constitutional reasons. I do not feel there is a lawful basis to dissent and, with reluctance, [**15] I concur in the majority opinion to remove the proposed amendment from the November 1982 general election ballot.

OVERTON, Justice, concurring specially.

I concur with the majority opinion and agree that the ballot language conclusively misleads the public concerning material changes contained in the proposed constitutional amendment.

I am, however, concerned with the substantial power this Court is exercising in removing from the ballot a constitutional amendment which has been placed there by the legislature of this state on a vote of 29 to 6 in the senate and 96 to 15 in the house. Because of the defective ballot language, the public is now prohibited from voting on this amendment. Infringing on the people's right to vote on an amendment is a power this Court should use only where the record clearly and convincingly establishes that the public is being misled on material elements of the amendment. It concerns me that the public is being denied the opportunity to vote because no process has been established to correct misleading ballot language in sufficient time to change the language.

To avoid future situations in which this Court may again have to exercise this [**16] extraordinary power of striking an amendment from the ballot due to misleading ballot language, the legislature and this Court should devise a process whereby misleading language can be challenged and corrected in sufficient time to allow a vote on the proposal.

Since our constitution requires that amendments and revisions be filed with the secretary of state at least ninety days prior to the designated election date, I suggest that a process be established by the legislature to afford those who desire to challenge the ballot language to be able to do so within thirty days of the filing of the amendment or revision. This Court should then create an expedited process whereby such challenges can be settled within thirty days of the filing of the challenge. In this process a means should be provided for the correction of defective ballot language so that the election on the proposal may proceed.

This Court should do everything possible to cooperate in establishing such a process so that we may eliminate the necessity for this Court to again have to deny the people a right to vote on the merits of a constitutional proposition due to faulty ballot language. The power to remove [**17] an amendment or revision from the ballot is too great to reside solely in the few members of this Court.

McDONALD and EHRLICH, JJ., concur.

EHRLICH, Justice, concurring.

I join in the opinion of the Court with these additional comments.

Appellee in his brief says "[g]ranted, there is a *tradeoff,* but in giving up the total ban to lobby before their former agency for two years, the legislature has gained something valuable in return." Appellee's Brief at 12. (Emphasis supplied.) The ballot summary accurately describes one-half of the "trade-off," namely, that former office holders would be banned from lobbying or representing someone before all state bodies and agencies unless they file full disclosures of their financial interests with the Secretary of State. But by appellee's counsel's candid admission during oral argument, the ballot summary does not disclose the other half of the "trade-off," namely, giving up the total ban to lobby before the former agency for two years. The chief purpose of the amendment is the "trade-off" and the failure of the ballot summary to state the full "trade-off" is a failure to comply with the mandatory requirements of section 101.161, [**18] Florida Statutes (1981), and hence the ballot summary is fatally defective.

[*158] The same deficiency in the ballot summary causes it to be misleading. In my opinion the proposed ballot summary is deceptive, because although it contains an absolutely true statement, it omits to state a material fact necessary in order to make the statement made not misleading. If the ballot summary had contained the words "and deletes from the Constitution the absolute ban against such representation during such two-year period," or words to that effect, the ballot summary would have fairly complied with section 101.161, Florida Statutes (1981), and would not have been misleading.

I do not intend to imply that the framers of the joint resolution and those members of the legislature who voted for it intentionally set out to mislead or deceive the voters. That is undoubtedly not the case. All I say is that the end result of their well-intentioned efforts was not in compliance with section 101.161, Florida Statutes (1981).

Mr. Justice Adkins ends his dissent with a rousing clarion call that the people should be allowed to vote on the proposal. I join with him in the belief that the [**19] people ought to be able to vote on amendments to their constitution. I differ with him in that I believe that the mandate of the legislature expressed in section 101.161, Florida Statutes (1981), was not complied with here for the reasons expressed above and in the Court's opinion, and hence the proposed amendment should not be on the ballot. This by no means forecloses a future legislature from submitting to the people the proposed constitutional amendment so long as the ballot title and ballot substance comply with the statutory requirements.

ALDERMAN, C.J., and McDONALD, J., concur.

Dissent by: ADKINS

Dissent

ADKINS, Justice, dissenting.

The only issue in this case is whether the language of the caption and substance of the proposed amendment meets the requirements of section 101.161, Florida Statutes. This statutory provision only requires that the "chief purpose of the measure" be set forth in the ballot summary. Although there may be multiple purposes in the constitutional amendment, it would be impractical to list all the purposes; rather, it is the chief purpose that must be stated. In the original Sunshine Amendment as passed by the people, its "chief purpose" was financial [**20] disclosure. It is not only reasonable, but logical, to say that the "chief purpose" of the proposed amendment is "financial disclosure." This gives "fair notice" that the Sunshine Amendment is being changed.

We are required to uphold the action of the legislature if there is any reasonable theory on which it can be done.

The majority seems to ignore article II, section 3, Florida Constitution, which prohibits one branch of government from exercising any powers appertaining to another, unless expressly provided in the Constitution. The legislature has full

power to enact measures such as section 101.161, Florida Statutes (1981), to regulate the form of the ballot; including the contents of summaries of proposals for constitutional change.

The majority opinion seems to impute fraud and deceit to the legislature. But all the legislature is required to do, under its statute, is give "fair notice" of the contents of the amendment. The summary is not challenged for failing to provide details of the proposed amendment. In *Hill v. Milander,* 72 So.2d 796 (Fla. 1954), we held that the whole proposal did not have to be printed on the ballot. We also said that a proposal need [**21] not be extensively explained in the voting booth. *Miami Dolphins v. Metro Dade County,* 394 So.2d 981, 987 (Fla. 1981).

Nor is the summary challenged because it does not debate the merits of both sides of the issue. The challenge is restricted to the theory that the ballot summary does not provide the public fair notice of the repealing effect of the proposed amendment. But did it repeal or did it amend?

Section 8(e) as it presently stands prohibits, for a period of two years following their leaving office, members of the legislature and statewide elected officers from lobbying [*159] or representing anyone for compensation before government bodies of which they were a member. This was a very limited ban. While a former legislator would be banned presently from lobbying before the legislature, he would not be banned from lobbying or representing someone before any other state body or agency.

If the purpose of section 8(e) was to prevent all influence peddling, it failed from the start. The individual was and still is free to peddle his influence before any other state body.

The proposed change brings former state officials into line with the true intent of the [**22] Sunshine Amendment. Instead of being able to freely lobby in front of other state agencies immediately after their vacation of office, the former officeholders would be banned from lobbying or representing someone before any and all state bodies and agencies unless they file full disclosure of their financial interests with the Secretary of State.

The requirement of financial disclosure by certain former elected officials is more closely attuned to the purpose of the Sunshine Amendment than is the present section 8(e).

The burden is on the appellants to show "on the record that the proposal is clearly and conclusively defective", a burden the circuit court found the appellant had failed to carry. Anyone can read the summary and clearly know what the purpose

of the proposed amendment is. There are no hidden meanings or deceptive phrases.

At an election held March 11, 1980, article V, section 3 of the Florida Constitution pertaining to the jurisdiction of this Court was substantially revised. What was submitted to the people for adoption was a statement on the ballot which read "proposing an amendment to the state constitution to modify the jurisdiction of the Supreme Court". [**23] *See Jenkins v. State,* 385 So.2d 1356, 1364 (Fla. 1980). Just as here, the substance of the amendment repealed some of our jurisdiction. This proposed amendment was adequately explained to the public. *See Jenkins v. State* at 1362. If this short statement was sufficient to give fair notice of the amendment which we sponsored, I believe we should also approve the statement and summary prepared by the legislature in the instant case.

Fair notice is not strictly limited to the ballot summary. Fair notice can also be shown by the amount of information disseminated to the general public. *Hill v. Milander.*

It is important to note that when the Sunshine Amendment was passed the "explanation" emphasized that it provided a constitutional mandate for *full and public disclosures* of campaign finances and the personal finances of public officials. The public was told that "the cornerstone of the amendment is the provision requiring financial disclosure."

How can it be said that it is not fair notice to state that "financial disclosure" is the main purpose of a proposed amendment?

The legislature certainly has the ability to prepare a summary that would not mislead [**24] a person of average intelligence as to the scope of the law and put that person on notice thereby causing him to inquire into the body of the provision itself. They have done so. As a practical matter, the public generally is now more familiar with the contents and effect of this amendment than any other which will be on the ballot.

The people should be allowed to vote on the proposal.

Hill v. Milander

Supreme Court of Florida

May 11, 1954; Rehearing Denied June 10, 1954

[NO DOCKET NUMBER]

Reporter
72 So. 2d 796 *; 1954 Fla. LEXIS 1451 **

HILL v. MILANDER, Mayor, et al.

Counsel: [**1] Franklin Parson, Miami, for appellants.

Arthur Primm and Anderson & Nadeau, Miami, for Henry Milander.

E. F. P. Brigham, Phillip Goldman, and Burton M. Michaels, Miami, for James H. Goodlet, A. H. Caswell, William Lockward, Roy F. Woodruff, Charles E. Brady, J. H. Smith, Milton Thompson and City of Hialeah.

Judges: DREW, Justice., ROBERTS, C.J., and TERRELL, THOMAS, and HOBSON, JJ., concur; SEBRING, J., not participating.

Opinion by: DREW

Opinion

EN BANC

[*797] DREW, Justice.

The sole question involved in this appeal is whether Chapter 29113, Laws of Florida, Special Acts of 1953, has become a law pursuant to the provisions of Section 2 of the Act providing, "This Bill shall not become effective until approved by a majority vote of those electors voting on this Bill at the election to be held in the City of Hialeah on September 8, 1953."

It is clear from the record that an election was held on September 8, 1953 in the City of Hialeah; that voting machines were required to be used and were used in conducting said election; that there appeared on the ballot at said election on said date the following proposition: "Shall the Hialeah Council appoint a Board to prepare a proposed new City [**2] Charter as provided by Chapter 29113, Laws of Florida, 1953"; and that on said proposition 4,4331 electors voted, 2,892 voting yes and 1, 439 voting no.

Appellants contend here that said Section 2 of the Special Act mandatorily required the entire bill to be printed on the ballot and that the failure of those charged with the responsibility of conducting said election to do so constituted a fatal defect in the election and rendered the same invalid.

Pursuant to appropriate proceedings in the court below and after evidence had been taken, the lower court held, inter alia: "that the election held on September 8, 1953 pursuant to Section 2 of Chapter 29113, Laws of Florida, Special Acts of 1953, at which election said Chapter 29113 was approved by a majority vote of the electors voting on said law at said election, was a valid and lawful election, making and rendering the said Chapter 29113, Laws of Florida, Special Acts of 1953, effective and operative."

[*798] Under the provisions of the Florida Constitution, Art. III, Sec. 21, F.S.A., special or local laws affecting cities and towns may be enacted by the Legislature after notice of the intention to seek the passage of such [**3] act has been duly published or posted as provided by law, or where the bill so passed contains a provision for submitting such act to the qualified electors of the city or town to be affected thereby. In this instance the Legislature chose to provide that the act should be submitted to the qualified electors of the City of Hialeah for their approval or rejection.

The lower court before whom the evidence in this case was taken, decreed that the election held September 8, 1953 was a valid and lawful election and that as a result thereof Chapter 29113, supra, was approved by the qualified electors of the City of Hialeah. Inherent in this result is a finding that the phraseology of the ballot above quoted together with such other information as was made available to the electors of the City of Hialeah in the weeks preceding said election, was sufficient to advise each of those participating in said election as to the content and substance of the act they were voting upon. The evidence which was before the Circuit Judge is not before us. It was not included in the record. Under such circumstances and numerous decisions by this Court, we are bound by his findings in that respect. [**4] We must assume, therefore, that the electors had full knowledge of the proposition upon which they were voting.

We cannot agree with the argument advanced by appellants that Section 2 of the Act required the printing of the whole bill on the ballot. In the first place, we take judicial knowledge of the limitations inherent in the use of voting machines so far as the amount of printed material thereon is concerned. In numerous instances we have held that the only requirements in a election of this kind are that the voter should not be misled and that he have an opportunity to know and be on notice as to the proposition on which he is to cast his vote. In the case of Sylvester v.

Tindall, 154 Fla. 663, 18 So.2d 892, we passed upon the sufficiency of the ballot used in the general election when the Constitutional Amendment creating and establishing the Game and Fresh Water Fish Commission was submitted to the electorate of this State. That act is far more involved than the act under discussion here and when approved by the electorate became a part of the organic law in this State. We approved there a proposition on the ballot consisting of thirty-six words. In this connection [**5] we take judicial knowledge of the many other Constitutional Amendments of much greater length that have been submitted to and approved by the electorate of this State and which have become a part of our organic law. 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. It is a matter of common knowledge that many weeks are consumed, in advance of elections, apprising the electorate of the issues to be determined and that in this day and age of radio, television, newspaper and the many other means of communicating and disseminating information, it is idle to argue that every proposition on a ballot must appear at great and undue length Such would hamper instead of aiding the intelligent exercise of the privilege of voting. It is a matter of common knowledge that one does not wait until he enters the election booth to decide how he is going to cast his ballot. What the law requires is that the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot. We think the ballot under question amply complies with these requirements.

It is argued that the only proposition [**6] that was voted on by the electors was whether the Council should appoint a board to prepare a proposed new city charter. An examination of the proposition, However, makes it crystal clear that the authority to appoint the board must be derived from the provisions of the Chapter 29113, Laws of Florida, Special Acts of 1953, referred to on the ballot. The approval of the appointment was necessarily the approval of the act.

[*799] In the case of Routt v. Barrett, 396 Ill. 322, 71 N.E.2d 660, 665, in passing upon an almost identical proposition, the Supreme Court of Illinois said:

"Plaintiffs contend that the words of the constitutional provisions 'unless the law authorizing the same shall, at a general election, have been submitted to the people,' requires that the proposition to be printed on the ballot should call for a vote upon the acceptance or rejection of the law. It will be observed that section 3 of article 4 of the act and the form of ballot prescribed direct that the vote shall be on the question, 'Shall the State of Illinois contract a debt of $385,000,000.00?'

* * *

"The contention made requires consideration as to whether there is any substantial difference [**7] between the meaning of a proposition to be voted upon which says 'Shall an act of the General Assembly entitled "An Act",' etc.. (which authorizes the creating of a debt) become a law, and a proposition which says 'Shall the State of Illinois contract a debt of $385,000,000.00 and issue bonds to that amount maturing within 25 years after their date, pursuant to "An Act",' etc., (which act authorizes the creating of a debt.) If there is no difference, then the constitutional mandate was complied with in this case. The purpose of the constitutional provision was to place a limit on the power of the General Assembly to borrow money on the credit of the State. Before a debt such as the one provided for in the Bonus Act could be created, the General Assembly had to adopt a law which necessarily had to include the purpose for which the debt was to be incurred, the time and terms of payment, the rates of interest and other provisions incidental to giving effect to the law. But the primary purpose of requiring a vote of the people was to determine whether they approved the incurring of a debt for the particular purpose stated in the law. It is not conceivable how an elector could be misled [**8] by the language used in the form of ballot prescribed in the act. It would be hypercritical to hold that the submission of a question as to whether the debt provided for in the law should be contracted was not in fact a submission of the law which proposed the incurring of the debt. The contention is without merit."

We entirely agree with the conclusions reached by the Supreme Court of Illinois.

It is true that Chapter 29113 provides that the Chapter Board shall submit a proposed charter to the City Council of the City of Hialeah within ninety days from its appointment and that the City Council shall call a special election within sixty days thereafter for the purpose of submitting said charter to the qualified electors of said municipality and that "If approved by a majority of said electors participating in said election, the proposed City Charter shall then become the Charter of the City of Hialeah and all laws and parts of laws in conflict therewith shall be automatically repealed." While not argued in the original briefs filed in this cause, it was suggested at the Bar of this Court in oral argument that the quoted language was an unlawful delegation of legislative power [**9] and rendered the subject act invalid and unconstitutional. Some members of the Court felt that such a question was so basically involved in this case that it might be determinative of the issues and the Court allowed the filing of supplemental briefs on the question. On further reflection, however, we conclude the question is not properly before us at this time. The Charter so submitted may not receive the approval of the qualified electors and for that reason the question may never arise. We specifically make no finding on that question in this case.

Affirmed.

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Fla. Ass'n of Realtors v. Orange Cnty.

Court of Appeal of Florida, Fifth District

October 27, 2022, Opinion Filed

Case No. 5D22-2277

Reporter
350 So. 3d 115 *; 2022 Fla. App. LEXIS 7356 **; 47 Fla. L. Weekly D 2179; 2022 WL 15234476

FLORIDA ASSOCIATION OF REALTORS D/B/A FLORIDA REALTORS AND FLORIDA APARTMENT ASSOCIATION, INC., Appellants/Cross-Appellees, v. ORANGE COUNTY, FLORIDA Appellee/Cross-Appellant, AND BILL COWLES, IN HIS OFFICIAL CAPACITY AS ORANGE COUNTY SUPERVISOR OF ELECTIONS, Appellee.

Subsequent History: Review denied by Orange County v. Cowles, 2023 Fla. LEXIS 571 (Fla., Apr. 17, 2023)

Prior History: [**1] Nonfinal Appeal from the Circuit Court for Orange County, Jeffrey L. Ashton, Judge. LT Case No. 2022-CA-007552-O.

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Judges: TRAVER, J. SASSO, J., concurs. COHEN, J., dissents, with opinion.

Opinion by: TRAVER

Opinion

[*119] TRAVER, J.

Florida Association of Realtors and Florida Apartment Association, Inc. (collectively, "the Association") and Orange County, Florida ("the County") both appeal the trial court's non-final order denying the Association's motion for temporary injunction to enjoin [**2] the County and the Orange County Supervisor of Elections Bill Cowles from implementing and enforcing the contents of a rent control ordinance. We have jurisdiction. *See* Fla. R. App. P. 9.130(a)(3)(B). The trial court correctly concluded that the Association had a substantial likelihood of success on the merits of its two-pronged challenge to the County's rent control ordinance and the corresponding ballot summary. But it erred by allowing the matter to remain on the ballot for the people of Orange County to vote on an unconstitutional ordinance described by a misleading ballot summary. We therefore reverse the trial court's denial of the Association's motion for temporary injunction and remand this matter for its immediate entry.

[*120] **I. *Overview***

Before we discuss the factual background of this matter, some discussion of the Florida Constitution and the specific law involved in this case is appropriate. The Florida Constitution "is the paramount expression of the law by the people of this State." *See N. Fla. Women's Health & Counseling Servs., Inc. v. State*, 866 So. 2d 612, 658 (Fla. 2003) (Quince, J., concurring). Accordingly, if a law is inconsistent with our constitution, it must fail. *See Holley v. Adams*, 238 So. 2d 401, 405 (Fla. 1970).

Florida counties that operate under county charters—like the one in this case—have the power of self-government. *[**3] See* Art. 8, § 1(g), Fla. Const. But the Florida Constitution limits this power. For example, local governments cannot pass an ordinance that is inconsistent with general and special laws enacted by the Florida Legislature. *See id.* Such an ordinance, by its nature, would be unconstitutional.

In 1977, the Florida Legislature passed a law limiting the ability of local governments to pass any measure imposing "controls on rents." *See* § 125.0103(2), Fla. Stat. (1977). This law remains in effect today, and it sets an extremely high bar if a local government wishes to pass a rent control measure. First, if a local government wants to impose rent controls, it must find and determine "that such controls are necessary and proper to eliminate an existing housing emergency which is so grave as to constitute a serious menace to the general public." *Id.* Second, any such measure may not be imposed for longer

than one year. *Id.* § 125.0103(3). Third, certain types of properties, like second homes, are completely exempted from rent controls. *Id.* § 125.0103(4).

The law also requires a regimented process before a local government can pass a rent control ordinance. *Id.* § 125.0103(5). The local government's governing body must duly adopt the ordinance after notice and public hearing. *Id.* § 125.0103(5)(a). In the [**4] resulting ordinance, the local government must recite "its findings establishing the existence in fact of a housing emergency so grave as to constitute a serious menace to the general public and that such controls are necessary and proper to eliminate such grave housing emergency." *Id.* § 125.0103(5)(b). Finally, the local government's voters must approve the measure. *Id.* § 125.0103(5)(c). If the ordinance is ever challenged in court, the local government bears the burden of upholding its validity. *Id.* § 125.0103(6). So, in this case, the County must establish that its rent control ordinance is valid, even though the Association sued to enjoin its place on the ballot and its ultimate enforcement. With that overview, we turn to the matter at hand.

II. *Background*

In April 2022, the County Commission discussed a proposal from one of its commissioners to enact a rent control measure. Thereafter, the County hired Community Solutions Group of GAI Consultants, Inc. ("GAI") to evaluate county housing costs and the effectiveness of rent control measures. Specifically, the County asked GAI to: 1) evaluate and document local housing conditions to determine whether they rise to the level of a housing emergency; 2) estimate the number of units [**5] that could be affected by rent control measures; and 3) comment on the likely effectiveness of those measures if implemented.

In June 2022, GAI presented its findings at a public meeting. GAI concluded that Orange County faced several pressing challenges relating to housing. For example, its population was growing, its housing inventory was falling, and its prices were increasing—all beyond historic levels. In [*121] addition, rents rose more than 25% from 2020 to 2021, and rental vacancy rates were at 5.2%, the lowest since 2000. GAI noted that rents were "spiking," and that Orange County's least affluent citizens bore a disproportionate resulting burden. It recognized that a significant portion of Orange County's population was spending a large percentage of income on housing costs.

But the County's hired consultant did not find a "housing emergency," which we have explained is one of several mandatory findings necessary for a local government to impose rent controls. GAI concluded that the issues driving rising

housing costs in Orange County were "deeply structural and a product of regional and national market influences, likely beyond the control of local regulation," stemming mostly from [**6] "inadequate housing production over years which a temporary rent ceiling would do little to correct." GAI opined that if the County passed such a measure, it "may impede the objective of speeding overall housing deliveries as well as create a number of unintended consequences," rather than fulfilling its goal of eliminating a housing crisis. Instead, GAI recommended a well-funded, continuing, and comprehensive strategic approach to address these concerns. After this presentation, GAI had no further participation in the legislative process.

The County Mayor also directed the County Attorney to prepare an advisory legal opinion on the issues surrounding rent control ordinances in Florida. The County Attorney advised that Florida law imposed strict limits on the County's ability to enact such a measure, and that it was "unlikely that findings of an increase in the cost of living or inflation alone will be sufficient to meet the requirements of [section 125.0103, Florida Statutes]."

The County held three additional meetings to consider additional information that would ultimately inform the findings in its rent control ordinance. This additional information included data about evictions and home sale costs. The County also [**7] entertained public comment.

In August 2022, following a public meeting, the County adopted Ordinance 2022-29 ("the Ordinance") by a 3-2 vote. As required by section 125.0103(5)(b), the Ordinance listed findings supporting its contention that a housing emergency existed in Orange County "so grave as to constitute a serious menace to the general public and that such controls are necessary and proper to eliminate such grave housing emergency."

Specifically, the Ordinance described a housing shortage of 26,500 units in Orange County, and a population increase of 25% from 2010 to 2020. It noted that 39% of the housing units in Orange County are occupied by renters, and the current 5.2% rental vacancy rate is the lowest since 2000. It declared that "inflation, housing prices, and rental rates in Orange County are increasing, accelerating, and spiraling," citing a 43% increase in median home sales price from May 2020 to May 2022 and a 25% increase in asking rent per unit from 2020 to 2021, the highest increase since 2006 when it was 6.7%. It recited that 80.3% of households earning at or below the average median income in Orange County pay more than 30% of their household income for housing and may have difficulty [**8] affording other life necessities such as food, clothing, transportation, and medical care. It stated that Orange County has been in a housing crisis since

before the pandemic. But the pandemic had worsened the housing crisis; the State awarded Orange County the most funds from its now-ended COVID-19 emergency rental assistance program, and the housing conditions [*122] continue to deteriorate. Finally, it disclosed 6,970 eviction case filings in the first half of 2022, a 70.1% increase over the same period in 2021.

To eliminate this stated housing emergency, the Ordinance outlined a rent control measure limiting the frequency and amount of rent increases. First, it would prevent any landlord from demanding, charging, or accepting a rent increase from a residential tenant more than once in a twelve-month period. Second, it would preclude any landlord from demanding, charging, or accepting a rent increase on any residential unit greater than the existing rent multiplied by the Consumer Price Index. The Ordinance also includes a process by which landlords can request exceptions to receive a fair and reasonable return on investment and lists factors for deviations from the limitation on rent increases. [**9] Likewise, it provides several exemptions, including those required by various state and federal statutes. The Ordinance further provides for civil and criminal enforcement pursuant to existing Florida law: a landlord who violates it is subject to potential civil citations and fines imposed by the County's code enforcement board of up to $15,000 per violation, and potential criminal prosecution resulting in a fine up to $500 and 60 days in jail.

Finally, as section 125.0103(5)(c) requires, the Ordinance provides that it will be placed on the ballot of the November 2022 general election for consideration and action by the Orange County electorate. The Ordinance contains the following ballot title and summary statement:

> **Rent Stabilization Ordinance to Limit Rent Increase for Certain Residential Rental Units**
>
> Shall the Orange County Rent Stabilization Ordinance, which limits rent increases for certain residential rental units in multifamily structures to the average annual increase in the Consumer Price Index, and requires the County to create a process for landlords to request an exception to the limitation on the rent increase based on an opportunity to receive a fair and reasonable return on investment, be approved [**10] for a period of one year?

Six days later, the Association sued the County to declare the Ordinance unconstitutional and the ballot summary invalid. The Association also sought injunctive relief preventing the County from enforcing the Ordinance and preventing the Orange County Supervisor of Elections from conducting or

certifying the November 2022 referendum election. In September 2022, the Association moved for a temporary injunction seeking this relief, and both sides filed detailed legal memoranda supporting their positions. The trial court quickly convened a five-hour evidentiary hearing, at which the Association and the County called witnesses, introduced exhibits, and made legal arguments. The Supervisor of Elections also explained potential ways in which he could implement an order directing removal of the issue from the ballot.

In its prompt and detailed order, the trial court denied the Association's request for a temporary injunction. But it concluded that the Association had a substantial likelihood of succeeding in its challenges against the Ordinance and the ballot summary. In support of this conclusion, the trial court recognized that section 125.0103(5)(b) required the County to make findings [**11] supporting the existence of a housing emergency. It found that the County's findings fell short of this high bar. It further acknowledged that a ballot summary cannot mislead on a proposed law's true effect. The trial court determined the ballot summary was misleading because it did not include potential criminal [*123] penalties for landlords who violated the Ordinance.

The trial court rationalized its decision to leave the initiative on the ballot even though it was likely doomed to ultimate failure for three reasons. First, it reasoned that nobody would suffer any harm if the voters rejected the Ordinance at the polls. Second, it explained that even if the Ordinance passed, aggrieved landlords could fight its enforcement and appeal any adverse ruling. Third, it noted that a temporary injunction would not serve the public interest. The trial court observed that even though the County had advanced an initiative that violated the law, there was value in allowing the public to "exercise their right to express their opinion on this issue, even if that is all it will ever be, an opinion."

Both the Association and the County appealed the trial court's order denying the temporary injunction. We [**12] expedited briefing in this case due to the upcoming election. The Association suggests that the trial court erred by denying its request for temporary injunctive relief. The County takes no issue with the denial, but it disputes the trial court's conclusion that it will likely not succeed in upholding the Ordinance or defending the ballot summary. The Association is correct.

III. *Standard of Review*

We review the trial court's denial of the Association's motion for temporary injunction in a "hybrid" manner. *See Gainesville Woman Care, LLC v. State*, 210

So. 3d 1243, 1258 (Fla. 2017) (citations omitted). We give great deference to its factual findings, evaluating them for an abuse of discretion. *See id.* A trial court only abuses its discretion if no reasonable person could adopt its view. *See Canakaris v. Canakaris*, 382 So. 2d 1197, 1203 (Fla. 1980). By contrast, we examine the trial court's legal conclusions de novo, which means that we review it anew, as if it had never been heard before. *See Gainesville Woman Care, LLC*, 210 So. 3d at 1258; *Lee v. St. Johns County Bd. of County Comm'rs*, 776 So. 2d 1110, 1113 (Fla. 5th DCA 2001).

The Florida Supreme Court has imposed a four-part test on the issuance of a temporary injunction. *See Naegele Outdoor Advertising Co. v. City of Jacksonville*, 659 So. 2d 1046, 1047 (Fla. 1995). To obtain this relief, the party seeking it must establish: 1) a substantial likelihood of success on the merits; 2) the likelihood of irreparable harm; 3) the lack of an adequate legal remedy; and 4) that the public [**13] interest supports the injunction. *Id.* The injunction's proponent must establish each element with competent substantial evidence. *See Concerned Citizens for Jud. Fairness, Inc. v. Yacucci*, 162 So. 3d 68, 72 (Fla. 4th DCA 2014). If any element is missing, a trial court cannot enter an injunction. *See Fla. Dep't of Health v. Florigrown, LLC*, 317 So. 3d 1101, 1111 (Fla. 2021).

The trial court properly applied this four-part test, also correctly identifying that the County had the burden to establish the Ordinance's validity. See § 125.0103(6). Indeed, the parties do not dispute the trial court's methodology, only its factual findings and legal conclusions. We assess these findings and conclusions for both the Association's request to enjoin the Ordinance's enforcement and to remove the question of its adoption from the ballot, discussing the four-part test for each issue.

IV. *Analysis*

The trial court correctly concluded that the Association was substantially likely to succeed on the merits of its claims against the Ordinance and the ballot summary. By contrast, we find that the trial court erred in determining that the Association did not [*124] suffer irreparable harm, it had an adequate remedy at law, and the public interest supported a public vote on a misleading ballot summary of an unconstitutional ordinance.

1. *Likelihood of Success on the Merits*

To establish a substantial [**14] likelihood of success on the merits of its claims, the Association had to advance more than just a colorable claim. *See Scott v.*

Trotti, 283 So. 3d 340, 343 (Fla. 1st DCA 2018). Instead, it must illustrate "a clear legal right to relief requested." *See Mid-Fla. at Eustis, Inc. v. Griffin*, 521 So. 2d 357, 357 (Fla. 5th DCA 1988). The Association easily meets this standard for both its challenges.

a. *The Ordinance*

First, the trial court properly determined the Association is likely to succeed on the merits of its claim that the Ordinance is facially invalid under section 125.0103, Florida Statutes, and Article VIII, § 1(g) of the Florida Constitution. As we discussed at the outset of this opinion, the County has "all powers of local self-government not inconsistent with general law." *See* Art. VIII, § 1(g), Fla. Const. Our constitutional structure therefore empowers the County to enact ordinances provided they are "not inconsistent with general law." In other words, the County may legislate in areas in which the Florida Legislature has not "preempted" its authority.

We begin our analysis of this issue by examining the law in question. Originally enacted in 1977, section 125.0103(2) currently outlines three significant requirements before a county may adopt a rent control measure:

> No law, ordinance, rule, or other measure which would have the effect of imposing controls on rents shall be adopted or maintained in effect except as provided herein and [**15] unless it is found and determined, as hereinafter provided, that such controls are *necessary and proper to eliminate* an *existing housing emergency* which is *so grave as to constitute a serious menace to the general public*.

(Emphasis added).

As illustrated, this statute requires the County to prove the "existence in fact" of its adopted legislative findings establishing: 1) a "housing emergency"; 2) that is "so grave as to constitute a serious menace to the general public"; and 3) that the proposed rent control measures are both "necessary" and "proper" to "eliminate" the grave housing emergency. *See* § 125.0103(2), (5)(b), (6). By examining each of the statute's requirements, we conclude that the Ordinance fails to identify or support any one of these three requirements.

i. "[H]ousing emergency."

First, the Ordinance's findings do not illustrate "an existing housing emergency," as is required by section 125.0103(2) and (5)(b). We note that the statute does not define "housing emergency," but we can ascertain its meaning by considering its plain and ordinary public meaning at the time of enactment. In doing so, we must

consider the term in context, '"exhaust[ing] all the textual and structural clues' that bear on the meaning of a disputed [**16] text." *Conage v. United States*, 47 Fla. L. Weekly S199, S200 (Fla. Aug. 25, 2022) (quoting *Alachua Cnty. v. Watson*, 333 So. 3d 162, 169 (Fla. 2022)).

Typically, the best evidence of what a contested term meant when enacted comes from a dictionary published close to that time. *Id.* at S201. And here, dictionaries demonstrate that an "emergency" was commonly understood to mean "an [*125] unforeseen combination of circumstances or the resulting state that calls for immediate action." *Emergency, Webster's Seventh New Collegiate Dictionary* (1967); *Emergency, Webster's Third New International Dictionary* (1961).[1]

The context in which the statute uses "housing emergency" provides additional clues to its meaning. Indeed, the Florida Supreme Court discussed and defined a "housing emergency" before the Florida Legislature adopted the term in 1977. Specifically, in evaluating multiple cases from the United States Supreme Court, the Florida Supreme Court concluded that an emergency was "[t]he only justification" for a rent control measure. *City of Miami Beach v. Fleetwood Hotel, Inc.*, 261 So. 2d 801, 804 (Fla. 1972). The *Fleetwood* Court noted that "emergency" had "been narrowly defined" in this context. *Id.* It declared that "[a]n increase in the cost of living (an inflationary spiral) alone is not a justification for rent control legislation which limits the amount of rent which [**17] a tenant may be required to pay." *Id.* In other words, "[t]he mere inability by a group of tenants to meet rent payments is not such an emergency as to justify government controls which are suitable to that group of tenants but which would render investments in housing projects far less attractive and in some instances lead to bankruptcy." *City of Miami Beach v. Forte Towers, Inc.*, 305 So. 2d 764, 771-72 (Fla. 1974) (Roberts, J., concurring in part and dissenting in part).

Given this precedent, we may reasonably conclude that the Legislature's use of "emergency" in section 125.0103(2) and (5)(b) carried a similar meaning, especially considering the United State Supreme Court's admonition that rent control legislation was only permitted in the face of an "emergency." *See, e.g., Conage*, 47 Fla. L. Weekly at S201 (noting that existing precedent would inform reader of legislature's work product, and legislature itself, as to meaning of term).

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[1] We review dictionaries published close to the time of enactment because sometimes a word's usage evolves or changes. For example, depending on the context, "spam" might or might not mean something completely different now than it did fifty years ago. Here, "emergency" has the same definition today as it did in 1977. *See Emergency, Merriam- Webster Dictionary*, https://www.merriam-webster.com/dictionary/ emergency (defining "emergency" as "an unforeseen combination of circumstances or the resulting state that calls for immediate action"). The dictionary definitions of the other terms we define in this opinion also have not changed.

Section 125.0103's structure provides further evidence as to the scope of the term "housing emergency." Section 125.0103(3) provides that any rent control ordinance "shall terminate and expire within 1 year" and cannot be extended unless the county adopts a new measure meeting all of section 125.0103's requirements.

Considering the ordinary meaning of the term "housing emergency" in context, we conclude—as the trial court did—that the [**18] type of housing emergency contemplated by section 125.0103 is sudden or unexpected, creating a temporary condition necessitating immediate or quick action. A decision otherwise would require us to overlook the background in which the term was adopted, dispense with dictionary definitions, and disregard the structure of section 125.0103, which contemplates only a year-long enactment.

The legislative findings in the Ordinance contradict the ordinary meaning of "housing emergency" as used in this context. The Ordinance's findings, which cite population increases over the past decade, longstanding housing shortages, and a study [*126] finding an affordable housing crisis in May 2018, primarily refer to historical structural issues rather than a "sudden" or "unexpected" occurrence. Other findings addressed more recent circumstances, like the COVID-19 pandemic worsening the housing crisis, resulting in spiraling inflation, housing prices, and rental rates. But the Florida Supreme Court has held that an "increase in the cost of living (an inflationary spiral) alone is not a justification for rent control legislation." *Fleetwood Hotel*, 261 So. 2d at 804. The County Attorney warned the County that these factors would be legally insufficient before it enacted the [**19] Ordinance.

The County suggests that structural issues that are not an emergency can reach a "tipping point" that makes them one. But the trial court found otherwise, which is supported by the testimony of Dr. Owen Beitsch, the leader of GAI's consulting team. In testifying for the Association at the temporary injunction hearing, Dr. Beitsch opined that numerous other market conditions and social indicators in Orange County belied this point. These include a low unemployment rate, high rental occupancy, a high home sale rate, and the regular retirement of stably paid workers.

Ultimately, in applying the ordinary meaning of a "housing emergency," as understood in the context of section 125.0103, we conclude that Orange County cannot prove the "existence in fact" of a "housing emergency" sufficient to justify the Ordinance under section 125.0103(2) and 5(b). Accordingly, the trial court correctly determined that the Association is substantially likely to succeed on the merits of its challenge to the Ordinance's validity.

ii. "[S]o grave as to constitute a serious menace to the general public."

Even if the County could prove the existence of a "housing emergency," section 125.0103 requires another showing it cannot make. Specifically, the statute [**20] also requires that emergency be "so grave as to constitute a serious menace to the general public." § 125.0103(2), (5)(b). The terms in this phrase are also undefined, so we again consider the ordinary meaning of the terms in context.

"Menace," used as a noun, generally means someone or something that represents a threat or danger. *See Menace, Webster's Seventh New Collegiate Dictionary* (1967); *Menace, Webster's Third New International Dictionary* (1961). "Public" generally means the people as a whole, populace, or masses. *See Public, Webster's Seventh New Collegiate Dictionary* (1967); *Public, Webster's Third New International Dictionary* (1961). Taken together, the statute requires that the County demonstrate a housing emergency that constitutes a grave threat or danger to the Orange County citizens *as a whole*.

We again find support for this interpretation in precedent. The United State Supreme Court determined that states had the authority to limit rents based upon the justification of "a social emergency." *Edgar A. Levy Leasing Co. v. Siegel*, 258 U.S. 242, 245, 42 S. Ct. 289, 66 L. Ed. 595 (1922). The *Levy* Court described this as an emergency that was not only caused by "an insufficient supply of dwelling houses and apartments," but one that was "so grave that it constituted a serious menace [**21] to the health, morality, comfort, and even to the peace *of a large part of the people of the state*." *Id.* (emphasis added). In *Levy*, the State of New York cited numerous conditions that affected a large part of its populace. *Id.* at 245-46. These included a shortage of housing that was causing "widespread distress"; rent profiteering so oppressive and flagrant that it amounted to extortion; never-before-seen abuse of legal process solely for the purpose [*127] of increasing rents; and a crisis of multi-family living situations in apartments adequate for only one family. These conditions, the evidence supported, were causing overcrowding and "insanitary conditions, disease, immorality, discomfort, and widespread social discontent." *Id.*

Here, the County's legislative findings are virtually devoid of findings that the allegedly existing housing emergency is "so grave as to constitute a serious menace to the general public." § 125.0103(2). At most, the County cites to a low rental vacancy rate and low availability of affordable housing. Both the trial court's order and its questioning of Dr. Beitsch at the evidentiary hearing demonstrates it was properly focused on this issue. In response to the trial court's questions, [**22] Dr. Beitsch testified that there was no evidence that rents had become so high that "essential workers couldn't afford to live and work in this

community." He explained that he found no evidence that the homeless population had become so great that it "overwhelmed public services" and "the general public didn't have access." He concluded there was no evidence that the "rent issue" poses any danger to "people who aren't renters themselves." While we do not minimize the evidence supporting a complex, multifaceted housing issue affecting *renters* in Orange County, it was insufficient under the law to support a rent control measure. These are not the sort of factors the United States Supreme Court described in *Levy*, nor do they establish any sort of grave threat or danger to the people *as a whole*, as contemplated by section 125.0103.

Therefore, applying the ordinary meaning of "so grave as to constitute a serious menace to the general public" as understood in the context of section 125.0103, we conclude that Orange County cannot meet the statute's requirements, even if it were to establish a "housing emergency." The trial court correctly determined that the Association is substantially likely to succeed on the merits of [**23] its challenge to the Ordinance's validity in this aspect as well.

iii. "[N]ecessary" and "proper" to "eliminate" any grave housing emergency.

A final and significant aspect of section 125.0103 further demonstrates the Ordinance's invalidity. Section 125.0103 states that even if there is a "housing emergency," and even if it is "so grave as to constitute a serious menace to the general public," counties still must demonstrate that the ordinance is "necessary and proper to eliminate such grave housing emergency." § 125.0103(5)(b).

Dictionaries published close in time to the legislative enactment illuminate the ordinary meaning of the word "eliminate," demonstrating it means to "get rid of," expel, or eradicate. *Eliminate, Webster's Seventh New Collegiate Dictionary* (1967); *Eliminate, Webster's Third New International Dictionary* (1961). The County suggests we should not view "eliminate" in this manner because it contemplates an "impossible standard." Instead, it effectively suggests we view "eliminate" as synonymous with terms "ameliorate," "lessen," or "mitigate."

We cannot accept this suggestion for at least three reasons. First, "eliminate" does not and has never meant this. The County's legislative findings do not even suggest that [**24] the Ordinance will "eliminate" a housing emergency in Orange County. Second, the trial court received competent, substantial evidence showing the opposite. Dr. Beitsch testified that rent control measures are "not likely to have much of an effect on rental conditions in the market." GAI's report, admitted into evidence without objection, concluded that rent control measures may actually hurt rental [*128] conditions by "imped[ing] the objective of speeding overall housing deliveries as well as creat[ing] a number of unintended consequences."

Third, and perhaps most importantly, the County's inability to demonstrate this factor illustrates the difference between a housing crisis based on long-term systemic factors, some of which may not be unique to Orange County, and a housing emergency that a rent control measure may eliminate. The County urges us to ignore the extremely high bar section 125.0103 imposes to allow enforcement of a rent control measure that may potentially make a housing shortage worse. In sum, for this third and independent reason, the trial court correctly concluded that the Association satisfied its burden to demonstrate a substantial likelihood of success on the merits of its challenge [**25] to the Ordinance's validity.[2]

b. *The Ballot Summary*

The trial court also correctly ruled the Association was likely to succeed on its ballot summary claim, although not for the reason it found.[3] The ballot summary is misleading because it only describes one of the two ways in which the County will control rent. Stated differently, a voter reviewing the summary might be able to ascertain that the County wished to impose rent control, but he or she would be misled as to how the County would effectuate it.

We review de novo the trial court's determination that the ballot summary was invalid. *See City of Riviera Beach v. Riviera Beach Citizens Task Force*, 87 So. 3d 18, 21 (Fla. 4th DCA 2012). In so doing, we must evaluate whether the ballot language satisfies the requirements of section 101.161, Florida Statutes. *See Fla. Educ. Ass'n v. Fla. Dep't of State*, 48 So. 3d 694, 700 (Fla. 2010). This statute requires that a ballot summary "shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure." § 101.161(1). 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." *Id.*

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[2] We reject the County's complaint that the trial court improperly excluded most of its expert testimony at the injunction hearing. The trial court did not err in doing so, reasoning that the County did not have the benefit of the information when it enacted the Ordinance. This information could not have informed the County's mandated legislative findings because it did not know the information existed. *See* § 125.0103(5)(b).

But even if this testimony had informed the County's legislative findings, or if the County could introduce this information at trial, it would make no difference. This reflects just one of the many elements that make section 125.0103 a unique and distinct statute. To satisfy it, the County had to outline specific facts—in the form of legislative findings in the Ordinance—that supported its contention that it met all three of the significant requirements set forth in section 125.0103(5)(b). Because we conclude that these findings did not meet a single one of them, additional testimony about the legislative findings in the Ordinance—no matter what it was—would have no effect.

[3] This presents no issue for us because the Florida Supreme Court has ruled that a trial court's decision is primarily what matters, not the reasoning it used. *See Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979). "Even when based on erroneous reasoning, a conclusion or decision of a trial court will generally be affirmed if the evidence or an alternative theory supports it." *Id.* (citations omitted); *see also Dade Cnty. Sch. Bd. v. Radio Station WQBA*, 731 So. 2d 638, 644-45 (Fla. 1999).

These requirements are designed to provide fair notice of a proposed law's content, so that a voter can cast an intelligent and informed vote and not be misled as to the proposed law's purpose. [**26] *See Advisory Op. to Att'y Gen. re Use of Marijuana for Debilitating Med. Conditions*, 181 So. 3d 471, 478 (Fla. 2015) (quoting [*129] *Advisory Op. to Att'y Gen. re Term Limits Pledge*, 718 So. 2d 798, 803 (Fla. 1998)). Indeed, voters must be able to understand how far a proposed law sweeps from the ballot title and summary, so that the proposed law "is neither less nor more extensive than it appears to be." *See Smathers v. Smith*, 338 So. 2d 825, 829 (Fla. 1976). A ballot title and summary do not have to explain every detail of the proposed law, but rather its chief purpose. *City of Riviera Beach*, 87 So. 3d at 21.

In determining whether section 101.161's requirements are satisfied, we consider two questions: "(1) whether the ballot title and summary, in clear and unambiguous language, fairly inform the voters of the chief purpose of the amendment; and (2) whether the language of the ballot title and summary, as written, will be affirmatively misleading to voters." *Advisory Op. to Att'y Gen. re Regulate Marijuana in a Manner Similar to Alcohol to Establish Age, Licensing, & Other Restrictions*, 320 So. 3d 657, 667-68 (Fla. 2021) (quoting *Advisory Op. to Att'y Gen. re Use of Marijuana for Certain Med. Conditions*, 132 So. 3d 786, 797 (Fla. 2014)). Indeed, a ballot summary may be defective if it "omits material facts necessary to make the summary not misleading." *Advisory Op. to Att'y Gen.-Ltd. Pol. Terms in Certain Elective Offs.*, 592 So. 2d 225, 228 (Fla. 1991).

The ballot title and summary state:

> **Rent Stabilization Ordinance to Limit Rent Increase for Certain Residential Rental Units**
>
> Shall the Orange County Rent Stabilization Ordinance, which limits rent increases for certain residential rental units in multifamily structures to the average annual increase in the Consumer Price Index, and requires the County to create a process for landlords to request [**27] an exception to the limitation on the rent increase based on an opportunity to receive a fair and reasonable return on investment, be approved for a period of one year?

The summary is misleading not because of what it says, but because of what it does not say. Critically, the Ordinance purports to control rent in two ways. The first restricts the frequency of rental increases to one time per twelve-month period. The second limits the amount of these increases by tying them to the Consumer Price Index. The ballot summary, however, only advises the voter

about the amount of rent control, but not its frequency. This omission is confusing because the chief purpose of the initiative is rent control, but the ballot summary misleads on how the Ordinance will effectuate this purpose. It does not, in other words, accurately advise a voter about the Ordinance's scope, thus, portraying the measure as "less . . . extensive than it appears to be." *See Smathers*, 338 So. 2d at 829. The Ordinance does not provide, and would be completely different, for allowing landlords to raise rent on month-to-month leases every month for the year it was in effect, provided all twelve increases were tied to the Consumer Price Index.

This fatal [**28] omission is also completely avoidable. We can conceive of several alterations that would fully inform voters while still satisfying the word limit. Florida law does not require a ballot summary to explain every detail in the seventy-five-word limit. *See Advisory Op. to the Att'y Gen. re Prohibiting Pub. Funding of Pol. Candidates' Campaigns*, 693 So. 2d 972, 975 (Fla. 1997); *see also Matheson v. Miami-Dade Cnty.*, 187 So. 3d 221, 225-26 (Fla. 3d DCA 2015) ("Florida courts have previously held that section 101.161(1) does not require excessive detail."). But it cannot mislead with what it does say. *See Armstrong v. Harris*, 773 So. 2d 7, 21 (Fla. [*130] 2000) (concluding that "ballot language in the present case is defective for what it does not say"); *Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982) ("The problem, therefore, lies not with what the summary says, but, rather, with what it does not say."). For this reason, although it employed a different rationale, the trial court correctly determined that the Association was substantially likely to succeed in its efforts to remove the referendum on the Ordinance from the ballot.

2. *Irreparable Harm & No Adequate Legal Remedy*

The trial court erred, however, when it concluded it should not afford the Association temporary relief because it had not been irreparably harmed and the Association had an adequate legal remedy. The concepts of irreparable harm and no adequate legal remedy are distinct prongs of the temporary injunction test, but they are [**29] related to one another. *See, e.g., Corp. Mgmt. Advisors, Inc. v. Boghos*, 756 So. 2d 246, 247 (Fla. 5th DCA 2000) (citations omitted) ("The question of whether the injury is 'irreparable' turns on whether there is an adequate remedy available."). Accordingly, we discuss them together.

"Irreparable" means an injury cannot be adequately repaired or redressed in a court of law by an award of money damages. *Air Ambulance Network, Inc. v. Floribus*, 511 So. 2d 702, 702 (Fla. 3d DCA 1987). An injury is not irreparable if it is "doubtful, eventual or contingent." *Jacksonville Elec. Auth. v. Beemik Builders &*

Constructors, Inc., 487 So. 2d 372, 373 (Fla. 1st DCA 1986) (citation omitted). Further, irreparable injury will never be found "when a plaintiff's right to recover is based upon a future event" or the alleged injury is speculative. *Biscayne Park, LLC v. Wal-Mart Stores E., LP*, 34 So. 3d 24, 26 (Fla. 3d DCA 2010). Instead, the irreparable injury must be "actual and imminent." *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000). It is an injury of such a "peculiar nature" that money cannot adequately "atone for it." *Liza Danielle, Inc. v. Jamko, Inc.*, 408 So. 2d 735, 738 (Fla. 3d DCA 1982) (citation omitted).

An "adequate remedy at law" refers to a litigant's ability to obtain a monetary judgment, and not whether that judgment will be collectible once obtained. *Holland M. Ware Charitable Found. v. Tamez Pine Straw, LLC*, 343 So. 3d 1285, 1289-90 (Fla. 1st DCA 2022); *see Am. Sur. Co. of N.Y. v. Murphy*, 152 Fla. 862, 13 So. 2d 442, 443 (Fla. 1943) (stating general proposition that party will not be able to assert equitable claims if it has "a complete and adequate remedy at law").

The Association suffered—and continues to suffer—irreparable harm because the County enacted an unconstitutional law. A county ordinance that conflicts [**30] directly with a state statute is unconstitutional. *See Miami-Dade Cnty. v. Miami Gardens Square One, Inc.*, 314 So. 3d 389, 392-93 (Fla. 3d DCA 2020). And "a continuing constitutional violation, in and of itself, constitutes irreparable harm." *Bd. of Cnty. Commis, Santa Rosa Cnty. v. Home Builders Ass'n of W. Fla.*, 325 So. 3d 981, 985 (Fla. 1st DCA 2021) (quoting *Fla. Dep't of Health v. Florigrown, LLC*, 320 So. 3d 195, 200 (Fla. 1st DCA 2019), *quashed on other grounds by* 317 So. 3d 1101 (Fla. 2021)). The Ordinance plainly falls short of section 125.0103's high bar, and thus, it is unconstitutional. Because we presume the Association suffers irreparable harm in this situation, the trial court erred by finding otherwise.

The Association has also suffered a different type of irreparable harm in connection with both the Ordinance and [*131] the misleading ballot summary. Here, the trial court erred by overlooking unrebutted evidence on this point. Two Association executives testified that its members were having difficulty obtaining loans because lenders had grown more apprehensive about investing in the commercial rental market due to the possibility of rent control. Further, the Association has had to devote all its resources to defeating the measure before its enactment. The County made no effort to challenge this testimony on cross-examination. The attested injuries are actual, and they are neither speculative nor compensable. In this sense, competent, substantial evidence does not support the trial court's finding [**31] that the Association's harm would be mooted if voters rejected this measure on Election Day, and we must therefore reject it.

This evidence also shows the Association has no adequate legal remedy. The County is protected by sovereign immunity, and neither the Association nor its members could recover damages for the harm it has and will incur even if those damages were quantifiable. Separately, the only remedy for a misleading ballot measure is its removal from the ballot. *See Let Miami Beach Decide v. City of Miami Beach*, 120 So. 3d 1282, 1292 (Fla. 3d DCA 2013); *see also Detzner v. League of Women Voters of Fla.*, 256 So. 3d 803 (Fla. 2018) (affirming entry of permanent injunction enjoining secretary of state from placing misleading proposed constitutional revision on ballot). In this sense, the Association has no other remedy, much less an adequate remedy at law, for the County's misleading ballot summary.

3. *The Public Interest*

Finally, the public interest supports the issuance of the Association's temporary injunction. The trial court reasoned that no harm could come of the public offering its opinion on a measure that had no likelihood of legal success, and that it would not substitute its judgment for that of Orange County's elected representatives. Respectfully, we disagree.

No public interest can be served by allowing the potential [**32] enforcement of a rent control ordinance that fails to meet the facial requirements of section 125.0103, and Article 8, section 1 of the Florida Constitution. We recognize that a local government's aim to enact legislation to address a complex, multifaceted issue is noble, and citizens might believe that rent control is a harmless way to accomplish that aim. But as we stated at the outset of this opinion, the power of local government is limited, and a critical limitation on this power is the Florida Constitution.

Similarly, no public interest can be served by having the electorate vote on a misleading ballot measure. Our constitution already reflects this concern. It requires the Florida Supreme Court to render an advisory opinion on the validity of any proposed amendment to our constitution via initiative petition before it appears on the ballot. *See* Art. 4, § 10; Art. 5, § 3, Fla. Const. While we cannot, and do not, evaluate such a proposed amendment, we see no reason why the same principle should not apply here. Stated differently, there is no defensible reason to determine a ballot initiative is misleading, yet still have the electorate vote on it, only then informing them that we knew it was an unenforceable opinion poll all along. We recognize that the removal of the County's [**33] ballot initiative is a significant remedy, and we do not exercise it lightly. But it is the only remedy

available, and the law requires we impose it. *See Let Miami Beach Decide*, 120 So. 3d at 1292.

[*132] **V. *Conclusion***

For these reasons, the trial court erred in denying the Association's motion for temporary injunction. We reverse and remand for its immediate issuance. We have considered the Supervisor of Elections' arguments about his available options given this determination and the timing of its issuance. Based on the Florida Constitution's admonition about the separation of powers, we decline to dictate precisely *how* the Supervisor of Elections should effectuate the relief imposed by the temporary injunction vis-à-vis the November 2022 election. *See* Art. II, § 3, Fla. Const. We anticipate at a minimum, however, that the results of the ballot initiative will not be certified.

AFFIRMED in Part; REVERSED in Part; and REMANDED WITH INSTRUCTIONS.

SASSO, J., concurs.

COHEN, J., dissents, with opinion.

Dissent by: COHEN

Dissent

COHEN, J., dissenting with opinion.

In this appeal, we are asked to review nearly 100 years of law, state statutes, and multiple briefs, and to provide an analysis in just a few days.[1] I commend the majority's work in this case, as that is no easy task. However, [**34] I cannot agree with the majority's result, which effectively removes from the ballot an ordinance proposed by a duly elected body, the County Commissioners of Orange County ("the County").

The procedural posture of this case has import. The case comes to us on appeal from the denial of a temporary injunction. Before reaching the crux of the matter, it is instructive to remember that the appellants, Florida Realtors and Florida Apartment Association, Inc. (collectively, "Realtors"), must establish: (1) a substantial likelihood of success on the merits, (2) a lack of an adequate remedy

[1] This case was not perfected until October 11, 2022.

at law, (3) the likelihood of irreparable harm absent the entry of an injunction, and (4) that injunctive relief will serve the public interest. *Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243, 1258 (Fla. 2017) (citing *Reform Party of Fla. v. Black*, 885 So. 2d 303, 305 (Fla. 2004)). Despite the trial court's ruling that Realtors did not establish the last three of the four elements, the majority reverses that ruling by utilizing, in part, the trial court's finding as to the first element—a substantial likelihood of success on the merits—to support its conclusions that Realtors had also satisfied the remaining elements.

The County presented a plethora of facts supporting its position that a housing crisis exists in Orange County, [**35] an emergency so grave as to constitute a serious menace to the general public. § 125.0103(2), (5)(b), Fla. Stat. For the most part, Realtors did not dispute those facts. As a result, our review should be limited to whether those facts are sufficient to fulfill the statutory requirements.

There was scant law to assist the trial court (or this Court) in making that determination. As such, the trial court relied on the facts outlined in *Edgar A. Levy Leasing Co. v. Siegel*, 258 U.S. 242, 42 S. Ct. 289, 66 L. Ed. 595 (1922), the seminal case on rent control from the United States Supreme Court.[2] The Supreme Court noted the circumstances that existed in New York in the early twentieth century:

> That there was a very great shortage in dwelling house accommodations in the cities of the state to which the acts apply; that this condition was causing [*133] widespread distress; that extortion in most oppressive forms was flagrant in rent profiteering; that, for the purpose of increasing rents, legal process was being abused and eviction was being resorted to as never before; and that unreasonable and extortionate increases of rent had frequently resulted in two or more families being obliged to occupy an apartment adequate only for one family, with a consequent overcrowding, which was resulting in insanitary conditions, [**36] disease, immorality, discomfort, and widespread social discontent.

Siegel, 258 U.S. at 246.

Nowhere in *Siegel*, or throughout the intervening years, does the Supreme Court suggest that the facts present in *Siegel* should be considered the baseline or measuring stick for establishing what constitutes a housing emergency necessitating the enactment of rent control ordinances; we would hardly expect the circumstances of *Siegel* to be identically replicated since that time. Thus, the

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[2] The pertinent language of section 125.0103 mirrors that of *Siegel*.

trial court's use of the specific factual circumstances in *Siegel* as setting some sort of baseline to demonstrate an emergency was misplaced.

That is not to say that *Siegel* is wholly inapplicable. Importantly, in affirming the New York rent control laws at issue, the Supreme Court noted the "very great respect which courts must give to the legislative declaration that an emergency existed." *Id.* We should do the same. After all, the judiciary's statutorily mandated review is to determine whether the County has met its burden of establishing a grave housing emergency sufficient to enact a rent control ordinance, and we should give deference to the County's factual findings substantiating that need. *See id.*

Just as *Siegel* considered the circumstances facing the residents of [**37] New York, we must look at the circumstances particular to Orange County residents. Orange County is facing an issue found virtually nowhere else among the 67 counties in Florida.[3] Its economy is based in large part upon tourism, and it is well documented that a significant portion of Orange County's population is employed in associated low-paying jobs in that industry. Over 80% of households in Orange County are earning at or below the average median income. Those households spend more than 30% of their household income on rent and are having difficulty affording other life necessities such as food, clothing, transportation, and medical care. It is within that context that the County examined the current housing market.[4]

Moreover, approximately 40% of Orange County's population are renters. The legislative factual findings also noted that inflation, housing prices, and rental rates in Orange County are "increasing, accelerating, and spiraling." There has been a 43% increase in median home sales prices from May 2020 to May 2022, signaling that the percentage of renters is likely to continue to increase as fewer residents become able to afford to purchase their own homes. At the same time, [**38] there has been a 25% increase in asking rent per unit from 2020 to 2021, the highest increase since 2006 when it was only 6.7%. All the while, the population of Orange County continues to grow, with a population increase of 25% from 2010 to 2020, further exacerbating the housing crisis, especially when there is a documented shortage of approximately 26,500 housing units in the county.

[*134] More and more residents in Orange County are unable to afford even the most basic housing, resulting in a dramatic increase in evictions: through the first

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[3] Osceola County is similarly situated.

[4] During the pandemic, Orange County received more funds from the State's now-terminated COVID-19 emergency rental assistance program than any other county in Florida.

half of 2022, there have been nearly 7,000 eviction cases filed, representing a 70% increase when compared to the same time frame in 2021. Contrary to the position taken by Realtors, these circumstances reflect more than a mere inflationary spiral.

Realtors do not dispute that, as a result of the affordable housing shortage, families are struggling to afford essential life necessities, from food and utilities to medical expenses, at the same time that the decreased ability to pay for transportation affects employment opportunities. These are not simply statistics; these factual findings reflect real people facing rent hikes that are not only historic, [**39] but which dwarf prior records and show no signs of abating given the undisputed population growth and housing shortage.

Realtors posit that the dire economic straits of a significant portion of Orange County residents do not rise to the level of a housing emergency justifying a rent control ordinance—one that is limited in scope and duration and which provides exemptions to ensure that rental property owners retain the right to receive a fair and reasonable return on investment.[5] While Realtors are naturally advocating for the financial interests of their members, the County has a broader perspective. The County, having examined all the facts, which objectively could be characterized as a perfect storm, decided to act.[6] It determined that Orange County is in the midst of a grave housing emergency, constituting a serious menace to the general public. § 125.0103(2), (5)(b), Fla. Stat.

Accordingly, I would find that, as a matter of law, the County has met its burden under section 125.0103. I would therefore affirm the trial court's denial of temporary injunctive relief and allow the residents of Orange County to vote on the ordinance in the upcoming election.

Turning to the ballot summary aspect of this case, I agree with the majority [**40] that the trial court's basis for concluding that the ballot language was defective was flawed, i.e., that it failed to "inform the public that the ordinance would criminalize previously lawful conduct." However, I disagree with the majority's conclusion that the ballot language was nonetheless defective because it "only describes one of the two ways in which the County will control rent." All that Florida law requires is that the language used to summarize the ordinance "give the voters 'fair notice' of the decision they must make." *Dep't of State v. Fla.*

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[5] The ordinance would only be applicable to certain residential units in multi-family structures and would not impact individuals who own single-family rental properties.

[6] As a legislative body, the County was not bound by the opinions of its consultant as to the ultimate determination of whether the facts as established constituted a grave housing emergency.

Greyhound Ass'n, Inc., 253 So. 3d 513, 519 (Fla. 2018) (citing *Miami Dolphins, Ltd. v. Metro. Dade Cnty.*, 394 So. 2d 981, 987 (Fla. 1981)). Under Florida law, the ballot summary is limited to 75 words, must be "printed in clear and unambiguous language on the ballot," and "shall be an explanatory statement . . . of the chief purpose of the measure." § 101.161(1), Fla. Stat. (2022). The ballot summary does not have to "explain every detail or ramification of the proposed amendment." *City of Riviera Beach v. Riviera Beach Citizens Task Force*, 87 So. 3d 18, 21 (Fla. 4th DCA 2012) (quoting *Fla. Educ. Ass'n v. Fla. Dep't of State*, 48 So. 3d 694, 700 (Fla. 2010)).

In determining whether the statutory requirements are satisfied, this Court considers two questions: "(1) whether the ballot [*135] title and summary, in clear and unambiguous language, fairly inform the voters of the chief purpose of the amendment; and (2) whether the language of the ballot title and summary, as written, [**41] will be affirmatively misleading to voters." *Advisory Op. to Att'y Gen. re Regulate Marijuana in a Manner Similar to Alcohol to Establish Age, Licensing, & Other Restrictions*, 320 So. 3d 657, 667-68 (Fla. 2021) (quoting *Advisory Op. to Att'y Gen. re Use of Marijuana for Certain Med. Conditions*, 132 So. 3d 786, 797 (Fla. 2014)).

Here, the ballot summary clearly sets out the main purpose of the ordinance—to limit rent increases for certain residential rental units to not exceed the Consumer Price Index. The frequency with which such rent can be increased over the one-year time frame allowed by law is not the chief purpose of the ordinance; nor does the absence of those details render the summary misleading. Simply put, under Florida law, the ballot summary did not have to contain every detail or ramification of the ordinance to provide its chief purpose within the 75-word limit. I also respectfully dissent from the majority's view on the propriety of Orange County's ballot summary.

End of Document

Dinerstein v. Bucher

Court of Appeal of Florida, Fourth District

January 15, 2020, Decided

No. 4D19-755

Reporter
287 So. 3d 639 *; 2020 Fla. App. LEXIS 448 **; 45 Fla. L. Weekly D 104; 2020 WL 218328

SIDNEY F. DINERSTEIN, Appellant, v. SUSAN BUCHER, Supervisor of Elections in Palm Beach County, THE CITY OF PALM BEACH GARDENS, PATRICIA SNIDER, City Clerk of Palm Beach Gardens, VOTERS IN CONTROL, Appellees.

Subsequent History: Review denied by Dinerstein v. Bucher, 2020 Fla. LEXIS 1024 (Fla., June 22, 2020)

Prior History: [**1] Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Janis Brustares Keyser, Judge; L.T. Case No. 502018CA010672XXXXMB.

Counsel: James D'Loughy of AdvisorLaw, PLLC, Palm Beach Gardens, for appellant.

R. Max Lohman of Lohman Law Group, P.A., West Palm Beach, for appellee City of Palm Beach Gardens.

Judges: MAY, J. WARNER and GROSS, JJ., concur.

Opinion by: MAY

Opinion

[*640] MAY, J.

The plaintiff appeals a final judgment in favor of the City of Palm Beach Gardens ("City"). He argues the trial court erred in applying the "magic words" test in finding the City did not expressly advocate in favor of a ballot initiative and in finding the ballot initiative's title and summary valid. We disagree and affirm.

In May 2018, the City Council passed and adopted three ordinances to appear on the August 2018 City Election Ballot as Ballot Question Nos. 1, 2, and 3 (collectively "August Charter Amendments").

Ballot Question No. 1 (Ordinance 7-18)

[*641] Sought to increase term-limits for city council members from two to three consecutive terms.

Ballot Question No. 2 (Ordinance 8-18)
Consisted of several amendments to remove and modify provisions of the City Charter.

Ballot Question No. 3 (Ordinance 9-18)

Sought to remove the requirement that the City Manager [**2] be a resident within one year of appointment.

In an article published August 17, 2018, the Palm Beach Post reported that the City paid Cornerstone Solutions Florida, LLC, a local political consulting company, $43,200 to plan, manage, and execute the City's voter education campaign before the March 2018 City Election. And, the City planned to spend no more than about $65,000 on the August 2018 campaign.

On August 22, 2018, the plaintiff filed a verified emergency petition for declaratory and injunctive relief as to the misuse of public funds for unlawful government advocacy and injunctive relief against a political action committee concerning the dissemination of deceptive advertisements.

Ballot Question No. 2 passed in the August election, but Ballot Questions Nos. 1 and 3 did not.

Ballot Question No. 2 provided:

BALLOT TITLE: CITY OF PALM BEACH GARDENS REFERENDUM QUESTION NO. 2

BALLOT SUMMARY: SHALL THE CITY CHARTER BE AMENDED TO REMOVE PROVISIONS THAT ARE OUTDATED, UNNECESSARY OR CONFLICT WITH STATE LAW INCLUDING MUNICIPALITY, CITY CLERK, AND CITY TREASURER SPECIFIC POWERS/DUTIES; OATH OF OFFICE; MERIT SYSTEM; PROCEDURE REMOVING COUNCILMEN, QUALIFICATION OF ELECTORS, COUNCIL MEETING AND [**3] PROCEDURE, AND OTHER PROVISIONS; REVISE COUNCIL-MANAGER RELATIONSHIP; CHANGE FILLING OF VACANCIES; LIMIT INITIATIVE/REFERENDUM; DEFINE "FULL TERM"; REMOVE COUNCIL CONFIRMATION OF EMPLOYEES AND OTHER CHANGES; AS PROVIDED IN EXHIBIT A, ORDINANCE 8?

BALLOT QUESTION: SHALL THE ABOVE DESCRIBED QUESTION NO. 2 BE ADOPTED?
YES
NO

In Count I of his Second Amended Complaint, the plaintiff alleged the City's expenditures to promote passage of the August Charter Amendments violated Article I, section 1 of the Florida Constitution ("Count I"), as established in *Palm Beach Cty. v. Hudspeth*, 540 So. 2d 147 (Fla. 4th DCA 1989). The plaintiff asked the trial court to declare the City's use of public funds to advocate passage of Ballot Question No. 2, without affording him the same opportunity to access funds to present his view, violated his constitutional rights under Article I, section 1 of the Florida Constitution. The plaintiff also alleged the ballot title and summary for Ballot Question No. 2 violated section 101.161(1), Florida Statutes (2009). He asked the trial court to declare Ballot Question No. 2 invalid and misleading.

The City moved for summary judgment. As to Count I, the City argued the plaintiff failed to allege a special injury to assert taxpayer standing or a sufficiently specific constitutional challenge pursuant to Article I, section 1 of the Florida Constitution.[1] [*642] The City argued *Hudspeth* was obsolete because we specifically acknowledged the lack [**4] of legislation concerning the propriety of local government expenditures related to campaign literature. The City pointed to section 106.113, Florida Statutes (2009), enacted after *Hudspeth*, as controlling.

Section 106.113 prohibits local governments from expending public funds on political advertisements that concern an issue subject to a vote of the electors. The City opined that the campaign literature did not meet the definition of a "political advertisement" as defined in section 106.011(15), Florida Statutes (2009). Specifically, the City argued that the Florida Legislature's inclusion of "expressly advocate" in the definition of "political advertisement" intended the "magic words" standard in *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976), to apply. Pursuant to the "magic words" standard, the City argued the campaign literature [**5] was not a "political advertisement" because none of the literature contained the "magic words."

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[1] At oral argument, the City admitted the plaintiff has standing. In *Hudspeth*, we stated:

> While the county not only may but should allocate tax dollars to educate the electorate on the purpose and essential ramifications of referendum items, it must do so fairly and impartially. . . . The funds collected from taxpayers theoretically belong to proponents and opponents of county action alike. To favor one side of any such issue by expending funds obtained from those who do not favor that issue turns government on its head and is the antithesis of the democratic process.

540 So. 2d at 154. In doing so, we tacitly suggested standing exists to challenge a government's expenditure of funds for advocacy of a particular position on a referendum.

The trial court found that section 106.113 controlled and that the "magic words" test applied. "Since none of the *Buckley* 'magic words' were used in the City's communications," the trial court found the City did not expressly advocate for Ballot Question No. 2. Therefore, the trial court found that the City had not violated section 106.113 or Article 1, section 1 of the Florida Constitution. The trial court further found the title and summary of Ballot Question No. 2 were valid and not misleading.

The plaintiff appeals that judgment.

• ***The Use of Public Funds***

"The right of a citizen and taxpayer to maintain a suit to prevent the unlawful expenditure by public officials of public moneys, unless otherwise provided by legislative enactment, is generally recognized." *Krantzler v. Board of County Comm'rs*, 354 So. 2d 126, 128 (Fla. 3d DCA 1978) (quoting *Rickman v. Whitehurst*, 73 Fla. 152, 74 So. 205, 207 (1917)).

> As the trial court recognized, in *Rickman v. Whitehurst*, 73 Fla. 152, 74 So. 205, 207 (1917), the Florida Supreme Court construed the right of citizen-taxpayers to sue the state by requiring that, when challenging government policy or actions, a taxpayer must allege a "special injury" which differs in kind and degree from that sustained by other members of the community at large. In *Department of Administration v. Horne*, 269 So. 2d 659 (Fla. 1972), the court created an exception to the *Rickman* standing rule. "[W]here there [**6] is an attack upon *constitutional* grounds based directly upon the Legislature's taxing and spending power, there is standing to sue without the *Rickman* requirement of special injury." *Id.* at 663. To withstand dismissal on standing grounds, however, the challenge must be to legislative appropriations.

Council for Secular Humanism, Inc. v. McNeil, 44 So. 3d 112, 121 (Fla. 1st DCA 2010).

The plaintiff first argues the trial court used the wrong legal test in applying section 106.113 to the ballot initiative campaign [*643] purchased by the City. In so doing, he argues the court improperly made factual findings at the summary judgment stage. Specifically, he suggests the trial court incorrectly applied the *Buckley* "magic words" test instead of the "functional equivalent of express advocacy"[2] test established by *Citizens United v. FEC*, 558 U.S. 310, 324-25, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010). We agree with the plaintiff that the "functional equivalent" test should have been applied, but even under that test, the

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[2] The functional equivalent of express advocacy has been shortened to functional equivalent for brevity.

result is the same. The City did not violate section 106.113 or Article I, section 1 of the Florida Constitution.

In *Citizens United*, the Supreme Court announced the "functional-equivalent test." A "court should find that [a communication] is the functional equivalent of express advocacy only if [it] is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." *Citizens United*, 558 U.S. at 324-25.

Section 106.113(2), Florida Statutes, provides in part:

> A local [**7] government or a person acting on behalf of local government may not expend or authorize the expenditure of . . . public funds for a political advertisement or electioneering communication concerning an issue, referendum, or amendment, including any state question, that is subject to a vote of the electors.

Section 106.011(8)(a) defines a "political advertisement" as, "a paid expression in a communications medium prescribed in subsection (4), . . . which expressly advocates the election or defeat of a candidate or the approval or rejection of an issue."

So, the issue is whether the City's expenditure was for a "political advertisement." Using the "magic words" test, the trial court found it was not. We reach the same conclusion using the "functional equivalent" test articulated in *Citizens United*.

Having reviewed the records, the City expended resources to bring public awareness to the ballot initiative. The City provided literature which explained that a Charter Review Committee recommended three ballot initiatives. The literature indicated that it contained "What You Should Know" about the initiatives. The City created a website where citizens could learn more information and disseminated a voter's guide. Robocalls were [**8] made in which the Mayor provided a website address and a hotline number where citizens could learn more.

In short, the City did not expressly advocate a position. The literature paid for by the City was "not the functional equivalent of express advocacy." The City neither violated section 106.113, nor Article 1, section 1 of the Florida Constitution. The trial court correctly entered summary judgment.[3]

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[3] The plaintiff also argues the Division's interpretation in *DE Op.* 12-05 is not controlling because the issue here challenges the actions of local government officials, not the agencies themselves. Because the Division of Elections is not a party, the plaintiff suggests the Division's interpretation of section 106.113 is irrelevant. The Division has the authority to render advisory opinions upon request by specified government officers concerning campaign finance law. *See* § 106.023, Fla. Stat. (2009). Because we reach our conclusion as a matter of law, and without deference to *DE Op.* 12-05, this issue is moot.

• ***The Ballot Title and Summary***

The plaintiff next argues the ballot title and summary were misleading and therefore invalid. We disagree.

[*644] We review de novo a trial court's finding that a ballot title and summary are valid. *See City of Riviera Beach v. Riviera Beach Citizens Task Force*, 87 So. 3d 18, 21 (Fla. 4th DCA 2012). "Only where the record shows that the ballot language is 'clearly and conclusively defective' should the court invalidate the ballot question." *Id.* at 22 (quoting *Armstrong v. Harris*, 773 So. 2d 7, 11 (Fla. 2000)).

"Section 101.161(1) requires that a constitutional amendment 'submitted to the vote of the people' include a title 'not exceeding 15 words in length, by which the measure is commonly referred to,' and a ballot summary that explains 'the chief purpose of the measure' in no more than seventy-five words." *Cty. of Volusia v. Detzner*, 253 So. 3d 507, 510 (Fla. 2018).

"In assessing conformity with these requirements, we consider two questions: '(1) whether the ballot title and summary, in clear and unambiguous language, fairly inform the voter [**9] of the chief purpose of the amendment; and (2) whether the language of the title and summary, as written, misleads the public.'" *Id.* (citations omitted).

A ballot title need only be a caption "by which the measure is commonly referred to." § 101.161(1), Fla. Stat. (2018). A ballot summary must be "clear and unambiguous" and "shall be an explanatory statement . . . of the chief purpose of the measure." *Id.*

Where the required summary does not inform the voters of the "true effect" of the ballot proposal, courts are required to direct that the matter be removed from the ballot. *Let Miami Beach Decide v. City of Miami Beach*, 120 So. 3d 1282, 1292 (Fla. 3d DCA 2013). In short, a ballot summary can neither "hide the ball" as to the measure's true effect, nor mislead by "flying under false colors." *Armstrong*, 773 So. 2d at 16-18.

A ballot summary "hides the ball" when its chief purpose is obscured and the legal effect of approving the proposed measure is impossible to ascertain by reading it. *Id.* A ballot summary "flies under false colors" when it is misleading such that the voter perceives that the proposed measure will achieve one thing when it will achieve something different. The ballot title and summary need not explain every detail or ramification of the proposed amendment, only the chief purpose. *Carroll v. Firestone*, 497 So. 2d 1204, 1206 (Fla. 1986).

Here, the summary for Ballot [**10] Question No. 2 begins by asking "to remove provisions that are outdated, unnecessary or conflict with state law" and then lists various topics, which are generally understandable. It ends the list with "as provided in Exhibit A, Ordinance 8?" While this reference requires the reader to refer to another document, it is not inherently misleading. *See e.g., Matheson v. Miami-Dade Cty.*, 187 So. 3d 221, 230 (Fla. 3d DCA 2015) (holding referendum did not "hide the ball" or "fly under false colors" where other documents were referenced). Here, the exhibit contained a track-changes version of the charter, indicating the precise proposed additions and deletions.

The Ballot Title was a caption to which the initiative could be referred. The Ballot Summary explained the chief purpose of the amendment—to remove inconsistent and outdated provisions. The summary neither hid the ball, nor misled the public. We therefore affirm.

Affirmed.

WARNER and GROSS, JJ., concur.

Shulmister v. City of Pompano

Court of Appeal of Florida, Fourth District

October 24, 2001, Opinion Filed

CASE NO. 4D00-3742

Reporter
798 So. 2d 799 *; 2001 Fla. App. LEXIS 15032 **; 26 Fla. L. Weekly D 2546

M. ROSS SHULMISTER, as Chairman of, and on behalf of the MAYOR-AT-LARGE INITIATIVE COMMITTEE, Appellant, v. CITY OF POMPANO, a Florida municipality, and MIRIAM OLIPHANT, as Broward County Supervisor of Elections, and REUBEN GLICKMAN, Appellees.

Subsequent History: [**1] Rehearing Denied November 28, 2001. Released for Publication November 28, 2001.

Review denied by City of Pompano Beach v. Shulmister, 821 So. 2d 293, 2002 Fla. LEXIS 1238 (Fla., 2002)

Subsequent appeal at Shulmister v. Larkins, 2003 Fla. App. LEXIS 16180 (Fla. Dist. Ct. App. 4th Dist., Oct. 29, 2003)

Prior History: Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Leroy H. Moe, Judge; L.T. Case No. 00-10100 (13) CACE.

Disposition: Reversed and remanded.

Counsel: M. Ross Shulmister of Law Offices of M. Ross Shulmister, Pompano Beach, Pro se.

Charles L. Curtis of Doumar, Allsworth, Curtis, Cross, Laystrom, Perloff, Voight, Wachs & MacIver, Fort Lauderdale, for appellee-City of Pompano Beach.

Samuel S. Goren and Michael D. Cirullo, Jr. of Josias, Goren, Cherof, Doody & Ezrol, P.A., Fort Lauderdale, for appellee-Miriam Oliphant.

Judges: WARNER, J. DELL and TAYLOR, JJ., concur.

Opinion by: WARNER

Opinion

[*800] WARNER, J.

The issue presented in this appeal is whether a governing body of a municipality has the responsibility to prepare a proper ballot summary for placing a charter amendment proposed by petition of the registered voters on the ballot. We hold that because section 166.031(1), Florida Statutes (2000), requires the governing body to place the proposed amendment on the ballot, it is that body's responsibility to provide a ballot summary in compliance with section 101.161(1).

Appellant, as chairman [**2] of the Mayor-at-Large Initiative Committee, circulated an initiative petition for an amendment to the Pompano Beach City Charter. The proposal contained a summary, which stated:

Shall the Pompano Beach City Charter be amended to provide in gender-neutral language that the City Commission be composed of a mayor elected at large by [*801] all electors of the City of Pompano Beach for three (3) year terms, and four commissioners representing four geographically compact districts, each elected by electors in the respective districts, for staggered terms of two (2) years; provide for the filling of vacancies; and provide for a transition; all commencing before the municipal election of March 1999?

Appellant obtained the requisite number of signatures of duly registered voters and submitted the proposal to the Pompano Beach City Clerk, who in turn took the necessary steps to verify the signatures.

Thereafter, appellant sought to require the City of Pompano Beach to place the proposal on the November 1998 ballot by filing suit. The trial court approved the constitutionality of the proposal but did not require the City to place it on the 1998 ballot. Instead, either a special election or placement [**3] on the November 2000 ballot was approved.

In February 2000, the City Commission passed a resolution to include the proposal on the November 2000 ballot, adopting the proposal's ballot summary verbatim. This included the phrase "all commencing before the municipal election of March 1999." Without this phrase, the ballot summary would be less than 75 words. The City Commission then passed another resolution in June of 2000 urging the Broward County supervisor of elections to refuse to place the proposal on any ballot because it contained a ballot summary in excess of 75 words, a violation of section 101.161(1), Florida Statutes (2000).

Appellant then petitioned for a writ of mandamus and injunctive relief to prohibit the removal of the proposal from the November 2000 ballot. He requested that the court either delete the now obsolete language "all commencing before the municipal election of March 1999" or otherwise place the proposal before the voters in a timely manner as the court directed.

After a hearing, the court ruled that the ballot summary was defective under section 101.161(1) because it contained more than 75 words. Because it believed that neither [**4] the City nor the court had the authority under Florida law to delete the extraneous language so that the summary would comply with the statute, the trial court entered final summary judgment for the City.

Appellant's petition for a charter amendment was required to comply with section 166.031(1), which provides:

The governing body of a municipality may, by ordinance, or the electors of a municipality may, by petition signed by 10 percent of the registered electors as of the last preceding municipal election, submit to the electors of said municipality a proposed amendment to its charter . . . . The governing body of the municipality shall place the proposed amendment contained in the ordinance or petition to a vote of the electors at the next general election held within the municipality or at a special election called for such purpose.

Because appellant's proposal met the above requirements, the City was required to put the amendment to a vote of the electors. When such proposals are submitted to the voters at an election, section 101.161 governs the requirements for placing the proposal on the ballot. That section provides:

(1) **Whenever a** constitutional amendment or [**5] other **public measure is submitted to the vote of the people, the substance of such** amendment or other **public measure shall be printed in clear and unambiguous language on the ballot** . . . . **The wording of the substance of the** amendment or other [*802] **public measure** and the ballot title to appear on the ballot **shall be embodied in the** joint resolution, constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or **enabling resolution or ordinance**. Except for amendments and ballot language proposed by joint resolution, 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. . . .

(2) The substance and ballot title of a constitutional amendment proposed by initiative shall be prepared by the sponsor and approved by the Secretary of State in accordance with rules adopted pursuant to s. 120.54. The Department of State shall give each proposed constitutional amendment a designating number for convenient reference. . . . The Department of State shall furnish the designating number, the ballot [**6] title, and the substance of each amendment to the supervisor of elections of each county in which such amendment is to be voted on.

§ 101.161, Fla. Stat. (emphasis added).

"It is well settled that where a statute is clear and unambiguous, as it is here, a court will not look behind the statute's plain language for legislative intent. A statute's plain and ordinary meaning must be given effect unless to do so would lead to an unreasonable and ridiculous result." *City of Miami Beach v. Galbut*, 626 So. 2d 192, 193 (Fla. 1993)(citations omitted). Here, the two statutes plainly require the City to write the ballot summary.

After appellant submitted the proposed amendment petition, signed by the duly authenticated signatures of 10% of the registered voters, the City Commission was required to place the proposal to the voters at the next election. *See* § 166.031(1), Fla. Stat. Pursuant to section 101.161(1), the substance of that public measure shall be placed on the ballot, and the wording of the substance shall be contained in the resolution and must not exceed 75 words. Because it is the City Commission's [**7] responsibility to pass the ordinance containing the wording of the substance of the amendment, it must also comply with the word limitation in order to place the proposal on the ballot. While the City contends that it is the sponsor which must submit the ballot language, section 101.161 only places that responsibility on the sponsor of proposed constitutional amendments by initiative. *See* § 101.161(2), Fla. Stat.

The City also argues that the petition was required to contain a summary not exceeding 75 words. However, there is no law imposing a requirement that a citizen petition contain a ballot summary. The legislature could have included that requirement in section 166.031(1), but it did not. This court cannot add such a requirement to the statute.

The City had the responsibility of providing a ballot summary in its enabling resolution which complied with the statute. "Mandamus is an appropriate remedy to compel the performance of a ministerial act that an agency has a clear legal duty to perform. 'A duty or act is defined as ministerial when there is no room for the exercise of discretion, and the performance being required is directed by law.'" [**8] *Shea v. Cochran*, 680 So. 2d 628, 629 (Fla. 4th DCA 1996) (quoting *Town of Manalapan v. Rechler*, 674 So. 2d 789, 790 (Fla. 4th DCA 1996)). The City failed to comply with its legal duty to prepare a ballot summary in accordance with section 101.161(1). The trial court erred in denying the petition for writ of mandamus.

We therefore reverse and remand to the trial court with directions to order the City [*803] to pass a resolution to place the proposed amendment on the ballot with a ballot summary which complies with section 101.161(1).

DELL and TAYLOR, JJ., concur.

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