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

ALAN LOWE,

Plaintiff, Case No. 2024-CA-000488

v.

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

Defendants.
_____/

**AMENDED NOTICE OF FILING AUTHORITIES**

In anticipation of the hearing in this matter set for November 1, 2024, at 11:30 a.m., Defendant City of Palm Coast (the "City"), pursuant to this Court's October 17, 2024, Civil Division 49 Procedures, herby files this Notice of Filing Authorities in support of its Answer, Motion to Strike Improper Affidavit and Complaint Allegations, and Legal Memorandum in Opposition to First Amended Complaint filed on October 21, 2024.

**CERTIFICATE OF SERVICE**

Dated this 28th day of October, 2024.

***/s/ Rachael M. Crews***
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY I electronically filed the foregoing with the Clerk of the Court by using the eFiling Portal, which will electronically serve a copy of the foregoing to all registered participants this 28th day of October, 2024.

*/s/ Rachael M. Crews*
RACHAEL M. CREWS, ESQUIRE
Florida Bar No. 795321

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

ALAN LOWE,

Plaintiff,
vs.

CIRCUIT CIVIL DIVISION
CASE NO.: 2024 CA 000488

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

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778 So.2d 888 (Mem)
Supreme Court of Florida.

# ADVISORY OPINION TO The ATTORNEY GENERAL, re AMENDMENT TO BAR GOVERNMENT FROM TREATING PEOPLE DIFFERENTLY BASED ON RACE IN PUBLIC EDUCATION.

# Advisory Opinion to The Attorney General, re Amendment to Bar Government from Treating People Differently Based on Race in Public Employment.

# Advisory Opinion to The Attorney General, re Amendment to Bar Government from Treating People Differently Based on Race in Public Contracting.

# Advisory Opinion to The Attorney General, re End Governmental Discrimination and Preferences Amendment.

Nos. SC97086, SC97087, SC97088, SC97089.
|
July 13, 2000.
|
Rehearing Denied Feb. 20, 2001.

**Attorneys and Law Firms**

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**Opinion**

PER CURIAM.

The Attorney General has requested this Court review proposed amendments to the Florida Constitution. We have jurisdiction. Art. IV, § 10; art. V, § 3(b)(10), Fla. Const. For the reasons expressed below, we hold the four proposed amendments violate article XI, section 3, Florida Constitution, and section 101.161, Florida Statutes (1999). Accordingly, the proposed amendments should not be placed on the ballot.

In accordance with article XI, section 3, Florida Constitution,[1] the Florida Civil ***889** Rights Initiative, the sponsor of the proposed state constitutional amendments, filed initiative petitions with the Secretary of State. On October 26, 1999, the Secretary of State submitted the initiative petitions to the Attorney General pursuant to section 15.21, Florida Statutes (1999).[2] In compliance with section 16.061, Florida Statutes (1999), the Attorney General subsequently petitioned this Court for an advisory opinion regarding the validity of the proposed constitutional amendments.[3] Thereafter, this Court issued an interlocutory order inviting interested parties to file briefs in this case. In response to the Court's order, the following groups filed briefs as interested parties: Florida Civil Rights Initiative (FCRI), Leadership Conference on Civil Rights (Leadership Conference), Florida Conference of Black State Legislators (CBSL), Florida Board of Regents (Board of Regents), Campaign for a Colorblind America, Initiative & Referendum Institute and Pacific Legal Foundation (CCBA), Florida Chapter of the National Bar Association (NBA), and Floridians Representing Equity and Equality (FREE).

1 Article XI, section 3, which vests the power to propose a revision or amendment in the people, provides, in relevant part:

> It [the power] may be invoked by filing with the secretary of state a petition containing a copy of the proposed revision or amendment, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts, respectively and in the state as a whole in the last preceding election in which presidential electors were chosen.

Art. XI, § 3, Fla. Const.

2 Section 15.21, Florida Statutes, requires the Secretary of State to submit the initiative petition to the Attorney General if the sponsor has registered as a political action committee, submitted the proposed amendment to the Secretary of State, and obtained a letter from the Division of Elections stating that the sponsor has received verification that it has collected the requisite number of signatures. *See* § 15.21, Fla.Stat. (1999).

3 Section 16.061, Florida Statutes, provides, in pertinent part:

> The Attorney General shall, within 30 days after receipt of a proposed revision or amendment to the State Constitution by initiative petition from the Secretary of State, petition the Supreme Court, requesting an advisory opinion regarding the compliance of the text of the proposed amendment or revision with s. 3, Art. XI of the State Constitution and the compliance of the proposed ballot title and substance with s. 101.161.

§ 16.061, Fla.Stat. (1999).

Generally, the four initiative petitions address alleged discriminatory practices in the areas of public education, employment, and contracting. The first three proposed amendments purport to bar differential treatment based on race, color, ethnicity, and national origin, and are identical in every respect except the designation of the targeted area of discrimination. For example, the first petition addresses education, the second petition addresses employment, and the third petition addresses contracting. The first three proposed amendments state:

> ADD SECTION 26 TO ARTICLE I, FLORIDA CONSTITUTION AS FOLLOWS:
>
> (1) The state shall not treat persons differently based on race, color, ethnicity, or national origin in the operation of public education.
>
> (2) This section applies only to action taken after the effective date of this section.

(3) This section does not affect any law or governmental action that does not treat persons differently based on the person's race, color, ethnicity, or national origin.

(4) This section does not invalidate any court order or consent decree that is in force as of the effective date of this section.

(5) This section does not prohibit action that must be taken to establish or maintain eligibility for any federal program, if ineligibility would result in a loss of federal funds to the state.

(6) For the purposes of this section, "state" includes, but is not necessarily limited to, the state itself, any city, county, district, public college or university, ***890** or other political subdivision or governmental instrumentality of or within the state.

(7) The remedies available for violations of this section shall be the same, regardless of the injured party's race, color, ethnicity, or national origin, as are otherwise available for violations of then existing Florida education discrimination law.

(8) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law or the United States Constitution, the section shall be implemented to the maximum extent that federal law and the United States Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section.

The ballot titles for the proposed amendments state: "AMENDMENT TO BAR GOVERNMENT FROM TREATING PEOPLE DIFFERENTLY BASED ON RACE IN PUBLIC EDUCATION." As previously mentioned, the titles for the proposed amendments for employment and contracting are identical except they replace "public education" with "public employment" and "public contracting," respectively. The summaries for the proposed amendments provide:

Amends Declaration of Rights, Article I of the Florida Constitution, to bar state and local government bodies from treating people differently based on race, color, ethnicity, or national origin in the operation of public education [public employment] [public contracting], whether the program is called "preferential treatment," "affirmative action," or anything else. Does not bar programs that treat people equally without regard to race, color, ethnicity, or national origin. Exempts actions needed for federal funds eligibility.

The fourth petition also purports to prohibit discrimination on the aforementioned bases, but also allegedly proscribes differential treatment based on sex. Furthermore, the fourth petition purports in one petition to bar differential treatment in the three areas, education, employment, and contracting, instead of addressing these areas in separate petitions. The fourth proposed amendment contains the same provisions as the first three, except it contains an additional section which states:

This section does not affect any otherwise lawful classification that: (a) Is based on sex and is necessary for sexual privacy or medical or psychological treatment; or (b) Is necessary for undercover law enforcement or for film, video, audio, or theatrical casting; or (c) Provides for separate athletic teams for each sex.

The ballot title for the fourth petition is also slightly different, stating "END GOVERNMENTAL DISCRIMINATION AND PREFERENCES AMENDMENT." The summary for the fourth petition provides:

Amends Declaration of Rights, Article I of Florida Constitution, to bar government from treating people differently based on race, sex, color, ethnicity, or national origin in public education, employment, or contracting, whether the program is called "preferential treatment," "affirmative action," or anything else. Does not bar programs that treat people equally without regard to race, sex, color, ethnicity, or national origin. Exempts bona fide qualifications based on sex and actions needed for federal funds eligibility.

The Court's inquiry, when determining the validity of initiative petitions, is limited to two legal issues: whether the petition satisfies the single-subject requirement of article XI, section 3, Florida Constitution, and whether the ballot titles and summaries are printed in clear and unambiguous language pursuant to section 101.161, Florida Statutes (1999). *See Advisory Opinion to the Attorney General re Right of Citizens to Choose Health Care Providers,* 705 So.2d 563, 565 (Fla.1998); *Advisory* ***891** *Opinion to the Attorney General re Prohibiting Public Funding of Political Candidates' Campaigns,* 693 So.2d 972, 974 (Fla.1997). In order for the Court to invalidate a proposed amendment, the record must show that the proposal is clearly and conclusively

defective on either ground. *See Askew v. Firestone,* 421 So.2d 151, 154 (Fla.1982). In determining the propriety of the initiative petitions, the Court does not review the merits of the proposed amendments. *See Right of Citizens to Choose Health Care Providers,* 705 So.2d at 565; *Advisory Opinion to the Attorney General re People's Property Rights Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects,* 699 So.2d 1304, 1306 (Fla.1997). As the Court noted in *Advisory Opinion to the Attorney General re Tax Limitation,* 644 So.2d 486, 489 (Fla.1994) (*Tax Limitation I* ), "This Court's role in these matters is strictly limited to the legal issues presented by the constitution and relevant statutes. This Court does not have the authority or responsibility to rule on the merits or the wisdom of these proposed initiative amendments...." Moreover, other constitutional challenges are not justiciable in this type of proceeding. *See Advisory Opinion to the Attorney General-Limited Political Terms in Certain Elective Offices,* 592 So.2d 225, 227 (Fla.1991).

The restrictions on initiative petitions are both constitutionally and statutorily mandated. The single-subject requirement is derived from article XI, section 3, which provides, in relevant part:

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

Art. XI, § 3, Fla. Const. (emphasis added). Although article XI provides other methods for amending or revising the constitution,[4] the citizen initiative is the only method that is constrained by the single-subject requirement. *See Advisory Opinion to the Attorney General re Fish and Wildlife Conservation Comm'n,* 705 So.2d 1351, 1353 (Fla.1998). The single-subject limitation exists because the initiative process does not provide the opportunity for public hearing and debate that accompanies the other methods of proposing amendments. *See Fish and Wildlife Conservation Comm'n,* 705 So.2d at 1353. Consequently, "[the] single-subject provision is a rule of restraint designed to insulate Florida's organic law from precipitous and cataclysmic change." *In re Advisory Opinion to the Attorney General-Save Our Everglades,* 636 So.2d 1336, 1339 (Fla.1994). This Court requires "strict compliance with the single-subject rule in the initiative process for constitutional change because our constitution is the basic document that controls our governmental functions, including the adoption of any laws by the legislature." *Fine v. Firestone,* 448 So.2d 984, 989 (Fla.1984). The single-subject requirement also prevents logrolling, a practice that combines separate issues into a single proposal to secure passage of an unpopular issue. *See Fish and Wildlife Conservation Comm'n,* 705 So.2d at 1353; *People's Property Rights Amendments,* 699 So.2d at 1307; *Save Our Everglades,* 636 So.2d at 1339. Thus, voters are protected by the single-subject requirement because they are not forced to "accept part of an initiative proposal which they oppose in order to obtain a change in the constitution which they support." *Fine,* 448 So.2d at 988.

4 In addition to a citizen initiative, amendments may be proposed by the Florida Legislature (article XI, section 1), by a constitutional convention (article XI, section 4), by a constitution revision commission (article XI, section 2), and by a taxation and budget reform commission (article XI, section 6).

In evaluating whether a proposed amendment violates the single-subject requirement, the Court must determine ***892** whether it has a "logical and natural oneness of purpose." *Advisory Opinion to the Attorney General re Term Limits Pledge,* 718 So.2d 798, 802 (Fla.1998) (quoting *Fine,* 448 So.2d at 990). To ascertain whether a "oneness of purpose" exists, the Court must consider "whether the proposal affects separate functions of government and how the proposal affects other provisions of the constitution." *People's Property Rights Amendments,* 699 So.2d at 1307; *see also Term Limits Pledge,* 718 So.2d at 802; *Tax Limitation I,* 644 So.2d at 490 (noting that "how an initiative proposal affects other articles or sections of the constitution is an appropriate factor to be considered in determining whether there is more than one subject included in an initiative proposal") (quoting *Fine,* 448 So.2d at 990). However, "[a] proposal that affects several branches of government will not automatically fail; rather, it is when a proposal substantially alters or performs the functions of multiple branches that it violates the single-subject test." *Fish and Wildlife Conservation Comm'n,* 705 So.2d at 1353-54. Moreover, "the possibility that an amendment might interact with other parts of the Florida Constitution is not sufficient reason to invalidate the proposed amendment." *Term Limits Pledge,* 718 So.2d at 802. Nevertheless, "it is imperative that an initiative identify the provisions of the constitution substantially affected by the proposed amendment in order for the public to fully comprehend the contemplated changes and to ensure that the initiative's effect on other unnamed provisions is not left unresolved and open to various interpretations." *Right of Citizens to Choose Health Care Providers,* 705 So.2d at 565-66.

  

The second area of our inquiry, the need for clarity in the ballot titles and summaries, is addressed in section 101.161, Florida Statutes, which provides, in pertinent part:

> Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment ... shall be printed in clear and unambiguous language on the ballot.... The substance of the amendment ... shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

§ 101.161(1), Fla.Stat. (1999). Thus, the statute requires that the ballot title and summary "state in clear and unambiguous language the chief purpose of the measure." *Limited Political Terms in Certain Elective Offices,* 592 So.2d at 228 (quoting *Askew,* 421 So.2d at 155); *accord Right of Citizens to Choose Health Care Providers,* 705 So.2d at 566. Moreover, the title and summary must be accurate and informative. *See Term Limits Pledge,* 718 So.2d at 803. These requirements ensure that the "electorate is advised of the true meaning, and ramifications, of an amendment." *Tax Limitation I,* 644 So.2d at 490 (quoting *Askew,* 421 So.2d at 156). Indeed, the Court concluded that the purpose of the statute was "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." *Term Limits Pledge,* 718 So.2d at 803. Nonetheless, "the title and summary need not explain every detail or ramification of the proposed amendment." *Prohibiting Public Funding of Political Candidates' Campaigns,* 693 So.2d at 975.

*SINGLE-SUBJECT REQUIREMENT*

The Attorney General and various opponents have asserted several arguments regarding the validity of the proposed amendments. We, however, address only those contentions which we find dispositive. The first challenge to the initiative petitions is that they include multiple classifications, thereby asking voters several questions in derogation of the single-subject requirement. This Court addressed the issue of including multiple classifications ***893** in a single initiative petition in *In re Advisory Opinion to the Attorney General-Restricts Laws Related to Discrimination,* 632 So.2d 1018 (Fla.1994). In that case, the proposed amendment enumerated ten classifications of people who were entitled to protection from discrimination.[5] *See Restricts Laws Related to Discrimination,* 632 So.2d at 1019. In invalidating the petition, we noted that the amendment's inclusion of ten different classifications constituted logrolling and was violative of the single-subject requirement. *See id.* at 1020. In essence, the voters were "being asked to give one 'yes' or 'no' answer to a proposal that actually asks ten questions." *Id.*

5 The classifications used in the *Restricts Laws Related to Discrimination* amendment were race, color, religion, sex, national origin, age, handicap, ethnic background, marital status, and familial status. *Restricts Laws Related to Discrimination,* 632 So.2d at 1019.

As the Attorney General correctly recognizes, the omnibus petition contains the same fatal flaw by combining three distinct subjects which constitute separate and distinct functional operations of government-public education, public employment, and public contracting. FCRI, however, contends that the subject areas operate as a limitation on the amendment's application, thereby preventing it from having universal application to all government action.

That the proposed amendment does not universally apply to all government action does not insulate it from single-subject scrutiny. Surely the proponents of an initiative petition cannot satisfy the single-subject requirement by contending that the proposed amendment could have been even broader. Such a contention would contravene both the constitutional requirement and this Court's repeated holdings that initiative petitions should embrace only one subject. The Court's commitment to enforcing this standard is evidenced by *Right of Citizens to Choose Health Care Providers,* which recognized that the issue of health care providers presented multiple topics that constrained the electorate's ability to vote on singular issues. Moreover, in *Fine* and *Tax Limitation I* we recognized that the subject of taxes and user fees could not be combined within a single initiative.[6] *See* 448 So.2d at 991, 644 So.2d at 491. Without question, the amendment combining education, employment, and contracting is significantly broader than the subjects of health care providers and taxes and user fees. It applies to diverse areas of governmental operation which, in themselves, are multifaceted. In effect, FCRI's purported "limitation" on the application of the proposed amendment

essentially creates multiple subjects. In short, the omnibus petition applies to three broadly defined subjects and, therefore, violates the single-subject requirement.

6 Subsequent to our decision in *Tax Limitation I,* voters approved a constitutional amendment exempting proposals limiting the power of government to raise revenue from the single-subject requirement. *See Advisory Opinion to the Attorney General re Tax Limitation,* 673 So.2d 864, 865-66 (Fla.1996) (*Tax Limitation II* ). The initiative petition we struck down in *Tax Limitation I* fell within this exemption. *See id.* Consequently, the Attorney General resubmitted the petition for review by this Court. *See id.* at 865. In accordance with the new constitutional provision, we addressed only the ballot summary and title requirements. *See id.* at 866.

Opponents also maintain that the proposed amendments substantially affect other existing constitutional provisions. As previously stated, initiative petitions must identify those constitutional provisions that are substantially affected by the proposed amendments. *See Right of Citizens to Choose Health Care Providers,* 705 So.2d at 565-66. We further elucidated this "identification" requirement in *Tax Limitation I.* In that advisory opinion, we held that the proposed amendment substantially affected article VII, sections 1(a), 1(b), 2, 5, 7, and 9. *See* 644 So.2d at 493-94. We noted that all of these constitutional provisions were included in the constitution ***894** "for a distinct and specific purpose." *Id.* at 494. In concluding that these provisions were substantially affected, we recognized that "[n]one have been identified and, consequently, this proposed initiative violates the principle we clearly established in *Fine* that the electorate must be advised of the effect a proposal has on existing sections of the constitution." *Id.*

Likewise, the proposed amendments fail to identify the constitutional provisions that they substantially affect. Specifically, the proposed amendments substantially affect both article I, section 2, and article I, section 21. Article I, section 2, provides:

> All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion, national origin, or physical disability.

Art. I, § 2, Fla. Const. If the electorate approves the proposed amendments, preferential treatment would be prohibited on the basis of the enumerated classifications, but permitted on the basis of religion and physical disability-the remaining classifications in the current constitutional provision. FCRI contends that the proposed amendments do not affect the existing protection against deprivation of rights. Rather, they provide an additional protection against discriminatory preferences to the existing constitutional protection against discriminatory deprivation.

FCRI's construction of the proposed amendments' effect on article I, section 2, is not entirely accurate. Although FCRI characterizes the changes as "additional" or "supplemental," they nevertheless affect the existing constitutional prohibitions. For example, counsel for FCRI conceded at oral argument that the prohibition against deprivation has not previously been construed as prohibiting preferential treatment. To be sure, "affirmative action" laws and programs have been used as remedies for violations or deprivations of rights. As such, the proposed amendments alter the available remedies for an existing constitutional protection. As a result, they take away existing protections granted by article I, section 2, to those who have been victims of discrimination. As counsel for NBA suggested, the petitions engage in false advertisement because they do "not provide equal protection of the law, [they] take away the cloak of protection from victims of discrimination." Further, the proposed amendments create new distinctions between discrimination based on the enumerated classifications and discrimination based on religion and physical disability. In short, article I, section 2, is substantially affected, yet nowhere in the petitions is the voter apprised of its new operation. Accordingly, the petitions' failure to acknowledge the proposed amendments' effect on article I, section 2, violates the single-subject requirement.

Additionally, the absence of a reference to article I, section 21, also renders the initiative petitions constitutionally infirm. Article I, section 21, provides: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." Art. I, § 21, Fla. Const. The proposed amendments state: "This section does not invalidate any court order or consent decree that is in force as of the effective date of this section." Individual Petitions § 4; Omnibus Petition

§ 5. By providing an exception for only existing court orders or consent decrees, the proposed amendments strip the judiciary of its powers to provide redress for injuries emanating from discriminatory practices, thereby directly impacting article I, section 21. Indeed, counsel for FCRI explicitly stated in ***895** oral argument that courts would be unable to use preferences or consider race in fashioning remedies for discriminatory violations. FCRI attempts to minimize the gravity of the amendments' impact by contending that individuals are still entitled to remedies-those provided by general law.

This argument, however, is both tautological and misleading. According to FCRI, individual victims purportedly maintain access to courts because remedies will be provided by general law. However, the proposed amendments themselves place limitations on what remedies general law may provide. The amendments require general law to limit available remedies to injunctive or prohibitive relief. These limitations on the courts' powers are significant in that they operate to redefine the remedial role of courts in equal protection cases. As a result, courts will be closed, not open, to victims of discrimination who seek redress for their injuries. Thus, the proposed amendments have a substantial effect on article I, section 21, and the failure to identify this substantial effect violates the single-subject requirement.

The Attorney General and opponents further contend that the proposed amendments violate the single-subject requirement because of their functional effect on multiple levels and branches of government. This Court has invalidated proposed amendments on single-subject grounds repeatedly for substantially altering or performing the functions of multiple branches of government. *See People's Property Rights Amendments,* 699 So.2d at 1308. As we reiterated in *Evans v. Firestone,* 457 So.2d 1351 (Fla.1984), the test is functional, not locational, "and where a proposed amendment changes more than one government function, it is clearly multi-subject." 457 So.2d at 1354. In *Evans,* we invalidated a proposed amendment because it performed both legislative and judicial functions. *See* 457 So.2d at 1354. We noted that substantive provisions were essentially legislative, and that the amendment's effect on procedural rules was judicial in nature. *See id.* Similarly, in *People's Property Rights Amendments,* we invalidated an initiative because of its effect not only on "legislative appropriations and statutory enactments but executive enforcement and decision-making." 699 So.2d at 1308. We further noted that the amendment was violative of the single-subject requirement because "[t]he state, special districts, and local governments have various legislative, executive, and quasi-judicial functions which are applicable to land use." *Id.*

The foregoing cases illustrate the defects in the present petitions. As counsel for FCRI conceded, the Legislature will be prohibited from adopting an "affirmative or balancing program" to address unlawful deprivation of rights. In effect, the proposed amendments would eliminate the Legislature's authority to adopt programs, create legislative bodies, or fund scholarships specifically designed for minorities. Like the amendments in *Evans,* these substantive constraints are essentially legislative functions. As previously discussed, the functions of the judiciary are also substantially affected. Like the procedural rule changes proposed in the *Evans* amendments, restricting the scope of courts' remedial powers is inherently judicial in nature. Limiting legislative authority and redefining courts' remedial powers significantly restricts the state's ability to address the effects of past and present discriminatory practices. That these effects constitute substantial alterations of governmental functions is incontrovertible.

Moreover, in *Tax Limitation I,* we invalidated a petition that not only altered the functions of the legislative and executive branches, but had "a very distinct and substantial affect [sic] on each local governmental entity." 644 So.2d at 494-95. Likewise, in *Restricts Laws Related to Discrimination,* we invalidated an amendment applying to "any governmental entity" in part because it encroached on the home rule powers of local government. ***896** The FCRI initiatives have a similar effect. As previously mentioned, the proposed amendments specifically define "state" to include "any city, county, district, public college or university, or other political subdivision or government instrumentality of or within the state." Individual Petitions § 6; Omnibus Petition § 7. If extended to their logical extreme, the proposed amendments will bar school districts from sponsoring programs developed solely for the benefit of minorities, public universities from either maintaining educational programs tailored specifically for minority students or recruiting minorities with minority scholarships, and city governments from considering race when hiring and assigning police officers to various precincts and neighborhoods. Thus, the proposed amendments' substantial effect on local government entities, coupled with its curtailment of the powers of the legislative

  

and judicial branches, renders it fatally defective and violative of the single-subject requirement. It is precisely this sort of "cataclysmic change" that the drafters of the single-subject rule labored to prevent.

Nevertheless, FCRI maintains that the proposed degree of specificity imposes hypertechnical burdens on citizens' constitutional right to place proposed amendments on the ballot. While citizens have the right to amend the constitution by the methods provided, the citizens have recognized that the power to do so should not be unbridled. As we noted in *Evans:*

> We recognize that all power ... 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.

457 So.2d at 1354. Thus, while purely speculative consequences, such as the possibility that the Legislature could pass a law abridging existing constitutional rights, *see In re Advisory Opinion to the Attorney General: English-The Official Language of Florida,* 520 So.2d 11, 12 (Fla.1988), are not germane to this Court's determination, identifiable changes in the functions of different levels and branches of government are sufficient to warrant invalidating the amendments.

*BALLOT TITLES AND SUMMARIES*

The Attorney General and opponents assert that the ballot titles and summaries violate section 101.161, Florida Statutes, for several reasons. As previously mentioned, the ballot title and summaries must describe the chief purpose of the measure in clear and unambiguous language. *See Right of Citizens to Choose Health Care Providers,* 705 So.2d at 566. The Attorney General, CBSL, FREE, NBA, and Leadership Conference highlight the different terminology used in the ballot titles and summaries from the actual text of the proposed amendments. The ballot titles and summaries refer to "people"; however, the text of the proposed amendments refers to "persons." They contend that use of the term "people" fails to give voters notice that corporations may also be prohibited from receiving preferential treatment. FCRI, however, submits that these contentions are without merit where the terms are virtually synonymous.

Opponents contend that the divergent terminology creates an ambiguity similar to that in *Right of Citizens to Choose Health Care Providers.* In that advisory opinion, we found a discrepancy between the term "citizens," which was used in the ballot summary, and "every natural person," which appeared in the text of the amendment. *See* 705 So.2d at 566. We concluded: "This discrepancy between 'natural person' and 'citizens' is material and misleading. This divergence in terminology is ambiguous in that it leaves voters guessing whether the terms are intended to be synonymous or whether the difference in terms was intentional." *Id.* ***897** Similarly, in *People's Property Rights Amendments,* we invalidated a misleading petition, stating that the "summary refers to the owner of real property but does not define 'owner.' Consequently, the use of the term 'people' in the title 'People's Property Rights Amendments' is confusing because it is unclear if 'owner' is restricted to people who own the property or also to corporate entities." 699 So.2d at 1308-09. By like measure, in *In re Advisory Opinion to the Attorney General re Casino Authorization, Taxation and Regulation,* 656 So.2d 466, 468-69 (Fla.1995), we invalidated a petition because voters were not informed that the proposal's use of different terminology was legally significant. In that advisory opinion, the summary used the term "hotel," but the text of the proposed amendment used the term "transient lodging establishment." *Id.* at 469. We noted that the legal definition for "transient lodging establishment" was much broader than that for "hotel," and concluded:

> Thus, while the summary leads the voters to believe that casinos will be operated only in "hotels," the proposed amendment actually permits voters to authorize casinos in any number of facilities, including a bed and breakfast inn. We believe that the public perceives the term "hotel" to have a much narrower meaning than the term "transient lodging establishment."

*Id.* In *English-The Official Language of Florida,* we also addressed differing terminology where the summary stated that the Legislature could "implement this article," but the text stated that the Legislature had the power to "enforce this section." 520 So.2d at 13. We, however, concluded that the two terms were synonymous and that voters could not reasonably be misled. *See id.*

  

As the opponents suggest, the divergent terminology creates a discrepancy as to whether the proposed amendments' proscriptions apply to corporations. Although FCRI likens the difference in terminology to *English-The Official Language of Florida,* the different terms used in the present initiatives are more analogous to those used in *Right of Citizens to Choose Health Care Providers, People's Property Rights Amendments,* and *Casino Authorization, Taxation and Regulation.* FCRI maintains that while the term "persons" is not defined, its contextual meaning is clear. Since corporations do not have "race, color, or ethnicity," FCRI contends that the plain meaning of the amendments is that they apply to natural persons. However, the amendments' proscriptions could extend to corporations based on the race of their ownership or racially-oriented purpose. Like the amendments in *Right of Citizens to Choose Health Care Providers* and *People's Property Rights Amendments,* it is unclear to the voter whether the difference in terms was intentional and how corporations will be affected. As in *Casino Authorization, Taxation and Regulation,* the petitions do not account for the legal significance of using the term "person," thereby failing to inform voters of the potential breadth of the proposed amendments. Contrary to the inconsistent terminology used in this case, the terms used in *English-The Official Language of Florida*-legislative implementation and enforcement-were virtually synonymous. While "people" and "person" also appear synonymous, their legal differences are significant and are not revealed to the voter. In addition, FCRI points out that the scope of the amendment is, however, broad enough to apply where governmental action attempts to authorize or endorse the use of the corporate form to circumvent the prohibition of discrimination as to race, color, ethnicity, or national origin. This distinction is also not clearly explained to the voters. As we noted in *Restricts Laws Related to Discrimination,* "[t]he omission of such material information is misleading and precludes voters from being able to cast their ballots intelligently." 632 So.2d at 1021.

***898** Further, the Attorney General, FREE, Board of Regents, and Leadership Conference contend that the ballot titles and summaries do not identify the constitutional and statutory provisions that the proposed amendments will affect. In *Advisory Opinion to the Attorney General Re Stop Early Release of Prisoners,* 642 So.2d 724, 726 (Fla.1994), we invalidated a petition because it substantially modified another constitutional provision but did not mention this consequence in the ballot summary. As previously discussed, the proposed amendments substantially affect article I, section 2, and article I, section 21. However, the ballot summaries do not describe this effect. Consequently, the ballot summaries are defective for not identifying the initiative petitions' effect on these existing constitutional provisions.

In a similar vein, the Attorney General, CBSL, and Board of Regents contend that the ballot titles and summaries imply that there currently is no such constitutional provision barring discrimination based on the enumerated classifications. In *Tax Limitation I,* we held that the ballot title and summary were misleading because they implied that there was no existing cap or limitation on taxes in the constitution when, in fact, such a limitation existed. *See* 644 So.2d at 494. Similarly, in *Casino Authorization, Taxation and Regulation,* we invalidated a petition because the ballot summary implied that the amendment was necessary to prohibit casinos in the state. *See* 656 So.2d at 469. We noted that the first line of the summary, "This amendment prohibits casinos unless approved by the voters," created the false impression that casinos were presently allowed in the state. *Id.* Consequently, we held that the ballot summary was defective because of what it failed to say. *See id.*

The ballot titles in the present case state: "AMENDMENT TO BAR GOVERNMENT FROM TREATING PEOPLE DIFFERENTLY BASED ON RACE IN PUBLIC EDUCATION [EMPLOYMENT] [CONTRACTING]" and "END GOVERNMENTAL DISCRIMINATION AND PREFERENCES AMENDMENT." As in *Tax Limitation I* and *Casino Authorization, Taxation and Regulation,* the ballot titles imply that there is no provision addressing differential treatment for the enumerated classifications. However, article I, section 2, prohibits deprivation of rights based on race, religion, national origin, or physical disability. *See* art. I, § 2, Fla. Const. As this Court has noted with other initiatives, the problem "lies not with what the summary says, but, rather, with what it does not say." *Term Limits Pledge,* 718 So.2d at 804 (quoting *Askew,* 421 So.2d at 156). Consequently, the ballot titles are defective because of the misleading negative implication that no such constitutional provision addressing differential treatment currently exists, and for the negative implication that the government is presently practicing discrimination.

The Leadership Conference contends that the omnibus summary's reference to "bona fide qualifications based on sex" does not accurately explain what the proposed amendment provides. It notes that a voter has no basis for knowing the meaning of an

  

"otherwise lawful classification." It contends that voters could construe "bona fide qualifications based on sex" very broadly or narrowly, without knowing of the limitations provided in the initiative.

This Court addressed the problem of including ambiguous and undefined terms in ballot summaries in *People's Property Rights Amendments.* In that advisory opinion, we held that the ballot summary was defective because, among other things, it failed to define the term "common law nuisance," leaving voters unaware of what restrictions would be compensable under the proposed amendment. *See* 699 So.2d at 1309. Similarly, we invalidated another petition because the ballot summary's definition of new tax as "increases in tax rates" did not distinguish between an increase in the amount of payments on taxable property or an increase in the actual ***899** rate at which the property was being taxed. *See id.* at 1311. We also vigorously enforced the "clear and unambiguous" requirement in *Smith v. American Airlines, Inc.,* 606 So.2d 618 (Fla.1992), noting that "the ballot summary here is [not] written clearly enough for even the more educated voters to understand its chief purpose. The summary not only assumes an extensive understanding of [the topic], but also requires the voter to infer a meaning which is nowhere evident on the face of the summary itself."

Like the summaries in *People's Property Rights Amendments* and *Smith,* the omnibus ballot summary's general reference to the bona fide qualification exception is inadequate. The omnibus petition provides:

> This section does not affect any otherwise lawful classification that: (a) Is based on sex and is necessary for sexual privacy or medical or psychological treatment; or (b) Is necessary for undercover law enforcement or for film, video, audio, or theatrical casting; or (c) Provides for separate athletic teams for each sex.

Omnibus Petition § 4. The summary states: "Exempts bona fide qualifications based on sex...." Omnibus Petition Summary. The term is not defined, leaving voters to guess at its meaning. Moreover, like the term "common law nuisance" in *People's Property Rights Amendments,* "bona fide qualification based on sex" is a legal phrase, and voters are not informed of its legal significance. Certainly, the bare mention of a bona fide qualification exception does not inform voters of the concerns regarding sexual privacy, medical treatment, law enforcement, theatrical casting, or sports. Like the defective ballot summary in *Smith,* voters would undoubtedly rely on their own conceptions of what constitutes a bona fide qualification. Thus, the omnibus petition's summary is vague and ambiguous, thereby violating section 101.161, Florida Statutes.

In a general rebuttal to the foregoing arguments, FCRI asserts that this Court has recognized that the summary is required only to state the "chief purpose of the measure" and that the statutory seventy-five word limit neither permits nor requires the inclusion or explanation of such detail, limitations, or anticipated ramifications. To be sure, we noted in *Advisory Opinion to the Attorney General re Limited Casinos,* 644 So.2d 71 (Fla.1994) that "[t]he seventy-five word limit placed on the ballot summary as required by statute does not lend itself to an explanation of all of a proposed amendment's details." 644 So.2d at 75. Similarly, in *Grose v. Firestone,* 422 So.2d 303, 305 (Fla.1982), we recognized that an exhaustive explanation of the interpretation and future possible effects of the amendment was not required. Consistent with this approach, we recognized in *Prohibiting Public Funding of Political Candidates* that the ballot title and summary "need not explain every detail or ramification of the proposed amendment." 693 So.2d at 975. Despite the foregoing observations, we have stated:

> [W]e have never required that the summary explain the complete details of a proposal at great and undue length, nor do we do so now. However, the word limit does not give drafters of proposed amendments leave to ignore the importance of the ballot summary and to provide an abbreviated, ambiguous statement in the hope that this Court's reluctance to remove issues from the ballot will prevent us from insisting on clarity and meaningful information.

*Smith,* 606 So.2d at 621. Thus, drafters of proposed amendments cannot circumvent the requirements of section 101.161, Florida Statutes, by cursorily contending that the summary need not be exhaustive. Although significant detail regarding implementation and speculative scenarios may be omitted, this Court has repeatedly held that ballot summaries which do not adequately define terms, use inconsistent terminology, fail to mention constitutional provisions that are affected, and do not adequately describe the general operation ***900** of the proposed amendment must be invalidated. That being the case, the challenges in the present case are not anomalous in that they require the summaries to contain sufficient detail. Rather, they are representative of the types of information that this Court has previously determined must be included in ballot summaries to ensure that voters are not misled. In short, the summaries are misleading and, therefore, violate section 101.161, Florida Statutes.

In invalidating the four proposed amendments, we find Justice Kogan's concurrence in *Restricts Laws Related to Discrimination* instructive:

> I reach this conclusion only because of the present initiative's overbroad and unstated effects. I do not believe the Constitution forbids the people to propose limited initiatives that either broaden or restrict civil rights. What the Constitution does require is that all such civil rights initiatives must be narrowly framed, must not involve undisclosed collateral effects, and must not have the potential to disrupt other aspects of Florida law or government beyond the subject of the amendment itself. When such overbreadth exists, the single-subject requirement necessarily is violated; and the ballot-summary requirement is violated to the extent the initiative does not or cannot explain its own domino effect.

632 So.2d at 1024 (Kogan, J., concurring). Accordingly, we hold that the four proposed amendments should be stricken from the ballot for failure to comply with article XI, section 3, of the Florida Constitution and section 101.161, Florida Statutes.

It is so ordered.

HARDING, PARIENTE and QUINCE, JJ., concur.

SHAW, J., concurs in result only with an opinion.

WELLS, C.J., and ANSTEAD and LEWIS, JJ., concur in result only.

SHAW, J., concurring in result only.

The majority opinion holds that the four proposed amendments violate the single subject requirement in various ways[7] and violate the ballot title and summary requirements in sundry other ways.[8] While I disagree with the majority's reasoning, I nevertheless agree that the amendments are invalid. My quarrel with the amendments is simple and straightforward: I believe that the ballot titles and summaries are fundamentally misleading.

7 The majority opinion holds that the omnibus amendment improperly embraces multiple subjects and that all four amendments are defective in the following ways: They fail to identify the other constitutional provisions that they substantially affect; and they functionally affect multiple branches and levels of government.

8 The majority opinion holds that the omnibus amendment improperly uses the phrase "bona fide qualifications based on sex" and that all four amendments are defective in the following ways: They improperly use the term "people" in the summary and "persons" in the text; they fail to identify the other constitutional provisions that they affect; and they erroneously imply that the constitution does not currently contain a provision barring discrimination based on the enumerated classifications.

I. FACTS

In 1999, the Florida Civil Rights Initiative ("sponsors") filed with the Florida Secretary of State ("Secretary") four initiative petitions seeking to amend the Florida Constitution. The proposed amendments would bar state and local government from promulgating programs that "treat people differently" based on membership in enumerated classes. Three amendments, all of which apply to "race, color, ethnicity, or national origin," would bar such programs in public education, public employment, and public contracting respectively. The fourth amendment, i.e., the omnibus amendment, applies to "race, ***901** sex, color, ethnicity, national origin" and would bar such programs in all three areas, i.e., in public education, public employment, and public contracting. The Secretary submitted the petitions to the Florida Attorney General[9] who petitioned this Court for an advisory opinion concerning the amendments' validity.[10]

9 *See* § 15.21, Fla.Stat. (1999).

10 *See* § 16.061, Fla.Stat. (1999).

This Court's inquiry, when assessing the validity of an initiative petition on request of the Attorney General, is limited to two questions: whether the text of the amendment comports with the single subject requirement in article XI, section 3, Florida Constitution, and whether the ballot title and summary comport with the accuracy requirement in section 101.161(1), Florida Statutes (1999). During this pre-election inquiry, the merits of the amendment are not in issue. The Court will declare a proposed amendment invalid only if the record shows that the proposal is clearly and conclusively defective in either of the above areas.[11]

11 *See Askew v. Firestone,* 421 So.2d 151, 154 (Fla.1982).

II. THE PRESENT AMENDMENTS

The ballot titles of the first three amendments are identical to one another except for the last word in each, which reads either "EDUCATION," "EMPLOYMENT," or "CONTRACTING," as indicated by the blank space below:

> AMENDMENT TO BAR GOVERNMENT FROM TREATING PEOPLE DIFFERENTLY BASED ON RACE IN PUBLIC _____

The ballot summaries for the three amendments also are identical except for the words "EDUCATION," "EMPLOYMENT," and "CONTRACTING," as indicated by the blank space below:

> Amends Declaration of Rights, Article I of the Florida Constitution, to bar state and local government bodies from treating people differently based on race, color, ethnicity, or national origin in the operation of public _____, whether the program is called "preferential treatment," "affirmative action," or anything else. Does not bar programs that treat people equally without regard to race, color, ethnicity, or national origin. Exempts actions needed for federal funds eligibility.

Similarly, the core provision in the text of each of the three amendments is identical, except for the words "education," "employment," and "contracting":

> (1) The state shall not treat persons differently based on race, color, ethnicity, or national origin in the operation of public _____.

In contrast to the first three amendments, the ballot title for the fourth amendment, i.e., the omnibus amendment, reads as follows:

> END GOVERNMENTAL DISCRIMINATION AND PREFERENCES AMENDMENT

The ballot summary for the omnibus amendment utilizes the same "treating people differently" language used in first three summaries and additionally addresses sex:

> Amends Declaration or Rights, Article I of the Florida Constitution, to bar state and local government bodies from treating people differently based on race, sex, color, ethnicity, or national origin in public education, employment, or contracting, whether the program is called "preferential treatment," "affirmative action," or anything else. Does not bar programs that treat people equally without regard to race, sex, color, ethnicity, or national origin. Exempts bona fide qualifications based on sex and actions needed for federal funds eligibility.

The core provision in the text of the omnibus amendment reads as follows:

> (1) The state shall not discriminate against, or grant preferential treatment ***902** to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

The gist of the proposed amendments is to bar state and local government from "treating people differently" in public education, public employment, and public contracting based on race, sex, color, ethnicity, or national origin.

III. SINGLE SUBJECT

The Florida Constitution states that an initiative petition must be limited to a single subject:

> SECTION 3. Initiative.-The power to propose the revision or amendment of any portion or portions of the constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, *shall embrace but one subject and matter directly connected therewith.*

Art. XI, § 3, Fla. Const. (emphasis added). The purpose of this requirement is twofold: to insulate the organic law from "precipitous and cataclysmic change,"[12] and to prevent "logrolling."[13]

12 *In re Advisory Opinion to the Attorney General-Save Our Everglades,* 636 So.2d 1336, 1339 (Fla.1994).

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

The abiding test for evaluating a single-subject challenge to an initiative petition was set forth by this Court in *Fine v. Firestone,* 448 So.2d 984 (Fla.1984):

> [I]n determining whether a proposal addresses a single subject the test is whether it "may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme. Unity of subject and plan is the universal test."

*Fine,* 448 So.2d at 990 (quoting *City of Coral Gables v. Gray,* 154 Fla. 881, 883-84, 19 So.2d 318, 320 (1944)). In brief, the amendment must exhibit "a logical and natural oneness of purpose." *Id.*

The present amendments comport with this test. Although the amendments apply to several areas (i.e., public education, public employment, and public contracting) and various classifications (i.e., race, sex, color, ethnicity, or national origin), these areas and classifications are logically and naturally related to the sponsors' single dominant scheme to stop state and local government from promulgating programs that expressly promote or favor certain groups or classifications for whatever reason. The enumerated classifications embrace any program that would accomplish that result and are sufficiently interrelated to minimize the danger of logrolling.[14] The amendments would result in a singular change in the organic law of the state, for they would return this area of governmental function to the *status quo ante.* The state could no longer attempt to adjust for past inequities by sponsoring assistance programs for discrete, historically disadvantaged groups.

14 *Cf. In re Advisory Opinion to the Attorney General-Restricts Laws Related to Discrimination,* 632 So.2d 1018, 1019 (Fla.1994) (striking an amendment that was intended to bar rights or protections for homosexuals and that forbade the passage of laws creating rights or protections based on anything other than "race, color, religion, sex, national origin, age, handicap, ethnic background, marital status, or familial status"; "marital status" was defined to include only opposite-sex marriages).

IV. BALLOT TITLE AND SUMMARY

Section 101.161, Florida Statutes (1999), requires that all proposed amendments must be accurately represented on the ballot by a title and summary:

> 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* ***903** *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 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. (1999) (emphasis added). The purpose of this requirement is to ensure that voters have fair notice of the content of the amendment and can cast "an intelligent and informed ballot."[15] Significantly, both the ballot title and summary are prepared by the amendment's sponsor.[16]

15 *Advisory Opinion to the Attorney General re Term Limits Pledge,* 718 So.2d 798, 803 (Fla.1998).

16 *See* § 101.161(2), Fla.Stat. (1999).

To conform to section 101.161(1), a ballot summary must state "the chief purpose" of the proposed amendment.[17] In evaluating an amendment's chief purpose, the 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.[18] As noted above, the gist of the present amendments is to bar state and local government from "treating people differently" in the specified areas based on the enumerated classifications. The amendments thus would do two things: They would bar the state from either (1) *repressing* citizens' rights, or (2) *promoting* citizens' rights, in the specified areas based on membership in the enumerated classes.

17 *See* § 101.161(1), Fla.Stat. (1999) ("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)).

18 *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 v. Firestone,* 421 So.2d at 151, 156 (Fla.1982) ("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)).

As to the first function, i.e., barring government from repressing citizens' rights, such state action is currently prohibited by the Florida Constitution's Equal Protection Clause. Article I, section 2, Florida Constitution, expressly states:

> Section 2. Basic rights.-All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion, national origin, or physical disability.

Art. I, § 2, Fla. Const. The Clause logically embraces those areas (i.e., public education, public employment, and public contracting) and classifications (i.e., race, sex, color, ethnicity, or national origin) enumerated in the proposed amendments. The Clause historically has protected against race and sex-based discrimination.[19] Thus, to the extent that the amendments ***904** would protect Floridians from the deprivation of rights based on membership in the enumerated classes, the amendments would simply duplicate the Equal Protection Clause of the Florida Constitution[20] and would have no practical effect-despite language suggesting otherwise.

19 *Cf. United States v. Virginia,* 518 U.S. 515, 116 S.Ct. 2264, 135 L.Ed.2d 735 (1996) (addressing sex-based discrimination at Virginia's publicly-operated military academy, Virginia Military Institute, under the federal Equal Protection Clause); *Brown v. Board of Education,* 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954) (addressing race-based discrimination in public schools under the federal Equal Protection Clause).

20 The amendments, however, could have a confusing effect on the Equal Protection Clause by implying that "religion" and "physical disability," which are denoted in the constitution but not in the present amendments, are entitled to *less* protection than the other classes, which are denoted in both the constitution and the present amendments.

As to the second function, i.e., barring government from promoting citizens' rights, this is the true import of these amendments. The constitution currently contains no provision expressly addressing this issue and the amendments thus would have a practical effect in this area, for they would bar government from doing something that it presently can do. In point of fact, state and local governments in Florida have recognized historically founded inequities and have promulgated class-specific programs promoting citizens' rights in an effort to redress past and present deprivations.[21] One effect-i.e., the intended effect-of the amendments is clear: They would stop government from pursuing any programs that promote the rights of a discrete class (e.g., minorities or women) in the enumerated areas.[22]

21 *See, e.g.,* §§ 287.0931-.0947, Fla.Stat. (1999) (delineating minority business enterprise programs); §§ 288.702-.714, Fla.Stat. (1999) (setting forth the Florida Small Minority Business Assistance Act of 1985); §§ 337.125-.139, Fla.Stat. (1999) (delineating criteria for socially and economically disadvantaged business enterprises and efforts to encourage the awarding contracts to disadvantaged business enterprises).

22 Under the plain language of the amendments, state and local governments could pursue only those programs that are mandated by court order or consent decree or that are necessary to maintain federal funding for the state.

Nothing in the ballot titles and summaries notifies the voter of this effect. Just the opposite. By clothing the amendments in traditional equal protection terminology (e.g., "to bar government from treating people differently"; "end governmental discrimination"), the ballot titles and summaries give the illusory impression that the amendments' main effect would be to protect Floridians from the deprivation of rights. Although the summaries use the phrase "whether the program is called 'preferential treatment,' 'affirmative action,' or anything else," this phrase is far from clear and falls short of notifying voters of the actual impact the amendments would have on state programs that recognize and are designed to redress past and present discrimination.[23] Further, this language implies that the amendments would bar only those programs that give *preferential* treatment to members of the enumerated classes,[24] whereas in fact the amendments would bar *all* class-specific programs, preferential or not.

23 The amendments on their face would bar any race or sex-based program in the enumerated areas. This would include enrichment, outreach, and mentoring programs as well as traditional affirmative action programs involving percentages, timetables, and goals.

24 The ballot title of the omnibus amendment states: "END GOVERNMENTAL ... PREFERENCES ..."

This Court in *Askew v. Firestone,* 421 So.2d 151 (Fla.1982), reviewed a proposed amendment that banned former legislators from lobbying for a two-year period after leaving office unless the legislator disclosed his or her financial interests. Although the ballot summary faithfully tracked the text of the proposed amendment, the summary failed to explain that the amendment would trump an already existing constitutional provision that imposed ***905** an *absolute* two-year ban, regardless of financial disclosure. The Court concluded that the summary was misleading:

> The problem ... lies not with what the summary says, but, rather, with what it does not say.
>
> ....
>
> 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.*

*Askew,* 421 So.2d at 156 (emphasis added).[25]

25 *See also Wadhams v. Board of County Comm'rs,* 567 So.2d 414 (Fla.1990) (striking as misleading a county charter amendment that called for meetings by the Charter Review Board every four years, where the ballot language failed to inform voters that the amendment would supersede an existing charter provision that allowed *unlimited* meetings).

In the present case, as in *Askew,* the main effect of the amendments is *not* stated clearly-or even hinted at-anywhere in the ballot language. Rather, the burden of informing voters of the amendments' true effect is left to the press and opponents of the measures. Many voters-indeed, most voters-thus are left in the dark as to the amendments' chief purpose and far-ranging effect.[26]

26 *See Wadhams,* 567 So.2d at 414 ("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."); *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.").

## V. CONCLUSION

Based on the foregoing, I conclude that the ballot titles and summaries violate the accuracy requirement set forth in section 101.161(1), Florida Statutes (1999).[27] Rather than frankly notifying voters that the proposed amendments would be used as a "sword" to stop state and local governments from *promoting* citizens' rights, the amendments "fly under false colors" and give voters the illusory impression that they would be used as a "shield" to bar government from *repressing* citizens' rights.[28] Further, the ballot titles and summaries "hide the ball" as to the amendments' true effect, giving voters no clue of the impact the amendments actually would have on government programs promoting social harmony and combating discrimination.[29] Under the plain language of the amendments, state and local governments would be powerless to redress ***906** many forms of *de facto* discrimination, no matter how abject.[30]

27 The amendments also contain several technical faults: The summaries use the term "people" whereas the texts use the term "persons"; and the summary to the omnibus amendment uses the phrase "bona fide qualifications based on sex" without clarification.

28 The ballot title of the omnibus amendment states: "END GOVERNMENTAL DISCRIMINATION ..."

29 For instance, state and local governments would be barred from undertaking class-specific programs intended to promote full use of community resources, to preempt expensive legal challenges, or to defuse tension or unrest within a community.

30 As noted above, under the plain language of the amendments, state and local governments could pursue class-specific programs only when mandated by court order or consent decree or when necessary to preserve federal funding for the state.

While the vague and obfuscating language employed in the ballot titles and summaries might be viewed by some as a deft campaign tactic, such a practice is inimical to the constitutional processes in Florida and is patently impermissible in an initiative petition. A constitutional referendum is not a high stakes poker game where voters must guess the sponsors' hand by discounting the hype and spin and calculating the odds themselves. Whenever constitutional rights are in issue, accuracy and truthfulness are the hallmarks.[31] The sponsors of an amendment must place all the cards on the table, face up, prior to the election. Each voter is entitled to cast a ballot based on the *full* truth.

31 *See generally 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").

Because the ballot titles and summaries of the proposed amendments are fundamentally misleading, I conclude that the four amendments-as presently drafted-are invalid.

**All Citations**

778 So.2d 888 (Mem), 25 Fla. L. Weekly S546

## Negative Treatment

### Negative Citing References (2)

*The KeyCited document has been negatively referenced by the following events or decisions in other litigation or proceedings:*

| Treatment | Title | Date | Type | Depth | Headnote(s) |
|---|---|---|---|---|---|
| Distinguished by | 1. Advisory Opinion To Attorney General re Florida Marriage Protection Amendment<br><br>926 So.2d 1229 , Fla.<br>FAMILY LAW - Marriage. Proposed constitutional amendment barring same-sex marriage or its equivalent did not violate single-subject rule. | Mar. 23, 2006 | Case | | — |
| Distinguished by | 2. In re Advisory Opinion to Atty. Gen. re Use of Marijuana for Certain Medical Conditions<br>MOST NEGATIVE<br><br>132 So.3d 786 , Fla.<br>GOVERNMENT - Elections. Citizen proposed constitutional amendment permitting medical use of marijuana satisfied requirements for ballot inclusion. | Jan. 27, 2014 | Case | | — |

880 So.2d 617 (Mem)
Supreme Court of Florida.

# ADVISORY OPINION TO the ATTORNEY GENERAL RE PATIENTS' RIGHT TO KNOW ABOUT ADVERSE MEDICAL INCIDENTS.

No. SC04-777.
|
July 15, 2004.

**Attorneys and Law Firms**

Charles J. Crist, Jr., Attorney General, and Louis Hubener, Assistant Attorney General, Tallahassee, FL, for Petitioner.

Jon Mills and Timothy McLendon, Gainesville, FL, on behalf of Floridians for Patient Protection, Proponents.

***618** Graham H. Nichol, General Counsel and Don A. Dennis, Assistant General Counsel, Florida Dental Association; and Harold R. Mardenborough, Jr., of McFarlain & Cassedy, P.A., Tallahassee, FL, on behalf of Florida Dental Association, Opponents.

**Opinion**

PER CURIAM.

The Attorney General has requested that this Court review a proposed amendment to the Florida Constitution that would permit patients and prospective patients of health care providers to obtain information concerning adverse medical incidents. We have jurisdiction. *See* art. IV, § 10; art. V, § 3(b)(10), Fla. Const. For the reasons explained below, we approve the amendment and the ballot title and summary for placement on the ballot.

## I. THE PROPOSED AMENDMENT AND BALLOT SUMMARY

The proposed amendment provides as follows:

1) Statement and Purpose:

The Legislature has enacted provisions relating to a patients' bill of rights and responsibilities, including provisions relating to information about practitioners' qualifications, treatment and financial aspects of patient care. The Legislature has, however, restricted public access to information concerning a particular health care provider's or facility's investigations, incidents or history of acts, neglects, or defaults that have injured patients or had the potential to injure patients. This information may be important to a patient. The purpose of this amendment is to create a constitutional right for a patient or potential patient to know and have access to records of a health care facility's or provider's adverse medical incidents, including medical malpractice and other acts which have caused or have the potential to cause injury or death. This right to know is to be balanced against an individual patient's rights to privacy and dignity, so that the information available relates to the practitioner or facility as opposed to individuals who may have been or are patients.

2) Amendment of Florida Constitution:

Art. X, Fla. Const., is amended by inserting the following new section at the end thereof, to read:

Section 22. Patients' Right to Know About Adverse Medical Incidents.

(a) In addition to any other similar rights provided herein or by general law, patients have a right to have access to any records made or received in the course of business by a health care facility or provider relating to any adverse medical incident.

(b) In providing such access, the identity of patients involved in the incidents shall not be disclosed, and any privacy restrictions imposed by federal law shall be maintained.

(c) For purposes of this section, the following terms have the following meanings:

(1) The phrases "health care facility" and "health care provider" have the meaning given in general law related to a patient's rights and responsibilities.

(2) The term "patient" means an individual who has sought, is seeking, is undergoing, or has undergone care or treatment in a health care facility or by a health care provider.

(3) The phrase "adverse medical incident" means medical negligence, intentional misconduct, and any other act, neglect, or default of a health care facility or health care provider that caused or could have caused injury to or death of a patient, including, but not limited to, those incidents that are required by ***619** state or federal law to be reported to any governmental agency or body, and incidents that are reported to or reviewed by any health care facility peer review, risk management, quality assurance, credentials, or similar committee, or any representative of any such committees.

(4) The phrase "have access to any records" means, in addition to any other procedure for producing such records provided by general law, making the records available for inspection and copying upon formal or informal request by the patient or a representative of the patient, provided that current records which have been made publicly available by publication or on the Internet may be "provided" by reference to the location at which the records are publicly available.

3) Effective Date and Severability:

This amendment shall be effective on the date it is approved by the electorate. If any portion of this measure is held invalid for any reason, the remaining portion of this measure, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application.

The ballot title for the proposed amendment is "Patients' Right to Know About Adverse Medical Incidents." The summary for the proposed amendment states:

Current Florida law restricts information available to patients related to investigations of adverse medical incidents, such as medical malpractice. This amendment would give patients the right to review, upon request, records of health care facilities' or providers' adverse medical incidents, including those which could cause injury or death. Provides that patients' identitie [sic] should not be disclosed.

## II. STANDARD AND SCOPE OF REVIEW

In *Advisory Opinion to the Att'y General re Amendment to Bar Government from Treating People Differently Based on Race in Public Education,* 778 So.2d 888 (Fla.2000), this Court summarized its standard of review in initiative petition cases as follows:

The Court's inquiry, when determining the validity of initiative petitions, is limited to two legal issues: whether the petition satisfies the single-subject requirement of article XI, section 3, Florida Constitution, and whether the ballot titles and summaries are printed in clear and unambiguous language pursuant to section 101.161, Florida Statutes (1999). *See Advisory*

  

*Opinion to the Attorney General re Right of Citizens to Choose Health Care Providers,* 705 So.2d 563, 565 (Fla.1998); *Advisory Opinion to the Attorney General re Prohibiting Public Funding of Political Candidates' Campaigns,* 693 So.2d 972, 974 (Fla.1997). In order for the Court to invalidate a proposed amendment, the record must show that the proposal is clearly and conclusively defective on either ground. *See Askew v. Firestone,* 421 So.2d 151, 154 (Fla.1982). In determining the propriety of the initiative petitions, the Court does not review the merits of the proposed amendments.

*Id.* at 890-91.

## III. THE SINGLE-SUBJECT REQUIREMENT

### A. APPLICABLE LAW

Article XI, section 3 of the Florida Constitution requires that an amendment proposed by initiative "shall embrace but one subject and matter directly connected therewith." Importantly, the single-subject limitation protects the State's fundamental ***620** document from "precipitous" and "spasmodic" changes. *See Fine v. Firestone,* 448 So.2d 984, 993 (Fla.1984). First, the single-subject requirement "allow[s] the citizens to vote on singular changes in our government that are identified in the proposal and to avoid voters having to accept part of a proposal which they oppose in order to obtain a change which they support." *Id.* The limitation thereby prevents logrolling. "The second reason for the single-subject restriction is to prevent a single constitutional amendment from substantially altering or performing the functions of multiple aspects of government." *Advisory Op. to Att'y Gen. re Florida Transp. Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation Sys.,* 769 So.2d 367, 369 (Fla.2000).

In determining compliance with the first purpose of the single-subject requirement, this Court examines the amendment to determine whether it "may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme. Unity of object and plan is the universal test...." *Fine v. Firestone,* 448 So.2d 984, 990 (Fla.1984) (quoting *City of Coral Gables v. Gray,* 154 Fla. 881, 19 So.2d 318, 320 (1944)).

As to the second purpose for the single-subject restriction, this Court has stated that a proposal that affects several branches of government will not automatically fail; rather, it is when a proposal substantially alters or performs the functions of multiple branches that it violates the single-subject test. *See In re Advisory Op. to Att'y Gen.-Save Our Everglades,* 636 So.2d 1336, 1340 (Fla.1994); *see also Advisory Op. to Att'y Gen.-Limited Political Terms in Certain Elective Offices,* 592 So.2d 225, 227 (Fla.1991); *Evans v. Firestone,* 457 So.2d 1351, 1354 (Fla.1984).

### B. APPLICATION OF LAW

The opponent[1] to the amendment argues that the amendment violates the single-subject requirement in two ways: (1) it constitutes logrolling and (2) it would affect more than one branch of government.

1 The only brief filed in opposition to the amendment was filed by the Florida Dental Association. The sponsor of the amendment, Floridians for Patient Protection, filed a brief in support of the amendment.

*1. Logrolling*

Opponent argues that while the amendment is designed to provide access to records on "adverse medical incidents," it does so by repealing several different statutes with different purposes, and by restricting a number of different rights available to physicians which are also available to all other Floridians. As stated above, in order to determine whether an amendment constitutes logrolling this Court must examine the amendment to determine whether it "may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme." *Fine,* 448 So.2d at 990 (quoting *City of*

*Coral Gables v. Gray,* 154 Fla. 881, 19 So.2d 318, 320 (1944). Although the amendment may affect several different statutes, the amendment has but one purpose-providing access to records on adverse medical incidents-and all provisions of the amendment appear to be logically related to that purpose.

*2. Effect on more than one branch of government*

Opponent argues that the amendment affects both the legislative and the judicial branches because it would affect statutes and procedural rules. Unquestionably, the ***621** amendment would affect sections 395.0193(8) and 766.101(5) of the Florida Statutes (2003), which currently exempt the records of investigations, proceedings, and records of the peer review panel from discovery in a civil or administrative action. Indeed, this is a primary purpose of the amendment. Opponent also argues that the amendment would affect Florida Rule of Civil Procedure 1.280(c), which restricts the discovery of work product, including incident reports generated by health care providers and facilities. Further, opponent argues that the amendment infringes on the statutes and rules delineating the attorney-client privilege, as there is no exception in the amendment for pertinent documents created by attorneys.

Contrary to the clear effect upon the above two statutes, the amendment does not expressly affect either rule 1.280(c) or the attorney-client privilege, and there is no evidence of any intent to do so. Any effect on the rule or the privilege is purely speculative; and, even if true, any such effect would not rise to the level of "substantially" altering or performing a function of the judiciary.[2]

2 *Compare Save Our Everglades,* 636 So.2d at 1340 (finding a single-subject violation where the amendment would have performed functions of each branch of government and created a virtual fourth branch of government) *with Evans,* 457 So.2d at 1354 (holding that the proposed amendment affected the function of both the legislative and the judicial branches of government, i.e., two provisions of the amendment limited a defendant's liability, thus performing an essentially legislative function, while a third provision would have written the summary judgment rule into the constitution, thus affecting a function of the judiciary).

## IV. REVIEW OF BALLOT TITLE AND SUMMARY

I. APPLICABLE LAW

Section 101.106(1), Florida Statutes (2003), requires that the ballot caption for a proposed amendment not exceed fifteen words, that the ballot summary not exceed seventy-five words, and that the two clearly and unambiguously provide an explanation of the "chief purpose" of the measure. *See Askew v. Firestone,* 421 So.2d 151, 154-55 (Fla.1982). "This requirement provides the voters with fair notice of the contents of the proposed initiative 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 People's Property Rights Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects,* 699 So.2d 1304, 1307 (Fla.1997); *see Askew,* 421 So.2d at 155 ("Simply put, the ballot must give the voter fair notice of the decision he must make."). The title and summary must be accurate and informative. *See Advisory Op. to Att'y Gen. re Term Limits Pledge,* 718 So.2d 798, 803 (Fla.1998). The ballot title and summary, however, are not required "to explain every detail or ramification of the proposed amendment." *Advisory Op. to Att'y Gen. re Prohibiting Public Funding of Political Candidates' Campaigns,* 693 So.2d 972, 975 (Fla.1997).

II. APPLICATION OF LAW

Opponent argues that the ballot title and summary are defective for five reasons: (1) the summary fails to fully inform the voters of the practical impact of the amendment on the existing peer review scheme and thereby prevents the voters from making a knowledgeable decision about what they might be giving up in exchange for what is being offered in the amendment; (2) the summary fails to inform the public of the significant impact the amendment will have on the constitutional ***622** powers

granted to the judiciary; (3) the title and summary contain improper political rhetoric; (4) the title and summary are misleading because they purport to be giving the public more than they actually do give, and they imply that there are no current methods for obtaining any information on adverse medical incidents; and (5) important language in the summary is inconsistent with the language in the amendment itself.

*1. The practical impact of the amendment*

Opponent argues that the summary fails to inform voters that the amendment will have an effect on the peer review statutes. It argues that the Legislature may do away with the peer review system if the amendment passes, and that voters should be advised of the possible impact on this system.

While it is possible that the peer review system will be affected by the amendment, the ballot title and summary are not required "to explain every detail or ramification of the proposed amendment." *Id.* It cannot be said that the lack of a prediction as to the amendment's effect on the peer review statutes misleads the public as to the chief purpose of the amendment.

*2. Significant impact on the judiciary*

Opponent asserts that the title and summary do not inform the voters that the amendment restricts the power of the judiciary to establish procedural rules and to regulate attorneys. The basis for this argument is the effect that the amendment would have on work product and the attorney-client privilege. We reject this argument. The amendment will affect this Court's procedural rules only to the extent that certain records currently classified as work product may have to be disclosed to certain persons. As we stated earlier, any effect on the attorney-client privilege is speculative.

*3. Improper political rhetoric in the title and summary*

Opponent argues that the summary contains improper political rhetoric. The summary states:

> Current Florida law restricts information available to patients related to investigations of adverse medical incidents, *such as medical malpractice.* This amendment would give patients the right to review, upon request, records of health care facilities' or providers' adverse medical incidents, *including those which could cause injury or death.* Provides that patients' identitie [sic] should not be disclosed.

This Court stated in *Evans v. Firestone,* 457 So.2d 1351, 1355 (Fla.1984), "[T]he ballot summary is no place for subjective evaluation of special impact. The ballot summary should tell the voter the legal effect of the amendment, and no more. The political motivation behind a given change must be propounded outside the voting booth." *Id.* Opponent argues that the "medical malpractice" and "including those which could cause injury or death" language is superfluous, as the comments are not necessary to describe the amendment. As support for its argument, opponent cites to *Evans.* In *Evans,* this Court held that the editorial comment, "thus avoiding unnecessary costs," in a summary judgment reform proposal violated the rules governing the ballot summary. *See Evans,* 457 So.2d at 1355. The Court noted in *Evans* that the "unnecessary costs" statement was "hotly contested" and "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." *Id.* Although the "medical malpractice" ***623** and "injury or death" comments may not be necessary to the summary, they do accurately describe the proposed amendment.

*4. Misleading title and summary*

Opponent argues that the statement that "[c]urrent Florida law restricts information available to patients related to investigations of adverse medical incidents" is misleading. It argues that while there is no open-ended constitutional right to the information, there are existing methods to obtain this information. For example, patients in litigation can obtain redacted records of relevant adverse incidents, and patients can obtain trend information on adverse medical incidents in the state from the Agency for Health Care Administration.

  

Additionally, opponent argues that the title "Patients' Right to Know About Adverse Medical Incidents" suggests that patients currently have no right to "know about adverse medical incidents." It asserts that, to the contrary, patients can receive information relating to their own incident.

Opponent's arguments are without merit. The summary of the amendment states that Florida law "restricts" information concerning adverse medical incidents. This language is consistent with opponent's own assertion that patients are entitled to receive information in only certain circumstances. By opponent's own admission, access to this information is "restricted." The amendment creates a broader right to know about adverse medical incidents than currently exists.

*5. Inconsistent language in the title and summary*

Opponent argues that the title and summary are inconsistent with the language of the actual amendment. The amendment states that the "identity of patients ... *shall* not be disclosed," while the summary states that the amendment "provides that patients' identitie [sic] *should* not be disclosed." Opponent argues that while the term "shall" is, to most people, a mandatory instruction, the term "should" is more vague. Thus, reasonable voters could assume that the use of the term "should" means that nondisclosure is the ideal, but that under some circumstances patients' identities may be available. We conducted an in-depth analysis of a similar inconsistent language issue in *Advisory Op. to Att'y Gen. re Amendment to Bar Government from Treating People Differently Based on Race in Public Education,* 778 So.2d at 897. The question in such a case is whether the discrepancy between the terms is material and misleading. Given the context in which "should" is used in the ballot summary, we do not believe the language will be misleading to voters.

## V. CONCLUSION

For the reasons stated, we hold that the initiative petition and proposed ballot title and summary meet the legal requirements of article XI, section 3 of the Florida Constitution, and section 101.161(1), Florida Statutes (2003). Accordingly, we approve the amendment for placement on the ballot. We note, however, that no other issue is addressed here, and this opinion should not be construed as expressing either favor for or opposition to the proposed amendment. No motion for rehearing will be permitted.

It is so ordered.

PARIENTE, C.J., and WELLS, ANSTEAD, LEWIS, QUINCE, CANTERO, and BELL, JJ., concur.

**All Citations**

880 So.2d 617 (Mem), 29 Fla. L. Weekly S399

**End of Document**

## Negative Treatment

### Negative Citing References (1)

*The KeyCited document has been negatively referenced by the following events or decisions in other litigation or proceedings:*

| Treatment | Title | Date | Type | Depth | Headnote(s) |
|---|---|---|---|---|---|
| Distinguished by | 1. Columbia Hosp. Corp. of South Broward v. Fain<br>MOST NEGATIVE<br><br>16 So.3d 236 , Fla.App. 4 Dist.<br>HEALTH - Peer Review. HCQIA did not preempt state constitutional amendment on patient rights to discover records for adverse medical incidents. | Aug. 19, 2009 | Case | | — |

880 So.2d 659 (Mem)
Supreme Court of Florida.

# ADVISORY OPINION TO THE ATTORNEY GENERAL RE PHYSICIAN SHALL CHARGE THE SAME FEE FOR THE SAME HEALTH CARE SERVICE TO EVERY PATIENT.

No. SC04-779.
|
July 15, 2004.

**Attorneys and Law Firms**

Charles J. Crist, Jr., Attorney General and Louis F. Hubener, Chief Deputy Solicitor General, Tallahassee, FL, for Petitioner.

Scott Henry Carruthers, Chair, Tallahassee, FL; and Jon Mills and Timothy McLendon, Gainesville, FL, for Floridians For Patient Protection, Proponents.

**Opinion**

PER CURIAM.

The Attorney General has petitioned this Court seeking an advisory opinion regarding the validity of a proposed amendment to the Florida Constitution submitted by an organization that has taken the name Floridians for Patient Protection. We have jurisdiction. *See* art. IV, § 10; art. V, § 3(b)(10), Fla. Const.

The full text of the proposed amendment reads as follows:

(1) Statement and Purpose:

***660** Many physicians in Florida agree to accept fees for health care covered by health insurance plans or other governmental or private third-party payor programs which limit payments for particular medical treatments, services or procedures. Yet many Floridians, including those in Health Maintenance Organizations or other "managed-care" programs and those without any coverage at all, pay substantially-higher fees for the same medical services. The purpose of this amendment is to insure that all Floridians are able to obtain the lowest prices for medical services which doctors will accept. Doctors will remain free to set their own fees, or to agree to any charges or fee schedules from third-party payors, subject to general law, but they can no longer charge some Floridians more for the same services just because the patients are not in the lowest-cost health insurance plan. In order to help consumers protect themselves against over-charges, patients and their representatives are to be given access, upon request, to the fee data necessary to determine whether they are receiving the lowest agreed-upon fee or whether this amendment is otherwise being violated.

(2) Amendment of Florida Constitution:

Art. X, Fla. Const., is amended by adding the following section at the end thereof, to read:

"**Section 22. Physicians' Health Care Charges.**[1]

1 Article X of the Florida Constitution contains "Miscellaneous" provisions. Currently, the next available section number is 22. However, should section number 22 be taken prior to the adoption of the amendment, the Secretary of State has the authority to assign the proper section number if the amendment is adopted. *See* § 15.155(1), Fla. Stat. (2004).

  

(a) A physician shall charge all purchasers the lowest fee for health care which the physician has agreed to accept as full payment for the same health care when the same health care is being paid for in whole or in part through any agreement between the physician and any other purchaser. Nothing in this section shall be deemed to limit the physician's right to provide any health care for free.

(b) To assist patients to determine a physician's fees and compliance with this Section, a patient shall have access to any fee schedules agreed to by the physician, and any other records of the physician related to the patient's health care which might contain information indicating whether the physician is in compliance with this Section. This right of access, whether or not exercised, may not be waived, and may be exercised prior to, during or after the health care is provided. This right of access is not intended to conflict with, supercede or alter any rights or obligations under general law related to the privacy of patient records.

(c) Definitions. As used in this section, the following terms shall have the following meanings:

(i) "Health care" means services, procedures, treatment, accommodations or products provided by a physician described by this section.

(ii) "Physician" means one licensed pursuant to Chapter 458, Florida Statutes, or any similar successor statute, and any corporation, professional association or similar organization established and operated for the purpose of providing health care by such licensees.

(iii) "Purchaser" means patients, third-party payors or others paying for a patient's health care, and does ***661** not include a patient receiving care without charge.

(iv) "Charge" means require, charge, bill, accept or be entitled to receive as payment for health care.

(v) "Patient" means an individual who has sought, is seeking, is receiving, or has received health care from the physician.

(vi) "Have access to" means, in addition to any other procedure for producing such records provided by general law, making the records available for review, inspection and copying upon formal or informal request by the patient or a representative of the patient, provided that current records which have been made publicly available by publication or on the Internet may be made available by reference to the location at which the records are publicly available."

(3) Effective Date and Severability:

This amendment shall be effective on the date it is approved by the electorate, and shall apply to any health care payment agreement entered into or renewed after the effective date. If any portion of this measure is held invalid for any reason, the remaining portion of this measure, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application.

The ballot title for the proposed amendment is "Physician Shall Charge the Same Fee for the Same Health Care Service to Every Patient." The summary for the proposed amendment provides:

Current law allows a physician to charge different prices for the same health care provided to different patients. This amendment would require a physician to charge the same fee for the same health care service, procedure or treatment. Requires lowest fee which physician has agreed to accept. Doesn't limit physician's ability to provide free services. A patient may review the physician's fee and similar information before, during or after the health care is provided.

We have previously explained our standard of review in connection with petitions seeking advisory opinions of this nature:

In determining the validity of initiative petitions, this Court's inquiry is limited to two legal issues: whether the proposed amendment comports with the single-subject requirement of article XI, section 3 of Florida's Constitution, and whether the

  

> ballot title and summary are clear and unambiguous pursuant to section 101.161(1), Florida Statutes (1999). This Court's review of a proposed amendment is strictly limited to these legal issues and does not include an evaluation of the merits or the wisdom of the proposed amendment. Accordingly, we do not have the authority to evaluate whether ... the subject matter of this proposed amendment should more appropriately be addressed by the Legislature.

*Advisory Op. to the Att'y Gen. re Fla. Transp. Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation Sys.*, 769 So.2d 367, 368-69 (Fla.2000) (citations omitted).[2]

2 We also note that no comments in opposition to this proposed amendment have been filed with the Court.

SINGLE-SUBJECT REQUIREMENT

Article XI, section 3, of the Florida Constitution provides, in pertinent part:

> The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved ***662** to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith.

This Court has recognized that the single-subject requirement protects against "multiple precipitous changes in our state constitution." *Fine v. Firestone*, 448 So.2d 984, 988 (Fla.1984). The requirement is "intended to direct the electorate's attention to one change which may affect only one subject and matters directly connected therewith." *Id.* at 989. There is a dual purpose for the requirement. First, the single-subject requirement prevents "logrolling," the "practice whereby an amendment is proposed which contains unrelated provisions, some of which electors might wish to support, in order to get an otherwise disfavored provision passed." *Advisory Op. to the Att'y Gen. re Ltd. Casinos*, 644 So.2d 71, 73 (Fla.1994). The second justification for the single-subject requirement is that it is directed to prevent a single constitutional amendment from substantially altering or performing the functions of multiple aspects of government. *See Advisory Op. to the Att'y Gen. re Fla. Transp. Initiative*, 769 So.2d at 369. The requirement "protects against multiple 'precipitous' and 'cataclysmic' changes in the constitution by limiting to a single subject what may be included in any one amendment proposal." *Advisory Op. to the Att'y Gen. re Fish & Wildlife Conservation Comm'n*, 705 So.2d 1351, 1353 (Fla.1998) (quoting *In re Advisory Op. to the Att'y Gen.-Save Our Everglades*, 636 So.2d 1336, 1339 (Fla.1994)).

We have repeatedly held that "in determining whether a proposal addresses a single subject the test is whether it 'may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme. Unity of object and plan is the universal test....' " *Fine*, 448 So.2d at 990 (quoting *City of Coral Gables v. Gray*, 154 Fla. 881, 19 So.2d 318, 320 (1944)); *see also Advisory Op. to the Att'y Gen. re Fla. Transp. Initiative*, 769 So.2d at 369; *Advisory Op. to the Att'y Gen. re Ltd. Casinos*, 644 So.2d at 73. The amendment must have a "natural oneness of purpose." *Fine*, 448 So.2d at 990.

The only subject embraced within the proposed constitutional amendment at issue here is clearly the requirement that physicians charge the same fee or amount for health care services for all patients, regardless of whether the fee for such care is being paid by the patient directly or through an agreement between the physician and a third-party payor, including health insurance plans. As explained by the amendment's sponsor, there is a simple purpose behind the amendment-to eliminate cost shifting by giving or providing discounts, without public disclosure, to select groups that pay for health care services. Section (b) of the amendment, regarding a patient's right to access a physician's fee schedule to insure compliance with the amendment, is not a separate subject. The instant action is not unlike the amendment presented in *Advisory Opinion to the Attorney General re Limited Casinos*. There, the amendment authorized a limited number of gaming casinos in various counties in Florida. *See Advisory Op. to the Att'y Gen. re Ltd. Casinos*, 644 So.2d at 72. A separate section of the amendment provided that the Legislature would implement the amendment by passing legislation to regulate, tax, and license the casinos. *See id.* at 73. This Court held that the section pertaining to the legislative implementation was "incidental and reasonably necessary to effectuate the purpose of the proposed amendment and [did] not violate the single-subject ***663** requirement." *Id.* at 74. Similarly, here, the provision allowing patients access to a physician's fee schedule is reasonably necessary to effectuate the purpose of the amendment. Without access to fee schedules, it would be impossible for a patient to determine whether a physician is adhering to the mandates of the amendment.

The sponsor of the amendment argues that the proposed amendment does not substantially affect other sections of the constitution. We agree. The Florida Constitution does not currently contain a provision related to the fees that may be charged by physicians, and the right of privacy is not impacted. Article I, section 23, of the Florida Constitution provides: "Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law." Art. I, § 23, Fla. Const. Pursuant to Florida law, executive agencies already have access to physician fee schedules and payment information. *See* § 408.061, Fla. Stat. (2003).[3] Therefore, the right of privacy is not affected by the proposed amendment's disclosure requirement, as fee schedules are public records and are obtained by government agencies.

3 Section 408.061 provides, in relevant part:

> (1) The agency may require the submission by health care facilities, health care providers, and health insurers of data necessary to carry out the agency's duties....
>
> (a) Data to be submitted by health care facilities may include, but are not limited to: case-mix data, patient admission or discharge data with patient and provider-specific identifiers included, actual charge data by diagnostic groups, financial data, accounting data, operating expenses, expenses incurred for rendering services to patients who cannot or do not pay, interest charges, depreciation expenses based on the expected useful life of the property and equipment involved, and demographic data. Data may be obtained from documents such as, but not limited to: leases, contracts, debt instruments, itemized patient bills, medical record abstracts, and related diagnostic information.

§ 408.061, Fla. Stat. (2003).

Florida's contractual clause, article I, section 10 of the state constitution, provides: "No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed." Art. I, § 10, Fla. Const. This provision applies only to *existing* contracts. *See Manning v. Travelers Ins. Co.*, 250 So.2d 872, 874 (Fla.1971) ("The guaranty of liberty of contract was never intended to withdraw from legislative supervision the making of contracts or deny to the government the power to provide restrictive safeguards."). The proposed amendment will require physicians to charge the same fee to all patients, regardless of how the fee is being paid, thus requiring that any contract fee with a third-party payor for a discounted fee previously below that paid by uninsured patients be available to all patients without regard to the source of payment. However, as noted by the sponsor, the amendment does not seek to alter existing contracts; it will only apply to fee agreements entered into following the enactment of the amendment. Therefore, as the proposed amendment does not affect existing contracts, it does not impact pre-existing rights under contract.

TITLE AND SUMMARY

Section 101.161(1), Florida Statutes (2003) provides, in pertinent part:

> Whenever a constitutional amendment ... is submitted to the vote of the people, the substance of such amendment ... shall be printed in clear and unambiguous ***664** 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.... [T]he substance of the amendment ... shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure.... The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

§ 101.161(1), Fla. Stat. (2003). Pursuant to section 101.161(1), the ballot title and summary must accurately inform the voter of the chief purpose of the proposed amendment; however, they are not required to include all possible effects of the amendment, nor are they required to "explain in detail what the proponents hope to accomplish." *In re Advisory Op. to the Att'y Gen. English-The Official Language of Fla.*, 520 So.2d 11, 13 (Fla.1988); *see also Advisory Op. to the Att'y Gen. re Tax Limitation*, 673 So.2d 864, 868 (Fla.1996); *In re Advisory Op. to the Att'y Gen.-Restricts Laws Related to Discrimination*, 632 So.2d 1018, 1021 (Fla.1994). We have recognized that the seventy-five word limit on ballot summaries prevents the summary from revealing all details or all possible ramifications of the proposed amendment. *See Advisory Op. to the Att'y Gen. re Amendment to Bar Gov't*

*from Treating People Differently Based on Race in Pub. Educ.*, 778 So.2d 888, 892 (Fla.2000); *Smith v. American Airlines*, 606 So.2d 618, 621 (Fla.1992). With respect to the ballot summary, we have explained: "[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." *Askew v. Firestone*, 421 So.2d 151, 155 (Fla.1982) (quoting *Hill v. Milander*, 72 So.2d 796, 798 (Fla.1954)). Additionally, we have repeatedly held that we will not prohibit the vote unless "the summary is clearly and conclusively defective." *Florida League of Cities v. Smith*, 607 So.2d 397, 399 (Fla.1992); *see also Advisory Op. to the Att'y Gen. re Tax Limitation*, 673 So.2d at 867.

The ballot title and summary of the proposed amendment here are clear, the language is not misleading or ambiguous, and the title and summary adequately inform the voters of the purpose of the proposed amendment. Furthermore, as noted above, the proposed constitutional amendment does not impact any other provision of the Florida Constitution and, therefore, it is not necessary that the summary inform voters of any conflict or impact with an existing provision. *See Advisory Op. to the Attorney Gen.-Ltd. Political Terms in Certain Elective Offices*, 592 So.2d 225, 228 (Fla.1991) (explaining that proposed amendment, in effect, "writes on a clean slate" and, therefore, does not present a situation in which the ballot summary conceals a conflict with an existing provision).

Given the seventy-five word limit contained in section 101.161(1), it would be impossible for sponsors to detail all possible effects or ramifications of the proposed amendment, most notably any indirect impact that could possibly touch upon government-sponsored insurance programs. The statute itself requires only that the voter be made aware of the *chief purpose* of the amendment, *see* § 101.161(1), Fla. Stat. (2004), and we have recognized that:

> All that the Constitution requires or that the law compels or ought to compel is that the voter have fair 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.

***665** *Askew*, 421 So.2d at 155 (emphasis omitted) (quoting *Hill*, 72 So.2d at 798); *see also Armstrong v. Harris*, 773 So.2d 7, 13 (Fla.2000). In a recent decision, we approved a ballot summary that was argued to be misleading because it failed to adequately inform the voters about pre-existing drug programs. *See Advisory Opinion to the Att'y Gen. re Right to Treatment & Rehab. for Non-Violent Drug Offenses*, 818 So.2d 491, 498 (Fla.2002). There, we held that the word limit contained within section 101.161 made it impossible for the amendment's sponsors to include such a detailed explanation, and that the sponsors had complied precisely with that which was required of them-they apprised the voter of the chief purpose of the amendment. *See id.* We reasoned:

> It is true ... that certain of the details of the [text] as well as some of its ramifications were either omitted from the ballot question or could have been better explained therein. That, however, is not the test. There is no requirement that the referendum question set forth the [text] verbatim nor explain its complete terms at great and undue length. Such would hamper instead of aiding the intelligent exercise of the privilege of voting. Under our system of free elections, the voter must acquaint himself with the details of a proposed ordinance on a referendum together with the pros and cons thereon before he enters the voting booth. If he does not, it is no function of the ballot question to provide him with that needed education. What the law very simply requires is that the ballot give the voter fair notice of the question he must decide so that he may intelligently cast his vote.

*Id.* (quoting *Metropolitan Dade County v. Shiver*, 365 So.2d 210, 213 (Fla. 3d DCA 1978)); *see also Smith*, 606 So.2d at 621 ("[V]oters are generally required to do their homework and educate themselves about the details of a proposal and about the pros and cons of adopting the proposal."); *Advisory Op. to the Att'y Gen. re Local Trustees*, 819 So.2d 725, 732 (Fla.2002) ("[It can be presumed] that the average voter has a certain amount of common understanding and knowledge."). Here, the sponsors have adequately informed the voters of the chief purpose of the amendment-that physicians be required to charge the same fee to all patients-and have accurately represented, in the title and summary, what is contained within the proposed amendment.

We note that the language in the summary reflects precisely that which is contained within the amendment. While the amendment provides that "[a] physician shall charge all purchasers the lowest fee for health care which the physician has agreed to accept," the summary states that "[t]his amendment would require a physician to charge the same fee for the same health care service, procedure or treatment. Requires lowest fee which physician has agreed to accept." A well-informed voter would recognize that

  

the amendment broadly defines the word "charge" to mean "require, charge, bill, accept or be entitled to receive as payment for health care." All voters will be on notice of this definition, as the full text of the amendment will be posted at all voting precincts on election day. *See* § 101.171, Fla. Stat. (2004); *Ray v. Mortham,* 742 So.2d 1276, 1283 (Fla.1999).

We fully understand that this amendment, as have many others, may be the subject of future litigation, and it will not be until that occurs that the full and complete application may be absolutely known. However, that fact alone does not preclude our approval of the ballot title and summary, as this Court's review at this time is limited to whether the ballot title and summary are clear and unambiguous pursuant ***666** to section 101.161(1), and we do not have the authority to either evaluate the merits of the proposed amendment or explore the entire world of possibilities of application. *See Advisory Op. to the Att'y Gen. re Fla. Transp. Initiative,* 769 So.2d at 368-69. "The Court must act with extreme care, caution, and restraint before it removes a constitutional amendment from the vote of the people." *Askew,* 421 So.2d at 156. "Infringing on the people's right to vote on an amendment is a power this Court should use only where the record ... establishes that the ballot language would clearly mislead the public concerning material elements of the proposed amendment and its effect on the present constitution." *Advisory Op. to the Att'y Gen. re Tax Limitation,* 644 So.2d 486, 489 (Fla.1994).

As noted above, it is impossible for the summary to include all possible ramifications of the proposed amendment, nor is it possible, without a crystal ball, for any person to foresee all possible effects the proposed amendment may have in the future. Certainly, if a ballot title and summary were required to include *all* possible ramifications, it is arguable that no proposed amendment would ever be approved within the current parameters. In *Grose v. Firestone,* 422 So.2d 303 (Fla.1982), the purpose of the proposed amendment was to assure that article I, section 12 of the Florida Constitution be read in conformity with the Fourth Amendment to the U.S. Constitution. *See id.* at 305. There, we held that the ballot summary and title were not misleading, there were no hidden meanings or deceptive phrases, and the summary expressed exactly what the amendment purported to do. *See id.* We held that the opponents were effectively seeking an exhaustive explanation reflecting their interpretation of the amendment and its possible future effects. In rejecting such notion we recognized: "To satisfy their request would require a lengthy history and analysis of the law of search and seizure and the exclusionary rule. Inclusion of all possible effects, however, is not required in the ballot summary." *Id.* Likewise, here, the sponsors have satisfied the statute by informing the voters of the chief purpose of the amendment, and the summary cannot be expected to include and fully explain all possible effects and ramifications. *See Advisory Op. to the Att'y Gen. re Amendment to Bar Gov't from Treating People Differently Based on Race in Pub. Educ.,* 778 So.2d at 899 ("[S]ignificant detail regarding implementation and speculative scenarios may be omitted ... [from] ballot summaries."). Therefore, we hold that the ballot title and summary provide an accurate description of the proposed amendment.

CONCLUSION

Based upon the foregoing, we hold that the proposed amendment does not violate the single-subject rule, as the entire amendment constitutes "one subject and matter directly connected therewith." *See Fine,* 448 So.2d at 989. Further, we hold that the proposed ballot title and summary adequately inform the voters of what they will be voting upon. Accordingly, there is no prohibition upon placing this proposed amendment on the ballot.

It is so ordered.

PARIENTE, C.J., and LEWIS, QUINCE, CANTERO and BELL, JJ., concur.

PARIENTE, C.J., concurs with an opinion, in which LEWIS and QUINCE, JJ., concur.

WELLS, J., dissents with an opinion, in which ANSTEAD, J., concurs.

ANSTEAD, J., dissents with an opinion.

***667** PARIENTE, C.J., concurring.
I concur fully in the majority opinion. The summary adequately apprises voters of the change in the law that the amendment would effect, which is all that is required to comply with the statutory requirement that the summary be an "explanatory statement ... of the chief purpose of the measure." The potential *practical* impact of the amendment is a matter for public debate by proponents and opponents of the measure as part of the political process. Our role is not to pass on the merits of the measure or the wisdom of its inclusion in our state constitution. *See Advisory Opinion to Atty. Gen. re Limiting Cruel & Inhumane Confinement of Pigs During Pregnancy,* 815 So.2d 597, 600 (Fla.2002).

This view is consistent with our decisions in other ballot review cases in which we held that the possibility that a proposed amendment could have "broad ramifications" for the state does not render it infirm under chapter 101.161(1). *Advisory Opinion to the Attorney Gen. re Fla. Transp. Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation Sys.,* 769 So.2d 367, 370 (Fla.2000); *Advisory Opinion to the Attorney General re Limited Casinos,* 644 So.2d 71, 74 (Fla.1994); *In re Advisory Opinion to the Attorney General English-The Official Language of Florida,* 520 So.2d 11, 13 (Fla.1988).

LEWIS and QUINCE, JJ., concur.

WELLS, J., dissenting.
I dissent because I believe that the ballot summary is defective. The ballot summary fails to set forth the true meaning and adverse ramifications to the availability and affordability of health care to the citizens of Florida which the adoption of this amendment will have.

ANSTEAD, J., concurs.

ANSTEAD, J., dissenting.
While I agree with the majority opinion on the single subject issue, I share Justice Wells' concerns as to the completeness and clarity of the summary. I am particularly concerned that while the proposed amendment itself makes clear that it affects third party payors such as Medicare, Medicaid, insurance companies, and other such entities, the summary makes absolutely no mention of this critically important matter. If this amendment should pass it could potentially have a dramatic effect on a Florida citizen's access to medical care generally, and especially under these various health care provider plans. In my view, citizens should be directly informed of this consequence before voting on this measure.

**All Citations**

880 So.2d 659 (Mem), 29 Fla. L. Weekly S402

**Negative Treatment**

There are no Negative Treatment results for this citation.

814 So.2d 415 (Mem)
Supreme Court of Florida.

# ADVISORY OPINION TO ATTORNEY GENERAL RE PROTECT PEOPLE FROM THE HEALTH HAZARDS OF SECOND-HAND SMOKE by Prohibiting Workplace Smoking.

No. SC01-2422.
|
March 28, 2002.

Original Proceeding-Advisory Opinion to Attorney General.

**Attorneys and Law Firms**

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**Opinion**

PER CURIAM.

The Attorney General has petitioned this Court for an advisory opinion concerning the validity of a proposed citizen initiative amendment to the Florida Constitution. The proponent of the initiative is a group known as Smoke-Free for Health, Incorporated (Smoke-Free). We have jurisdiction. *See* art. IV, § 10; art. V, § 3(b)(10), Fla. Const. This Court issued an order permitting interested parties to file briefs with regard to the proposed amendment.[1]

1 Briefs in support of the proposed amendment were submitted jointly in the name of the American College of Physicians and several other groups (ACP). Briefs in opposition to the proposal were submitted jointly by Lorillard Tobacco and several other groups (Tobacco), as well as by the Florida Restaurant Association (Restaurant Association). Smoke-Free for Health, Inc. (Smoke-Free), the proponent of the measure, filed an initial brief and a reply brief.

The ballot title and summary for the proposed amendment are as follows:
*Ballot title:* Protect People from the Health Hazards of Second Hand Tobacco Smoke by Prohibiting Workplace Smoking.

  

*Ballot summary:* To protect people from the health hazards of second-hand tobacco smoke, this amendment prohibits tobacco smoking in enclosed indoor workplaces. Allows exceptions for private residences except when they are being used to provide commercial child care, adult care or health care. Also allows exceptions for retail tobacco shops, designated smoking guest rooms at hotels, and other public lodging establishments, and standalone bars. Provides definitions, and requires the legislature to promptly implement this amendment.

The text of the proposed amendment, which would add section 20 to article X of the Florida Constitution, states:
BE IT ENACTED BY THE PEOPLE OF FLORIDA THAT:

WHEREAS, second-hand tobacco smoke is a known human carcinogen (contains cancer-causing agents) for which there is no safe level of exposure, and causes death and disease; WHEREAS, exposure to second-hand tobacco smoke frequently occurs in the workplace; and WHEREAS, ventilation and filtration systems do not remove the cancer-causing substances from second-hand smoke; NOW, THEREFORE, to protect people from the health hazards of second-hand tobacco smoke, the citizens of Florida hereby amend Article X of the Florida Constitution to add the following as section 20:

SECTION 20. Workplaces Without Tobacco Smoke.-

(a) *Prohibition.* As a Florida health initiative to protect people from the health hazards of second-hand tobacco smoke, tobacco smoking is prohibited in enclosed indoor workplaces.

(b) *Exceptions.* As further explained in the definitions below, tobacco smoking may be permitted in private residences ***417** whenever they are not being used commercially to provide child care, adult care, or health care, or any combination thereof; and further may be permitted in retail tobacco shops, designated smoking guest rooms at hotels and other public lodging establishments; and stand-alone bars. However, nothing in this section or in its implementing legislation or regulations shall prohibit the owner, lessee, or other person in control of the use of an enclosed indoor workplace from further prohibiting or limiting smoking therein.

(c) *Definitions.* For purposes of this section, the following words and terms shall have the stated meanings:

“Smoking” means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product.

“Second-hand smoke,” also known as environmental tobacco smoke (ETS), means smoke emitted from lighted, smoldering, or burning tobacco when the smoker is not inhaling; smoke emitted at the mouthpiece during puff drawing; and smoke exhaled by the smoker.

“Work” means any person's providing any employment or employment-type service for or at the request of another individual or individuals or any public or private entity, whether for compensation or not, whether full or part-time, whether legally or not.

“Work” includes, without limitation, any such service performed by an employee, independent contractor, agent, partner, proprietor, manager, officer, director, apprentice, trainee, associate, servant, volunteer, and the like.

“Enclosed indoor workplace” means any place where one or more persons engages in work, and which place is predominantly or totally bounded on all sides and above by physical barriers, regardless of whether such barriers consist of or include uncovered openings, screened or otherwise partially covered openings, or open or closed windows, jalousies, doors, or the like. This section applies to all such enclosed indoor workplaces without regard to whether work is occurring at any given time.

  

"Commercial" use of a private residence means any time during which the owner, lessee, or other person occupying or controlling the use of the private residence is furnishing in the private residence, or causing or allowing to be furnished in the private residence, child care, adult care, or health care, or any combination thereof, and receiving or expecting to receive compensation therefor.

"Retail tobacco shop" means any enclosed indoor workplace dedicated to or predominantly for the retail sale of tobacco, tobacco products, and accessories for such products, in which the sale of other products or services is merely incidental.

"Designated smoking guest rooms at public lodging establishments" means the sleeping rooms and directly associated private areas, such as bathrooms, living rooms, and kitchen areas, if any, rented to guests for their exclusive transient occupancy in public lodging establishments including hotels, motels, resort condominiums, transient apartments, transient lodging establishments, rooming houses, boarding houses, resort dwellings, bed and breakfast inns, and the like; and designated by the person or persons having management authority over such public lodging establishment as rooms in which smoking may be permitted.

"Stand-alone" bar means any place of business devoted during any time of operation predominantly or totally to serving ***418** alcoholic beverages, intoxicating beverages, or intoxicating liquors, or any combination thereof, for consumption on the licensed premises; in which the serving of food, if any, is merely incidental to the consumption of any such beverage; and that is not located within, and does not share any common entryway or common indoor area with, any other enclosed indoor workplace including any business for which the sale of food or any other product or service is more than an incidental source of gross revenue.

(d) *Legislation.* In the next regular legislative session occurring after voter approval of this amendment, the Florida Legislature shall adopt legislation to implement this amendment in a manner consistent with its broad purpose and stated terms, and having an effective date no later than July 1 of the year following voter approval. Such legislation shall include, without limitation, civil penalties for violations of this section; provisions for administrative enforcement; and the requirement and authorization of agency rules for implementation and enforcement. Nothing herein shall preclude the Legislature from enacting any law constituting or allowing a more restrictive regulation of tobacco smoking than is provided in this section.

Our inquiry, in determining the validity of an initiative petition, is limited to two issues: whether the ballot title and summary is printed in clear and unambiguous language pursuant to section 101.161(1), Florida Statutes (2001), and whether the petition satisfies the single subject requirement of article XI, section 3, Florida Constitution. This Court does not review the merits of a proposed amendment. *See Advisory Opinion to the Atty. Gen. re Right of Citizens to Choose Health Care Providers,* 705 So.2d 563, 565 (Fla.1998); *Advisory Opinion to the Atty. Gen. re People's Property Rights Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects,* 699 So.2d 1304, 1306 (Fla.1997); *see also Advisory Opinion to the Atty. Gen. re Tax Limitation,* 644 So.2d 486, 489 (Fla.1994) ( "This Court does not have the authority or the responsibility to rule on the merits or the wisdom of ... proposed initiative amendments....").

*BALLOT TITLE AND SUMMARY*

Section 101.161(1), Florida Statutes (2001), states in pertinent part:
Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment ... shall be printed in clear and unambiguous language on the ballot .... [T]he substance of the amendment ... shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

Thus, the ballot title and summary must clearly and unambiguously state "the chief purpose of the measure," *Askew v. Firestone,* 421 So.2d 151, 154 (Fla.1982), and must not be misleading. *Advisory Opinion to the Atty. Gen. re Term Limits Pledge,* 718 So.2d

798, 803 (Fla.1998). Moreover, the ballot title and summary must give "fair notice of the content of the proposed amendment to enable the casting of an intelligent and informed vote." *Advisory Opinion to the Atty. Gen.-Limited Casinos,* 644 So.2d 71, 74 (Fla.1994).

We first consider Restaurant Association's assertions with regard to the ballot title and summary. Restaurant Association contends that the title and summary are misleading because the definition of ***419** "enclosed indoor workplace" does not indicate that smoking would be banned in places like restaurants, which many patrons visit for the sole purpose of relaxing. The summary for the instant proposal clearly states the purpose of the amendment is to prohibit tobacco smoking in enclosed indoor workplaces. The title also states "Prohibiting Workplace Smoking." The summary indicates that definitions are provided in the amendment text, thereby alerting voters to review the contents of the amendment text. It is obvious that "[t]he seventy-five word limit placed on the ballot summary as required by statute does not lend itself to an explanation of all of a proposed amendment's details." *Advisory Opinion to the Atty. Gen. re-Amendment to Bar Government from Treating People Differently Based on Race in Public Education,* 778 So.2d 888, 899 (Fla.2000). It is not necessary that the title and summary explain every ramification of the proposed amendment. *Carroll v. Firestone,* 497 So.2d 1204, 1206 (Fla.1986). We conclude that as to Restaurant Association's contention, the summary clearly states the chief purpose of the measure and gives "fair notice of the content of the proposed amendment to enable the casting of an intelligent and informed vote." *Limited Casinos,* 644 So.2d at 74.[2] In our view, the argument that Florida citizens cannot understand that a restaurant may be a workplace is contrary to rational analysis.

2 We further reject as meritless Restaurant Association's other claims that the instant proposal employs vague terms.

Restaurant Association also asserts that the summary is misleading because it fails to disclose a major change in the law. Specifically, it argues that the summary fails to disclose the effect that the proposed amendment would have on sections 386.203, .205, Florida Statutes (2001). In general, those sections relate to existing smoking restrictions under certain circumstances in public places. Restaurant Association also contends that the summary is misleading because it does not disclose that smoking would be banned in workplaces that are not generally considered to be public places, and therefore fails to disclose its effect on certain parts of chapter 386, Florida Statutes (2001). We reiterate our conclusion that the summary adequately states its chief purpose of banning smoking in enclosed indoor workplaces and clarity does not require further references or definitions for validity here. As suggested by the proponents of the amendment, it does not stretch logic to presume that most, if not all, voters are aware that smoking is presently limited in certain public places, given the pervasiveness of signs and other remonstrations against smoking in those areas, and that people work in places such as restaurants. We agree. "The voter must be presumed to have a certain amount of common sense and knowledge." *Advisory Opinion to the Atty. Gen.-Tax Limitation,* 673 So.2d 864, 868 (Fla.1996). Moreover, contrary to all arguments otherwise, "an exhaustive explanation of the interpretation and future possible effects of the amendment [is] not required" in the ballot title and summary. *Race in Public Education,* 778 So.2d at 899. We are most concerned with relationships and impact on other areas of law when we consider whether the ballot summary and title mislead the voter with regard to effects and impact on other constitutional provisions. *See Race in Public Education,* 778 So.2d at 899-900 (stating that ballot summaries must be invalidated when they fail to mention *constitutional provisions* that are affected, or when they ***420** fail to define terms adequately or to use consistent terminology). We conclude that the instant proposal does not mislead in this area.[3]

3 Restaurant Association's reliance on our opinion in *Advisory Opinion to the Atty. Gen. re Casino Authorization, Taxation & Regulation,* 656 So.2d 466, 469 (Fla.1995), is unavailing. There, we determined that a ballot summary was defective because it would mislead voters into believing that to ban casinos in Florida they must cast an affirmative vote for the amendment. The summary failed to disclose that Florida law already banned casinos. The scenario is not the same in the instant case, because the ballot summary does not attempt to deceive the voter into believing or having any particular impression with regard to the present status of smoking in Florida. We also note that in the other cases on which Restaurant Association relies for support on this point, the ballot summary was misleading because it failed to disclose the proposed measure's impact on existing constitutional, not statutory, provisions.

We next consider Tobacco's arguments that the ballot title and summary are defective because each contains terms that constitute impermissible political or inflammatory rhetoric. Specifically, Tobacco focuses on the use of the words "protect" and "hazards"

  

in the ballot title and summary, and contends that the appearance of these terms on the ballot would constitute judicial adjudication of unproven facts. On these points, we disagree.[4]

4 Restaurant Association presents similar arguments on these points in its opposition brief.

On this issue Tobacco asserts that the instant proposal is similar to the initiative we found invalid in *In re Advisory Opinion to the Atty. Gen.-Save Our Everglades,* 636 So.2d 1336, 1341-42 (Fla.1994). There, we determined that the ballot title was deficient because, in considering the term "save," a voter could easily be led into believing that the Everglades ecosystem was lost. The text of the amendment itself gave no indication of the severity of pollution and other perils purportedly threatening the Everglades, and employed the term "restore" rather than the word "save," which appeared in the title. We also noted that the ballot summary implied that the sugarcane industry would only be required to assist in an Everglades cleanup, while the amendment text provided no indication that any other entity would assist the sugarcane industry with the cleanup. There we determined that the title caused the proposal to "fly under false colors." We concluded that the ballot summary was political rhetoric with an emotional appeal, rather than "an accurate and informative synopsis of the meaning and effect of the proposed amendment." *Id.* at 1342. The summary in *Save Our Everglades* was determined to be a subjective evaluation of the impact of the proposed amendment as opposed to a summary of the legal effect which is accomplished by the summary presented here.

In our view, the singular use of the word "hazards" in the ballot title and summary of the instant proposal does not rise to a comparable level of political and emotional language and subjective evaluation as the language we rejected in *Save Our Everglades.* Since no definition of "hazard" is provided in the text of the proposed amendment, we resort to the dictionary definition.[5] In doing so, we note that the meaning associated with the term is that of ***421** "chance" or "risk."[6] When considered in this light, the language in the ballot summary consisting of the use of one word refers to a chance or risk that Florida citizens can evaluate in connection with the proposed limitations contained within the proposed amendment. Neither we nor the voters decide the fact of harm but evaluate the proposal with reference to risks or chances. Moreover, the instant proposal does not involve, as did the rejected language in *Save Our Everglades,* the legerdemain of employing an emotional term ("save") in the ballot title or summary while substituting a more docile term ("restore") in the amendment text. Authorization of the instant measure's appearance on the ballot simply does not constitute adjudication or acceptance of statements contained therein as a factual determination. Our review is confined to the aspects of clarity and lack of ambiguity within the ballot title and summary. With regard to the instant proposal, the voters will ultimately determine the wisdom of the policy alternative presented to them. If there is no risk or chance of harm from such conditions the voters' voice will certainly be heard. We conclude that the use of the term "hazards" does not mislead voters and is clearly related to the choice placed before them.

5 In determining the meaning of a term in a citizen initiative, we have previously resorted to a dictionary definition when no definition was provided in the amendment text. *See Advisory Opinion to the Governor-1996 Amendment 5 (Everglades),* 706 So.2d 278, 282 (Fla.1997) (providing advisory opinion on meaning of term "primarily responsible" with regard to initiative on Everglades preservation).

6 *Merriam-Webster's Collegiate Dictionary* at 534 (10th ed.1996). Moreover, "hazardous" is defined as "involving or exposing one to risk (as of loss or harm)." *Id.*

In a similar manner, use of the term "protect" does not constitute impermissible political rhetoric or the adjudication of a fact. Tobacco asserts that this term has political or emotional underpinnings, and that whether the instant proposal would "protect" voters from the possible harm of second-hand smoke is not a fact which this Court should adjudicate. Yet, in its brief Tobacco alludes to the amendment proposals in *Advisory Opinion to the Atty. Gen.-Fee on the Everglades Sugar Production,* 681 So.2d 1124 (Fla.1996), as exemplars of "neutral" language in a citizen initiative. In two of the three amendment proposals we reviewed in *Fee on Everglades,* the ballot summary stated that the purpose of the amendment was for "conservation and protection of natural resources and abatement of water pollution in the Everglades." On one hand, Tobacco implies that the use of the term "protection" in *Fee on Everglades* is neutral and does not constitute adjudication of a fact. On the other, however, Tobacco asserts that the use of the term "protect" in the instant proposal is infected with political or emotional sentiment. Moreover,

  

Tobacco posits that the employment of the term in the instant proposal impermissibly determines, as a factual matter, that voters would be sheltered from the risk of harm from second-hand smoke.

We are unable to discern the logic as to how the application of essentially the same term can produce such dramatically different results. We concluded in *Fee on Everglades* that the ballot titles and summaries were not misleading. Our opinion did not in any way indicate that the appearance of the proposed amendment on the ballot constituted our adjudication or acceptance, as fact, that the proposals would actually be effective in protecting or conserving the Everglades. Nor does our authorization for this proposed amendment to appear on the ballot constitute an adjudication of whether second-hand smoke is hazardous or whether the proposal will be effective in protecting citizens from any actual or perceived harm attendant to second-hand smoke. As mentioned above, those considerations are reserved for the voters. The ballot summary and title in the instant proposal are not misleading, nor are they "clearly and conclusively defective." *Askew* ***422** *v. Firestone,* 421 So.2d 151, 154 (Fla.1982) (noting that language in citizen initiative must be clearly and conclusively defective to justify removal of measure from the ballot). Therefore, we decline to strike the measure from the ballot based on our review of the title and summary.[7]

7 In his petition seeking review of the instant proposal, the Attorney General presented a concern with regard to the language that describes when smoking is permitted in private residences which provide commercial care to children, adults, or health patients. Smoke Free asserted both in its brief and at oral argument that the language unambiguously indicates that smoking would be permitted at times during which a private residence is not being used to provide commercial care. We agree. The proposal is not misleading on this point.

*SINGLE-SUBJECT REQUIREMENT*

Article XI, section 3 of the Florida Constitution requires that proposed citizen-initiative amendments "embrace but one subject and matter directly connected therewith." "[S]ection 3 protects against multiple 'precipitous' and 'cataclysmic' changes in the constitution by limiting to a single subject what may be included in any one amendment proposal." *Advisory Opinion to the Atty. Gen. re Fish & Wildlife Conservation Comm'n,* 705 So.2d 1351, 1353 (Fla.1998). To satisfy the single-subject requirement, a proposed amendment must express a "logical and natural oneness of purpose." *Fine v. Firestone,* 448 So.2d 984, 990 (Fla.1984). "[I]t is when a proposal substantially alters or performs the functions of multiple branches of government that it violates the single-subject test." *Fish & Wildlife Conservation Comm'n,* 705 So.2d at 1354. Moreover, the mere possibility that an amendment might interact with other parts of the Florida Constitution is not sufficient reason to invalidate the proposed amendment. *See Fee on Everglades,* 681 So.2d at 1128.

Restaurant Association challenges the instant proposal on several single-subject grounds. None requires significant discussion, however, as we determine that the instant proposal focuses on a single subject: the issue of second-hand smoke in enclosed indoor workplaces. The measure respects the legislative function by making allowance for the Legislature to enact statutes to implement the constitutional provision. The proposal does not perform any judicial functions by adjudicating specific facts.[8] We also reject Restaurant Association's other single-subject contentions as lacking in merit.

8 We agree with the Attorney General that language contained in the "whereas" clauses of the proposed initiative "[does] not appear to be a part of the actual proposed amendment to add section 20 to Article X, Florida Constitution." *See* Letter from Attorney General Robert Butterworth to Chief Justice Charles T. Wells and Justices of Supreme Court of Florida at 7 (November 7, 2001) (on file with Supreme Court of Florida). Performance of a judicial function is therefore not an issue with regard to the "whereas" language.

The ballot title in the instant proposal does not exceed fifteen words, and the ballot summary does not exceed seventy-five words, thereby falling within statutory requirements. The title and summary also meet the other legal requirements of article XI, section 3 of the Florida Constitution, and section 101.161(1), Florida Statutes (2001). Accordingly, we determine that they provide the citizens of Florida with the necessary information to cast an intelligent and informed vote. This opinion encompasses no other issues, and should not be construed as favoring or opposing the passage of the proposed amendment.

It is so ordered.

***423** WELLS, C.J., and SHAW, HARDING, ANSTEAD, PARIENTE, LEWIS, and QUINCE, JJ., concur.

**All Citations**

814 So.2d 415 (Mem), 27 Fla. L. Weekly S266

**Negative Treatment**

There are no Negative Treatment results for this citation.

818 So.2d 491 (Mem)
Supreme Court of Florida.

# ADVISORY OPINION TO THE ATTORNEY GENERAL re RIGHT TO TREATMENT AND REHABILITATION for Non-Violent Drug Offenses.

No. SC01-1950.
|
May 16, 2002.

Original Proceeding-Advisory Opinion to the Attorney General.

**Attorneys and Law Firms**

Robert A. Butterworth, Attorney General, and Louis F. Hubener, III, Assistant Attorney General, Tallahassee, FL, Presentor.

Stephen H. Grimes and Susan L. Kelsey of Holland & Knight, Tallahassee, FL, on behalf of Florida Campaign for New Drug Policies, Sponsor.

Simone Marstiller, Assistant General Counsel, Executive Office of the Governor, Tallahassee, FL, on behalf of Governor John Ellis" Jeb" Bush; Kenneth W. Sukhia of ***492** Fowler, White, Gillen, Boggs, Villareal and Banker, P.A., Tallahassee, FL, on behalf of Save Our Society From Drugs, Inc.; Michael R. Ramage, General Counsel, The Florida Department of Law Enforcement, Tallahassee, FL, Amicus Curiae; Arthur I. Jacobs of Jacobs & Associates, P.A., Fernandina Beach, FL, The Florida Prosecuting Attorneys Association, Amicus Curiae; David P. Healy, Tallahassee, FL, on behalf of Florida Alcohol and Drug Abuse Association; and Martin Epstein, West Palm Beach, FL, Florida Association of Drug Court Professionals, Inc., Amicus Curiae.

**Opinion**

SHAW, J.

The Attorney General has requested this Court to review a proposed amendment to the Florida Constitution. We have jurisdiction. *See* art. IV, § 10; art. V, § 3(b)(10), Fla. Const. We approve the amendment as explained below.

## I. FACTS

The sponsor of the proposed amendment, the Florida Campaign for New Drug Policies, a Florida political committee, invoked the petition process of article XI, section 3, Florida Constitution, to seek placement of an amendment on the ballot via citizen initiative. The Secretary of State submitted the amendment to the Attorney General[1] and the Attorney General has petitioned this Court for an advisory opinion concerning the amendment's validity.[2]

1 *See* § 15.21, Fla. Stat. (2000).

2 *See* § 16.061(1), Fla. Stat. (2000).

The ballot title and summary of the proposed amendment, which are drafted to appear on the ballot, read as follows:

RIGHT TO TREATMENT AND REHABILITATION FOR NONVIOLENT DRUG OFFENSES.

Individuals charged or convicted of possessing or purchasing controlled substances or drug paraphernalia may elect appropriate treatment as defined, instead of sentencing or incarceration, for first two offenses; discretionary with court thereafter. Excludes individuals committing serious crimes in same episode or convicted or in prison for violent crimes in past five years. Individuals unamenable to treatment may be prosecuted or sentenced. Upon successful completion or eighteen months in treatment, no prosecution or sentencing. Legislative implementation.

The full text of the proposed amendment, which will not appear on the ballot but which will be posted in each voting precinct, reads as follows:

BE IT ENACTED BY THE PEOPLE OF FLORIDA THAT:

Article I, Section 26, Florida Constitution, is hereby created to read as follows:

Right to Treatment and Rehabilitation

(a) Any individual charged with or convicted of illegally possessing or purchasing a controlled substance or drug paraphernalia may elect to receive appropriate treatment as described in subsection (c), instead of being sentenced or incarcerated, which shall be a matter of right for the first and second offense after enactment of this section and at the discretion of the court for subsequent offenses. If more than one qualifying offense under this section occurs during a single criminal episode, it shall be considered a single offense. For purposes of this section, an individual who elects to receive appropriate treatment prior to conviction shall be deemed to have waived the right to a speedy trial.

***493** (b) This section shall not apply to any individual who in connection with the same criminal episode as the drug offense described in (a) is also charged with or convicted of: any felony; any misdemeanor involving theft, violence or the threat of violence; trafficking, sale, manufacture, or delivery of a controlled substance; purchase or possession with intent to sell, manufacture, or deliver a controlled substance or drug paraphernalia; or operating a vehicle under the influence of alcohol or a controlled substance. This section also shall not apply to any individual who, within five years before committing the drug offense described in (a), has been convicted of, or in prison for, one of the serious or violent crimes described in Section 775.084(1)(c) 1.a.-r., Florida Statutes (2000), or such other violent crimes as may be provided by law.

(c) For purposes of this section, "appropriate treatment" means a state-approved drug treatment and/or rehabilitation treatment program, or set of programs, designed to reduce or eliminate substance abuse or drug dependency and to increase employability. Such program or programs shall include, as deemed appropriate, access to vocational training, literacy training, family counseling, mental health services, or similar support services. The determination of the type and duration of the appropriate treatment program or programs that an individual shall receive, and methods of monitoring the individual's progress while in treatment, shall be made by a qualified professional as defined in Section 397.311(25), Florida Statutes (2000).

(d) An individual receiving appropriate treatment under this section may be transferred to a different program due to violations of program rules or unsuitability to the form of treatment initially prescribed. An individual may be removed from appropriate treatment if, after multiple programs and violations, and upon an independent evaluation by a qualified professional as defined in Section 397.311(25), Florida Statutes (2000), the individual is found by the court to be unamenable to treatment and rehabilitation. Any such individual removed from appropriate treatment who has been convicted of the drug offense described in (a) may be sentenced for the offense. Prosecution may be recommenced against any individual removed from appropriate treatment who has not yet been convicted, and a conviction resulting from such prosecution may result in a criminal sentence without regard to this section.

(e) Appropriate treatment shall be terminated upon an individual's successful completion of the prescribed course of appropriate treatment, or upon an independent evaluation and finding by a qualified professional as defined in Section

  

397.311(25), Florida Statutes (2000), that an individual's appropriate treatment has been successful, or eighteen months after the date the individual elected to receive appropriate treatment, whichever occurs first. Upon termination of appropriate treatment, the individual may not be prosecuted, sentenced, or placed under continued court supervision for the offense which led to the appropriate treatment.

(f) This section shall become effective on July 1 of the year following passage by the voters, and shall apply prospectively only to qualifying drug offenses occurring on or after that date.

(g) The Legislature shall enact such laws as necessary to implement this section.

This Court invited interested parties to file briefs; the sponsor filed a brief in support ***494** of the proposed amendment and numerous parties filed briefs in opposition.[3]

3 The following parties filed briefs in opposition: Governor Jeb Bush; Florida Alcohol and Drug Abuse Association; Save Our Society From Drugs, Inc.; Florida Association of Drug Court Professionals, Inc.; Florida Department of Law Enforcement; and Florida Prosecuting Attorneys Association. Additionally, the Attorney General filed a lengthy letter in opposition.

## II. STANDARD OF REVIEW

Above all, the Florida Constitution embodies the right of self-determination for *all* Florida's citizens. This Court traditionally has been reluctant to interfere with this right by barring citizens from formulating their own organic law:

> There is no lawful reason why the electors of this State should not have the right to determine the manner in which the Constitution may be amended. This is the most sanctified area in which a court can exercise power. Sovereignty resides in the people and the electors have a right to approve or reject a proposed amendment to the organic law of this State, limited only by those instances where there is an entire failure to comply with a plain and essential requirement of [the law].

*Pope v. Gray,* 104 So.2d 841, 842 (Fla.1958).

This deference is especially appropriate in the case of proposed constitutional amendments arising through the citizen initiative process. Because such amendments often are initiated by ad hoc groups of concerned lay persons without formal legal training or prior experience in the field, such amendments are reviewed under a forgiving standard and will be submitted to the voters if at all possible:

> [A] court's duty is to uphold the proposal unless it can be shown to be "clearly and conclusively defective."

*Floridians Against Casino Takeover v. Let's Help Fla.,* 363 So.2d 337, 339 (Fla.1978).

When determining the validity of an amendment arising via citizen initiative petition, our inquiry is limited to two issues: (1) whether the petition violates the single-subject requirement of article XI, section 3, Florida Constitution; and (2) whether the ballot title and summary violate the clarity requirements of section 101.161(1), Florida Statutes (2000).[4] We do not address the merits of the amendment.[5]

4 *See, e.g., Advisory Op. to the Att'y Gen., re Amendment to Bar Gov't From Treating People Differently Based on Race in Pub. Educ.,* 778 So.2d 888, 890-91 (Fla.2000); *Advisory Op. to the Att'y Gen. re Term Limits Pledge,* 718 So.2d 798, 801 (Fla.1998).

5 *See, e.g., Amendment to Bar Gov't From Treating People Differently Based on Race in Pub. Educ.,* 778 So.2d at 891.

## III. SINGLE SUBJECT RULE

Article XI, section 3, Florida Constitution, sets forth the requirements for a proposed constitutional amendment arising via citizen initiative. This section contains the single-subject rule:

> SECTION 3. Initiative.-The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, *any such revision or amendment,* except for those limiting the power of government to raise revenue, *shall embrace but one subject and matter directly connected therewith.*

Art. XI, § 3, Fla. Const. (emphasis added). The purpose of the single-subject rule is twofold: to prevent "logrolling"[6] and to ***495** prevent a single amendment from substantially altering or performing the functions of multiple branches of government and thereby causing multiple "precipitous" and "cataclysmic" changes in state government.[7]

6 *See In re Advisory Op. to the Att'y Gen.-Save Our Everglades,* 636 So.2d 1336, 1339 (Fla.1994) ("The single-subject limitation also guards against 'logrolling,' 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.").

7 *See id.*

A. "*Oneness of Purpose* "

This Court utilizes a "oneness of purpose" standard in applying the single-subject rule.[8] A proposed amendment meets this test when it "may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme. Unity of object and plan is the universal test...." *City of Coral Gables v. Gray,* 154 Fla. 881, 19 So.2d 318, 320 (1944).

8 *See Fine v. Firestone,* 448 So.2d 984, 990 (Fla.1984) ("[T]he one-subject limitation deal[s] with a logical and natural oneness of purpose.").

The present proposed amendment is similar in key respects to the amendment in *Advisory Opinion to the Attorney General re Stop Early Release of Prisoners,* 661 So.2d 1204 (Fla.1995). There, the title and summary read as follows:

> TITLE: STOP TURNING OUT PRISONERS: LIMIT EARLY RELEASE.
>
> SUMMARY: A state constitutional amendment which, except for pardon or clemency, requires that state prisoners sentenced to a term of years shall serve at least eighty-five percent of their terms of imprisonment. Parole, conditional release, or any mechanism of sentence reduction may reduce the term of years sentence by no more than fifteen percent. State prisoners sentenced to life imprisonment shall be incarcerated for the rest of their natural lives, unless granted pardon or clemency.

*Stop Early Release of Prisoners,* 661 So.2d at 1205. The full text of the amendment provided as follows:

> All state prisoners lawfully sentenced to a term of years shall serve at least eighty-five percent of their term of imprisonment, unless granted pardon or clemency. Parole, conditional release, or any mechanism of sentence reduction may reduce the term of years sentence by no more than fifteen percent. State prisoners sentenced to life imprisonment shall be incarcerated for the rest of their natural lives, unless granted pardon or clemency.

*Id.*

This Court approved the amendment, finding no single subject violation. The Court reasoned as follows:

> Article XI, section 3 of the Florida Constitution provides that any constitutional amendment or revision by initiative "shall embrace but one subject and matter directly connected therewith." To comply with this provision the proposed amendment must manifest "a logical and natural oneness of purpose." *Fine v. Firestone,* 448 So.2d 984, 990 (Fla.1984). We find that the proposed amendment meets this criterion, as it deals with the sole subject of limiting sentencing reduction methods. The final provision pertaining to life sentences merely provides detail as to how the proposed amendment will be implemented in cases where life sentences are imposed.

*Stop Early Release of Prisoners,* 661 So.2d at 1206.

In the present case, the proposed amendment evinces a similar "oneness of ***496** purpose," for the amendment has but one function: to establish a treatment and rehabilitation option for first- and second-time nonviolent drug offenders. The amendment sets forth a simple, straightforward constitutional framework for accomplishing this goal; it is a "no-frills" amendment. Just as the Court in *Stop Early Release of Prisoners* held that the "oneness of purpose" criterion was dispositive in that case, so too do we hold that the same criterion is dispositive in the present case.

B. *Altering the Function of Multiple Branches*

This Court has held that while most amendments will "affect" multiple branches of government this fact alone is insufficient to invalidate an amendment on single-subject grounds:

> As the proponents of the amendment point out, the fact that an amendment affects multiple functions of government does not automatically invalidate a citizens' initiative. As we explained in detail in [a prior case]:
>
> > We recognize that the petition, if passed, could affect multiple areas of government. In fact, we find it difficult to conceive of a constitutional amendment that would not affect other aspects of government to some extent. However, this Court has held that a proposed amendment can meet the single-subject requirement even though it affects multiple branches of government.
>
> *Advisory Op. to Att'y Gen. re Fla. Transp. Initiative,* 769 So.2d 367, 369-70 (Fla.2000). The test is as follows:
>
> > A proposal that affects several branches of government will not automatically fail; rather, *it is when a proposal substantially alters or performs the functions of multiple branches that it violates the single-subject test.*
>
> *Advisory Op. to Att'y Gen. re Fish & Wildlife Conservation Comm'n,* 705 So.2d 1351, 1353-54 (Fla.1998) (emphasis added).

In the present case, the proposed amendment may "affect" several branches of government but it does not substantially "alter" or "perform" the functions of those branches. First, the amendment does not usurp the function of the judiciary. Rather, the amendment leaves the prime function of the judiciary intact and in fact promotes that function by requiring judges to perform several quintessential judicial functions: determining eligibility for treatment under the amendment, entering orders to ensure compliance with prescribed regimens, responding to violations, and terminating treatment when appropriate.

Second, the amendment does not usurp the function of the Legislature. Rather, the amendment leaves the prime function of that body intact. The proposed net ban amendment in *Advisory Opinion to the Attorney General-Limited Marine Net Fishing,* 620 So.2d 997 (Fla.1993), deprived the Legislature of the right to designate certain behavior as criminal and to punish violations in any way other than the way prescribed in the amendment. In conducting its analysis of that amendment, the Court focused on the fact that the amendment "is functionally and facially unified." The Court held that the amendment did not violate the single-subject rule. Similarly, the present amendment, by proposing a uniform system for dealing with first- and second-time nonviolent drug offenders, is functionally and facially unified; it is far less invasive of legislative authority than the net ban amendment.

Third, the amendment does not substantially usurp the function of the executive branch. Rather, the amendment leaves the prime function of that branch intact, for it has no effect on the power of prosecutors ***497** to charge persons with crimes where appropriate. The amendment contemplates that the charging of drug offenses will proceed as it always has; it is only *after* charging or conviction takes place that the amendment's diversion option is implicated. Florida law currently allows diversion for drug offenders on the motion of either party or the trial court itself.[9]

9 *See* §§ 397.12, 397.334(c)-(d), 948.08, Fla. Stat. (2000).

IV. BALLOT TITLE AND SUMMARY

Section 101.161, Florida Statutes (2000), sets forth the requirements for the ballot title and summary of a proposed constitutional amendment and provides in relevant part:

> [T]he 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. (2000).

This Court in *Save Our Everglades* explained the meaning of section 101.161(1):

> "[S]ection 101.161 requires that the ballot title and summary for a proposed constitutional amendment state in clear and unambiguous language the chief purpose of the measure." This is so that the voter will have notice of the issue contained in the amendment, will not be misled as to its purpose, and can cast an intelligent and informed ballot. However, "it is not necessary to explain every ramification of a proposed amendment, only the chief purpose."

*Save Our Everglades,* 636 So.2d at 1341.[10] In brief, the ballot title and summary must fairly inform the voter of the chief purpose of the amendment.

10 *See also Advisory Op. to Att'y Gen. re Ltd. Casinos,* 644 So.2d 71, 74 (Fla.1994) ("[W]e have held that the ballot information need not explain every detail or ramification of the proposed amendment.").

Opponents of the present amendment contend that the phrase "first two offenses" in the summary is misleading because it gives voters the impression that a first-time offender who committed two qualifying offenses as the result of a single criminal episode would have exhausted both treatment options under the amendment whereas the amendment in fact provides that a first-time offender who committed multiple qualifying drug offenses as the result of a single criminal episode would still be eligible for treatment upon reoffending a second time. We disagree.

The phrase "first two offenses" as used in the summary is an accurate representation of the text of the amendment; the amendment applies to only the first two nonviolent drug offenses. Although the details alleged by the opponents are accurate, the sponsors of the amendment were required to work within the statutory limit of seventy-five words for the *entire* summary. *They used all seventy-five words.* Had the sponsors explained the phrase "first two offenses" in the same detail that the opponents suggest, they would have violated the law. As noted above, this Court consistently has advised sponsors that "it is not necessary to explain every ramification of a proposed amendment."[11]

11 *See Save Our Everglades,* 636 So.2d at 1341.

Opponents also contend that the phrase "Legislative implementation" is misleading because it is a sentence fragment that voters could construe as meaning that legislative implementation would be required ***498** before the amendment would become effective; the amendment, however, in subsection (f) gives the amendment's effective date and only in subsection (g) are voters made aware that the Legislature is involved with this amendment because it "shall enact such laws as necessary to implement this section." We disagree.

The phrase "Legislative implementation" in fact is true. Subsection (g) of the text of the amendment states: "The Legislature shall enact such laws as necessary to implement this section." What the summary fails to say is that the framework established in the amendment is self-effectuating. Subsection (f) of the amendment states: "This section shall become effective on July 1 of the year following passage by the voters, and shall apply prospectively only to qualifying drug offenses occurring on or after that date." Although a "perfectly" drafted summary might mention this self-effectuating provision, imperfection is not

necessarily fatal given the seventy-five word statutory maximum. The sponsors reasonably may have determined that it would have been misleading to fail to mention the legislative implementation provision-and they would have been correct.

Finally, opponents contend that the ballot title and summary are misleading because they imply that Florida is currently without any treatment plan for drug offenders; the ballot title and summary fail to mention the current diversion system or inform the voter that the proposed amendment is actually at odds in many respects with the current drug court scheme and other diversion programs. Again, we disagree.

The ballot title and summary say nothing to indicate that other drug treatment programs are nonexistent. Given the fifteen-word statutory maximum for the title and the seventy-five word maximum for the summary, it would have been impossible for the sponsors to include such detailed language concerning pre-existing programs. The sponsors did precisely as this Court has advised them to do in decision after decision: they apprised the voter of the chief purpose of the amendment.

> It is true ... that certain of the details of the [text] as well as some of its ramifications were either omitted from the ballot question or could have been better explained therein. That, however, is not the test. There is no requirement that the referendum question set forth the [text] verbatim nor explain its complete terms at great and undue length. Such would hamper instead of aiding the intelligent exercise of the privilege of voting. Under our system of free elections, the voter must acquaint himself with the details of a proposed ordinance on a referendum together with the pros and cons thereon before he enters the voting booth. If he does not, it is no function of the ballot question to provide him with that needed education. What the law very simply requires is that the ballot give the voter fair notice of the question he must decide so that he may intelligently cast his vote. That requirement has been more than adequately met in this case.

*Metropolitan Dade County v. Shiver,* 365 So.2d 210, 213 (Fla. 3d DCA 1978). Had the sponsors of the present amendment attempted to advise the voters in the same detail proposed by the opponents, they would have hampered, not helped, the voting process, for they would have made the amendment more, not less, confusing.

## V. CONCLUSION

The right of Floridians to decide whether to accept or reject a change of their *own* making in their *own* organic law is paramount. This Court has no authority ***499** to inject itself in the process, unless the laws governing the process have been "clearly and conclusively" violated. This Court's inquiry under the single-subject rule is simple and straightforward: (1) does the proposed amendment engage in logrolling? and (2) does the proposed amendment cause multiple precipitous and cataclysmic changes in state government? The Court's inquiry into the validity of the ballot title and summary is equally simple: does the ballot title and summary fairly apprise the voter of the amendment's chief purpose?

In the present case, the answer to these questions is clear. The present amendment neither engages in logrolling nor causes multiple precipitous and cataclysmic changes in state government. In fact, it does not cause even a *single* precipitous and cataclysmic change. And the ballot title and summary fairly apprise the voter of the amendment's chief purpose.

Accordingly, we hold that the proposed amendment meets the requirements of article XI, section 3, Florida Constitution, and section 101.161, Florida Statutes (2000). We approve the amendment for placement on the ballot.

It is so ordered.

WELLS, C.J., and PARIENTE and QUINCE, JJ., concur.

ANSTEAD, J., concurs in part and dissents in part with an opinion, in which HARDING and LEWIS, JJ., concur.

  

ANSTEAD, J., concurring in part and dissenting in part.

Section 101.161(1) of the Florida Statutes governs the requirements for ballot titles and summaries and 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...." § 101.161(1), Fla. Stat. (2000). Under this provision the ballot summary must be complete and accurate and not be misleading as to the actual effects of the proposed amendment. As this Court stated in *Term Limits Pledge:* "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." *Advisory Opinion to the Attorney Gen. re Term Limits Pledge,* 718 So.2d 798, 804 (Fla.1998). Upon review, I conclude that the proposed amendment's ballot title and summary are misleading because they use vague and ambiguous language to relate its chief purpose and to explain its critical features.

First, I find the term "first two offenses" to be misleading because it does not accurately or adequately convey the amendment's actual definition of "single criminal episode." The amendment itself provides: "If more than one qualifying offense under this section occurs during a single criminal episode, it shall be considered a single offense." Hence, the amendment provides that a first-time offender who committed multiple qualifying drug offenses as the result of a single criminal episode would still be eligible for treatment under this amendment upon reoffending a second time. However, the summary, when considered alone, gives voters the impression that a first-time offender who committed two qualifying offenses as the result of a single criminal episode (e.g., a defendant charged with possession of cocaine and possession of drug paraphernalia resulting from a single lawful search of her pocket), would only qualify *once* for treatment under this amendment. Thus, the summary's use of "first two offenses" does not accurately describe the wide ***500** scope of the amendment's text. *See Advisory Opinion to the Attorney Gen. re Casino Authorization, Taxation and Regulation,* 656 So.2d 466, 469 (Fla.1995) (holding that the amendment's summary was misleading because it could lead voters to believe that only operational, floating vessels may house casinos, when the amendment authorized casinos on "stationary and non-stationary riverboats and U.S. registered commercial vessels").

Second, the term "legislative implementation" appears to be misleading because it could be read to mean that legislative implementation would be required before the amendment would become effective. The amendment itself, however, actually provides for the amendment's effective date in subsection (f). Only in subsection (g) are voters made aware that the Legislature is involved with this amendment because it "shall enact such laws as necessary to implement this section." Thus, the term "legislative implementation" does not accurately describe the proposed amendment's implementation as set forth in the amendment's text. *See Save Our Everglades,* 636 So.2d at 1341 (holding that the summary was "too misleading" because the phrase "to help to pay" gave readers the impression that entities other than the sugarcane industry would be sharing in the expense of cleanup but the amendment's text called for the levying of a fee on sugarcane processors exclusively).

Third, the title and summary are also misleading because they imply that Florida is currently without any treatment plan for drug offenders. Hence, the voter is left to falsely assume that Florida does not already have extensive diversion programs for first- and second-time drug offenders. Although the amendment's sponsor argues that it is intended to work in tandem with the present system of drug courts and diversion programs, the ballot title and summary fail to mention the current system. The summary also fails to inform the voter that the proposed amendment is actually at odds in many respects with the current drug court scheme and other diversion programs. *See* §§ 397.334, 948.08(6)(a), Fla. Stat. (2001). Thus, the summary is misleading because it fails to advise the electorate of the true meaning and ramifications of the amendment compared to the status quo. *See Advisory Opinion to the Attorney Gen. re Tax Limitation,* 644 So.2d 486, 494 (Fla.1994) (finding the Proposed Voter Approval of New Taxes Amendment misleading because it implied that there was no constitutional cap on taxes when there actually were such limitations for governmental entities in article VII, section 9, and inheritance and income taxes in article VII, section 5(b)).

HARDING and LEWIS, JJ., concur.

27 Fla. L. Weekly S488

**All Citations**

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**End of Document**

**Negative Treatment**

There are no Negative Treatment results for this citation.

2 So.3d 175
Supreme Court of Florida.

# ADVISORY OPINION TO the ATTORNEY GENERAL RE STANDARDS FOR ESTABLISHING LEGISLATIVE DISTRICT BOUNDARIES.

## Advisory Opinion to the Attorney General Re Standards for Legislature to Follow in Congressional Redistricting.

Nos. SC08–986, SC08–1149
|
Jan. 29, 2009.

**Synopsis**

**Background:** State Attorney General requested advisory opinion from Supreme Court regarding validity of initiative petitions to amend state constitution to establish guidelines for state legislature to apply when redistricting legislative and congressional boundaries.

**Holdings:** The Supreme Court advised that:

[1] amendments encompassed a single subject;

[2] amendments did not engage in logrolling;

[3] amendments did not impact multiple branches of government;

[4] fact that ballot summaries did not mention judiciary's role did not render the summaries misleading;

[5] fact that summaries replaced "drawn with the intent to favor" with "drawn to favor" did not render the summaries misleading;

[6] fact that summaries replaced "political and geographical boundaries" with "city, county and geographical boundaries" did not render the summaries misleading;

[7] fact that summaries replaced an "or" with an "and" did not render the summaries misleading;

[8] term "language minorities" in amendments was not vague or ambiguous; and

[9] amendments would not impliedly repeal existing provision authorizing multi-member districts.

Amendments approved.

Wells, Canady, and Polston, JJ., concurred in result only.

West Headnotes (14)

[1] **Constitutional Law** Single or Multiple Subjects

To determine whether a proposed constitutional amendment addresses a single subject, Supreme Court must evaluate whether the proposal may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme. (Per Lewis, J., with two justices concurring, and three justices concurring in result.) West's F.S.A. Const. Art. 11, § 3.

4 Cases that cite this headnote

[2] **Constitutional Law** Single or Multiple Subjects

**Constitutional Law** Applicability to multiple branches of government

A proposed constitutional amendment is not invalid under the single subject rule merely because it affects more than one branch of government or may interact with other provisions of the Florida Constitution. (Per Lewis, J., with two justices concurring, and three justices concurring in result.) West's F.S.A. Const. Art. 11, § 3.

1 Case that cites this headnote

[3] **Constitutional Law** Applicability to multiple branches of government

When a proposed constitutional amendment substantially alters or performs the functions of multiple branches, it violates the single-subject test. (Per Lewis, J., with two justices concurring, and three justices concurring in result.) West's F.S.A. Const. Art. 11, § 3.

[4] **Constitutional Law** Applicability to multiple branches of government

Speculation about possible impacts of a proposed constitutional amendment on other branches of government is premature when determining whether a proposed amendment, on its face, meets the single-subject requirement. (Per Lewis, J., with two justices concurring, and three justices concurring in result.) West's F.S.A. Const. Art. 11, § 3.

5 Cases that cite this headnote

[5] **Constitutional Law** Particular amendments

**Constitutional Law** Applicability to multiple branches of government

Proposed constitutional amendments establishing guidelines for state legislature to apply when redistricting legislative and congressional boundaries encompassed a single subject, as required to satisfy the single-subject rule; amendments each addressed a single function of a single branch of government. (Per Lewis, J., with two justices concurring, and three justices concurring in result.) West's F.S.A. Const. Art. 11, § 3.

[6] **Constitutional Law** Particular amendments

Proposed constitutional amendments establishing guidelines for state legislature to apply when redistricting legislative and congressional boundaries did not engage in logrolling in violation of the single-subject rule, even though each amendment included multiple guidelines to be followed; guidelines possessed a natural relation and connection as component parts or aspects of a single dominant plan or scheme, and were directed to the single unified purpose of

  

establishing standards by which legislative and congressional districts were to be drawn. (Per Lewis, J., with two justices concurring, and three justices concurring in result.) West's F.S.A. Const. Art. 11, § 3.

4 Cases that cite this headnote

[7] **Constitutional Law** Applicability to multiple branches of government

Proposed constitutional amendments establishing guidelines for state legislature to apply when redistricting legislative and congressional boundaries did not impact multiple branches of government in violation of the single-subject rule, despite contention that proposals would shift the duty of reapportionment to the judiciary; amendments merely changed the standard of review to be applied to the validity of a legislative apportionment, and there was no basis for predicting that judiciary would always reject legislature's redistricting plans for failure to comply with the new guidelines. (Per Lewis, J., with two justices concurring, and three justices concurring in result.) West's F.S.A. Const. Art. 11, § 3.

1 Case that cites this headnote

[8] **Constitutional Law** Summaries, Explanatory Statements, and Statements of Purpose

Inadvertent use of different but clearly synonymous terms in a proposed constitutional amendment and the ballot summary for that proposed amendment will not render the ballot summary fatally defective where the differing use of terminology could not reasonably mislead the voters. (Per Lewis, J., with two justices concurring, and three justices concurring in result.) West's F.S.A. § 101.161(1).

9 Cases that cite this headnote

[9] **Constitutional Law** Particular amendments

Fact that ballot summaries for proposed constitutional amendments establishing guidelines for state legislature to apply when redistricting legislative and congressional boundaries did not mention the judiciary's role in enforcing the guidelines did not render the summaries misleading; purpose of the amendments was to provide legislature with guidelines to follow when redistricting, and it could logically be presumed that any entity responsible for redrawing boundaries if the legislature failed to comply with the guidelines would itself be required to comply with the guidelines. (Per Lewis, J., with two justices concurring, and three justices concurring in result.) West's F.S.A. § 101.161(1).

1 Case that cites this headnote

[10] **Constitutional Law** Particular amendments

Fact that ballot summaries for proposed constitutional amendments establishing guidelines for state legislature to apply when redistricting legislative and congressional boundaries replaced phrase “drawn with the intent to favor or disfavor an incumbent or political party” with “drawn to favor or disfavor an incumbent or political party” did not render the summaries misleading, despite contention that summaries indicated concern with the effect of a redistricting plan, rather than its intent; addition of the missing words would cause summaries to exceed the statutory word limit, and voters could be expected to educate themselves about the substance of the amendments. (Per Lewis, J., with two justices concurring, and three justices concurring in result.) West's F.S.A. § 101.161(1).

7 Cases that cite this headnote

[11] **Constitutional Law** Particular amendments

  

Fact that ballot summaries for proposed constitutional amendments establishing guidelines for state legislature to apply when redistricting legislative and congressional boundaries replaced phrase "political and geographical boundaries" with "city, county and geographical boundaries" did not render the summaries misleading, even if there were political boundaries other than city and county boundaries; wording of the summary was chosen so as to be readily understandable by average citizens, and such different wording could not reasonably mislead voters. (Per Lewis, J., with two justices concurring, and three justices concurring in result.) West's F.S.A. § 101.161(1).

2 Cases that cite this headnote

[12] **Constitutional Law** Particular amendments

**States** Equality of Representation and Discrimination; Voting Rights Act

**United States** Equality of representation and discrimination; Voting Rights Act

Proposed constitutional amendments establishing guidelines for state legislature to apply when redistricting legislative and congressional boundaries, which stated that districts should not be drawn to deny racial or language minorities the equal opportunity to participate in the political process "or" diminish their ability to elect representatives of their choice, sought to require districts to adhere to both standards, and thus fact that ballot summaries for the amendments replaced the "or" with an "and" did not render the summaries misleading. (Per Lewis, J., with two justices concurring, and three justices concurring in result.) West's F.S.A. § 101.161(1).

6 Cases that cite this headnote

[13] **Constitutional Law** Particular amendments

Term "language minorities" in proposed constitutional amendments establishing guidelines for state legislature to apply when redistricting legislative and congressional boundaries was not vague or ambiguous, and thus use of term in ballot summaries for the amendments did not render the summaries misleading; term was legally and commonly understood to refer to any language other than English. (Per Lewis, J., with two justices concurring, and three justices concurring in result.) West's F.S.A. § 101.161(1).

2 Cases that cite this headnote

[14] **Constitutional Law** Particular amendments

**States** Compactness; contiguity; gerrymandering in general

**United States** Apportionment of Representatives; Reapportionment and Redistricting

Proposed constitutional amendments establishing guidelines for state legislature to apply when redistricting legislative and congressional boundaries, which required districts to be "contiguous," would not impliedly repeal existing constitutional provision permitting districts consisting of "either contiguous, overlapping or identical territory," and thus fact that ballot summaries for the amendments did not mention such repeal did not render the summaries misleading; "contiguous" meant only that each district must be contiguous within itself, and did not refer to the relationship of the districts to each other. (Per Lewis, J., with two justices concurring, and three justices concurring in result.) West's F.S.A. Const. Art. 3, § 16(a); West's F.S.A. § 101.161(1).

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Jason Vail, General Counsel, Florida Senate, and Jeremiah M. Hawkes, General Counsel, Florida House of Representatives, Tallahassee, FL, on behalf of The Florida Legislature, as Opponents.

**Opinion**

LEWIS, J.

The Attorney General of Florida has requested an opinion from this Court with regard to the validity of two initiative petitions sponsored by FairDistrictsFlorida.org, a political committee. We have jurisdiction. *See* art. IV, § 10, art. V, § 3(b)(10), Fla. Const. We conclude that ***179** the proposed amendments comply with the single-subject requirement of article XI, section 3 of the Florida Constitution, and that the ballot titles and summaries comply with section 101.161(1), Florida Statutes (2008).

## I. THE PROPOSED AMENDMENTS

The two amendments and their respective ballot titles and summaries are nearly identical except for references to legislative versus congressional boundaries. The full text of the proposed amendment that governs *legislative-district* boundaries states:

Section 21. Add a new Section 21 to Article III

STANDARDS FOR ESTABLISHING LEGISLATIVE DISTRICT BOUNDARIES

In establishing Legislative district boundaries:

(1) No apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice; and districts shall consist of contiguous territory.

(2) Unless compliance with the standards in this subsection conflicts with the standards in subsection (1) or with federal law, districts shall be as nearly equal in population as is practicable; districts shall be compact; and districts shall, where feasible, utilize existing political and geographical boundaries.

(3) The order in which the standards within sub-sections (1) and (2) of this section are set forth shall not be read to establish any priority of one standard over the other within that subsection.

The ballot title for this proposed initiative is:

STANDARDS FOR LEGISLATURE TO FOLLOW IN LEGISLATIVE REDISTRICTING.

The ballot summary provides:

Legislative districts or districting plans may not be drawn to favor or disfavor an incumbent or political party. Districts shall not be drawn to deny racial or language minorities the equal opportunity to participate in the political process and elect representatives of their choice. Districts must be contiguous. Unless otherwise required, districts must be compact, as equal in population as feasible, and where feasible must make use of existing city, county and geographical boundaries.

The full text of the proposed amendment that governs *congressional-district* boundaries states:

Add a new Section 20 to Article III

  

Section 20. STANDARDS FOR ESTABLISHING CONGRESSIONAL DISTRICT BOUNDARIES

In establishing Congressional district boundaries:

(1) No apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice; and districts shall consist of contiguous territory.

(2) Unless compliance with the standards in this subsection conflicts with the standards in subsection (1) or with federal law, districts shall be as nearly ***180** equal in population as is practicable; districts shall be compact; and districts shall, where feasible, utilize existing political and geographical boundaries.

(3) The order in which the standards within sub-sections (1) and (2) of this section are set forth shall not be read to establish any priority of one standard over the other within that subsection.

The ballot title for this proposal is:

STANDARDS FOR LEGISLATURE TO FOLLOW IN CONGRESSIONAL REDISTRICTING.

The ballot summary provides:

Congressional districts or districting plans may not be drawn to favor or disfavor an incumbent or political party. Districts shall not be drawn to deny racial or language minorities the equal opportunity to participate in the political process and elect representatives of their choice. Districts must be contiguous. Unless otherwise required, districts must be compact, as equal in population as feasible, and where feasible must make use of existing city, county and geographical boundaries.

## II. ANALYSIS

*A. Single–Subject Requirement*

**[1]** Article XI, section 3 of the Florida Constitution provides: "The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, *shall embrace but one subject and matter directly connected therewith.*" (Emphasis supplied.) This Court has previously explained the rationale behind the single-subject requirement:

The single-subject limitation exists because the initiative process does not provide the opportunity for public hearing and debate that accompanies the other methods of proposing amendments. Consequently, "[the] single-subject provision is a rule of restraint designed to insulate Florida's organic law from precipitous and cataclysmic change." This Court requires "strict compliance with the single-subject rule in the initiative process for constitutional change because our constitution is the basic document that controls our governmental functions, including the adoption of any laws by the legislature." The single-subject requirement also prevents logrolling, a practice that combines separate issues into a single proposal to secure passage of an unpopular issue. Thus, voters are protected by the single-subject requirement because they are not forced to "accept part of an initiative proposal which they oppose in order to obtain a change in the constitution which they support."

*Advisory Op. to Att'y Gen. re Amendment to Bar Gov't From Treating People Differently Based on Race in Pub. Educ.,* 778 So.2d 888, 891 (Fla.2000) (citations omitted) (quoting *In re Advisory Op. to Att'y Gen.—Save Our Everglades,* 636 So.2d 1336, 1339 (Fla.1994); *Fine v. Firestone,* 448 So.2d 984, 988–89 (Fla.1984)). To determine whether a proposed amendment addresses a single subject, this Court must evaluate whether the proposal "may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme." *Advisory Op. to Att'y Gen. re Patients' Right to Know About Adverse Med. Incidents,* 880 So.2d 617, 620 (Fla.2004) (quoting *Fine v. Firestone,* 448 So.2d 984, 990 (Fla.1984)).

**[2]** **[3]** **[4]** A proposed amendment is not invalid merely because it affects more than one branch of government or may interact ***181** with other provisions of the Florida Constitution. *See Advisory Op. to Att'y Gen. re Limited Casinos,* 644 So.2d 71, 74 (Fla.1994) ("[W]e find it difficult to conceive of a constitutional amendment that would not affect other aspects of government to some extent."). We have further explained that "the fact that [a] branch of government is required to comply with a provision of the Florida Constitution does not necessarily constitute the usurpation of the branch's function within the meaning of the single-subject rule." *Advisory Op. to Att'y Gen. re Protect People, Especially Youth, From Addiction, Disease, & Other Health Hazards of Using Tobacco,* 926 So.2d 1186, 1192 (Fla.2006). Rather, "it is when a proposal substantially alters or performs the functions of multiple branches that it violates the single-subject test." *Patients' Right to Know,* 880 So.2d at 620. Finally, speculation about possible impacts of a proposed amendment on other branches of government is premature when determining whether a proposed amendment, *on its face,* meets the single-subject requirement. *See In re Advisory Op. to Att'y Gen. re English—The Official Language of Fla.,* 520 So.2d 11, 13 (Fla.1988) (approving placement of proposed amendment on the ballot even where "the amendment could have broad ramifications" because, "on its face[,] it deals with only one subject").

**[5]** With regard to reapportionment, article III, section 16(a) of the Florida Constitution currently provides, in relevant part:

> (a) SENATORIAL AND REPRESENTATIVE DISTRICTS. The legislature at its regular session in the second year following each decennial census, by joint resolution, shall apportion the state in accordance with the constitution of the state and of 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.

We conclude that the proposed amendments (1) encompass a single subject, (2) do not engage in logrolling, and (3) do not substantially alter the functions of multiple branches of government. The proposed amendments address a single function of a single branch of government—establishing additional guidelines for the Legislature to apply when it redistricts legislative and congressional boundaries. This Court has previously stated that under the state and federal Constitutions, the only requirements for a redistricting plan are: (1) compliance with the equal protection standard of one-person, one-vote—i.e., that "legislatures be apportioned in such a way that each person's vote carries the same weight"; and (2) that districts consist of contiguous, overlapping, or identical territory. *In re Constitutionality of House Joint Resolution 1987,* 817 So.2d 819, 824–25 (Fla.2002) (quoting *In re Constitutionality of Senate Joint Resolution 2G,* 597 So.2d 276, 278 (Fla.1992)).

**[6]** *Logrolling*—Although the Legislature contends that the proposals violate the single-subject rule because they implement multiple reapportionment standards, such an interpretation of the rule is far too narrow. The overall goal of the proposed amendments is to require the Legislature to redistrict in a manner that prohibits favoritism or discrimination, while respecting geographic considerations. Although the proposed amendments delineate a number of guidelines, we conclude that these components possess "a natural relation and connection as component parts or aspects of a single dominant plan or ***182** scheme." *Patients' Right to Know,* 880 So.2d at 620 (quoting *Fine,* 448 So.2d at 990).

The instant case is distinguishable from others in which this Court has determined that proposals have violated the single-subject requirement. For example, in *In re Advisory Opinion to Attorney General—Restricts Laws Related to Discrimination,* 632 So.2d 1018, 1019 (Fla.1994) (*Discrimination* ), the proposed amendment sought to prohibit discrimination based on ten separate classifications—race, color, religion, sex, national origin, age, handicap, ethnic background, marital status, and familial status. While the sponsor contended that the amendment addressed the single subject of discrimination, we rejected this contention and instead concluded that the proposal "enfold[ed] disparate subjects within the cloak of a broad generality" in violation of the single-subject requirement. *Id.* at 1020 (quoting *Evans v. Firestone,* 457 So.2d 1351, 1353 (Fla.1984)). We explained:

> The voter is essentially being asked to give one "yes" or "no" answer to a proposal that actually asks ten questions. For example, a voter may want to support protection from discrimination for people based on race and religion, but oppose protection based on marital status and familial status. Requiring voters to choose which classifications they feel most strongly about, and then requiring them to cast an all or nothing vote on the classifications listed in the amendment, defies the purpose of the single-subject limitation.

*Id.* at 1020. Unlike the provision in *Discrimination,* the proposals in the instant cases do not group multiple subjects under the cloak of "redistricting." Rather, they address *solely* the *guidelines* to be applied in legislative and congressional reapportionment. Thus, the instant proposals are also distinguishable from the proposed amendment in *Advisory Opinion to Attorney General re Independent Nonpartisan Commission to Apportion Legislative & Congressional Districts Which Replaces Apportionment by Legislature,* 926 So.2d 1218 (Fla.2006) (*Nonpartisan* ), which we determined to be in violation of the single-subject requirement. The proposal in *Nonpartisan* sought not only to implement redistricting standards, *but to also create an entirely new commission* to replace the Legislature as the entity responsible for reapportionment in Florida. *See id.* at 1225. The proposed amendments here do *not* encompass two such disparate functions.

The proposed amendments here are more similar to proposals we have previously approved because they encompassed a single plan and merely enumerated various elements necessary to accomplish that plan. In *Health Hazards of Using Tobacco,* 926 So.2d at 1189, this Court approved for placement on the ballot a proposed amendment that would create a comprehensive statewide tobacco education and prevention program. The program was designed to encompass an advertising campaign, the creation of programs to educate youth about tobacco, enforcement of laws against the sale of tobacco to minors, and annual evaluations of the effectiveness of the program. *See id.* Further, the proposal included a provision which required that the Legislature appropriate fifteen percent of the gross funds collected from a tobacco settlement to the program. *See id.* This Court held that despite the various components, the proposal did not engage in logrolling:

> It addresses a single comprehensive plan for the education of youth about the health hazards related to tobacco. Although this plan includes a list of components such as advertising, school curricula, ***183** and law enforcement, all of these components are related to the single unifying purpose. It does not "combine subjects in such a manner as to force voters to accept one proposition they might not support in order to vote for one they favor." *Advisory Op. to Att'y Gen. re Fla.'s Amendment to Reduce Class Size,* 816 So.2d 580, 583 (Fla.2002). In other words, the proposed amendment does not combine unrelated provisions, some of which are popular and others that may be disfavored.

*Id.* at 1191–92. Similarly, here, the various components within the proposed amendments are directed to the single unified purpose of establishing standards by which legislative and congressional districts are to be drawn. Accordingly, we hold that the proposed amendments address a single subject.

**[7]** *Multiple Government Functions*—The Legislature next asserts that the proposals will essentially shift the duty of reapportionment to the judiciary and, therefore, the proposals impact multiple branches of government in violation of the single-subject rule. This contention is without merit. Under the Florida Constitution, after the Legislature drafts a reapportionment plan, the attorney general files a request with this Court for a "declaratory judgment" with regard to the validity of the plan. Art. III, § 16(c), Fla. Const. If this Court rejects the plan, the Governor must reconvene the Legislature for an "extraordinary apportionment session," during which the Legislature must adopt a joint resolution that conforms to this Court's judgment. *Id.* § 16(d). If the extraordinary session fails to produce a resolution of apportionment, or if this Court holds that the subsequent apportionment is invalid, the Court "shall, not later than sixty days after receiving the petition of the attorney general, file with the custodian of state records an order making such apportionment." *Id.* § 16(f).

As noted by FairDistrictsFlorida.org, the Florida Constitution currently contains no guidelines for congressional districting. However, article I, section 2 of the United States Constitution provides: "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States...." The Fourteenth Amendment of the United States Constitution provides that "[r]epresentatives shall be apportioned among the several states according to their respective numbers." The United States Supreme Court has held that the federal Constitution "leaves with the States primary responsibility for apportionment of their federal congressional and state legislative districts." *Growe v. Emison,* 507 U.S. 25, 34, 113 S.Ct. 1075, 122 L.Ed.2d 388 (1993). In *Wesberry v. Sanders,* 376 U.S. 1, 4, 84 S.Ct. 526, 11 L.Ed.2d 481 (1964), the Supreme Court held that a one-person, one-vote constitutional challenge to congressional reapportionment by a state legislature is a justiciable issue.

The proposed amendments do not alter the functions of the judiciary. They merely change the standard of review to be applied when either the attorney general seeks a "declaratory judgment" with regard to the validity of a legislative apportionment,

or a redistricting plan is challenged. This effect of the proposed amendments does not constitute a substantial alteration of the functions of the judicial branch. *See Health Hazards of Using Tobacco,* 926 So.2d at 1192 ("[T]he fact that [a] branch of government is required to comply with a provision of the Florida Constitution does not necessarily constitute the usurpation of the branch's function within the meaning of the single-subject rule.").

***184** The contention of the Legislature that a redistricting plan can never comply with the amendment guidelines and, therefore, the role of reapportionment will always fall upon the courts—thereby substantially changing a function of the courts—is speculative argument. There is no basis that the judiciary will reject any redistricting plan that the Legislature adopts for failure to comply with the guidelines. We must assume the Legislature will comply with the law at the time an apportionment plan is adopted. Moreover, such speculation with regard to a possible impact of the proposals on the judicial branch is premature because we need only determine at this time whether the proposed amendments, *on their face,* satisfy the single-subject requirement. *See English—The Official Language,* 520 So.2d at 13.

In light of the foregoing, we hold that the proposed amendments comply with article XI, section 3 of the Florida Constitution.

*B. Ballot Title and Summary*

**[8]** The requirement that a ballot title and summary comply with section 101.161(1), Florida Statutes (2008), was recently explained by this Court as follows:

> [A]ny proposed constitutional amendment must be "accurately represented on the ballot; otherwise, voter approval would be a nullity." *Armstrong v. Harris,* 773 So.2d 7, 12 (Fla.2000). Section 101.161(1), Florida Statutes (2007), codifies this principle:
>
> > 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.... 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.... 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.
>
> (Emphasis supplied.) *See also Askew v. Firestone,* 421 So.2d 151, 155 (Fla.1982) ("[T]he voter should not be misled.... 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.*" (alteration in original) (quoting *Hill v. Milander,* 72 So.2d 796, 798 (Fla.1954))).... To determine whether the ballot title and summary of [the proposed amendment] satisfy the requirements of section 101.161, Florida Statutes (2007), the Court must consider two questions: "(1) whether the ballot title and summary, in clear and unambiguous language, fairly inform the voter of the chief purpose of the amendment; and (2) whether the language of the title and summary, as written, misleads the public." *Advisory Opinion to Attorney Gen. re Prohibiting State Spending for Experimentation that Involves the Destruction of a Live Human Embryo,* 959 So.2d 210, 213–14 (Fla.2007) (quoting *Advisory Opinion to Attorney Gen. re Fla. Marriage Prot. Amendment,* 926 So.2d 1229, 1236 (Fla.2006)). We do not consider, nor do we address, the substantive merit of the proposed amendment.
>
> ... This Court has recognized that it must exercise extreme caution and restraint before removing a constitutional amendment from Florida voters. *See* ***185** *Advisory Opinion to Attorney Gen. re Fla. Marriage Prot. Amendment,* 926 So.2d 1229, 1233 (Fla.2006). We have further noted that we have no authority to inject this Court into the process, unless the laws governing the process have been "clearly and conclusively" violated. *Advisory Opinion to the Attorney Gen. re Right to Treatment & Rehab. for Non–Violent Drug Offenses,* 818 So.2d 491, 498–99 (Fla.2002).

  

*Fla. Dep't of Rev. v. Slough,* 992 So.2d 142, 146–47 (Fla.2008). Despite these various requirements, we have also noted that even though a ballot summary could have better explained the text of the amendment, that fact alone does *not* require a proposal to be struck:

> There is no requirement that the referendum question set forth the [text] verbatim nor explain its complete terms at great and undue length. Such [requirements] would hamper instead of aiding the intelligent exercise of the privilege of voting. Under our system of free elections, the voter must acquaint himself with the details of a proposed ordinance on a referendum together with the pros and cons thereon before he enters the voting booth. If he does not, it is no function of the ballot question to provide him with that needed education. What the law very simply requires is that the ballot give the voter fair notice of the question he must decide so that he may intelligently cast his vote.

*Advisory Op. to Att'y Gen. re Right to Treatment & Rehab. for Non–Violent Drug Offenses,* 818 So.2d 491, 498 (Fla.2002) (quoting *Metro. Dade County v. Shiver,* 365 So.2d 210, 213 (Fla. 3d DCA 1978), *aff'd sub nom. Miami Dolphins v. Metro. Dade County,* 394 So.2d 981 (Fla.1981)). Moreover, inadvertent use of different but clearly synonymous terms in the proposed amendment and the summary will *not* render a ballot summary fatally defective where "[t]he differing use of terminology could not reasonably mislead the voters." *English—The Official Language,* 520 So.2d at 13 (use of the phrase "to *implement* this *article* " in the ballot summary not misleading where the text of the proposed amendment actually provided "to *enforce* this *section* " (alteration in original)).

The Legislature presents multiple claims that the ballot titles and summaries for the proposed amendments are misleading. We address each of those arguments.

**[9]** *Ballot title*—The Legislature first asserts that the titles are misleading because they indicate that only the Legislature must comply with the new redistricting standards where, in fact, the judiciary will be similarly obligated to apply these standards when a legislative attempt at reapportionment fails and the courts are required to redraw the districts. We conclude that this challenge is without merit.

As previously discussed, the proposed amendments have one chief purpose: to provide the Legislature with guidelines to follow when it draws legislative and congressional boundaries. Thus, it is logical that the titles would only reference the Legislature. Although the Legislature might ultimately fail to comply with these standards, this contingency does not translate into a need for the ballot titles to indicate that the standards apply to the judiciary. Rather, it can logically be presumed that if the Legislature fails to comply with the Constitution and follow the applicable standards, the entity responsible for redrawing the boundaries must also comply with these standards. The failure to mention the judiciary in the ballot titles does not render them misleading.

**[10]** *"Drawn to favor" vs. "Drawn with the intent to favor"*—The amendment summaries provide that redistricting plans ***186** "shall not be drawn to favor or disfavor an incumbent or political party"; however, the body of the proposals provide that districting plans "shall not be drawn *with the intent* to favor or disfavor an incumbent or political party." (Emphasis supplied.) According to the Legislature, the summaries indicate that the *effect* of a reapportionment plan cannot be to favor or disfavor anyone or any party; however, under the proposed amendments, proof of *intent* to favor an incumbent or party must be demonstrated before a reapportionment plan will be rejected for noncompliance. The Legislature contends that the summaries are misleading because voters will believe that the proposals prohibit reapportionment plans whose *effect* is to favor a party or incumbent, while the amendments actually permit districts that favor a party or incumbent, provided that the district lines were drawn without intending that result.

We reject this assertion. The ballot summaries are currently seventy-four words in length. Hence, to add the words "with the intent" to the ballot summaries would exceed the statutory word limit. Thus, at issue in this case is whether the omission of these three words from the summaries (likely in an attempt to comply with the statutory word limit) causes them to be fatally misleading. As previously noted, a ballot summary need not (and because of the statutory word limit, often cannot) explain "at great and undue length" the complete details of a proposed amendment, and some onus falls upon voters to educate themselves about the substance of the proposed amendment. *Right to Treatment & Rehabilitation,* 818 So.2d at 498 (voters must acquaint themselves with the details of a proposed amendment together with the pros and cons thereon before they enter the voting booth and if they do not, it is no function of the ballot to provide that needed education). Here, the proposed amendments are relatively

short and straightforward. The text clearly highlights that for a redistricting plan to run afoul of the proposals, the conduct by the Legislature must be *intentional.*

Additionally, such an intent requirement has been historically applied with regard to allegations of gerrymandering in reapportionment. For example, this Court has held that a discriminatory *effect* is not sufficient to prove racial discrimination in redistricting; rather, a discriminatory *intent* must be demonstrated:

> This invidious intent or purpose of racial discrimination, the Supreme Court explained, cannot be proved by merely showing that the group discriminated against has not elected representatives in proportion to its numbers. Disproportionate effects alone will not establish a claim of unconstitutional racial vote dilution. Rather, "[a] plaintiff must prove that the disputed plan was conceived or operated as a purposeful device to further racial discrimination." Proof of a discriminatory effect is not sufficient.

*Milton v. Smathers,* 389 So.2d 978, 981–82 (Fla.1980) (quoting *City of Mobile v. Bolden,* 446 U.S. 55, 66, 100 S.Ct. 1490, 64 L.Ed.2d 47 (1980)). Thus, when implementing additional constitutional apportionment standards—here, that district boundaries not be drawn to favor a party or incumbent—it is logical to presume (and the text of the amendments require) that the *intent* of the entity that draws the districts must similarly be considered when determining whether those standards have been violated.

Moreover, to add the "with the intent" language to the proposed summaries would require removal of at least two other words for the summaries to comply with the seventy-five-word statutory limit. The ***187** Legislature fails to indicate which of the current seventy-four words could be removed without creating another claim that the summaries are vague or misleading. Indeed, it is likely impossible to draft summaries that explain *all* of the details sought by the Legislature within the statutory-word limit. While ideal summaries for these amendments might have included the words "with the intent," we conclude that—given the strict word limits—the failure of the summaries to include these three words does not render them so misleading as to clearly and conclusively violate section 101.161, Florida Statutes. *See Right to Treatment & Rehabilitation,* 818 So.2d at 498 (holding that failure of ballot summary to explain that proposed amendment is self-effectuating did not render the summary misleading and noting that "imperfection is not necessarily fatal given the seventy-five word statutory maximum").

*Shift of Authority*—The Legislature next contends that the summaries are misleading because they fail to mention that the proposed amendments divest the Legislature of its responsibility to draw legislative and congressional districts and transfer this role to the judiciary. However, we have already concluded that the proposed amendments do not substantially alter the functions of multiple branches of government. Rather, under the proposals, the judiciary maintains the same role as it has always possessed—to only review apportionment plans for compliance with state and federal constitutional requirements and to adjudicate challenges to redistricting plans. The proposed amendments do not shift in any way the authority of the Legislature to draw legislative and congressional districts to the judicial branch. Accordingly, the summaries are not misleading for the failure to mention this purported "effect" of the proposals.

**[11]** *"City/County" boundaries vs. "Political" Boundaries*—The ballot summaries state that district boundaries shall, where feasible, utilize existing "city, county and geographical boundaries"; however, the body of the amendments provide that districts must use "existing *political* and geographical boundaries." (Emphasis supplied.) The Legislature asserts that the term "political boundaries" encompasses more than city or county boundaries, and under the Florida Statutes, this State has many special districts—such as voting precincts and water-management districts—the borders of which would constitute "political boundaries." Thus, to the extent that the summaries use language inconsistent with that of the proposed amendments, the Legislature contends that they are misleading.

Although the phrase "political and geographical boundaries" used in the proposed amendments may be technically broader than the "city, county, and geographical boundaries" phrase used in the summaries, we conclude that this differing use of terminology could not reasonably mislead voters. The sponsor asserts that the terms "city" and "county" are utilized in the summaries because they are more understandable to the average citizen than the legal concept of "political" boundaries. We agree that most voters clearly understand the concept of a city or county boundary, but may be perplexed to define exactly what a "political boundary" may encompass. *See Askew v. Firestone,* 421 So.2d 151, 155 (Fla.1982) (noting that voters "must be able to comprehend the

  

sweep of each proposal" (quoting *Smathers v. Smith,* 338 So.2d 825, 829 (Fla.1976))). The purpose of the standards in section (2) of the proposals is to require legislative and congressional districts to follow existing community lines so that districts are logically drawn, and bizarrely shaped districts—such ***188** as one senate district that was challenged in *Resolution 1987,* 817 So.2d at 824–25—are avoided.[1] Since the "city" and "county" terminology honors this community-based standard for drawing legislative and congressional boundaries, and further describes the standards in terms that are readily understandable to the average voter, we conclude that the use of different terminology does not render the summaries misleading.

1 That senate district connected a region of Lee County with a region of Palm Beach County across the waters of Lake Okeechobee without any connecting territory on either the northern or southern shores of the lake. *See id.* at 828. Thus, the only way to travel from one end of the district to the other without passing through another district was by boat.

**[12]** *The And/Or Distinction*—Under this challenge, the Legislature contends that the summaries are misleading because while they provide that "[d]istricts shall not be drawn to deny racial or language minorities the equal opportunity to participate in the political process *and* elect representatives of their choice," the proposed amendments provide that "districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process *or* to diminish their ability to elect representatives of their choice." (Emphasis supplied.) According to the Legislature, the "or" in the proposals demonstrates that an apportionment plan need satisfy *only one* of the two conditions to comply with the amendment—either districts must not be drawn to deny racial or language minorities the equal opportunity to participate in the political process *or* districts must not be drawn to diminish the ability of racial or language minorities to elect representatives of their choice. According to the Legislature, both standards need not be accomplished. Conversely, the Legislature posits that use of the word "and" in the summary indicates that *both* standards must be satisfied to comply with the amendments—thus, the summaries are misleading because they promise more than is required under the proposed amendments.

We conclude that the logic of the Legislature is faulty. In support of its assertion, the Legislature relies upon the case *Armstrong v. Harris,* 773 So.2d 7, 16 (Fla.2000), in which this Court held that a ballot title which read "United States Supreme Court Interpretation of Cruel and Unusual Punishment" and a summary which provided that the proposed amendment "[r]equires construction of the prohibition against cruel and/or unusual punishment to conform to United States Supreme Court interpretation of the Eighth Amendment" were affirmatively misleading. *See* 773 So.2d at 16–17. This Court explained that although the title offered the impression that "the amendment will promote the rights of Florida citizens through the rulings of the United States Supreme Court," the amendment actually restricted the rights of Floridians because the United States Constitution ban against "cruel *and* unusual" punishment provided fewer protections than the Florida Constitution ban on "cruel *or* unusual punishment." *Id.* at 17. Thus, the "or" carried special significance because it prohibited punishment that is *either* cruel *or* unusual, whereas under the United States Constitution, the punishment is prohibited only if it is both cruel *and* unusual.

However, the proposal in *Armstrong* is distinguishable from the proposed amendments that we review today. While the word "or" in the *Armstrong* proposal was used in conjunction with two adjectives, here the word "or" separates two clauses of a sentence which share the same negative ***189** verb; i.e., "shall not be drawn." This verb modifies both clauses, thereby indicating that *both* clauses impose a restrictive imperative, *each of which must be satisfied.* For example, if a statute provides that "one person shall not kill another *or* cause him/her grievous bodily harm," it is illogical to suggest that the statute prohibits one action *but not the other.* Rather, the "shall not" unquestionably applies to both actions—*both* killing *and* causing grievous bodily harm are prohibited. Similarly, the negative verb "shall not be drawn" in the proposed amendments modifies both clauses "with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process" and "to diminish their ability to elect representatives of their choice." Under this sentence, *both* effects are prohibited.[2] Thus, use of the word "or" in the proposals is synonymous with the word "and" in the summaries. Because the use of synonymous terms is not misleading, this challenge by the Legislature fails. *See English—The Official Language,* 520 So.2d at 13 (use of synonymous terms will not render summary fatally defective where the use of different terms could not reasonably mislead voters).

2 One legal dictionary has explained:
"[O]r" has an inclusive sense as well as an exclusive sense. Hence:

....

• The "inclusive *or* ": A or B, or both

• The "exclusive *or* ": A or B, but not both.

Bryan A. Garner, *A Dictionary of Modern Legal Usage* 624 (2d ed.1995).

**[13]** *Language Minorities*—The Legislature's claim that this term is vague or ambiguous is not persuasive. The term "language minorities" is both legally and commonly understood to refer to any language other than English. *See, e.g.,* 42 U.S.C. § 1973b(f)(1) ("The Congress finds that voting discrimination against citizens of *language minorities* is pervasive and national in scope. Such minority citizens are from environments *in which the dominant language is other than English.*" (emphasis supplied)); *Briscoe v. Bell,* 432 U.S. 404, 405, 97 S.Ct. 2428, 53 L.Ed.2d 439 (1977) ("[A]s part of the 1975 amendments to the Voting Rights Act ... Congress extended the Act's strong protections to cover language minorities; that is, *citizens living in environments where the dominant language is not English.*" (emphasis supplied)); *Biddulph v. Mortham,* 89 F.3d 1491, 1498 (11th Cir.1996) ("The plaintiffs argued that the proposal's sponsors failed to comply with a provision of the Voting Rights Act requiring that certain jurisdictions subject to rules *prohibiting discrimination against language minorities* provide 'materials or information relating to the electoral process' in the minority group's language *as well as English.*" (emphasis supplied)). The Legislature's contention that voters may be confused by the term "language minorities" is even more dubious in light of the fact that the Florida Constitution contains a provision providing that *English is the official language of Florida. See* art. II, § 9, Fla. Const. Use of this term does not render the summaries misleading.

*Elimination of Multi–Member Districts*—Lastly, the Legislature contends that the summary of the legislative-boundary proposal is misleading because it fails to inform voters that it changes the Florida Constitution to no longer permit multi-member legislative districts and to mandate single-member legislative districts.[3] ***190** The Florida Constitution currently mandates that legislative districts consist of either "contiguous, overlapping or identical territory." Art. III, § 16(a), Fla. Const. In 1972, we held that this language permits multi-member legislative districts:

[3] In *Branch v. Smith,* 538 U.S. 254, 273, 123 S.Ct. 1429, 155 L.Ed.2d 407 (2003), the Supreme Court determined that "that in enacting 2 U.S.C. § 2c, Congress mandated that States are to provide for the election of their Representatives from single-member districts." Thus, even if the congressional-boundary amendment were interpreted to mandate single-member districts, this proposal would be consistent with federal law.

> [T]he Constitution requires that there be one senator elected from each Senatorial district and one member of the House of Representatives elected from each representative district. This, standing alone, would require single-member districts. However, the Constitution further provides that districts may be "identical territory." This means that multi-members of the Senate or the House of Representatives may be elected from the identical territory if such territory were designated as constituting several districts. To require single-member districts would void the provision of Fla. Const., art. III, § 16(a) ... authorizing the creation of districts in "identical territory."
>
> ....
>
> Under the provisions of Fla. Const., art. III, § 1 and 16 ... multi-member districts are permissible and such multi-member districts may coexist with single-member districts in the same plan.

*In re Apportionment Law Senate Joint Resolution No. 1305,* 263 So.2d 797, 806–07 (Fla.1972).

The Legislature contends that adoption of the proposed legislative-boundary amendment—which includes a "contiguous" requirement but does not mention overlapping or identical districts—operates to repeal article III, section 16(a) of the Florida Constitution. Under this rationale the Legislature argues that because identical districts are no longer permitted, the proposal amends the Florida Constitution to implement a single-member district requirement, and the ballot summary fails to inform voters of this significant change. *See Nonpartisan,* 926 So.2d at 1226 (noting that the "identical territory" provision in article III, section 16(a) permits the creation of multi-member districts).

**[14]** We disagree that adoption of the legislative-boundary proposal will have the asserted effect. This Court has explained:

  

> A new constitutional provision prevails over prior provisions of the Constitution (a) if it specifically repeals them or (b) if it cannot be harmonized with them. Nevertheless, it is settled that *implied repeal of one constitutional provision by another is not favored,* and every reasonable effort will be made to give effect to both provisions. Unless the later amendment expressly repeals or purports to modify an existing provision, *the old and new should stand and operate together unless the clear intent of the later provision is thereby defeated.*

*Jackson v. City of Jacksonville,* 225 So.2d 497, 500–501 (Fla.1969) (emphasis supplied). Since the legislative-boundary proposal does *not* expressly repeal section 16(a), this constitutional provision will be considered repealed by implication *only if* it cannot be harmonized with the proposal.

We conclude that harmonization of these two provisions is possible and, therefore, "identical" multi-member districts in Florida will still be constitutionally permissible even if the legislative-boundary proposal is adopted. In 1982, this Court clarified that the word "contiguous" in article III, section 16(a) "means only that each district must be contiguous *within itself*" and does not refer "to the relationship of the districts to each other." *In re Apportionment Law Appearing as Senate Joint Resolution No. 1E,* 414 So.2d 1040, 1045, 1050 (Fla.1982) (emphasis supplied). ***191** Thus, under this Court's prior case law, the reference to "contiguous" in the proposed legislative-boundary amendment solely addresses the characteristics of an individual district—not its relationship with any other district. Accordingly, a constitutional contiguity requirement for each individual district may exist, but—at the same time—an individual district may still overlap with, or be identical to, another individual district. Because these two provisions can be harmonized in such a manner, the proposed legislative-boundary proposal would not operate to repeal article III, section 16(a).[4]

[4] The proposals here are decidedly different from the proposed amendment that this Court struck from the ballot in *Nonpartisan.* In *Nonpartisan,* the proposal deleted article III, section 16(a) *in its entirety* and inserted a new section 16(a), which would have required "single-member" districts of "convenient contiguous territory." *See* 926 So.2d at 1221. Thus, in *Nonpartisan,* there was an express repeal of the constitutional provision that allowed districts to be overlapping and identical.

Since the legislative-boundary proposal does not have the effect of prohibiting multi-member districts, the ballot summary is not misleading for the failure to mention this purported "effect."

## III. CONCLUSION

In conclusion, we hold that the proposed amendments meet the legal requirements of article XI, section 3 of the Florida Constitution, and the ballot titles and summaries comply with section 101.161(1), Florida Statutes (2008). Accordingly, we approve the amendments for placement on the ballot.

It is so ordered.

QUINCE, C.J., and ANSTEAD, Senior Justice, concur.

WELLS, CANADY, and POLSTON, JJ., concur in result only.

PARIENTE, J., recused.

**All Citations**

2 So.3d 175, 34 Fla. L. Weekly S64

**Negative Treatment**

There are no Negative Treatment results for this citation.

KeyCite Yellow Flag - Negative Treatment
Declined to Extend by Advisory Opinion to Attorney General re Adult Use of Marijuana, Fla., April 22, 2021

132 So.3d 786
Supreme Court of Florida.

# ADVISORY OPINION TO the ATTORNEY GENERAL RE USE OF MARIJUANA FOR CERTAIN MEDICAL CONDITIONS.
# Advisory Opinion to the Attorney General re Use of Marijuana for Certain Medical Conditions (Financial Impact Statement).

Nos. SC13–2006, SC13–2132.
|
Jan. 27, 2014.

**Synopsis**
**Background:** Attorney general filed petition for advisory opinion as to validity of proposed citizen initiative amendment to Florida Constitution and corresponding financial impact statement.

**Holdings:** The Justices of the Supreme Court held that:

[1] proposed amendment satisfied single-subject requirement of state constitution;

[2] title and summary of proposed amendment complied with statutory requirement that they fairly inform voters of chief purpose of amendment and not mislead voters; and

[3] financial impact statement satisfied statutory requirements.

Question answered.

Polston, C.J., dissented with opinion in which Canady, J., joined.

Canady, J., dissented with opinion in which Polston, C.J., joined.

Labarga, J., dissented with opinion.

West Headnotes (31)

**[1] Constitutional Law** Submission to Popular Vote; Initiative

Sovereignty resides in the people, and the electors have right to approve or reject proposed amendment to organic law of the state, limited only in those instances where there is an entire failure to comply with a plain and essential requirement of organic law in proposing a constitutional amendment.

  

[2] **Constitutional Law** Pre-election challenges or review

Duty of the supreme court in reviewing a proposed citizen initiative amendment to the state constitution is to uphold the proposal unless it can be shown to be clearly and conclusively defective.

6 Cases that cite this headnote

[3] **Constitutional Law** Single or Multiple Subjects

**Constitutional Law** Ballot Title

**Constitutional Law** Summaries, Explanatory Statements, and Statements of Purpose

In determining the validity of initiative petitions, the supreme court is limited to two issues: (1) whether the petition satisfies the single-subject requirement of the Florida Constitution; and (2) whether the ballot title and summary are printed in clear and unambiguous language as required by statute. West's F.S.A. Const. Art. 11, § 3; West's F.S.A. § 101.161(1).

3 Cases that cite this headnote

[4] **Constitutional Law** Pre-election challenges or review

Supreme court does not review the merits of a proposed constitutional amendment based on a citizen initiative petition.

4 Cases that cite this headnote

[5] **Constitutional Law** Single or Multiple Subjects

In evaluating whether a proposed amendment violates the single-subject requirement of the state constitution, the supreme court must determine whether it has a logical and natural oneness of purpose. West's F.S.A. Const. Art. 11, § 3.

[6] **Constitutional Law** Single or Multiple Subjects

**Constitutional Law** Applicability to multiple branches of government

Single-subject requirement of the state constitution is a rule of restraint designed to insulate Florida's organic law from precipitous and cataclysmic change, and prevents a proposal from engaging in either of two practices: (1) logrolling; or (2) substantially altering or performing the functions of multiple branches of state government. West's F.S.A. Const. Art. 11, § 3.

2 Cases that cite this headnote

[7] **Constitutional Law** Single or Multiple Subjects

For purposes of single-subject analysis of a proposed citizen initiative amendment to the state constitution, "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. West's F.S.A. Const. Art. 11, § 3.

2 Cases that cite this headnote

[8] **Constitutional Law** Applicability to multiple branches of government

  

Proposal advanced in a proposed citizen initiative amendment to the state constitution that affects several branches of government will not automatically fail; rather, it is when a proposal substantially alters or performs the functions of multiple branches that it violates the single-subject test under the state constitution. West's F.S.A. Const. Art. 11, § 3.

2 Cases that cite this headnote

[9] **Constitutional Law** Particular amendments

Proposed amendment to state constitution legalizing medical use of marijuana did not violate "log-rolling" aspect of constitutional single-subject requirement for citizen initiative petitions by providing for specific role of Department of Health in overseeing and licensing medical use of marijuana, as such provision was directly connected with question of whether state residents wanted provision in state constitution authorizing medical use of marijuana, as determined by licensed Florida physician, under Florida law. West's F.S.A. Const. Art. 11, § 3.

[10] **Constitutional Law** Single or Multiple Subjects

Proposed amendment to the state constitution may delineate a number of guidelines consistent with the single-subject requirement as long as these components possess a natural relation and connection as component parts or aspects of a single dominant plan or scheme. West's F.S.A. Const. Art. 11, § 3.

1 Case that cites this headnote

[11] **Constitutional Law** Particular amendments

Proposed constitutional amendment based on citizen initiative petition legalizing medical use of marijuana did not violate "log-rolling" aspect of constitutional single-subject requirement for citizen initiative petitions by removing state-imposed penalties and liability from those involved in authorized medical use of marijuana consistent with proposed amendment. West's F.S.A. Const. Art. 11, § 3.

[12] **Constitutional Law** Applicability to multiple branches of government

Proposed constitutional amendment based on citizen initiative petition legalizing medical use of marijuana did not substantially alter or perform functions of multiple aspects of government, in violation of single-subject requirement of state constitution; amendment calling for Department of Health or its successor agency to register and oversee providers, issue identification cards, and determine treatment amounts to ensure safe use of medical marijuana by qualifying patients did not substantially affect or alter Department's functions, and amendment did not empower Department to make primary policy decisions in usurpation of legislative power. West's F.S.A. Const. Art. 11, § 3.

1 Case that cites this headnote

[13] **Constitutional Law** Applicability to multiple branches of government

Fact that a branch of government is required to comply with a provision of the state constitution does not necessarily constitute the usurpation of the branch's function within the meaning of the single-subject rule. West's F.S.A. Const. Art. 11, § 3.

1 Case that cites this headnote

[14] **Constitutional Law** Particular amendments

  

Proposed constitutional amendment based on citizen initiative petition legalizing medical use of marijuana satisfied single-subject requirement of state constitution. West's F.S.A. Const. Art. 11, § 3.

1 Case that cites this headnote

[15] **Constitutional Law** Ballot Title

**Constitutional Law** Summaries, Explanatory Statements, and Statements of Purpose

Determination of whether a constitutional amendment proposed by citizen initiative will be accurately represented on the ballot requires the supreme court to 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.

8 Cases that cite this headnote

[16] **Constitutional Law** Particular amendments

**Constitutional Law** Particular amendments

Title and summary of proposed constitutional amendment based on citizen initiative petition legalizing medical use of marijuana complied with statutory requirement that they fairly inform voters of chief purpose of amendment and not mislead voters; neither title, "Use of Marijuana for Certain Medical Conditions[,]" nor summary hid true scope of proposed amendment, title and summary were not affirmatively misleading for omitting issue of physician criminal or civil liability, and title and summary were not required to inform voters as to current state of federal law with respect to possession and use of marijuana. West's F.S.A. § 101.161.

4 Cases that cite this headnote

[17] **Constitutional Law** Particular amendments

**Constitutional Law** Particular amendments

Title and summary of proposed constitutional amendment based on citizen initiative petition legalizing medical use of marijuana satisfied statutory requirement that voters be given fair notice as to scope of proposed amendment; multiple restrictions in text of the amendment itself reflected constitutional scheme meant to be limited in scope regarding medical use of marijuana to treat "debilitating medical conditions[,]" use of "certain" in title conveyed role of physician in determining severity of condition and medical benefits of marijuana, and use of term "diseases" in ballot summary and term "medical conditions" in text of amendment did not render summary misleading. West's F.S.A. § 101.161.

[18] **Constitutional Law** General Rules of Construction

When reviewing constitutional provisions, the supreme court follows principles parallel to those of statutory interpretation.

[19] **Constitutional Law** Submission to Popular Vote; Initiative

**Constitutional Law** Plain, ordinary, or common meaning

In construing terms used in the state constitution and presented to the voters in a proposed constitutional amendment, the supreme court looks to dictionary definitions of the terms, recognizing that, in general, a dictionary may provide the popular and common-sense meaning of terms presented to the voters.

  

3 Cases that cite this headnote

[20] **Constitutional Law** Meaning of Language in General

**Statutes** General and specific terms and provisions; ejusdem generis

Statutory and constitutional construction principle of "ejusdem generis" provides that where general words or phrases follow an enumeration of specific words or phrases, the general words are construed as applying to the same kind or class as those that are specifically mentioned.

2 Cases that cite this headnote

[21] **Constitutional Law** In pari materia

In construing multiple constitutional provisions addressing a similar subject, the provisions must be read in pari materia to ensure a consistent and logical meaning that gives effect to each provision.

[22] **Constitutional Law** Giving effect to every word

**Statutes** Statute as a Whole; Relation of Parts to Whole and to One Another

It is an elementary principle of statutory and constitutional construction that significance and effect must be given to every word, phrase, sentence, and part of the provision if possible.

[23] **Constitutional Law** Ballot Title

**Constitutional Law** Summaries, Explanatory Statements, and Statements of Purpose

When determining whether a ballot title and summary are misleading, it is appropriate to consider both together. West's F.S.A. § 101.161.

1 Case that cites this headnote

[24] **Constitutional Law** Submission to Popular Vote; Initiative

**Constitutional Law** Summaries, Explanatory Statements, and Statements of Purpose

Inadvertent use of different but clearly synonymous terms in a proposed constitutional amendment and the summary thereof will not render a ballot summary fatally defective where the differing use of terminology could not reasonably mislead the voters. West's F.S.A. § 101.161.

[25] **Constitutional Law** Particular amendments

**Constitutional Law** Particular amendments

Title and summary of proposed constitutional amendment based on citizen initiative petition legalizing medical use of marijuana were not affirmatively misleading for omitting issue of physician criminal or civil liability, as proposed amendment did not afford broad tort and criminal immunity to physicians who prescribe marijuana fraudulently or negligently, did not change professional duties and obligations of licensed Florida physicians, did not restrict Florida's current constitutional right of access to the courts, and did not expressly or impliedly repeal existing medical malpractice or liability statutes, but rather exempted physicians from being subject to criminal or civil liability or sanctions for limited act of prescribing marijuana in manner consistent with the amendment. West's F.S.A. § 101.161.

  

[26] **Constitutional Law** Operation as to statutes previously in force

In considering the effect of constitutional amendments upon existing statutes, the rule is that the statute will continue in effect unless it is completely inconsistent with the plain terms of the constitution.

1 Case that cites this headnote

[27] **Constitutional Law** Particular amendments

**Constitutional Law** Particular amendments

Title and summary of proposed constitutional amendment based on citizen initiative petition legalizing medical use of marijuana were not affirmatively misleading for failing to inform voters as to current state of federal law with respect to possession and use of marijuana, as amendment informed voters that proposed amendment applied only to Florida law and did not authorize violations of federal law, summary was not required to inform voters of current state of federal statutory law, where no such language appeared in amendment, and statements in summary were legally accurate. West's F.S.A. § 101.161.

2 Cases that cite this headnote

[28] **Constitutional Law** Particular amendments

**Constitutional Law** Particular amendments

Title and summary of proposed constitutional amendment based on citizen initiative petition legalizing medical use of marijuana were not affirmatively misleading for failing to inform voters of alleged lack of age limit for marijuana use or requirement that physicians consult parents before authorizing marijuana use for minors, for employing definition of "caregiver" allegedly inconsistent with its common meaning and use under state law, or for failing to disclose amendment's alleged effect on state constitutional right of access to courts and to public records, as such issues did not involve chief purpose of amendment, or even any significant effect which would result from amendment if passed. West's F.S.A. § 101.161(1).

[29] **Constitutional Law** Fiscal impact statements

Supreme court has an independent obligation, in reviewing a proposed constitutional amendment based on a citizen initiative petition, to review the financial impact statement submitted therewith to ensure that it is clear and unambiguous and in compliance with Florida law. West's F.S.A. Const. Art. 11, § 5(c); West's F.S.A. § 100.371(5)(a), (5)(c)(2).

2 Cases that cite this headnote

[30] **Constitutional Law** Fiscal impact statements

Supreme court's review of financial impact statements submitted with proposed constitutional amendments based on citizen initiative petitions is narrow, addressing only whether the statement is clear, unambiguous, consists of no more than 75 words, and is limited to address the estimated increase or decrease in any revenues or costs to the state or local governments. West's F.S.A. Const. Art. 11, § 5(c); West's F.S.A. § 100.371(5)(a), (5)(c)(2).

2 Cases that cite this headnote

  

**[31] Constitutional Law** Fiscal impact statements

Financial impact statement for proposed constitutional amendment based on a citizen initiative petition legalizing medical use of marijuana, which stated that increased costs associated with additional regulatory and enforcement activities could not be determined, that fees would offset at least a portion of increased costs, and that change in revenue could not be estimated because relevant committee could not predict extent to which medical marijuana would be exempt from taxation satisfied statutory requirements governing financial impact statements. West's F.S.A. § 100.371(5).

**Attorneys and Law Firms**

***790** Pamela Jo Bondi, Attorney General, and Gerry Hammond, Senior Assistant Attorney General, Tallahassee, FL; Allen Winsor, Solicitor General, and Rachel E. Nordby and Leah A. Sevi, Deputy Solicitors General, Tallahassee, FL, for Petitioner.

Jon L. Mills of Boies Schiller & Flexner, LLP, Miami, FL, Timothy McLendon, Gainesville, FL, and John Morgan, Orlando, FL, for People United for Medical Marijuana, Sponsor.

George T. Levesque, General Counsel, Tallahassee, FL, on behalf of The Florida Senate and Don Gaetz, in his official capacity as President of the Florida Senate; and Daniel E. Nordby, General Counsel, on behalf of The Florida House of Representatives and Will Weatherford, in his official capacity as Speaker of the Florida House of Representatives; Susan L. Kelsey of Kelsey Appellate Law Firm, P.A., Tallahassee, FL, and Kenneth B. Bell of Clark, Partington, Hart, Larry, Bond & Stackhouse, Pensacola, FL, on behalf of Florida Chambers of Commerce, Florida Medical Association, Florida Police Chiefs Association, Florida Sheriffs Association, and Save Our Society from Drugs, as Opponents.

Rupert E. Dunkum, Webster, FL, Responding with comments.

**Opinion**

***791** PER CURIAM.

The Attorney General of Florida has petitioned this Court for an advisory opinion as to the validity of a proposed citizen initiative amendment to the Florida Constitution, submitted by an organization called People United for Medical Marijuana (the "proponent"), and the corresponding Financial Impact Statement submitted by the Financial Impact Estimating Conference. We have jurisdiction. *See* art. IV, § 10; art. V, § 3(b)(10), Fla. Const.

Our review of the proposed amendment is confined to two issues: (1) whether the proposed amendment itself satisfies the single-subject requirement of article XI, section 3, of the Florida Constitution; and (2) whether the ballot title and summary satisfy the requirements of section 101.161(1), Florida Statutes (2013). *See Advisory Op. to Att'y Gen. re Water & Land Conservation—Dedicates Funds to Acquire & Restore Fla. Conservation & Recreation Lands,* 123 So.3d 47, 50 (Fla.2013). For the reasons we explain, we conclude that the proposed amendment embraces a single subject, which is the medical use of marijuana, and therefore complies with article XI, section 3.

We also conclude that the ballot title and summary comply with section 101.161(1) because they are not clearly and conclusively defective. By reading the proposed amendment as a whole and construing the ballot title together with the ballot summary, we hold that the voters are given fair notice as to the chief purpose and scope of the proposed amendment, which is to allow a restricted use of marijuana for certain "debilitating" medical conditions. We conclude that the voters will not be affirmatively misled regarding the purpose of the proposed amendment because the ballot title and summary accurately convey the limited use of marijuana, as determined by a licensed Florida physician, that would be authorized by the amendment consistent with its

  

intent. The interpretation of the proposed amendment offered by the proponent that "the intent is to allow [marijuana] use for a serious medical condition or disease," rather than for any medical condition for which a physician personally believes that the benefits outweigh the health risks, is a reasonable one that is supported by accepted principles of constitutional interpretation.

Finally, we conclude that the accompanying Financial Impact Statement is in compliance with section 100.371(5), Florida Statutes (2013). We therefore approve the proposed amendment and Financial Impact Statement for placement on the ballot. We express no opinion as to the merits of the proposal.

## I. BACKGROUND

On October 24, 2013, the Attorney General petitioned this Court for an opinion as to the validity of a citizen initiative petition sponsored by the proponent and circulated pursuant to article XI, section 3, of the Florida Constitution. The proposed amendment would add a new section 29 to article X of the Florida Constitution. The full text of the proposed amendment states as follows:

> ARTICLE X, SECTION 29. Medical marijuana production, possession and use.—
>
> (a) PUBLIC POLICY.
>
> (1) The medical use of marijuana by a qualifying patient or personal caregiver is not subject to criminal or civil liability or sanctions under Florida law except as provided in this section.
>
> (2) A physician licensed in Florida shall not be subject to criminal or civil liability or sanctions under Florida law for issuing a physician certification to a person diagnosed with a debilitating ***792** medical condition in a manner consistent with this section.
>
> (3) Actions and conduct by a medical marijuana treatment center registered with the Department, or its employees, as permitted by this section and in compliance with Department regulations, shall not be subject to criminal or civil liability or sanctions under Florida law except as provided in this section.
>
> (b) DEFINITIONS. For purposes of this section, the following words and terms shall have the following meanings:
>
> (1) "Debilitating Medical Condition" means cancer, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), hepatitis C, amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, multiple sclerosis or other conditions for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient.
>
> (2) "Department" means the Department of Health or its successor agency.
>
> (3) "Identification card" means a document issued by the Department that identifies a person who has a physician certification or a personal caregiver who is at least twenty-one (21) years old and has agreed to assist with a qualifying patient's medical use of marijuana.
>
> (4) "Marijuana" has the meaning given cannabis in Section 893.02(3), Florida Statutes (2013).
>
> (5) "Medical Marijuana Treatment Center" means an entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers and is registered by the Department.

  

(6) "Medical use" means the acquisition, possession, use, delivery, transfer, or administration of marijuana or related supplies by a qualifying patient or personal caregiver for use by a qualifying patient for the treatment of a debilitating medical condition.

(7) "Personal caregiver" means a person who is at least twenty-one (21) years old who has agreed to assist with a qualifying patient's medical use of marijuana and has a caregiver identification card issued by the Department. A personal caregiver may assist no more than five (5) qualifying patients at one time. An employee of a hospice provider, nursing, or medical facility may serve as a personal caregiver to more than five (5) qualifying patients as permitted by the Department. Personal caregivers are prohibited from consuming marijuana obtained for the personal, medical use by the qualifying patient.

(8) "Physician" means a physician who is licensed in Florida.

(9) "Physician certification" means a written document signed by a physician, stating that in the physician's professional opinion, the patient suffers from a debilitating medical condition, that the potential benefits of the medical use of marijuana would likely outweigh the health risks for the patient, and for how long the physician recommends the medical use of marijuana for the patient. A physician certification may only be provided after the physician has conducted a physical examination of the patient and a full assessment of the patient's medical history.

(10) "Qualifying patient" means a person who has been diagnosed to have a debilitating medical condition, who has a physician certification and a valid qualifying ***793** patient identification card. If the Department does not begin issuing identification cards within nine (9) months after the effective date of this section, then a valid physician certification will serve as a patient identification card in order to allow a person to become a "qualifying patient" until the Department begins issuing identification cards.

(c) LIMITATIONS.

(1) Nothing in this section shall affect laws relating to non-medical use, possession, production or sale of marijuana.

(2) Nothing in this section authorizes the use of medical marijuana by anyone other than a qualifying patient.

(3) Nothing in this section allows the operation of a motor vehicle, boat, or aircraft while under the influence of marijuana.

(4) Nothing in this law section [sic] requires the violation of federal law or purports to give immunity under federal law.

(5) Nothing in this section shall require any accommodation of any on-site medical use of marijuana in any place of education or employment, or of smoking medical marijuana in any public place.

(6) Nothing in this section shall require any health insurance provider or any government agency or authority to reimburse any person for expenses related to the medical use of marijuana.

(d) DUTIES OF THE DEPARTMENT. The Department shall issue reasonable regulations necessary for the implementation and enforcement of this section. The purpose of the regulations is to ensure the availability and safe use of medical marijuana by qualifying patients. It is the duty of the Department to promulgate regulations in a timely fashion.

(1) Implementing Regulations. In order to allow the Department sufficient time after passage of this section, the following regulations shall be promulgated no later than six (6) months after the effective date of this section:

a. Procedures for the issuance of qualifying patient identification cards to people with physician certifications, and standards for the renewal of such identification cards.

b. Procedures for the issuance of personal caregiver identification cards to persons qualified to assist with a qualifying patient's medical use of marijuana, and standards for the renewal of such identification cards.

  

c. Procedures for the registration of Medical Marijuana Treatment Centers that include procedures for the issuance, renewal, suspension, and revocation of registration, and standards to ensure security, record keeping, testing, labeling, inspection, and safety.

d. A regulation that defines the amount of marijuana that could reasonably be presumed to be an adequate supply for qualifying patients' medical use, based on the best available evidence. This presumption as to quantity may be overcome with evidence of a particular qualifying patient's appropriate medical use.

(2) Issuance of identification cards and registrations. The Department shall begin issuing qualifying patient and personal caregiver identification cards, as well as begin registering Medical Marijuana Treatment Centers no later than nine months (9) after the effective date of this section.

(3) If the Department does not issue regulations, or if the Department does not begin issuing identification cards and registering Medical Marijuana Treatment Centers within the time limits set ***794** in this section, any Florida citizen shall have standing to seek judicial relief to compel compliance with the Department's constitutional duties.

(4) The Department shall protect the confidentiality of all qualifying patients. All records containing the identity of qualifying patients shall be confidential and kept from public disclosure other than for valid medical or law enforcement purposes.

(e) LEGISLATION. Nothing in this section shall limit the legislature from enacting laws consistent with this provision.

(f) SEVERABILITY. The provisions of this section are severable and if any clause, sentence, paragraph or section of this measure, or an application thereof, is adjudged invalid by any court of competent jurisdiction other provisions shall continue to be in effect to the fullest extent possible.

The ballot title for the proposed amendment is "Use of Marijuana for Certain Medical Conditions," and the ballot summary, which is limited by law to seventy-five words, reads as follows:

Allows the medical use of marijuana for individuals with debilitating diseases as determined by a licensed Florida physician. Allows caregivers to assist patients' medical use of marijuana. The Department of Health shall register and regulate centers that produce and distribute marijuana for medical purposes and shall issue identification cards to patients and caregivers. Applies only to Florida law. Does not authorize violations of federal law or any non-medical use, possession or production of marijuana.

On November 4, 2013, the Financial Impact Estimating Conference forwarded to the Attorney General the following Financial Impact Statement regarding the proposed amendment:

Increased costs from this amendment to state and local governments cannot be determined. There will be additional regulatory and enforcement activities associated with the production and sale of medical marijuana. Fees will offset at least a portion of the regulatory costs. While sales tax may apply to purchases, changes in revenue cannot reasonably be determined since the extent to which medical marijuana will be exempt from taxation is unclear without legislative or state administrative action.

Following this Court's direction for interested parties to file briefs as to the Attorney General's petition, the proponent submitted a brief in support of the proposed amendment's validity, while the Court received four briefs in opposition, filed by the Attorney General; the Florida Senate and Florida House of Representatives; the Florida Chamber of Commerce, Florida Medical Association, Florida Police Chiefs Association, Florida Sheriffs Association, and Save Our Society from Drugs; and a pro se citizen (collectively, the "opponents"). No briefs or comments were submitted to this Court in response to the proponent's argument that the Financial Impact Statement complies with section 100.371(5), Florida Statutes.

  

## II. STANDARD OF REVIEW

**[1]** **[2]** This Court has traditionally applied a deferential standard of review to the validity of a citizen initiative petition and "has been reluctant to interfere" with "the right of self-determination for *all* Florida's citizens" to formulate "their own organic law." *Advisory Op. to Att'y Gen. re Right to Treatment & Rehab. for Non–Violent Drug Offenses,* 818 So.2d 491, 494 (Fla.2002). As this Court has stated:

> ***795** There is no lawful reason why the electors of this State should not have the right to determine the manner in which the Constitution may be amended. This is the most sanctified area in which a court can exercise power. Sovereignty resides in the people and the electors have a right to approve or reject a proposed amendment to the organic law of this State, limited only by those instances where there is an entire failure to comply with a plain and essential requirement of [the law].

*Id.* (quoting *Pope v. Gray,* 104 So.2d 841, 842 (Fla.1958)). In this vein, this Court has long explained that our "duty is to uphold the proposal unless it can be shown to be 'clearly and conclusively defective.' " *In re Advisory Op. to Att'y Gen. re Florida's Amend. to Reduce Class Size,* 816 So.2d 580, 582 (Fla.2002) (quoting *Advisory Op. to Att'y Gen. re Tax Limitation,* 673 So.2d 864, 867 (Fla.1996)); *see also In re Advisory Op. to Att'y Gen. re Med. Liab. Claimant's Comp. Amend.,* 880 So.2d 675, 676 (Fla.2004) ("In order for the Court to invalidate a proposed amendment, the record must show that the proposal is clearly and conclusively defective...." (quoting *Advisory Op. to Att'y Gen. re Amend. to Bar Gov't from Treating People Differently Based on Race in Pub. Educ.,* 778 So.2d 888, 891 (Fla.2000))).

**[3]** **[4]** When determining the validity of an amendment arising through the citizen initiative process, our inquiry is limited to two legal issues: (1) whether the proposed amendment violates the single-subject requirement of article XI, section 3, of the Florida Constitution; and (2) whether the ballot title and summary violate the requirements of section 101.161(1), Florida Statutes. *Right to Treatment & Rehab.,* 818 So.2d at 494. We do not address the merits of the proposal. *Id.*

We begin our analysis in this case with the single-subject requirement.

## III. SINGLE–SUBJECT REQUIREMENT

**[5]** Article XI, section 3, of the Florida Constitution sets forth the requirements for a proposed constitutional amendment arising through the citizen initiative process. This constitutional provision provides in pertinent part that any proposed citizen initiative amendment "shall embrace but one subject and matter directly connected therewith." Art. XI, § 3, Fla. Const. "In evaluating whether a proposed amendment violates the single-subject requirement, the Court must determine whether it has a 'logical and natural oneness of purpose.' " *Treating People Differently,* 778 So.2d at 891–92 (quoting *Fine v. Firestone,* 448 So.2d 984, 990 (Fla.1984)).

**[6]** The single-subject requirement "is a rule of restraint designed to insulate Florida's organic law from precipitous and cataclysmic change." *In re Advisory Op. to Att'y Gen.—Save Our Everglades,* 636 So.2d 1336, 1339 (Fla.1994). This requirement prevents a proposal "from engaging in either of two practices: (a) logrolling; or (b) substantially altering or performing the functions of multiple branches of state government." *Water & Land Conservation,* 123 So.3d at 50–51.

**[7]** **[8]** This Court has defined logrolling as "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." *Save Our Everglades,* 636 So.2d at 1339. This Court has also explained that "[a] proposal that affects several branches of government will not automatically fail; rather, it is when a proposal substantially alters or performs the functions of multiple branches that it violates the single-subject test." *Advisory Op. to Att'y Gen. re Fish &* ***796** *Wildlife Conservation Comm'n,* 705 So.2d 1351, 1353–54 (Fla.1998).

The opponents, including the Attorney General and the Legislature, allege that the proposed amendment violates the single-subject requirement for a variety of reasons, including that the amendment engages in impermissible logrolling by combining separate subjects into one proposal, and that the amendment substantially alters multiple functions of government by making broad legislative policy determinations; exercising executive authority through "constitutionalizing" the Department of Health and establishing a complex regulatory system; and providing physicians broad immunity, thereby affecting access to courts. We disagree.

**[9]** **[10]** We conclude that the proposed amendment has a logical and natural oneness of purpose—namely, whether Floridians want a provision in the state constitution authorizing the medical use of marijuana, as determined by a licensed Florida physician, under Florida law. The amendment's provision of a specific role for the Department of Health in overseeing and licensing the medical use of marijuana is directly connected with this purpose. *See Advisory Op. to Att'y Gen.—Fee on Everglades Sugar Prod.*, 681 So.2d 1124, 1128 (Fla.1996) (concluding that the proposal did not violate the single-subject requirement and explaining that "the imposition of the fee and the designation of the revenue ... are two components directly connected to the fundamental policy of requiring first processors to contribute towards ongoing Everglades restoration"). As this Court explained in *Advisory Opinion to the Attorney General re Standards for Establishing Legislative District Boundaries*, 2 So.3d 175 (Fla.2009), a proposed amendment may "delineate a number of guidelines" consistent with the single-subject requirement as long as these components possess "a natural relation and connection as component parts or aspects of a single dominant plan or scheme." *Id.* at 181–82 (quoting *Advisory Op. to Att'y Gen. re Patients' Right to Know About Adverse Med. Incidents*, 880 So.2d 617, 620 (Fla.2004)).

**[11]** Further, removing state-imposed penalties and liability from those involved in the authorized medical use of marijuana consistent with the proposed amendment is also directly connected with the amendment's purpose. Therefore, the proposed amendment does not engage in impermissible logrolling, but is instead consistent with prior proposals this Court has approved "because they encompassed a single plan and merely enumerated various elements necessary to accomplish that plan." *Id.* at 182; *see also Advisory Op. to Att'y Gen. re Fla. Transp. Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation Sys.*, 769 So.2d 367, 369 (Fla.2000) (holding that "there is no impermissible logrolling" where "[t]he only subject embraced in the proposed amendment is whether the people of this State want to include a provision in their Constitution mandating that the government build a high speed ground transportation system").

**[12]** Additionally, the proposed amendment does not substantially alter or perform the functions of multiple branches. If the amendment passes, the Department of Health would perform regulatory oversight, which would not substantially alter its function or have a substantial impact on legislative functions or powers. The amendment would require the Department of Health or its successor agency to register and oversee providers, issue identification cards, and determine treatment amounts to ensure the "safe use of medical marijuana by qualifying patients." *See* ***797** *Everglades Sugar Prod.*, 681 So.2d at 1128 ("[T]he Fee amendment does not substantially affect or alter any government function, but is a levy by an existing agency."); *see also Advisory Op. to Att'y Gen. re Term Limits Pledge*, 718 So.2d 798, 802 (Fla.1998) (concluding that the initiative did not substantially alter the functions of multiple branches "even though affecting the constitutional authority of the Secretary of State and affecting more than one provision of the constitution").

**[13]** "[T]he fact that [a] branch of government is required to comply with a provision of the Florida Constitution does not necessarily constitute the usurpation of the branch's function within the meaning of the single-subject rule." *Advisory Op. to Att'y Gen. re Protect People, Especially Youth, From Addiction, Disease, and Other Health Hazards of Using Tobacco*, 926 So.2d 1186, 1192 (Fla.2006). Moreover, the Department of Health would not be empowered under this amendment to make the types of primary policy decisions that are prohibited under the doctrine of nondelegation of legislative power. *See Askew v. Cross Key Waterways*, 372 So.2d 913, 925 (Fla.1978).

**[14]** Accordingly, we conclude that the proposed amendment complies with the single-subject requirement of article XI, section 3.

  

## IV. BALLOT TITLE AND SUMMARY

**[15]** The next issue we address is whether the proposed amendment will be "accurately represented on the ballot." *Armstrong v. Harris,* 773 So.2d 7, 12 (Fla.2000) (emphasis omitted). This requires us to 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. *See Advisory Op. to Att'y Gen. re Fla. Marriage Prot. Amend.,* 926 So.2d 1229, 1236 (Fla.2006).

**[16]** We conclude that the ballot title and summary fairly inform voters of the chief purpose of the amendment and will not mislead voters, who will be able to cast an intelligent and informed ballot as to whether they want a provision in the state constitution authorizing the medical use of marijuana, as determined by a licensed Florida physician, under Florida law. We therefore reject the opponents' assertion that the amendment "would allow far wider marijuana use than the ballot title and summary reveal."

Section 101.161, Florida Statutes, governs the requirements for the ballot title and summary of an initiative petition. This statute provides in pertinent part as follows:

> (1) Whenever a constitutional amendment or other 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 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 ***798** 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, 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. (2013).

In *Save Our Everglades,* this Court explained the meaning of section 101.161 in the following way:

> "[S]ection 101.161 requires that the ballot title and summary for a proposed constitutional amendment state in clear and unambiguous language the chief purpose of the measure." This is so that the voter will have notice of the issue contained in the amendment, will not be misled as to its purpose, and can cast an intelligent and informed ballot. However, "[i]t is not necessary to explain every ramification of a proposed amendment, only the chief purpose."

636 So.2d at 1341 (citations omitted). "In brief, the ballot title and summary must fairly inform the voter of the chief purpose of the amendment." *Right to Treatment & Rehab.,* 818 So.2d at 497.

The opponents and Chief Justice Polston's dissent, agreeing with the arguments of the opponents, allege multiple reasons why the ballot title and summary are affirmatively misleading. Taken together, the main arguments of the opponents and the Chief Justice's dissent are that: (1) the summary "promises a narrow and limited marijuana program—the precise opposite of what the [a]mendment would deliver"; (2) the summary fails to disclose that physicians who authorize patients' use of medical marijuana consistent with the amendment allegedly will receive broad tort and disciplinary immunity; and (3) the summary wrongly suggests that the amendment "allows" activities that are plainly illegal under federal law. We address each of these arguments in turn.

**A. The Scope of the Amendment**

**[17]** We begin with the opponents' first and primary assertion: that the ballot title and summary hide the true scope of the proposed amendment. Specifically, we address two arguments raised by the opponents and contained in the dissents of Chief Justice Polston and Justice Labarga: (1) that the ballot summary is misleading because the phrase "debilitating diseases" will lead voters to think that the conditions that would qualify for the medical use of marijuana are only very serious ones, when in fact the amendment would permit virtually "limitless" use of marijuana; and (2) that the ballot title and summary are misleading based on the inconsistent use of terms such as "certain" in the title and "diseases" in the summary that will lead voters to believe that the amendment is narrow in scope, when in actuality it would authorize marijuana use for any condition for which a physician believes that the benefits outweigh the risks. To further illustrate this contention as to the "limitless" scope of the proposed amendment, Chief Justice Polston asserts that under the amendment, medical marijuana could be prescribed for "anxiety about an upcoming exam" or "minor aches and pains." Dissenting op. at 812, 814 (Polston, C.J.).

The opponents and Chief Justice Polston's dissent contend that the proponent deceptively uses the phrases "debilitating diseases" and "certain medical conditions" in the ballot title and summary in an attempt to gain an electoral advantage with ***799** voters who might otherwise object to a broader use of medical marijuana. The proponent counters that the intent of the amendment and the actual wording of the amendment, when various portions are read together, is not to authorize the open-ended and broad use of marijuana whenever a physician personally believes that the benefits outweigh the risks.

To the contrary, the proponent contends that the opponents advance a flawed interpretation of the proposed amendment as being "limitless" in scope and assert that marijuana can be prescribed by a physician only after the physician performs a physical examination, reviews the patient's medical history and finds that the patient has a "debilitating" medical condition, concludes that the potential benefits of using medical marijuana would likely outweigh the health risks, and then allows a limited time for any qualifying use. The proponent states that the "intent is to allow use for a serious medical condition or disease."

**[18]** Because the proponent and opponents disagree as to the scope of the proposed amendment, and because in our view the question of whether the ballot title and summary are misleading on this point turns on the interpretation of the amendment itself, we must review the operative portions of the proposed amendment's text. "When reviewing constitutional provisions, this Court follows principles parallel to those of statutory interpretation." *Graham v. Haridopolos,* 108 So.3d 597, 603 (Fla.2013) (quoting *Crist v. Fla. Ass'n of Criminal Def. Lawyers, Inc.,* 978 So.2d 134, 139 (Fla.2008)).

**1. "Debilitating Medical Condition"**

The initial argument we address concerns the breadth of the phrase "debilitating medical condition" in the text of the proposed amendment. There are three pertinent sections of the amendment related to this issue.

First, subsection (b)(1) defines the term "Debilitating Medical Condition" to mean:

> cancer, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), hepatitis C, amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, multiple sclerosis or other conditions for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient.

Second, subsection (b)(9) defines the term "Physician Certification" to mean:

> a written document signed by a physician, stating that in the physician's professional opinion, the patient suffers from a debilitating medical condition, that the potential benefits of the medical use of marijuana would likely outweigh the health risks for the patient, and for how long the physician recommends the medical use of marijuana for the patient. A

  

physician certification may only be provided after the physician has conducted a physical examination of the patient and a full assessment of the patient's medical history.

Finally, subsection (b)(10) defines the term "Qualifying patient" to mean "a person who has been diagnosed to have a debilitating medical condition, who has a physician certification and a valid qualifying patient identification card."

The opponents claim that, contrary to the impression presented by the ballot title and summary, these provisions in the proposed amendment's text authorize the medical use of marijuana for more conditions than are commonly thought of as "debilitating," and would allow physicians unfettered authority to authorize the use of marijuana for conditions ranging from ***800** everyday aches and pains to everyday stresses. In support of their argument about the breadth of the proposed amendment, the opponents point to the portion of subsection (b)(1) that includes, within the definition of "debilitating medical condition," the phrase "other conditions for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient."

The proponent responds that the term "debilitating medical condition," as defined in the text of the proposed amendment, includes specific and known debilitating conditions such as cancer and ALS but simply cannot and "does not attempt to define all possible debilitating conditions" for now and the future. The proponent contends that the "other conditions determined by a physician must be generically similar in severity or seriousness to the specific list of medical conditions" set forth in the proposed amendment.

The proponent further asserts that the types of conditions for which the proposed amendment authorizes the medical use of marijuana are limited by the requirement of "physician certification," which mandates that a physician certify in writing that the patient suffers from a "debilitating" condition *and* that the benefits of medical marijuana usage outweigh the health risks to the patient. In other words, the proponent states that the ballot title and summary are *not* misleading precisely because the intent of the amendment is to limit the use of marijuana to "debilitating medical conditions" and not to a broad and open-ended range of more minor medical conditions.

We reject the opponents' construction of the proposed amendment. Instead, for the reasons that follow, we conclude that the interpretation offered by the proponent is a reasonable one that is supported by accepted principles of constitutional interpretation.

In order to determine the scope of the proposed amendment, we begin by defining the key term "debilitating," which is the term used in both the amendment itself and the ballot summary to describe the types of conditions for which the amendment would authorize the medical use of marijuana. Notably, although "debilitating" is the key term that defines the breadth of the proposed amendment because it restricts the "medical conditions" that fall within the amendment's scope, Chief Justice Polston's dissent finds this critical term to be insignificant, focusing instead on the differences that exist between the terms "condition" in the ballot title and text of the proposed amendment and "disease" in the ballot summary, while minimizing the impact of the "debilitating" modifier used in both the proposed amendment and the ballot summary. To the contrary, we conclude that an analysis of the term "debilitating" is critical to understanding the intended scope of the proposed amendment, as a patient does not qualify under the text of the proposed amendment to receive a physician certification unless a licensed Florida physician makes a professional determination that the medical condition is "debilitating."

**[19]** In construing terms used in the constitution and presented to the voters in a proposed constitutional amendment, this Court looks to dictionary definitions of the terms because we recognize that, "in general, a dictionary may provide the popular and common-sense meaning of terms presented to the voters." *Advisory Op. to Gov.–1996 Amend. 5 (Everglades),* 706 So.2d 278, 282 (Fla.1997). Merriam Webster's Collegiate Dictionary defines "debilitating" to mean "to impair the strength of; enfeeble." *Merriam–Webster's Collegiate Dictionary* 320 (11th ed. 2005). The ***801** Oxford English Dictionary likewise defines "debilitating" to mean "[t]hat debilitates; weakening, enfeebling," where "debilitate" is defined as "[t]o render weak; to weaken, enfeeble." *The Oxford English Dictionary* 312 (2d ed. 1989). Similarly, Stedman's Medical Dictionary defines

  

"debilitating" as "[d]enoting or characteristic of a morbid process that causes weakness," where "morbid" is defined as "[d]iseased or pathologic." *Stedman's Medical Dictionary* 496, 1226 (28th ed. 2006).

The common definition of "debilitating," based on these authorities, is therefore similar under both medical and lay dictionaries. While the opponents suggest that the proposed amendment would authorize the "unfettered" use of marijuana to treat more conditions than are commonly thought of as "debilitating," the popular and common-sense meaning of "debilitating"—though not requiring the condition to be as "serious and devastating" as the opponents state—still requires that the medical condition cause impaired strength, weakness, or enfeeblement. In other words, a physician must first make a professional determination that the patient's medical condition causes impaired strength, weakness, or enfeeblement in order to consider issuing a physician certification consistent with the proposed amendment, which limits the amendment's scope.

Nevertheless, the opponents contend that the proposed amendment does not even require that an individual's condition be "debilitating." In arguing that the proposed amendment is virtually "limitless," the opponents point to the portion of the definition of "debilitating medical condition" within the proposed amendment that includes the phrase "other conditions for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient."

This phrase, however, is found within the section of the proposed amendment that defines "*debilitating* medical condition." (Emphasis added.) In this regard, we conclude that the phrase cannot be read in isolation to include any medical condition in which the physician concludes that the benefits of marijuana use outweigh the health risks, regardless of the "debilitating" nature of the condition. Instead, in order for a physician to prescribe marijuana to treat a medical condition not specifically listed in the amendment, the physician still must make a professional determination that the condition is "debilitating."

**[20]** Further and importantly, the statutory and constitutional construction principle of ejusdem generis—which is a Latin term for "of the same kind"—is instructive on this issue. Distilled to its essence, this rule provides that where general words or phrases follow an enumeration of specific words or phrases, "the general words are construed as applying to the same kind or class as those that are specifically mentioned." *Fayad v. Clarendon Nat'l Ins. Co.,* 899 So.2d 1082, 1088–89 (Fla.2005); *see also Graham,* 108 So.3d at 605.

Application of ejusdem generis in this case supports our conclusion that the scope of the proposed amendment is not open-ended because the general category of "other conditions" that may qualify as a "debilitating medical condition" under the terms of the amendment must be of the "same kind or class" as those conditions specifically mentioned. In *State v. Hearns,* 961 So.2d 211, 219 (Fla.2007), this Court addressed the meaning of a similar general category that followed a specific list, concluding that the general phrase "any other felony involving the use or threat of physical force or violence" included "only offenses which involve a level of physical force or violence comparable to ***802** that of the enumerated felonies." The Court observed that the mere touching of a law enforcement officer was "not in the same league" as the level of force contemplated by the enumerated felonies in the forcible felony statute. *Id.; see also State v. Rivers,* 660 So.2d 1360, 1362 (Fla.1995) (explaining that the general category of other crimes "dangerous to life, limb, or property, and punishable by imprisonment for more than one year" must be construed "as applying only to crimes of the same kind as those precisely stated in the statute").

Although Chief Justice Polston's and Justice Canady's dissents criticize our use of ejusdem generis, our application of this principle of constitutional interpretation in this case is strikingly similar to its application in *Hearns.* While Chief Justice Polston's dissent asserts that "the majority rewrites the definition" of "debilitating medical condition" by "in effect insert[ing] the word 'similar' into the clear and unambiguous definition," dissenting op. at 815 (Polston, C.J.), the canon of ejusdem generis itself is predicated upon the concept that a general category following an enumeration of specific words or phrases should be construed "similarly" to those that are specifically mentioned. Thus, the very purpose of ejusdem generis is to assist the Court in interpreting a general category that follows a specific list but that does not include the word "similar." In this way, Chief Justice Polston's dissent appears to disagree with the interpretive canon itself, as any use of ejusdem generis under the dissent's reasoning would involve inserting the word "similar" into the text.

**[21]** Moreover, this Court is required to read the term "debilitating medical condition" together with the rest of the proposed amendment. In construing "multiple constitutional provisions addressing a similar subject, the provisions 'must be read in pari materia to ensure a consistent and logical meaning that gives effect to each provision.' " *Graham,* 108 So.3d at 603 (quoting *Caribbean Conservation Corp. v. Fla. Fish & Wildlife Conservation Comm'n,* 838 So.2d 492, 501 (Fla.2003)).

In *Advisory Opinion to the Attorney General re Florida Locally Approved Gaming,* 656 So.2d 1259, 1262 (Fla.1995), this Court addressed a similar argument to the one presented by the opponents in this case that the ballot title and summary of a proposed citizen initiative amendment were misleading "because neither inform[ed] the voter of the actual effects of the proposed amendment." This Court rejected that argument, concluding that two subsections of the proposed amendment "must be read together" in order to properly interpret the meaning of the amendment. *Id.* Moreover, the Court noted that its interpretation, after reading the proposed amendment in pari materia, was "fully consistent with the proponents' construction of the amendment at oral argument." *Id.*

We conclude that a similar analysis applies in this case. Reading subsections (b)(1), (b)(9), and (b)(10) together demonstrates that the circumstances under which marijuana can be prescribed by a physician are not open-ended to any condition in which the physician personally believes that the benefits outweigh the risks. To the contrary, the circumstances under which the proposed amendment authorizes the medical use of marijuana are limited by two conditions: first, that "in the physician's professional opinion, the patient suffers from a debilitating medical condition"; and second, that "the potential benefits of the medical use of marijuana would likely outweigh the health risks for the patient."

**[22]** We therefore reject the view expressed in Chief Justice Polston's dissent ***803** that "by reading subsections (b)(1) and (b)(9) together, it is abundantly (and redundantly) clear that a physician need only believe that the potential benefits of marijuana would likely outweigh the risks" in order to issue a physician certification. Dissenting op. at 816 (Polston, C.J.). As this Court has consistently explained, "[i]t is an elementary principle of statutory [and constitutional] construction that significance and effect must be given to every word, phrase, sentence, and part" of the provision if possible. *Gulfstream Park Racing Ass'n, Inc. v. Tampa Bay Downs, Inc.,* 948 So.2d 599, 606 (Fla.2006) (quoting *Hechtman v. Nations Title Ins. of N.Y.,* 840 So.2d 993, 996 (Fla.2003)). The interpretation offered by Chief Justice Polston's dissent, however, would render meaningless the first part of subsection (b)(9), which states that the physician must determine that "the patient suffers from a debilitating medical condition," since this determination would become unnecessary under the dissent's reasoning given that the second part of subsection (b)(9) already requires a physician to determine that "the potential benefits of the medical use of marijuana would likely outweigh the health risks for the patient."

When the various provisions of the proposed amendment are read together in the context of the entire amendment, it is reasonable to construe the amendment as being limited to "debilitating" medical conditions that require the professional opinion of a physician to diagnose, and that as to each "debilitating" condition, the benefits of prescribing marijuana as a treatment must outweigh the health risks. Further, a "physician certification" must be filed with the Department of Health, affirming that in the physician's professional opinion, the patient suffers from a "debilitating" medical condition; that the potential benefits of the medical use of marijuana would likely outweigh the health risks; *and* a statement of "how long the physician recommends the medical use of marijuana for the patient."

As to this "physician certification," the amendment also states that it "may only be provided after the physician has conducted a physical examination of the patient and a full assessment of the patient's medical history." The amendment in addition requires that a "physician certification" must be filed with the Department of Health as to each "qualifying patient."

Rather than allow the open-ended, broad use of marijuana, these multiple restrictions in the text of the amendment itself reflect a constitutional scheme that is meant to be limited in scope regarding the medical use of marijuana to treat "debilitating medical conditions." Indeed, this interpretation is consistent with the interpretation of the proposed amendment offered by the proponent in its brief and at oral argument as to the intent of the amendment as proposed.

**2. Use of "Certain Medical Conditions" and "Debilitating Diseases"**

The opponents' next argument as to the scope of the proposed amendment is that the ballot title and summary are affirmatively misleading because the use of the phrase "certain medical conditions" in the ballot title denotes a fixed number of conditions, and the term "debilitating diseases" used in the ballot summary—instead of "debilitating medical condition," as used in the amendment itself—conveys a more limited scope regarding the use of marijuana than the amendment would actually permit. The proponent, on the other hand, contends that when viewed together, the ballot title and summary accurately convey the chief purpose of the amendment—to authorize the use of marijuana for certain debilitating medical conditions, ***804** as determined by a licensed Florida physician, under Florida law.

**[23]** We agree with the proponent that, read together, the ballot title and summary accurately convey to voters the chief purpose of the proposed amendment. We have previously instructed that when determining whether the ballot title and summary are misleading, it is appropriate to consider both together. *See Advisory Op. to Att'y Gen. re Voluntary Universal Pre–Kindergarten Educ.,* 824 So.2d 161, 166 (Fla.2002) ("[T]he 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."); *Tax Limitation,* 673 So.2d at 868 (rejecting the Attorney General's argument because "[s]ection 101.161 requires the ballot summary and title to be read together"). This proposition that the ballot title and summary "must be read together in determining whether the ballot information properly informs the voters" has been reaffirmed numerous times, including in *Florida Department of State v. Slough,* 992 So.2d 142, 148 (Fla.2008) (quoting *Amendment to Reduce Class Size,* 816 So.2d at 585).

The amendment's ballot title—"Use of Marijuana for Certain Medical Conditions"—supports the proponent's assertion that the voters will not be misled as to the scope of the amendment. Although the opponents contend that the use of "certain" implies that the number of "debilitating" conditions to which the amendment would apply is fixed and definite—while the amendment's actual scope is not—we disagree.

The word "certain" can mean "fixed" or "settled," but a primary dictionary definition of "certain" is also "of a specific but unspecified character, quantity, or degree." *Merriam–Webster's Collegiate Dictionary* 202 (11th ed. 2005); *see also The Oxford English Dictionary* 1050–51, (2d ed. 1989) (defining "certain" as both "determined, fixed, settled" and "a restricted or limited number of" or "[o]f positive yet restricted ... quantity, amount, or degree"). It is therefore necessary to read the ballot title together with the ballot summary, which explains the severity of the conditions that may qualify for the medical use of marijuana and that the qualifying conditions are "determined by a licensed Florida physician." Read together, the use of "certain" in the ballot title conveys to the voters the role of the physician in determining both the necessary severity for a qualifying condition and the medical benefits of marijuana to treat that condition.

The opponents also challenge, and both Chief Justice Polston's and Justice Labarga's dissenting opinions ascribe significance to, the use of the term "diseases" in the ballot summary since this term differs from the term "medical conditions" that is used in the text of the amendment itself. Merriam–Webster's Collegiate Dictionary defines "disease" as "*a condition* of the living animal or plant body or of one of its parts that impairs normal functioning and is typically manifested by distinguishing signs and symptoms; sickness; malady." *Merriam–Webster's Collegiate Dictionary* 358 (11th ed. 2005) (emphasis added); *see also Stedman's Medical Dictionary* 550 (28th ed. 2006) (defining "disease" as an "interruption, cessation, or disorder of a body, system, or organ structure or function").

**[24]** The fact that the ballot summary uses the phrase "debilitating diseases" while the text of the amendment uses the phrase "debilitating medical conditions" does not render the ballot summary per se misleading. The "inadvertent use of different but clearly synonymous terms in the proposed amendment and the summary ***805** will *not* render a ballot summary fatally defective where '[t]he differing use of terminology could not reasonably mislead the voters.' " *Legislative Dist. Boundaries,* 2 So.3d at 185 (quoting *Advisory Op. to Att'y Gen. re English–The Official Language of Fla.,* 520 So.2d 11, 13 (Fla.1988)).

We conclude that the use of "diseases" instead of "conditions" in the ballot summary will not reasonably mislead the voters. A "disease" is, by definition, a medical "condition." *See Merriam–Webster's Collegiate Dictionary* 358 (11th ed. 2005). Although the opponents and Chief Justice Polston's dissent assert that the word "diseases" was intentionally chosen to deceive voters as to the scope of the amendment "in an attempt to gain electoral advantage with voters who might object to a broader use of medical marijuana," dissenting op. at 814–15 (Polston, C.J.), it is the modifier "debilitating"—used in both the ballot summary and the amendment itself—that is the key to defining the severity of the conditions for which the amendment would apply. Further, the ballot title of the amendment, which must be read together with the ballot summary, uses the term "medical conditions."

This case is therefore distinguishable from other cases in which this Court has held a ballot summary to be misleading because of a discrepancy between the terms used in the ballot summary and the text of the amendment, where the discrepancy was "material and misleading" and where the difference had "legal significance." *Treating People Differently,* 778 So.2d at 896–97. For example, in *In re Advisory Opinion to the Attorney General re Casino Authorization, Taxation & Regulation,* 656 So.2d 466, 468–69 (Fla.1995), which is relied on by Chief Justice Polston's dissent, this Court invalidated a proposed amendment because "voters were not informed that the proposal's use of different terminology was legally significant." *Treating People Differently,* 778 So.2d at 897. In that case, the summary used the term "hotel," while the text of the proposed amendment used the term "transient lodging establishment." *Casino Authorization,* 656 So.2d at 468. This Court found that difference in terminology to be significant because the definitions of "hotel" and "transient lodging establishment" under the Florida Statutes were "substantially different." *Id.* Further, in *Treating People Differently,* 778 So.2d at 896, also relied on by Chief Justice Polston's dissent, the ballot titles and ballot summaries used the word "people," while the text of the amendments referred to "persons"—a fact with legal significance not revealed to the voters regarding whether the amendments affected corporations. *Id.* at 896–97.

Unlike the discrepancies in those cases, there is no legal significance in this case between the use of "debilitating diseases" and "debilitating medical conditions." While Chief Justice Polston points to out-of-state cases that "have acknowledged the differences in meaning between the terms 'condition' and 'disease,' and those differences have determined the outcomes of cases," dissenting op. at 812 (Polston, C.J.), those cases are distinguishable because they have arisen in the insurance context, where other considerations not relevant to our analysis, such as determining when the medical condition began and the scope of insurance coverage, are important to the resolution of a legal dispute.

In contrast to those cases, our inquiry here focuses solely on whether the use of "debilitating diseases" in the ballot summary and "debilitating medical conditions" in the proposed amendment itself will be affirmatively misleading to Florida voters. It is only if the difference between the two terms is "legally significant," and this legal significance is not disclosed to the voters, ***806** that the use of different terminology will render the ballot summary affirmatively misleading. Because "debilitating," which is used in both the ballot summary and the text of the proposed amendment itself, is the key to defining the severity of the conditions for which the amendment authorizes the medical use of marijuana, the difference between the use of "debilitating diseases" in the ballot summary and "debilitating medical conditions" in the amendment itself has no legal significance that is hidden from the voters.

Further, since "disease" is in fact defined as "a condition," the difference in terminology is not "substantially different." As this Court has repeatedly noted, "[t]here is no requirement that the referendum question set forth the [text] verbatim nor explain its complete terms at great and undue length. Such [requirements] would hamper instead of aiding the intelligent exercise of the privilege of voting." *Legislative District Boundaries,* 2 So.3d at 185 (quoting *Right to Treatment & Rehab.,* 818 So.2d at 498). Instead, "[w]hat the law very simply requires is that the ballot give the voter fair notice of the question he must decide so that he may intelligently cast his vote." *Id.* (quoting *Right to Treatment & Rehab.,* 818 So.2d at 498).

Here, we conclude that the ballot title and summary, read together, satisfy the legal requirement that the voters be given "fair notice" as to the scope of the proposed amendment. Accordingly, we agree with the proponent that the phrases used in the ballot

title and summary "are complementary and explanatory, not misleading" and reject the opponents' arguments as to the allegedly misleading ballot language on the issue of the proposed amendment's scope.

**B. Physician Immunity**

We next address the opponents' position that the ballot summary is affirmatively misleading because the proposed constitutional amendment protects doctors who abuse the practice of medicine by prescribing marijuana fraudulently or negligently, but this important aspect of the amendment—that is, physician immunity—is nowhere revealed within the ballot summary. The opponents argue that the immunity from "civil liability or sanctions" would "preclude an injured patient from recovering damages in a civil action against a physician whose wrongful issuance of a physician certification recommending marijuana use resulted in damages to the patient" and the "prohibition against 'sanctions' on a physician would likewise bar the Board of Medicine from initiating a disciplinary action against a physician for recommending marijuana use to patients in a manner contrary to accepted professional standards."

The proponent responds that the text of the proposed amendment provides no such broad immunity but offers protection to physicians only to the extent that they issue a physician certification "in a manner consistent with this section." The proponent asserts that where a physician, whether by fraud or negligence, acts outside of professional standards in diagnosing a patient or prescribing marijuana, this behavior would not be "consistent with this section" and may be subject to professional, civil, or criminal sanctions. Further, the proponent asserts that statutes governing the practice of medicine would remain in effect if the amendment were to pass and would not be repealed by implication.

In other words, the proponent claims that it is not the intent of the proposed amendment to confer broad immunity, but the opponents claim that this is precisely what the amendment does, therefore rendering the ballot summary fatally defective for omitting this substantial effect. To ***807** determine this issue, we once again must examine the text of the amendment as proposed and analyze whether the intent of the proponent was to confer broad immunity, even though the proponent adamantly asserts that there was no such intent.

**[25]** The text of subsection (a)(2) of the proposed amendment provides in pertinent part as follows:

> A physician licensed in Florida shall not be subject to criminal or civil liability or sanctions under Florida law for issuing a physician certification to a person diagnosed with a debilitating medical condition in a manner consistent with this section.

We agree with the proponent that this subsection does not grant broad immunity for either criminal or civil liability to physicians who prescribe medical marijuana fraudulently or even negligently. Rather, this subsection does no more than what it states—exempts physicians from being subject to criminal or civil liability or sanctions for the limited act of prescribing marijuana in a manner consistent with the amendment. This limited immunity is necessary because, in the absence of such immunity, the mere act of prescribing marijuana, a controlled substance under Florida law, would result in civil or criminal liability or sanctions, which would prevent the amendment from being implemented. In this regard, the proposed amendment does not protect physicians who fraudulently or negligently prescribe medical marijuana, does not change the professional duties and obligations of licensed Florida physicians, and does not restrict Florida's current constitutional right of access to the courts.

Under the proposed amendment, it is a reasonable construction that physicians are granted immunity only to the extent that they prescribe marijuana "consistent with this section." In other words, if a physician prescribes marijuana without having conducted a physical examination of the patient or without having made a "full assessment of the patient's medical history," and harm to the patient results, this conduct would not be "consistent with this section" and the physician would not be granted immunity.

The immunity subsection allows physicians to prescribe, consistent with the amendment, the medical use of marijuana as a possible treatment option for a "debilitating medical condition" without being criminally or civilly liable or subject to sanctions

under Florida law. As the proponent states, in order to enable physicians "to consider medical marijuana and certify its use, it is necessary to prevent them from being punished for the limited act of recommending marijuana under the terms of the amendment. That is all the amendment does.... The amendment does not change liability for negligence, fraud or misconduct."

**[26]** In addition, nothing in the text of the amendment explicitly repeals existing medical malpractice statutes. This Court has long held that "[i]n considering the effect of constitutional amendments upon existing statutes, the rule is that the statute will continue in effect unless it is completely inconsistent with the plain terms of the Constitution." *In re Advisory Op. to Gov.,* 132 So.2d 163, 169 (Fla.1961). It is also settled that "implied repeal of one constitutional provision by another is not favored, and every reasonable effort will be made to give effect to both provisions. Unless the later amendment expressly repeals or purports to modify an existing provision," this Court has explained that "the old and new should stand and operate together unless the clear intent of the later provision is thereby defeated." *Legislative* ***808** *Dist. Boundaries,* 2 So.3d at 190 (quoting *Jackson v. City of Jacksonville,* 225 So.2d 497, 500–01 (Fla.1969)). Therefore, as the proposed amendment does not explicitly repeal and is not completely inconsistent with existing medical malpractice or liability statutes, and does not mention the constitutional right of access to courts, we conclude that these provisions would remain in full effect if the amendment were to pass.

As this Court has stated, "a ballot summary need not (and because of the statutory word limit, often cannot) explain 'at great and undue length' the complete details of a proposed amendment, and some onus falls upon voters to educate themselves about the substance of the proposed amendment." *Legislative Dist. Boundaries,* 2 So.3d at 186 (quoting *Right to Treatment & Rehab.,* 818 So.2d at 498). Because we conclude that this amendment would not alter the liability of physicians for fraudulently or negligently prescribing marijuana, we reject the opponents' assertion that the ballot summary is affirmatively misleading for omitting the issue of liability.

**C. Federal Law**

**[27]** We next address whether the ballot summary will mislead voters regarding the interplay between the proposed amendment and federal law. Specifically, the ballot summary explains that the proposed amendment "[a]pplies only to Florida law" and "[d]oes not authorize violations of federal law." The opponents are certainly correct that these statements, standing alone, do not explicitly inform voters that any use and possession of marijuana, including the medical use of marijuana that would be authorized by the amendment, is currently prohibited by federal law.

However, the statements in the ballot summary are substantially similar in meaning to the proposed amendment's text, which provides that "[n]othing in this law section [sic] requires the violation of federal law or purports to give immunity under federal law." By asserting that the ballot summary should include language informing the voters that marijuana possession and use is currently prohibited under federal law, the opponents are actually asserting that the ballot summary should include language that is not in the proposed amendment itself. This is not required.

This Court has also never required that a ballot summary inform voters as to the current state of federal law and the impact of a proposed state constitutional amendment on federal statutory law as it exists at this moment in time. Moreover, the statements in the ballot summary are legally accurate. Therefore, the ballot summary's discussion of federal law is not "so misleading as to clearly and conclusively violate section 101.161." *Legislative Dist. Boundaries,* 2 So.3d at 187.

**D. Remaining Claims**

**[28]** Finally, the opponents assert that the ballot title and summary are affirmatively misleading because voters are not advised that there will allegedly be no age limit for marijuana use and no requirement that physicians consult parents before authorizing marijuana use for minors; that the definition of "caregiver" is inconsistent with its common meaning and use under the Florida

  

Statutes; and that the ballot summary fails to disclose the amendment's effect on two existing provisions within the Florida Constitution's Declaration of Rights: the right of access to courts and the right of access to public records.

These issues, however, do not involve the chief purpose of the amendment or even a significant effect that would result ***809** from the amendment if passed. *See* § 101.161(1), Fla. Stat. ("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."). Consequently, these allegations do not warrant striking the proposal from the ballot. *See Advisory Op. to Att'y Gen. re Prohibiting Pub. Funding of Political Candidates' Campaigns,* 693 So.2d 972, 975 (Fla.1997) ("[T]he title and summary need not explain every detail or ramification of the proposed amendment."). Moreover, we note that these allegations are largely speculative and in some instances—such as the right of access to courts—actually inaccurate as to the effect of the proposed amendment.

For all these reasons, we conclude that the ballot title and summary comply with the clarity requirements of section 101.161.

## V. FINANCIAL IMPACT STATEMENT

**[29]** Although neither the proponent of the amendment nor the opponents assert that the Financial Impact Statement is misleading, this Court still has an independent obligation to review the statement to ensure that it is clear and unambiguous and in compliance with Florida law. *See Advisory Op. to Att'y Gen. re Referenda Required for Adoption & Amend. of Local Gov't Comprehensive Land Use Plans,* 963 So.2d 210, 214 (Fla.2007) (explaining that "the Florida Constitution mandates that the advisory opinion address the financial impact statement portion of the initiative process"). Article XI, section 5(c), of the Florida Constitution states that "[t]he legislature shall provide by general law, prior to the holding of an election pursuant to this section, for the provision of a statement to the public regarding the probable financial impact of any amendment proposed by initiative pursuant to [article XI,] section 3." Section 100.371(5)(a), Florida Statutes, provides that this Financial Impact Statement must address "the estimated increase or decrease in any revenues or costs to state or local governments resulting from the proposed initiative," and section 100.371(5)(c) 2., Florida Statutes, requires the Financial Impact Statement to be "clear and unambiguous" and "no more than 75 words in length."

**[30]** This Court has explained that its "review of financial impact statements is narrow." *Water & Land Conservation,* 123 So.3d at 52. This Court only addresses "whether the statement is clear, unambiguous, consists of no more than seventy-five words, and is limited to address the estimated increase or decrease in any revenues or costs to the state or local governments." *Land Use Plans,* 963 So.2d at 214.

**[31]** Here, the Financial Impact Statement complies with the word limit and addresses only the subject of the estimated increase or decrease in revenues and costs to state and local governments. It plainly states that the increased costs associated with additional regulatory and enforcement activities could not be determined and that fees would offset at least a portion of these increased costs. The Financial Impact Statement also plainly explains that the Financial Impact Estimating Conference could not determine the change in revenue because it could not predict the extent to which medical marijuana would be exempt from taxation. Accordingly, we hold that the Financial Impact Statement complies with section 100.371(5), Florida Statutes. *See Advisory Op. to Att'y Gen. re Fla. Growth Mgmt. Initiative Giving Citizens the Right to Decide Local Growth Mgmt. Plan Changes,* 2 So.3d 118, 124 (Fla.2008) ("Overall, the financial impact ***810** statement is necessarily indefinite but not unclear or ambiguous.").

## VI. CONCLUSION

Based on the foregoing, we conclude that the initiative petition and ballot title and summary satisfy the legal requirements of article XI, section 3, of the Florida Constitution, and section 101.161(1), Florida Statutes. In addition, the Financial Impact

  

Statement is in compliance with section 100.371(5), Florida Statutes. We therefore approve the proposed amendment and Financial Impact Statement for placement on the ballot.

It is so ordered.

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

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

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

LABARGA, J., dissents with an opinion.

POLSTON, C.J., dissenting.

I respectfully dissent because placing this initiative's title and summary on the ballot will result in Floridians voting on a constitutional amendment in disguise. The majority fails to acknowledge that the normal and common sense meaning of the words used in this initiative's ballot summary and title are significantly different than the normal and common sense meaning of the words used in the amendment's text. The majority also fails to follow its own prior amendment cases.

Given the plain meaning of the words used, the ballot summary and title mislead voters and do not disclose the true purpose and effect of the amendment's text. *See Advisory Op. to the Att'y Gen. re Fairness Initiative Requiring Leg. Determination That Sales Tax Exemptions and Exclusions Serve a Pub. Purpose,* 880 So.2d 630, 635–36 (Fla.2004) (detailing this Court's review of the validity of a ballot title and summary under section 101.161(1), Florida Statutes). The summary and title "hide the ball" and allow this initiative to "fly under false colors" regarding the severity of medical issues that qualify for marijuana use, a type of deception this Court has previously disallowed and assailed against. *See, e.g., Fla. Dep't of State v. Slough,* 992 So.2d 142 (Fla.2008). Although this Court will not review the substantive merits of this initiative proposal, voters are entitled to know if they are being asked to open Florida to the expansive use of medical marijuana.

Specifically, the ballot title and summary are affirmatively misleading in four respects: (1) they fail to accurately inform voters that generic "conditions" (not "diseases") qualify for the use of medical marijuana under the amendment's text; (2) they fail to disclose that a person can obtain marijuana under the amendment's text if a doctor simply thinks the benefits of marijuana would likely outweigh the risks; (3) they fail to disclose that the amendment grants broad immunity to physicians, among others; and (4) they falsely imply that the use and possession of marijuana in accordance with this amendment is permissible under federal law. Accordingly, I would disapprove this initiative for placement on the ballot.

***1. "Condition" versus "Disease"***

The ballot summary informs Florida's voters that this amendment "[a]llows the medical use of marijuana for individuals with debilitating diseases as determined by a licensed Florida physician." However, the amendment's text does not actually provide that a physician must determine that an individual suffers from a "disease." Instead, under the amendment's text, an ***811** individual only has to have a "condition" in order to qualify for medical marijuana.

The majority faults my discussion of the differences in plain meaning between the term "condition" in the amendment's text and the term "disease" in the ballot summary for not including an in-depth discussion of the word "debilitating." *See* majority op. at 800–01. This entirely misses the point! As explained in the next section of my dissent, the "debilitating medical condition" language that appears in the amendment's text is specifically defined by that text to include medical issues that could hardly be considered "debilitating" or "enfeebling." *Infra* at 814. In this section, I focus upon the affirmatively misleading choice of

  

employing the word "disease" in the ballot summary when the word "condition" is what actually is to be given effect in the amendment's text. Moreover, the word "debilitating" is used to modify "disease" in the ballot summary as well as "condition" in the amendment's text. And because "debilitating" modifies both, it could not possibly eradicate any differences in plain meaning between the word "disease" and the word "condition."

It is plainly obvious that the word "condition" is much broader in meaning and much less negative in connotation than the word "disease." For example, the term "condition" can mean "states of health considered normal or healthy but nevertheless posing implications for the provision of health care (e.g., pregnancy)." Phil Sefton, *Condition, Disease, Disorder,* AMA Style Insider (Nov. 21, 2011), *available at* http://blog.amamanualofstyle.com/? s=condition+disease+disorder. "Condition" can also refer to "grades of health," such as "stable, serious, or critical condition." *Id.* And, if you look in a medical dictionary, you will discover that the medical profession defines "condition" to mean "to train; to subject to conditioning." *Dorland's Illustrated Medical Dictionary* 407 (31st ed. 2007); *see also Stedman's Medical Dictionary* 426 (28th ed. 2006) (defining "condition" to mean "[t]o train; to undergo conditioning," "[a] certain response elicited by a specifiable stimulus or emitted in the presence of certain stimuli with reward of the response during prior occurrence," or "[r]eferring to several classes of learning in the behavioristic branch of psychology.").

Medical dictionaries do not include a definition of illness, injury, or abnormal state of health for the term "condition." However, the fourth entry for the word in Merriam–Webster's Collegiate Dictionary indicates that "condition" may denote "a usu. defective state of health." *Merriam–Webster's Collegiate Dictionary* 240 (10th ed. 1994). Similarly, the Oxford English Dictionary includes "[a] state of health, esp. one which is poor or abnormal; a malady or sickness" as a definition for the word "condition." *The Oxford English Dictionary* 684 (2d ed. 1989).

In contrast, the term "disease" has a narrower meaning and much more negative connotation. For example, according to Webster's New World College Dictionary, a "disease" is "a particular destructive process in an organ or organism, with a specific cause and characteristic symptoms." *Webster's New World College Dictionary* 411 (4th ed. 1999). "Disease" is also defined as "a condition of the living animal or plant body or of one of its parts that impairs normal functioning and is typically manifested by distinguishing signs and symptoms" *Merriam–Webster's Collegiate Dictionary* 358 (11th ed. 2005). And those affiliated with the medical profession have explained that "disease is perhaps most often used when referring to a condition that possesses specific characteristics." *Condition, Disease, Disorder,* AMA Style Insider, *supra.* Specifically, Stedman's ***812** Medical Dictionary explains that a "disease" is "[a] morbid entity ordinarily characterized by two or more of the following criteria: recognized etiologic agent(s), identifiable group of signs and symptoms, or consistent anatomic alterations." *Stedman's Medical Dictionary* 550 (28th ed. 2006); *see also Dorland's Illustrated Medical Dictionary* 535 (31st ed. 2007) (defining "disease" to mean "any deviation from or interruption of the normal structure or function of a part, organ, or system of the body as manifested by characteristic symptoms and signs").

Accordingly, Justice Labarga is correct in surmising that, while every "disease" is by definition a "condition," every "condition" is not a "disease." *See* dissenting op. at 825 (Labarga, J.). "Diseases" are only a subset of what is included in the broader and more value-neutral term "condition." And by employing "disease" in the ballot summary, rather than the term "condition" that actually appears in the amendment's text, the summary is affirmatively misleading. Contrary to the commonly understood meaning of the words in the summary, an individual could qualify for the use of marijuana under the amendment's text if that individual suffers from a sore back as a result of playing sports or anxiety about an upcoming exam even though that abnormal soreness or anxiety (i.e., "condition") does not rise to the level of a "disease."

The manner in which the summary in this case misleads voters is certainly more egregious than other initiatives that this Court has stricken in the past, including the casino initiative petition that this Court disapproved in *Advisory Opinion to the Attorney General re Casino Authorization, Taxation and Regulation,* 656 So.2d 466 (Fla.1995). There, the ballot summary explained that local governments could authorize casinos at "hotels," but the amendment's text would have allowed local governments to authorize casinos at "transient lodging establishments." *Id.* at 468. This Court concluded that the difference in language was misleading, explaining that "[w]e believe that the public perceives the term 'hotel' to have a much narrower meaning than the

term 'transient lodging establishment.' " *Id.* at 469. "Thus, while the summary leads the voters to believe that casinos will be operated only in 'hotels,' the proposed amendment actually permits voters to authorize casinos in any number of facilities, including a bed and breakfast inn." *Id.; see also Fla. Dep't of State v. Mangat,* 43 So.3d 642, 648 (Fla.2010) (invalidating legislatively proposed amendment due to misleading ballot summary and explaining that while the ballot summary's "statement about 'mandates that don't work' might arguably have a relationship to the amendment which is intended to prevent mandated participation in any health care system, neither the amendment nor the summary identifies what mandates are at issue, explains how the mandates do not work, or specifies for whom they do not work").

Not only does the majority of this Court deny that there are commonly understood differences in meaning between "condition" and "disease," it also suggests that, even if there were differences, those differences would not matter because they would pose no legal significance. *See* majority op. at 805–06. However, the majority is mistaken. Numerous courts have acknowledged the differences in meaning between the terms "condition" and "disease," and those differences have determined the outcomes of cases, particularly in the insurance context. *See, e.g., Katskee v. Blue Cross/Blue Shield of Neb.,* 245 Neb. 808, 515 N.W.2d 645, 651–53 (1994) (recognizing that not every medical condition is harmful enough to be considered a disease under the plain and ordinary ***813** meaning of the term "disease," and explaining that "if the condition is abnormal when tested by a standard of perfection, but so remote in its potential mischief that common speech would not label it a disease or infirmity, such a condition is at most a predisposing tendency"); *Leslie v. J.C. Penney Life Ins. Co.,* 138 Idaho 305, 62 P.3d 1101, 1104 (2003) ("[A] condition which is found to be abnormal only when tested by a standard of perfection and with only a remote potential to be a source of physical disturbance is not a 'disease[.]' "); *Silverstein v. Metro. Life Ins. Co.,* 254 N.Y. 81, 171 N.E. 914 (1930) (same); *see also Leland v. Order of United Commercial Travelers of Am.,* 233 Mass. 558, 124 N.E. 517, 520 (1919) ("[T]here is no active disease, but merely a frail general condition[.]"). In fact, these legally recognized differences in the plain meaning of "condition" and "disease" are more relevant to our analysis of whether this ballot summary is affirmatively misleading to voters than were the legal differences between "people" and "persons" at issue in *Advisory Opinion to the Attorney General re Amendment to Bar Government from Treating People Differently Based on Race in Public Education,* 778 So.2d 888, 897 (Fla.2000) (invalidating proposed amendment due to misleading ballot summary and explaining that "[w]hile 'people' and 'person[s]' also appear synonymous, their legal differences are significant and are not revealed to the voter").

In addition, contrary to the majority's suggestion otherwise,[1] the misleading use of the word "disease" in the ballot summary is not cured by reading the summary along with the title. The sponsor chose the title "Use of Marijuana for Certain Medical Conditions," and, as explained above, the summary states that the amendment "[a]llows the medical use of marijuana for individuals with debilitating diseases as determined by a licensed Florida physician." Read together, these phrases would reasonably lead voters to believe that only those certain medical conditions that are determined by a physician to be debilitating diseases would qualify for the use of medical marijuana if the amendment passed. This Court's decision in *Slough* is directly on point in this regard.

1 *See* majority op. at 805.

In *Slough,* 992 So.2d at 148–49, this Court held that a ballot title and summary were misleading because, when read together, they distinctly implied that the proposed amendment would only apply to school property taxes when in fact it would have applied to other property taxes as well. This Court emphasized in *Slough* 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." *Id.* at 148 (quoting *Advisory Op. to Att'y Gen. re Florida's Amend. to Reduce Class Size,* 816 So.2d 580, 585 (Fla.2002)). This Court concluded that "[a]lthough the summary does state that proposed Amendment 5 '[l]imit[s] annual increases in assessment of non-homestead real property,' ... [t]he specific reference to school property taxes in the title would reasonably lead voters to believe that the maximum increases in 'assessment of non-homestead real property' referenced in the summary are limited to school property taxes." *Id.* Therefore, because "the actual ballot title and summary, when read together, do not clearly and unambiguously disclose [the] significant and distinct effect of proposed Amendment 5" on non-school assessments, "voters would likely be misled or confused with regard to the actual impact of Amendment 5." *Id.* at 149.

  

***814** Similarly, in this case, the inclusion of "certain medical conditions" in the title does not erase the summary's reference to "diseases." When read together, the title and summary are still misleading because they do not clearly and unambiguously disclose to voters that those with "conditions" would qualify for medical marijuana under the amendment's text, not just those with medical issues that rise to the level of "diseases."

***2. Benefits Would Likely Outweigh Risks***

In addition to deceptively employing the term "disease," the summary and title of this initiative also mislead voters by failing to inform them that all that is required under the amendment's text to qualify for the use of marijuana is for one physician to think that the potential benefits of the drug would likely outweigh the potential risks.

As explained above, the title references "certain medical conditions" and the summary mentions that the amendment would allow access to marijuana for the relief of "debilitating diseases." And while the definition in the amendment's text of what qualifies for medical marijuana as a "Debilitating Medical Condition" includes a specific list of diseases that are clearly "debilitating" (such as cancer, AIDS, and ALS), it also includes the catchall category of "other conditions for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient." This catchall category certainly encompasses various medical issues that are less severe and less enfeebling than the "debilitating diseases" described in the title and summary. For example, despite what the title and summary convey to voters, minor aches and pains, stress, insomnia, or fear of an upcoming flight could qualify for the medical use of marijuana under the text of the amendment. This is seriously misleading.

The manner in which the title and summary mislead voters regarding the scope of medical issues that qualify for marijuana is analogous to the casino initiative petition that this Court disapproved in *Advisory Opinion to the Attorney General re Casino Authorization, Taxation and Regulation,* 656 So.2d 466. The summary in the casino initiative case stated that local governments could authorize casinos "on riverboats, commercial vessels, [and] at hotels." *Id.* at 467. However, as this Court explained, the text of the amendment would allow casinos on stationary vessels, including "a casino in a building constructed to look like a riverboat even though the structure is completely landlocked." *Id.* at 469. Consequently, this Court struck the casino proposal, concluding that "the summary of the proposed amendment [did] not accurately describe the scope of the text." *Id.*

Furthermore, the title and summary in this case are an example of "wordsmithing," a practice that this Court expressly prohibited in *Slough,* 992 So.2d at 149:

> In recent years, advantageous but misleading "wordsmithing" has been employed in the crafting of ballot titles and summaries. Sponsors attempt to use phrases and wording techniques in an attempt to persuade voters to vote in favor of the proposal. When such wording selections render a ballot title and summary deceptive or misleading to voters, the law requires that such proposal be removed from the ballot—regardless of the substantive merit of the proposed changes.

The sponsor here deceptively uses the terms "debilitating diseases" and "certain medical conditions" in the title and summary in an attempt to gain electoral advantage with voters who might object to a ***815** broader use of medical marijuana. However, the amendment's text authorizes the medical use of marijuana for more "conditions" and "diseases" than one commonly thinks of as "debilitating." If the sponsor had wished to accurately convey the effect of the amendment's text in an informative and straightforward manner, the sponsor could have titled its amendment "Use of Marijuana for Various Medical Conditions" and employed terminology in the summary similar to "allows medical use of marijuana when licensed physician finds patient benefits would likely outweigh risks." *See Slough,* 992 So.2d at 149 ("If a sponsor ... wishes to guard a proposed amendment from [being stricken due to deceptive wordsmithing] it need only draft a ballot title and summary that is straightforward, direct, accurate and does not fail to disclose significant effects of the amendment merely because they may not be perceived by some voters as advantageous."); *see also Advisory Op. to Att'y Gen. re Ltd. Political Terms in Certain Elective Offices,* 592 So.2d 225, 228 (Fla.1991) ("A ballot summary may be defective if it omits material facts necessary to make the summary not misleading.").

  

The majority ignores this deceptive wordsmithing and the expansive use of medical marijuana that would result under the plain meaning of the amendment's text. Instead, the majority warps the ordinary and common sense meaning of the amendment's text through the inappropriate use of statutory construction tools. They do so even though the principle of ejusdem generis that they employ is inappropriate in this case because the meaning of this amendment's text (including its catchall category) is clear and unambiguous. *See City of Panama City v. State,* 60 So.2d 658, 660 (Fla.1952); *see also Pottsburg Util. Inc. v. Daugharty,* 309 So.2d 199, 201 (Fla. 1st DCA 1975) ("[Ejusdem generis] is applicable, however, only where there is some inconsistency or ambiguity in the contract and the meaning of the general provision is doubtful and requires clarification. (17A C.J.S. Contracts § 313) Where both the general and special provisions may be given reasonable effect in the context of the contract both provisions must be retained and given whatever meaning the words employed convey."). "*Ejusdem generis* should only come into play when it is necessary to construe an ambiguous statute, not to create an ambiguity in a clearly worded statute." *State v. Hobbs,* 974 So.2d 1119, 1121 (Fla. 5th DCA 2008).

Specifically, the definition of "Debilitating Medical Condition" that appears in subsection (b)(1) of the amendment's text reads in its entirety as follows:

> "Debilitating Medical Condition" means cancer, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), hepatitis C, amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, multiple sclerosis or other conditions for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient.

Instead of concluding that this definition includes a list of specific diseases followed by a catchall category of "other conditions for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient" as its text plainly and expressly says, the majority rewrites the definition. Inappropriately using the principle of ejusdem generis, the majority in effect inserts the word "similar" into the clear and unambiguous definition, thereby transforming the catchall category into something else entirely. After the majority's rewrite, subsection (b)(1) now states "or other *similar* conditions for which a physician believes ***816** that the medical use of marijuana would likely outweigh the potential health risks for a patient." The majority's revision is entirely inappropriate under our precedent. *See generally Mangat,* 43 So.3d at 650 ("This Court does not have the authority to substitute the language that three-fifths of the members of the Legislature have voted to place on the ballot."). To be clear, I do not disagree with the canon of ejusdem generis itself as the majority incorrectly asserts. *See* majority op. at 802. Rather, I disagree with the majority's decision to apply the canon in this particular case because the meaning of the amendment's text (including its catchall category) is very clear and unambiguous.

Additionally, while the majority correctly mentions that the amendment's subsections must be read together as a whole, it fails to do so. The majority points to subsection (b)(9), which defines "Physician certification" to mean "a written document signed by a physician, stating that in the physician's professional opinion, the patient suffers from a debilitating medical condition, that the potential benefits of the medical use of marijuana would likely outweigh the health risks for the patient, and for how long the physician recommends the medical use of marijuana." And the majority insists that based upon subsection (b)(9) a physician must not only conclude that the potential benefits outweigh the risks, but that the patient also has a "debilitating medical condition." *See* majority op. at 802–03. However, the majority ignores that "debilitating medical condition" is a specifically defined term under the amendment's text. In fact, as just mentioned above, subsection (b)(1) has already defined "Debilitating Medical Condition" to mean "other conditions for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient." Therefore, by reading subsections (b)(1) and (b)(9) together, it is abundantly (and redundantly) clear that a physician need only believe that the potential benefits of marijuana would likely outweigh the risks for the individual. There is no additional "debilitating" medical condition or "debilitating" disease that must be present to qualify for marijuana.

The majority claims that this interpretation renders "meaningless the first part of subsection (b)(9), which states that the physician must determine that 'the patient suffers from a debilitating medical condition.' " Majority op. at 803. To the contrary, it is the majority's interpretation that renders meaningless an entire subsection of the amendment's text, specifically subsection (b)(1) which actually defines what the amendment's text means when it states "debilitating medical condition" in the first part

of subsection (b)(9) and everywhere else. Why include a specific definition of a term that is used repeatedly in the amendment's text if the sponsor of the amendment did not intend for that term to mean what the definition says it means?

The majority also mentions other parts of the amendment's text that it claims are "restrictions [that] reflect a constitutional scheme that is meant to be limited in scope regarding the medical use of marijuana." Majority op. at 803. In particular, the majority notes subsection (b)(9)'s explanation that "[a] physician certification may only be provided after the physician has conducted a physical examination of the patient and a full assessment of the patient's medical history." But an exam and a medical history are hardly "restrictions" limiting the ability of a physician to recommend marijuana for medical issues that are not commonly viewed as severe or debilitating. In fact, these requirements are in place every time someone receives an antibiotics prescription for a mild, non- ***817** debilitating infection. Accordingly, contrary to the majority's suggestion otherwise, the title and summary mislead voters regarding the scope of medical issues that qualify for medical marijuana under the plain meaning of the amendment's text.

***3. Immunity***

Additionally, the title and summary of this initiative proposal mislead voters by failing to disclose the broad immunity that would be granted if this amendment is adopted, immunity that conflicts with and restricts Floridians' current constitutional right of access to courts. *Cf. Advisory Op. to the Att'y Gen. re Fla. Growth Mgmt. Initiative Giving Citizens the 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.").

While the title and summary omit any mention of immunity from civil liability, criminal liability, and sanctions under Florida law, the first section of the amendment's text reads as follows:

> (a) PUBLIC POLICY.
>
> (1) The medical use of marijuana by a qualifying patient or personal caregiver is not subject to criminal or civil liability or sanctions under Florida law except as provided in this section.
>
> (2) A physician licensed in Florida shall not be subject to criminal or civil liability or sanctions under Florida law for issuing a physician certification to a person diagnosed with a debilitating medical condition in a manner consistent with this section.
>
> (3) Actions and conduct by a medical marijuana treatment center registered with the Department, or its employees, as permitted by this section and in compliance with Department regulations, shall not be subject to criminal or civil liability or sanctions under Florida law except as provided in this section.

Based on the plain meaning of this text, physicians, caregivers, patients, marijuana treatment centers, and treatment center employees will be granted broad immunity relating to their participation in the medical use of marijuana if this amendment passes.

The majority completely ignores the broad immunity that subsection (a) provides to caregivers, patients, treatment centers, and treatment center employees. And while the majority acknowledges that subsection (a) discusses immunity for physicians, it completely misconstrues the plain language of the text to the point of making it meaningless.

Specifically, the majority claims that "it is a reasonable construction that physicians are granted immunity only to the extent that they prescribe marijuana 'consistent with this section.' " Majority op. at 807. Thus, the majority concludes that "the proposed amendment does not protect physicians who fraudulently or negligently prescribe medical marijuana, does not change the professional duties and obligations of licensed Florida physicians, and does not restrict Florida's current constitutional right of access to the courts." *Id.* However, the majority fails to acknowledge that a physician could recommend marijuana for a patient

"in a manner consistent with this section" but that recommendation could still be a form of medical malpractice. For example, a physician, in his misguided "professional opinion," could believe that the benefits of marijuana for a teething toddler would likely outweigh the risks and, therefore, recommend that the toddler use marijuana three times a day for six months or until the teething subsided. ***818** Indeed, this physician could have reached this determination and recommendation after conducting a "physical examination" of the toddler and after "a full assessment of the patient's medical history," which would mean the recommendation would be made "in a manner consistent with this section." Of course, such a recommendation may fall outside "the prevailing professional standard of care for that health care provider." § 766.102(1), Fla. Stat. (2013). And the victims of this medical malpractice would have no legal recourse due to the civil immunity provided to physicians by subsection (a) of the amendment's text. The text of the amendment fails to include a requirement of adhering to the prevailing professional standard of care and instead provides immunity for whatever "professional opinion" the physician exercises, even if it is a negligent one.

Because any mention of immunity is omitted from the ballot title and summary, voters would be unaware that their valuable right to pursue medical malpractice claims (as well as other tort claims) associated with medical marijuana will be lost if this amendment passes. And, to be clear, this valuable right is currently guaranteed by article I, section 21 of Florida's Constitution, which provides that "[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."

This Court has invalidated prior proposed amendments based upon less significant omissions in ballot language with respect to the amendment's effect on other constitutional provisions than the one at issue here. *See, e.g., Advisory Op. to the Att'y Gen. re 1.35% Prop. Tax Cap, Unless Voter Approved,* 2 So.3d 968, 976 (Fla.2009) ("[W]e find the ballot summary misleading because it does not inform the voter of the repeal of an existing Florida constitutional provision [providing] for the millages that can be assessed by the various local government units[.]"); *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).

Accordingly, based upon our precedent, this initiative's ballot language is fatally misleading because it fails to disclose the amendment's significant effect on Floridians' constitutional right of access to courts, including the right to pursue medical malpractice claims against physicians who negligently recommend marijuana in a manner consistent with the amendment's text. *See also Bar Gov't from Treating People Differently Based on Race in Pub. Educ.,* 778 So.2d at 895 ("[C]ourts will be closed, not open, to victims of discrimination who seek redress for their injuries. Thus, the proposed amendments have a substantial effect on article I, section 21, and the failure to identify this substantial effect violates the single-subject requirement.").

***4. Federal Law***

Finally, the summary misleads Florida's voters by falsely implying that the use and possession of marijuana in accordance with this amendment would be lawful, including under federal law.

The summary states the following: "Applies only to Florida law. Does not authorize violations of federal law or any non-medical use, possession or production of marijuana." When read together with the entire ballot summary and title, these ***819** statements imply that qualifying patients may lawfully use and possess marijuana if the amendment passes. However, this is absolutely false. Whether or not this amendment passes, the medical use of marijuana will remain a federal crime.

In fact, any manufacture, distribution, or possession of marijuana is a criminal offense under federal law. *See Gonzales v. Raich,* 545 U.S. 1, 14, 125 S.Ct. 2195, 162 L.Ed.2d 1 (2005). The federal Controlled Substances Act (CSA) "designates marijuana as contraband for *any* purpose; in fact, by characterizing marijuana as a Schedule I drug, Congress expressly found that the drug has no acceptable medical uses." *Id.* at 27, 125 S.Ct. 2195. Moreover, in 2005, the United States Supreme Court expressly held

that Congress has the power to prohibit the local, intrastate cultivation and use of marijuana under the CSA even though such cultivation and use complied with a state's medical marijuana law. *Id.* at 29, 125 S.Ct. 2195.

Therefore, despite what the summary falsely implies to voters, Floridians can still be prosecuted for the medical use of marijuana even if such use is in accordance with this amendment. *See City of Riverside v. Inland Empire Patients Health and Wellness Ctr., Inc.,* 56 Cal.4th 729, 156 Cal.Rptr.3d 409, 300 P.3d 494, 497 (2013) (explaining that California's medical marijuana laws "have no effect on the federal enforceability of the CSA in California. The CSA's prohibitions on the possession, distribution, or manufacture of marijuana remain fully enforceable in this jurisdiction."); *United States v. Stacy,* 734 F.Supp.2d 1074, 1084 (S.D.Cal.2010) (explaining that defendant's compliance with California's medical marijuana laws did not grant him immunity under federal law and that, in his federal prosecution, defendant could not present the defense that he was cultivating marijuana in compliance with state law and that he had a good faith belief it was lawful). And while ballot summaries are not required to mention the current state of federal law or a proposed state constitutional amendment's effect on federal law, they are required to not affirmatively mislead Florida voters by falsely implying the opposite of what that current state of federal law is.

***5. Conclusion***

To summarize, the title and summary at issue in this case are affirmatively misleading because they obscure the breadth of medical issues that would qualify for medical marijuana by deceptively employing the term "disease" and by failing to disclose that a physician need only believe that the benefits would likely outweigh the risks. Additionally, the title and summary are affirmatively misleading because they fail to disclose the broad immunity that would be granted if the amendment passes and because they falsely imply that the use and possession of marijuana in accordance with the amendment would not violate federal law. As a result, the ballot title and summary omit significant details that would enable a voter to make an informed decision regarding the merits of the amendment.

Therefore, I would disapprove the proposal for placement on the ballot, and I respectfully dissent.

CANADY, J., concurs.

CANADY, J., dissenting.

I agree with Chief Justice Polston and Justice Labarga that the proposed amendment should be denied placement on the ballot because the ballot summary is clearly and conclusively misleading. One of the most important rights enjoyed by the people of Florida under our constitution is the right to vote on constitutional amendments proposed through the initiative process. ***820** That right and the initiative process are subverted when the voters are presented a misleading ballot summary. The integrity of the electoral process is seriously compromised by placing this proposed amendment on the ballot with a radically defective summary—a summary that will affirmatively mislead the voters in several different ways concerning the chief purpose of the amendment. I dissent.

I.

Most egregiously, the ballot summary seriously misrepresents the interaction of the proposed amendment with federal law. The problem here is not with what the summary omits but with what it contains. The summary states that the proposed amendment "[d]oes not authorize violations of federal law," but the truth is that violations of federal law unquestionably are authorized by the amendment. A more misleading characterization of the relationship between the amendment and federal law is hard to conceive.

The majority's attempt to address this issue blithely sidesteps the basic deception in this portion of the summary. First, the majority states that "the statements in the ballot summary are substantially similar in meaning to the proposed amendment's

text." Majority op. at 808. A comparison of the text of the summary with the text of the amendment gives the lie to this assertion. Second, the majority states that we have "never required that a ballot summary inform voters as to the current state of federal law and the impact of a proposed state constitutional amendment on federal statutory law as it exists at this moment in time." *Id.* at 808. That assertion may be true, but it is totally beside the point. The issue here is not that the summary fails to explain the amendment's relationship with federal law but that it affirmatively misrepresents that relationship.

This is what the text of the amendment says about federal law: "Nothing in this law section [sic] *requires the violation* of federal law or purports to give *immunity* under federal law." (Emphasis added.) And this is what the summary says about federal law: "Applies only to Florida law. Does not *authorize violations* of federal law...." (Emphasis added.) Contrary to the majority's assertion, it is obvious that the text of the summary is strikingly dissimilar to the text of the amendment.

The text of the amendment says that nothing in the amendment "requires the violation of federal law," but the text of the summary says that the amendment "[d]oes not authorize violations of federal law." There is a vast difference between not *requiring* a violation of federal law—whatever that may mean—and not *authorizing* a violation of federal law. To find substantial similarity here is to find something that does not exist. The text of the amendment also says that the amendment does not "purport[ ] to give immunity under federal law," but the summary says nothing about "immunity." Once again, there is a salient lack of similarity between the amendment and the summary.

The problem with this aspect of the summary, however, goes beyond these dissimilarities. The fundamental problem is that the summary is blatantly deceptive because it informs the voters that the amendment "[d]oes not authorize violations of federal law," although it is beyond dispute—as Chief Justice Polston's dissent explains—that conduct authorized by the amendment is criminal conduct under federal law. The voters therefore are potentially hoodwinked into believing that the amendment is consistent with the requirements of federal law. The summary's proclamation of the amendment's supposed ***821** consistency with federal law is not about some inconsequential, ancillary detail that would be unlikely to influence a reasonable voter's evaluation of the proposed amendment. On the contrary, it is a circumstance to which many voters may attach considerable significance. By misleading the voters on this significant point, the summary corrupts the electoral process.

The sponsors of the proposed amendment argue that the language of the summary is accurate because it "explicitly places the voter[s] on notice that they should be aware that the proposed initiative does not authorize violation of federal marijuana laws." Initial Brief of Sponsor at 41, *Advisory Op. to the Att'y Gen. re Use of Marijuana for Certain Med. Conditions,* SC13–2006 (Fla. Nov. 8, 2013). They also argue that the summary places "voters on notice that any change provided by this amendment affects only Florida law, and that federal laws are unaffected by this change." *Id.* at 44. The first argument is nonsensical. The second argument is correct, but it dodges the real issue.

By the first argument, the sponsors apparently mean to suggest that the summary informs voters that liability for violations of federal law will not be affected by the amendment. That is not inaccurate as a description of the portion of the summary that states: "Applies only to Florida law." A reasonable reader would understand from this statement that the amendment would not alter or preempt federal law. If that were the only language in the summary bearing on the relationship between the proposed amendment and federal law, there would be no problem. The deception comes in the language that immediately follows, which informs the voters that the amendment "[d]oes not authorize violations of federal law."

The sponsors suggest that this language is equivalent to the immediately preceding language in the summary. The suggestion that the two distinct statements communicate the same information crumbles under scrutiny. The question immediately arises why in the summary—where the seventy-five-word limitation places a premium on economy of expression—a statement would be included that simply restated in different words what had already been stated. A reasonable reader of the summary would hardly expect that the summary would repeat itself.

But, of course, the summary does not repeat itself. The statement that the amendment "[d]oes not authorize violations of federal law" carries a meaning that is entirely different from the preceding statement that the amendment "[a]pplies only to Florida

law." The attempt to equate the two statements does violence to the plain meaning of the terms. A reasonable reader can only conclude that the second of the two statements occurring in the summary affirms that the conduct authorized by the amendment is not conduct that would violate federal law. That is what it says. If the statement in the summary had paralleled the statement in the text of the amendment that nothing in the amendment "purports to give immunity under federal law," there would have been no deception, and the voters would have indeed been placed on notice that conduct authorized by the amendment might run afoul of federal law. The sponsors, however, chose not to include the statement tracking the text of the amendment. Instead, they chose—for some inexplicable reason—the deceptive statement.

II.

The remaining defects in the ballot summary largely revolve around the failure of ***822** the summary accurately to reflect the amendment's chief purpose, which is to authorize physicians to prescribe the medical use of marijuana when the "physician *believes* that the medical use of marijuana would likely outweigh the potential health risks for a patient." (Emphasis added.) This crucial language of the amendment—which appears in the definition of "Debilitating Medical Condition" in subsection (b)(1)—establishes a subjective standard for the medical use of marijuana, a standard granting physicians the authority to authorize the use of marijuana if the physician "believes" that the use by a particular patient would be medically beneficial given the medical condition from which the patient suffers. In particular, this language in the text of the amendment is relevant to the misleading statement in the summary that the amendment "[a]llows the medical use of marijuana for individuals with debilitating diseases as determined by a licensed Florida physician." It is also relevant to the summary's failure to disclose the broad nature of the immunity from civil liability granted to physicians by the text of the amendment, an immunity that is inextricably tied to the chief purpose of the amendment.

With respect to the immunity from liability granted by subsection (a)(2) of the amendment, analysis must begin with the acknowledgment that a standard predicated on what a particular physician "believes"—a word denoting a subjective determination—is not equivalent to the prevailing medical standard of care. It is significant that the word "believes" in subsection (b)(1) is unqualified by the word "reasonably." And nothing in the text or the context of the amendment suggests that "reasonably" should be read into the text. As a consequence, a physician who "believes that the medical use of marijuana would likely outweigh the potential health risks for a patient" and who issues a physician certification reflecting that subjective belief, has issued a physician certification "in a manner consistent with" the amendment. Under subsection (a)(2), the physician therefore "shall not be subject to ... civil liability or sanctions under Florida law for issuing" the physician certification.

The unmistakable import of the immunity provision is that such a physician cannot be held liable for negligence in connection with the issuance of the physician certification. The voters have a right to know that their right to pursue negligence claims in these circumstances is barred by the amendment's immunity provision. But the summary omits any mention of this immunity.

Finally, I turn to the majority's attempt to justify the misleading reference to "debilitating diseases" in the ballot summary. In that attempt, the majority incorrectly relies on the ejusdem generis—"like kind"—canon. Consideration of the structure and full context of the amendment's central definition in light of the rationale for the canon leads to the conclusion that the canon is not properly applied here.

The canon "means that 'where an enumeration of specific things is followed by some more general word or phrase, such general word or phrase will usually be construed to refer to things of the same kind or species as those specifically enumerated.' " *Arnold v. Shumpert,* 217 So.2d 116, 119 (Fla.1968) (quoting *Children's Bootery v. Sutker,* 91 Fla. 60, 107 So. 345, 347 (1926)). The canon "rests on [a] practical insight[ ] about everyday language usage" which recognizes that "[w]hen people list a number of particulars and add a general reference ... they mean to include by use of the general reference not everything else [within the scope of the general ***823** reference] but only others of like kind [with the listed particulars]." 2A Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutory Construction* § 47:18, at 382 (7th ed. 2007).

A necessary condition for the application of the canon is that the "members of the enumeration suggest a class." *Id.* at 380. That is to say, there must be something that makes the enumerated particulars of "like kind" with one another. "Without some objective relationship" among the members of the enumeration, identifying a class for purposes of applying the canon will necessarily be "arbitrary and meaningless." *Id.* at 382. Accordingly, to properly apply the canon, some naturally understood common quality or characteristic among all the specific members of the enumeration must exist. If that condition obtains, the specific common quality or characteristic ordinarily will naturally be understood to limit the sweep of the general reference following the enumeration to a subcategory of the general reference. Otherwise, there is no basis for restricting the sweep of the general reference.

Here, the enumerated particulars in the definition do not "suggest a class" that can reasonably be understood to limit the sweep of the general provision to some subcategory. These are the particulars enumerated in the definition: "cancer, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), hepatitis C, amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, multiple sclerosis." This list represents a diverse group of medical conditions, ranging from the inevitably and devastatingly debilitating and fatal to conditions that frequently can be successfully treated and controlled or cured. The list does not suggest a subcategory of the general category of "other conditions for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient."

This is a consequence not only of the diverse nature of the specifically enumerated medical conditions but also of the special nature of the general reference, which focuses on what a physician subjectively "believes" about the medical benefit for a particular patient given the particular medical condition from which the patient suffers. Based on this structural feature of the general reference, it is more natural to understand the listed medical conditions as illustrative of conditions that physicians will likely "believe" warrant the medical use of marijuana than to understand the listed conditions as establishing a limitation on the scope of the physician's authority. The general thus controls the specific. The standard is whether the patient suffers from a medical condition—listed or unlisted—"for which [the] physician believes that the medical use of marijuana would likely outweigh the potential health risks for [the] patient."

The majority unconvincingly asserts that an ancillary administrative provision of the amendment—subsection (b)(9)—relating to the content of physician certifications, should be allowed to alter the meaning of the definition that is the very heart of the proposed amendment. Contrary to the majority's assertion, subsection (b)(9) does not require that the key phrase of the definition in subsection (b)(1)—which refers to "other conditions for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient"—be effectively read out of the definition. Instead, the dual requirements of subsection (b)(9) that the physician certification include the statement that "the patient suffers from a debilitating medical condition" and the statement "that the potential benefits of ***824** the medical use of marijuana would likely outweigh the health risks for the patient," are entirely consistent with the understanding that the general phrase in the definition controls the specifically enumerated conditions. Subsection (b)(9) simply requires the physician to *state the conclusion* that the patient is eligible as a patient with a "debilitating medical condition" and to *state the basis for that conclusion*—namely, that the benefits of the medical use of marijuana outweigh the risks for the particular patient.

In maintaining that only debilitating diseases are within the scope of the subsection (b)(1) definition, the majority is determinedly oblivious to the fact that "debilitating medical condition" is a specifically defined term and that neither the term "debilitating" nor the term "disease" appears in the operative language of the definition. The majority is also determinedly oblivious to the fact that "medical condition" is a broader, more inclusive term than "diseases." By reading "debilitating diseases" into the operative language of the definitions set forth in subsection (b)(1), the majority gives the definition a meaning that the text of the definition does not admit. As a result, the majority turns a blind eye to the misleading reference to "debilitating diseases" in the ballot summary, a reference that cannot be squared with the text of the amendment, which allows physicians to authorize the use of medical marijuana not only for patients suffering from a debilitating disease but for any patient suffering from a condition "for which [the] physician believes that the medical use of marijuana would likely outweigh the potential health risks for [the] patient."

  

III.

Foisting this seriously deceptive ballot summary on the voters does a severe disservice to the people and to their constitution. The proposed amendment should not be placed on the ballot. The sponsors of this amendment should be given an opportunity to pursue their objective with a new proposal that has a ballot summary that does not mislead the voters.

POLSTON, C.J., concurs.

LABARGA, J., dissenting.

I dissent because I conclude that the ballot title and ballot summary are fatally confusing in regard to the conditions or diseases which may be treated by the use of medical marijuana. When determining the validity of initiative petitions such as this, the Court's inquiry is limited to whether the petition satisfies the constitutional single-subject requirement and the requirement of section 101.161(1), Florida Statutes (2013). *See Advisory Op. to Att'y Gen. re Amend. to Bar Gov't from Treating People Differently Based on Race in Pub. Educ.,* 778 So.2d 888, 890–91 (Fla.2000). Section 101.161(1) requires that that ballot title and summary state "in clear and unambiguous language the chief purpose of the measure." *Advisory Op. to Att'y Gen.—Limited Political Terms in Certain Elective Offices,* 592 So.2d 225, 228 (Fla.1991).

We have noted that "voters are generally required to do their homework and educate themselves about the details of a proposal and about the pros and cons of adopting the proposal." *Smith v. Am. Airlines, Inc.,* 606 So.2d 618, 621 (Fla.1992). However, no amount of voter homework would disclose exactly what conditions or diseases may be treated with medical marijuana under this ballot title and summary. As we reiterated in *Armstrong v. Harris,* 773 So.2d 7 (Fla.2000), "[t]he problem, therefore, lies not with what the summary says, but rather with what it does not say." *Id.* at 15 (quoting ***825** *Askew v. Firestone,* 421 So.2d 151, 156 (Fla.1982)).

While the ballot title suggests that medical marijuana may be prescribed only for "certain medical conditions," the ballot summary states that the use is allowed for "debilitating diseases as determined by a licensed Florida physician." At this point, the voter will not know if the category of "medical conditions" for which use of medical marijuana is allowed is smaller or larger than the category of "debilitating diseases" for which physicians may prescribe medical marijuana. Further confusing the matter for the voter is the fact that the text of the amendment defines "debilitating medical condition" with a list of specifically named diseases followed by a catchall phrase, "other conditions for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient." Is the term "condition" limited to what may be characterized as a "disease"? Or may a debilitating medical condition be a condition not caused by disease? While "disease" may be defined by use of the term "condition," it is not so clear that "condition" is in turn defined by use of the term "disease" or is synonymous with it. The confusion inherent in the use of these terms, even when read together, gives me great concern that the voter will not be fairly and clearly apprised of the proposal's chief purpose.

"Fair notice in terms of a ballot summary must be actual notice consisting of a clear and unambiguous explanation of the measure's chief purpose." *Askew,* 421 So.2d at 156. In my view, even the informed voters who have done their homework and read the complete ballot title, ballot summary, and ballot text will not be clearly informed of what limits, if any, are placed on the use of medical marijuana. Nor will the voter know the scope of "certain medical conditions" or "debilitating diseases" for which the use of marijuana may be allowed.

This Court has been assiduous in the past in scrutinizing ballot titles and summaries to assure that they fairly inform the voters of the substance and effect of proposed amendments. Although the Court is reluctant to remove proposed amendments from a vote of the public, this Court has not been reluctant to strike a summary that fails to clearly and fully inform the voter of the significant effects of the amendment. As we held in *Smith,* "we are required by section 101.161 [Florida Statutes] to ensure

that the ballot summary clearly communicates what the electorate is being asked to vote upon. This ballot summary fails to do so." *Smith,* 606 So.2d at 621.

I do recognize that the limited range of the ballot summary "prevents [it] from revealing all the details or ramifications of the proposed amendment." *Smith,* 606 So.2d at 621. Even so, the summary must clearly state the amendment's chief purpose.[2] In this case, the chief purpose of ***826** the proposed amendment is inextricably tied to the circumstances under which medical marijuana may be prescribed. That is exactly the area of the ballot title and summary that are not clear. For these reasons, I dissent from the majority's approval of the ballot title and summary and the placement of this proposed amendment on the ballot.

2 Section 101.161(1), Fla. Stat. (2013), provides that the ballot summary for a constitutional amendment proposed by citizen initiative "shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure." Given the complexity of issues often raised in amendments proposed by citizen initiative, the Legislature should consider expanding that limit or providing some mechanism for redrafting the amendment, where practicable, to provide the clarity necessary for placement on the ballot. The Legislature provided a similar corrective mechanism for legislatively proposed constitutional amendments where the ballot statement proposed by legislative joint resolution is found to be defective. Section 101.161, Florida Statutes, was amended in 2011 to provide in subsection (3) that if the court finds the Legislature's ballot statement to be defective, the Attorney General may prepare and submit a revised ballot statement, unless otherwise provided in the joint resolution. *See* § 101.161(3)(b) 2., Fla. Stat. (2011). I urge the Legislature to consider extending a similar corrective mechanism to constitutional amendments proposed by citizen initiative.

**All Citations**

132 So.3d 786, 39 Fla. L. Weekly S45

**End of Document**

## Negative Treatment

### Negative Citing References (1)

*The KeyCited document has been negatively referenced by the following events or decisions in other litigation or proceedings:*

| Treatment | Title | Date | Type | Depth | Headnote(s) |
|---|---|---|---|---|---|
| Declined to Extend by | 1. Advisory Opinion to Attorney General re Adult Use of Marijuana MOST NEGATIVE<br><br>315 So.3d 1176 , Fla.<br>GOVERNMENT — States. Ballot summary for constitutional amendment for marijuana legalization in Florida was misleading. | Apr. 22, 2021 | Case | | 15<br>16<br>27<br>So.3d |

 

824 So.2d 161
Supreme Court of Florida.

# ADVISORY OPINION TO THE ATTORNEY GENERAL re: VOLUNTARY UNIVERSAL PRE-KINDERGARTEN EDUCATION.

No. SC02-868.
|
July 11, 2002.

**Synopsis**
Attorney General filed petition for advisory opinion as to validity of proposed citizen initiative amendment to Florida Constitution regarding establishment of pre-kindergarten education program. The Justices of the Supreme Court held that initiative petition and proposed ballot title met single-subject requirement of Florida Constitution and statutory requirements.

Question answered.

West Headnotes (9)

[1] **Constitutional Law** Single or Multiple Subjects
**Constitutional Law** Ballot Title
**Constitutional Law** Summaries, Explanatory Statements, and Statements of Purpose

In determining the validity of initiative petitions, Supreme Court is limited to two issues: (1) whether the petition satisfies the single-subject requirement of Florida Constitution; and (2) whether the ballot title and summary are printed in clear and unambiguous language as required by statute. West's F.S.A. Const. Art. 11, § 3; West's F.S.A. § 101.161.

1 Case that cites this headnote

[2] **Constitutional Law** Pre-Election Challenges or Review

Supreme Court does not review the merits of a proposed constitutional amendment based on citizen initiative petition.

[3] **Constitutional Law** Single or Multiple Subjects

To comply with the single-subject requirement, a proposed constitutional amendment based on a citizen initiative petition must manifest a logical and natural oneness of purpose. West's F.S.A. Const. Art. 11, § 3.

[4] **Constitutional Law** Particular Amendments

Proposed constitutional amendment based on citizen initiative petition that created pre-kindergarten program did not violate single-subject requirement of Florida Constitution by requiring Legislature to fund program. West's F.S.A. Const. Art. 11, § 3.

  

[5] **Constitutional Law** Applicability to Multiple Branches of Government

Proposed constitutional amendment based on citizen initiative petition that created pre-kindergarten program and required Legislature to fund program did not substantially alter or perform functions of multiple aspects of government, which would have violated single-subject requirement of Florida Constitution; proposal did not require Legislature to spend specific percentage of budget or a specific amount on development of program. West's F.S.A. Const. Art. 11, § 3.

[6] **Constitutional Law** Ballot Title

**Constitutional Law** Summaries, Explanatory Statements, and Statements of Purpose

Ballot title and summary of proposed constitutional amendment based on citizen initiative petition must state in clear and unambiguous language the initiative's primary purpose. West's F.S.A. § 101.161(1).

4 Cases that cite this headnote

[7] **Constitutional Law** Ballot Title

**Constitutional Law** Summaries, Explanatory Statements, and Statements of Purpose

Ballot title and summary of proposed constitutional amendment based on citizen initiative petition must be accurate and informative. West's F.S.A. § 101.161(1).

6 Cases that cite this headnote

[8] **Constitutional Law** Ballot Title

**Constitutional Law** Summaries, Explanatory Statements, and Statements of Purpose

Ballot title and summary of proposed constitutional amendment based on citizen initiative petition may not be read in isolation, but must be read together in determining whether the ballot information properly informs the voters. West's F.S.A. § 101.161(1).

9 Cases that cite this headnote

[9] **Constitutional Law** Particular Amendments

**Constitutional Law** Particular Amendments

Title and summary of proposed constitutional amendment based on citizen initiative petition complied with statutory requirement that they state clearly the initiative's primary purpose; title was "Voluntary Universal Pre-Kindergarten Education," and ballot summary clearly and unambiguously set forth initiative's primary purpose, stating that every four-year-old child would be offered high quality pre-kindergarten learning opportunity by State and stating that funding would not take away funds used for existing education, health, and development programs. West's F.S.A. § 101.161(1).

1 Case that cites this headnote

**Attorneys and Law Firms**

***162** The Honorable Robert A. Butterworth, Attorney General, Tallahassee, FL, for Petitioner.

  

The Honorable Alexander Penelas, The Committee on Pre-K, Miami, FL; and Parker D. Thomson and Carol A. Licko of Hogan & Hartson, LLP, Miami, FL, for The Committee on Pre-K (supporting the initiative petition).

Christina A. Zawisza, Children First Project, Shepard Broad Law Center, Nova Southeastern University, Fort Lauderdale, FL, for Children First Project and The Early Childhood Initiative Foundation, et al., Amici Curiae.

**Opinion**

PER CURIAM.

The Attorney General has petitioned this Court for an advisory opinion as to the validity of a proposed citizen initiative amendment to the Florida Constitution. We have jurisdiction. *See* art. IV, § 10; art V, § 3(b)(10), Fla. Const. This Court issued an order permitting interested parties to file briefs on the proposed amendment.[1]

1 The Committee on Pre-K, sponsors of the initiative petition, filed a brief in support of the proposed amendment. No briefs were filed in opposition to the proposed amendment.

The ballot title and summary for the proposed amendment are as follows:

> *Ballot title:* Voluntary Universal Pre-Kindergarten Education
>
> *Ballot summary:* Every four-year-old child in Florida shall be offered a high quality pre-kindergarten learning opportunity ***163** by the state no later than the 2005 school year. This voluntary early childhood development and education program shall be established according to high quality standards and shall be free for all Florida four-year olds without taking away funds used for existing education, health and development programs.

The text of the proposed amendment, which would rename section 1 to section 1(a), and add sections 1(b) and 1(c) to article IX of the Florida Constitution, and the paragraphs outlining the reasons for the amendment state:

> WHEREAS, infancy and early childhood development set the stage for a child's future ability to interact socially and achieve academically, and extensive research on the human brain shows that from birth to age 5 children rapidly develop the language and cognitive capabilities and emotional, social, regulatory and moral capacities upon which child development proceeds. To this end, these critical dimensions must be nurtured in early, high quality, active learning pre-kindergarten programs for all Florida four-year-old children to provide both short and long-term benefits, including later school success.
>
> WHEREAS, it is not advisable to mandate such pre-kindergarten programs for all children, but rather to require such programs to be available to all children who wish to participate therein, and thus to permit the parents, custodian, guardian or other caregiver to make the individual determination on behalf of each of Florida's four-year-olds whether to participate therein.
>
> WHEREAS, existing resources of public institutions are limited in their ability to support additional demand, and therefore a range of pre-kindergarten settings, including school sites, childcare facilities and homes, both public and non-public, should house pre-kindergarten programming, so that parents, custodians, guardians, or other caregivers may have choices among school settings, curricula, and services in order to preserve their role as the primary protector of the welfare of the children.
>
> WHEREAS, current available knowledge accepts three primary essentials for school readiness: 1) that children are physically healthy, rested and well nourished; 2) that they are able to communicate needs, wants and thoughts verbally; 3) and that they are enthusiastic and curious in approaching new activities; accordingly, high quality pre-kindergarten programs should reflect an understanding of how children learn by providing appropriate preschool experiences in emphasizing basic skills including growth in language, literacy, math concepts, science arts, physical development and personal and social competence.
>
> WHEREAS, current knowledge dictates that a high quality pre-kindergarten learning opportunity must operate according to standards that require a core curriculum and interactive, age appropriate, individualized programming delivered according

to children's unique scheduling needs and which promote and enhance children's feelings of comfort and self-esteem, and further dictates the importance of appropriate staffing ratios, teacher qualifications and professional development, physical environment, and the protection of child health and safety, and therefore, it is necessary to operate the Florida early childhood development and education program according to professionally accepted standards.

WHEREAS, Florida currently has many fine education, development and ***164** health care programs that seek to address the needs of children and adults but current resources do not meet the full demand of such programs, and therefore the early childhood education and development program described herein must be implemented in such a way as not to remove any funds from any existing education, development or health care program.

NOW THEREFORE, Article IX, Section 1 of the Florida Constitution is hereby amended to renumber Section 1 as Section 1(a) and to add the following Sections 1(b) and (c):

(b) Every four-year-old child in Florida shall be provided by the State a high quality pre-kindergarten learning opportunity in the form of an early childhood development and education program which shall be voluntary, high quality, free, and delivered according to professionally accepted standards. An early childhood development and education program means an organized program designed to address and enhance each child's ability to make age appropriate progress in an appropriate range of settings in the development of language and cognitive capabilities and emotional, social, regulatory and moral capacities through education in basic skills and such other skills as the Legislature may determine to be appropriate.

(c) The early childhood education and development programs provided by reason of subparagraph (b) shall be implemented no later than the beginning of the 2005 school year through funds generated in addition to those used for existing education, health, and development programs. Existing education, health, and development programs are those funded by the State as of January 1, 2002 that provided for child or adult education, health care, or development.

**[1]** **[2]** In determining the validity of initiative petitions, this Court is limited to two issues: (1) whether the petition satisfies the single-subject requirement of article XI, section 3, of the Florida Constitution; and (2) whether the ballot title and summary are printed in clear and unambiguous language pursuant to section 101.161, Florida Statutes (2001). *See Advisory Opinion to the Attorney Gen. re Florida's Amend. to Reduce Class Size,* 816 So.2d 580 (Fla.2002); *Advisory Opinion to Attorney Gen. re Fla. Transp. Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation Sys.,* 769 So.2d 367, 368 (Fla.2000). This Court does not review the merits of a proposed amendment. *See, e.g., Advisory Opinion to the Attorney Gen. re Right of Citizens to Choose Health Care Providers,* 705 So.2d 563, 565 (Fla.1998).

*Single Subject Requirement*

Article XI, section 3 of the Florida Constitution provides in pertinent part that proposed amendments based on citizen initiative petitions "shall embrace but one subject and matter directly connected therewith." The single-subject requirement applies to the citizen initiative method of amending the constitution because

> section 3 [citizen initiative] does not afford the same opportunity for public hearing and debate that accompanies the proposal and drafting processes of sections 1, 2, and 4. Accordingly, section 3 protects against multiple "precipitous" and "cataclysmic" changes in the constitution by limiting to a single subject what may be included in any one amendment proposal.

*Advisory Op. to the Att'y Gen. re Fish & Wildlife Conservation Comm'n,* 705 So.2d 1351, 1353 (Fla.1998).

***165** **[3]** **[4]** Two reasons exist for the single-subject requirement. The first reason is to prevent "logrolling," a practice that combines separate issues into a single proposal to secure passage of an unpopular issue. *See High Speed Monorail,* 769 So.2d at 369. To comply with this single-subject requirement, a proposed amendment must manifest a "logical and natural oneness of purpose." *See Fine v. Firestone,* 448 So.2d 984, 990 (Fla.1984). In this case the proposed amendment deals with a single subject-the creation of a high-quality pre-kindergarten education program for all Florida four-year-olds by 2005. The

  

proposal does not "logroll" additional or unpopular issues into the amendment, but does manifest a "logical and natural oneness of purpose." The fact that the proposed amendment requires the Legislature to fund the pre-kindergarten program does not constitute impermissible logrolling, but rather provides the details of how the amendment will be implemented. *See Amendment to Reduce Class Size,* 816 So.2d at 583.

The second purpose of the single-subject requirement is to prevent a constitutional amendment from substantially altering or performing the functions of multiple aspects of government, or from affecting other provisions of the constitution. *See In re Advisory Opinion to the Atty. Gen.-Restricts Laws Related to Discrimination,* 632 So.2d 1018, 1020 (Fla.1994). As we explained in *High Speed Monorail:*

> Article XI, section 3 "protects against multiple 'precipitous' and 'cataclysmic' changes in the constitution by limiting to a single subject what may be included in one amendment proposal." The single-subject requirement is a "rule of restraint" that was placed in the constitution by the people to allow the citizens, by initiative petition, to propose and vote on singular changes in the functions of our governmental structure.

769 So.2d at 369. We have also observed that it is "difficult to conceive of a constitutional amendment that would not affect other aspects of the government to some extent." *Id.* (quoting *Advisory Opinion to the Atty. Gen. re Limited Casinos,* 644 So.2d 71, 74 (Fla.1994)).

**[5]** In this case the proposed amendment does not substantially alter or perform the functions of multiple aspects of government, and is similar to the amendments approved in *High Speed Monorail* and *Amendment to Reduce Class Size.* In those cases, the proposed amendments did not specify a certain percentage of the budget or a specific amount to be spent on the project contemplated by the proposed amendment. Likewise in this case, the proposal does not require the Legislature to spend a specific percentage of the budget or a specific amount on the development of the pre-kindergarten program. The only requirement as to funding is that it must be "through funds generated in addition to those used for existing education, health, and development programs." The proposed amendment defines existing "education, health, and development programs" as "those funded by the State as of January 1, 2002 that provide for child or adult education, health care, or development." This is unlike the situation in *Advisory Opinion to the Attorney General re Requirement for Adequate Public Education Funding,* 703 So.2d 446, 450 (Fla.1997), where this Court struck down a proposed constitutional amendment requiring that forty percent of state appropriations, not including lottery proceeds, or federal funds, be allocated to education. The proposed amendment failed in *Adequate Public Education Funding* because "its rigid funding percentage actually performed the appropriation function of the Legislature and removed entirely the Governor's ability ***166** to veto any portion of that appropriation." *High Speed Monorail,* 769 So.2d at 370. The requirement on the source of funding in this case does not substantially alter or perform multiple functions of state government because it does not actually perform the appropriation function of the Legislature; it simply provides that funding must be in addition to current funding for existing education, health and development programs. Also, the proposal does not perform any judicial functions by adjudicating specific facts.[2]

2 The language contained in the "whereas" clauses of the proposed initiative is not part of the actual proposed amendment and will not appear in the Florida Constitution if the amendment is adopted. "Performance of a judicial function is therefore not an issue with regard to the 'whereas' language." *Advisory Opinion to Attorney General re Protect People from the Health Hazards of Second-Hand Smoke,* 814 So.2d 415, 422 n. 8 (Fla.2002); *see also* Letter from Robert A. Butterworth, Attorney General of the State of Florida, to the Honorable Charles Wells, Chief Justice, and the Justices of the Supreme Court of Florida at 7 (May 2, 2002) (on file with Supreme Court of Florida) ("These clauses are not part of the actual proposed amendment to Article IX, section 1, Florida Constitution.")

Finally, as in *Amendment to Reduce Class Size,* it appears "the branches of government are left with wide discretion in determining the details of the project." 816 So.2d at 584 (*quoting High Speed Monorail,* 769 So.2d at 370-71). For these reasons the proposed amendment does not create "precipitous" or "cataclysmic" changes in the functions of multiple branches of government as to render the proposed amendment clearly and conclusively defective. We conclude the proposed amendment complies with the single-subject requirement.

*Ballot Title and Summary*

**[6]** **[7]** **[8]** Section 101.161(1) governs the requirements for ballot titles and summaries and 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 ... shall be printed in clear and unambiguous language on the ballot .... [T]he substance of the amendment ... shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

§ 101.161(1), Fla. Stat. (2001). Section 101.161 requires the ballot title and summary "state in clear and unambiguous language the initiative's primary purpose." *Advisory Opinion to the Attorney Gen. re People's Property Rights Amendments Providing Compensation for Restricting Real Property Use May Cover Multiple Subjects,* 699 So.2d 1304, 1307 (Fla.1997). Furthermore, the ballot title and summary must be accurate and informative. *See Advisory Opinion to the Attorney Gen. re Term Limits Pledge,* 718 So.2d 798, 803 (Fla.1998). The purpose of section 101.161 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." *Id.* Finally, 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. *See Advisory Opinion to the Attorney Gen. re Tax Limitation,* 673 So.2d 864, 868 (Fla.1996).

**[9]** The title of the initiative in this case is "Voluntary Universal Pre-Kindergarten Education." The ballot summary clearly and unambiguously sets forth the initiative's primary purpose, stating every four-year-old child in Florida shall be offered ***167** a high quality pre-kindergarten learning opportunity by the State no later than the 2005 school year. The ballot summary also states the funding for the pre-kindergarten learning opportunity "shall be free ... without taking away funds used for existing education, health and development programs." Thus, when read together, the ballot title and summary are accurate and informative, and provide fair notice of the content of the proposed amendment so that the voter will not be misled and can cast an intelligent and informed ballot. Finally, the ballot title does not exceed fifteen words and the ballot summary does not exceed seventy-five words in accordance with section 101.161(1). For these reasons, we conclude the ballot title and summary comply with section 101.161(1).

Accordingly, we hold that the initiative petition and proposed ballot title and summary meet the legal requirements of article XI, section 3 of the Florida Constitution, and section 101.161(1), Florida Statutes (2001). This opinion encompasses no other issues, and should not be construed as favoring or opposing the passage of the proposed amendment.

It is so ordered.

ANSTEAD, C.J., and SHAW, HARDING, WELLS, PARIENTE, LEWIS, and QUINCE, JJ., concur.

**All Citations**

824 So.2d 161, 169 Ed. Law Rep. 449, 27 Fla. L. Weekly S663

**End of Document**

**Negative Treatment**

There are no Negative Treatment results for this citation.

705 So.2d 563
Supreme Court of Florida.

# ADVISORY OPINION TO THE ATTORNEY GENERAL RE RIGHT OF CITIZENS TO CHOOSE HEALTH CARE PROVIDERS.

No. 90160.
|
Jan. 22, 1998.

**Synopsis**
State Attorney General requested review of initiative petition to amend state Constitution to establish right of citizens to choose their health care providers. The Supreme Court held that: (1) proposed amendment violated single-subject requirement of state Constitution, and (2) proposed amendment violated ballot title and summary requirement for proposed amendments.

Proposed amendment stricken from ballot.

Shaw, J., concurred in result only.

West Headnotes (8)

[1] **Constitutional Law** Pre-Election Challenges or Review

In reviewing propriety of initiative petition to amend state Constitution, Supreme Court does not rule on merits or wisdom of proposal.

1 Case that cites this headnote

[2] **Constitutional Law** Title in General

**Constitutional Law** Single or Multiple Subjects

**Constitutional Law** Summaries, Explanatory Statements, and Statements of Purpose

Supreme Court's responsibility in analyzing proposed amendment to state Constitution is limited to two legal issues: (1) whether proposed amendment meets single-subject requirements of Constitution; and (2) whether proposed amendment's title and summary are printed in clear and unambiguous language. West's F.S.A. Const. Art. 11, § 3; West's F.S.A. § 101.161(1).

21 Cases that cite this headnote

[3] **Constitutional Law** Single or Multiple Subjects

In evaluating whether proposed amendment to state Constitution violates single-subject requirement, Supreme Court must determine whether amendment deals with a logical and natural oneness of purpose. West's F.S.A. Const. Art. 11, § 3.

[4] **Constitutional Law** Single or Multiple Subjects

  

In evaluating whether proposed amendment to state Constitution violates single-subject requirement, Supreme Court must consider whether proposal affects separate functions of government and how proposal affects other provisions of Constitution. West's F.S.A. Const. Art. 11, § 3.

1 Case that cites this headnote

[5] **Constitutional Law** Submission to Popular Vote; Initiative

Initiative must identify provisions of state Constitution substantially affected by proposed amendment in order for public to fully comprehend contemplated changes and to ensure that initiative's effect on other unnamed provisions is not left unresolved and open to various interpretations. West's F.S.A. Const. Art. 11, § 3.

5 Cases that cite this headnote

[6] **Constitutional Law** Particular Amendments

Single-subject requirement of state Constitution was violated by proposed constitutional amendment that would have banned limitations on health care provider choices imposed by law and would have prohibited private parties from entering into contracts that would limit health care provider choice. West's F.S.A. Const. Art. 11, § 3.

2 Cases that cite this headnote

[7] **Constitutional Law** Ballot Title

**Constitutional Law** Summaries, Explanatory Statements, and Statements of Purpose

Ballot title and summary requirement for proposed state constitutional amendments is intended to provide fair notice of content of proposed amendment so that voter will not be misled as to its purpose, and can cast an intelligent and informed ballot. West's F.S.A. § 101.161(1).

30 Cases that cite this headnote

[8] **Constitutional Law** Particular Amendments

**Constitutional Law** Particular Amendments

Ballot title and summary requirement for proposed state constitutional amendments was violated by proposed amendment regarding "right to select health care providers"; ballot summary asserted that "citizens" would have right to choose health care providers while language of amendment granted right to "every natural person," and proposed amendment created illusory right to choose health care provider when in fact it would have severely limited individual's ability to enter into health care contract. West's F.S.A. § 101.161(1).

19 Cases that cite this headnote

**Attorneys and Law Firms**

***564** Robert A. Butterworth, Attorney General and Louis F. Hubener, III, Assistant Attorney General, Tallahassee, for Presentor.

Randy D. Ellison, West Palm Beach, on behalf of Floridians for Health Care Choice, in support of the proposed amendment.

  

Arthur J. England, Jr. and Jerold I. Budney of Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A., Miami, on behalf of Blue Cross and Blue Shield of Florida, Inc.; Thomas J. Maida and Austin B. Neal of McConnaughhay, Maida & Cherr, P.A., Tallahassee, on behalf of Florida Worker's Compensation Joint Underwriting Association, Inc.; Frederick B. Karl, Christopher L. Griffin and Pamela K. Cothran of Annis, Mitchell, Cockey, Edwards & Roehn, P.A., Tampa, and James C. Massie and Janice G. Scott of Massie & Scott, Tallahassee, on behalf of Alliance of American Insurers; Daniel C. Brown, Paul R. Ezatoff and Alan H. Brents of Katz, Kutter, Haigler, Alderman, Marks, Bryant & Yon, P.A., Tallahassee, on behalf of Floridians for Quality Patient Care, American Insurance Association, Florida School Board Association, Florida Association of District School Superintendents, Florida League of Cities, Firemen's Fund Insurance Company, Hartford Fire Insurance Company and National Association of Independent Insurers, in opposition to the proposed amendment.

**Opinion**

***565** PER CURIAM.

The Attorney General has requested this Court to review an initiative petition to amend the Florida Constitution to establish the right of citizens to choose their health care providers. We have jurisdiction. Art. IV, § 10; art. V, § 3(b)(10), Fla. Const.

In response to the Attorney General's request, we issued an order permitting interested parties to file briefs and heard oral arguments on the validity of the proposed amendment. For the reasons expressed, this Court finds that the proposed initiative violates both the single-subject requirement of article XI, section 3 of the Florida Constitution and the requirements of section 101.161, Florida Statutes (1995), that the ballot title and summary properly inform the voters of the amendment's complete meaning. Overall, the proposed amendment is vague and fails to completely inform voters of the impact that the initiative will have on existing laws and the Florida Constitution. Consequently, we do not approve the proposed initiative for placement on the ballot.

The initiative petition in this case is titled: "RIGHT OF CITIZENS TO CHOOSE HEALTH CARE PROVIDERS." The ballot summary provides:

> Establishes the right of citizens to choose health care providers. This provision prevents insurance companies, managed care personnel, employers, and other such third parties from controlling a citizen's selection of health care providers; requiring provision for choice of health care providers in future contracts providing care under programs such as those organized under Chapter 440, Chapter 627, Chapter 636 and Chapter 641, Florida Statutes.

The full text of the proposed amendment provides:

> Article I of the Constitution of the State of Florida is hereby amended to add the following:
>
> **1) "SECTION 24. Right to Select Health Care Providers.-**
>
> (a) The right of every natural person to the free, full and absolute choice in the selection of health care providers, licensed in accordance with state law, shall not be denied or limited by law or contract.
>
> (b) This section shall not be construed to limit the authority of the state to regulate health care providers to ensure the preservation of the health, safety and welfare of the public."
>
> 2) This amendment shall take effect on the date it is approved by the electorate, however, this section shall not be applied to impair the obligations of contracts existing and in force at the time this section takes effect.

**[1]** **[2]** In reviewing the propriety of the initiative, this Court does not rule on the merits or wisdom of the proposal. *Advisory Opinion to the Attorney General re Tax Limitation,* 644 So.2d 486, 489 (Fla.1994). This Court's responsibility in analyzing a proposed amendment is limited to two legal issues: (1) whether the proposed amendment meets the single-subject requirements of article XI, section 3 of the Florida Constitution; and (2) whether the proposed amendment's title and summary are "printed

  

in clear and unambiguous language," as provided in section 101.161(1), Florida Statutes (1995). *Tax Limitation,* 644 So.2d at 489-90. We find that the instant petition violates both requirements. In fact, the proposed ballot initiative incorporates numerous defects that have proven fatal to other proposed amendments in the past.

**[3]** **[4]** **[5]** In evaluating whether a proposed amendment violates the single-subject requirement, this Court must determine whether the amendment deals with a "logical and natural oneness of purpose." *Fine v. Firestone,* 448 So.2d 984, 990 (Fla.1984). Furthermore, "we must consider whether the proposal affects separate functions of government and how the proposal affects other provisions of the constitution." *In re Advisory Opinion to the Attorney General-Restricts Laws Related to Discrimination,* 632 So.2d 1018, 1020 (Fla.1994); accord *Fine,* 448 So.2d at 990. Thus, it is imperative that an initiative identify the provisions of the constitution substantially affected by the proposed amendment in order for the public to fully comprehend the contemplated changes and ***566** to ensure that the initiative's effect on other unnamed provisions is not left unresolved and open to various interpretations. *Tax Limitation,* 644 So.2d at 490.

**[6]** Here the initiative is significantly flawed in many respects in regard to the single-subject requirement. However, we address only one of these defects.[1] The proposed amendment combines two distinct subjects by banning limitations on health care provider choices imposed by law and by prohibiting private parties from entering into contracts that would limit health care provider choice. The amendment forces the voter who may favor or oppose one aspect of the ballot initiative to vote on the health care provider issue in an "all or nothing" manner. Thus, the proposed amendment has a prohibited logrolling effect and fails the single-subject requirement.

[1] We note that the proposed amendment also fails the single-subject requirement because it would significantly affect the legislative and executive branches of government as well as local governments and would impact the constitutional rights of privacy and to bargain collectively.

The proposed amendment also violates the ballot title and summary requirement. Section 101.161(1) provides in pertinent 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....

**[7]** This requirement is intended "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 Opinion to Attorney General Fee on Everglades Sugar Production,* 681 So.2d 1124, 1127 (Fla.1996). This Court has previously determined that section 101.161(1) "requires that the ballot title and summary for a proposed constitutional amendment state in clear and unambiguous language the chief purpose of the measure." *Askew v. Firestone,* 421 So.2d 151, 154-55 (Fla.1982). Our responsibility is to determine whether the language of the title and summary, as written, misleads the public.

**[8]** We find that the proposed amendment violates this basic principle because the language is overly vague. This is exemplified by the ballot summary asserting that "citizens" will have the right to choose health care providers while the language of the amendment grants the right to "every natural person." This discrepancy between "natural person" and "citizens" is material and misleading. This divergence in terminology is ambiguous in that it leaves voters guessing whether the terms are intended to be synonymous or whether the difference in terms was intentional. We also find that the proposed amendment creates an illusory right to choose a health care provider when in fact it would severely limit an individual's ability to enter into a health care contract. As such, this ambiguity violates section 101.161 and causes the proposed amendment to be fatally defective.

Accordingly, we hold that the proposed amendment entitled "Right of Citizens to Choose Health Care Providers" should be stricken from the ballot for failure to meet both the statutory and the constitutional requirements.

It is so ordered.

  

KOGAN, C.J., OVERTON, HARDING, WELLS and ANSTEAD, JJ., and GRIMES, Senior Justice, concur.

SHAW, J., concurs in result only.

**All Citations**

705 So.2d 563, 23 Fla. L. Weekly S40

**Negative Treatment**

There are no Negative Treatment results for this citation.

773 So.2d 7

Editor's Note: Additions are indicated by | **Text** | and deletions by ~~Text~~ .

Supreme Court of Florida.

Rev. Dr. James ARMSTRONG, et al., Appellants,

v.

Katherine HARRIS, etc., et al., Appellees.

No. SC95223.

|

Sept. 7, 2000.

|

Rehearing Denied Dec. 5, 2000.

**Synopsis**

Citizens brought action against the Secretary of State for declaratory judgment that ballot title and summary for proposed constitutional amendment on the death penalty were inaccurate. The Circuit Court, Leon County, Terry P. Lewis, J., entered summary judgment in favor of the Secretary and certified great public importance of the case. Citizens appealed. The Supreme Court, Shaw, J., held that: (1) proposed constitutional amendment on the death penalty did not comply with accuracy requirement; (2) the accuracy requirement for proposed constitutional amendments applies to proposals by the legislature; (3) voters' approval of the amendment did not cleanse the proposal of defects; and (4) citizens timely filed their petition.

So ordered.

Harding, J., specially concurred and filed opinion joined by Pariente, J.

Pariente, J., specially concurred and filed opinion.

Wells, C.J., and Lewis and Quince, JJ., dissented and filed opinions.

West Headnotes (13)

**[1] Constitutional Law** Petitions

Citizens who objected to proposed constitutional amendment timely filed their petition within a reasonable time after receiving constructive notice of the proposed amendment; they needed a reasonable period of time 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, and they filed the petition three and one-half weeks before the election. West's F.S.A. Const. Art. 11, § 5.

1 Case that cites this headnote

**[2] Constitutional Law** Pre-election challenges or review

A court may declare a proposed constitutional amendment invalid only if the record shows that the proposal is clearly and conclusively defective.

3 Cases that cite this headnote

[3] **Appeal and Error** De novo review

The standard of review for a pure question of law is de novo.

41 Cases that cite this headnote

[4] **Constitutional Law** Ballots in general

Implicit in the constitutional requirement for submitting a proposed constitutional amendment to voters is the requirement that the proposed amendment be accurately represented on the ballot; otherwise, voter approval would be a nullity. West's F.S.A. Const. Art. 11, § 5.

15 Cases that cite this headnote

[5] **Constitutional Law** Ballots in general

The constitutional requirement that proposed constitutional amendments be accurately represented on ballot applies to a legislatively proposed amendment, even if a party cannot show conclusively that the legislature engaged in fraud, deceit, or trickery. West's F.S.A. Const. Art. 11, § 5; West's F.S.A. § 101.161(1).

6 Cases that cite this headnote

[6] **Constitutional Law** Pre-election challenges or review

Supreme Court's deference in reviewing constitutional amendments proposed by the legislature 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. West's F.S.A. Const. Art. 11, §§ 1, 5.

3 Cases that cite this headnote

[7] **Constitutional Law** Ballots in general

The constitutional requirement that proposed constitutional amendments be accurately represented on ballot applies across-the-board to all constitutional amendments, including those arising in the legislature. West's F.S.A. Const. Art. 11, § 5; West's F.S.A. § 101.161(1).

3 Cases that cite this headnote

[8] **Constitutional Law** Ballot Title

**Constitutional Law** Summaries, Explanatory Statements, and Statements of Purpose

The gist of the constitutional accuracy requirement for proposed constitutional amendments is simple: ballot title and summary cannot either "fly under false colors" or "hide the ball" as to the amendment's true effect. West's F.S.A. Const. Art. 11, § 5; West's F.S.A. § 101.161(1).

34 Cases that cite this headnote

  

[9] **Constitutional Law** Particular amendments

**Constitutional Law** Particular amendments

Proposed constitutional amendment on the death penalty did not comply with accuracy requirement; although the amendment would change "cruel or unusual punishment" to "cruel and unusual punishment," the ballot summary did not state this main effect or the chief purpose of eliminating the state constitutional requirement, the ballot title and summary which stated an intent to require the same interpretation for the State and Federal Constitutions were misleading in implying an intent to preserve rights, and the title and summary thus flew "under false colors" and hid "the ball." West's F.S.A. Const. Art. 1, § 17; Art. 11, § 5; West's F.S.A. § 101.161(1).

28 Cases that cite this headnote

[10] **Constitutional Law** Summaries, Explanatory Statements, and Statements of Purpose

In evaluating a proposed constitutional amendment's chief purpose as stated in the ballot summary, a court must look not to subjective criteria espoused by the amendment's sponsor; rather, it must look to objective criteria inherent in the amendment itself, such as the amendment's main effect. West's F.S.A. § 101.161(1).

9 Cases that cite this headnote

[11] **Constitutional Law** Particular amendments

**Constitutional Law** Particular amendments

Voters' approval of proposed constitutional amendment on the death penalty did not cleanse the amendment of defects in the title and ballot summary that failed to disclose the chief purpose of eliminating the state constitutional prohibition against "cruel or unusual punishment"; citizens may well have voted in favor of the amendment based on the false premise that the amendment would promote the basic rights of Florida citizens. West's F.S.A. Const. Art. 1, § 17; Art. 11, § 5; West's F.S.A. § 101.161(1).

7 Cases that cite this headnote

[12] **Constitutional Law** Submission to Popular Vote; Initiative

Where a proposed constitutional amendment contains a technical and minor defect in form, approval by the electorate can cleanse the amendment of the defect.

[13] **Constitutional Law** Submission to Popular Vote; Initiative

A favorable popular vote standing alone does not confer automatic validity on a defective constitutional amendment.

1 Case that cites this headnote

**Attorneys and Law Firms**

***9** 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.

**Opinion**

SHAW, J.

We have 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 (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).

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).

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 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 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]

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,* No. 94,205 (Fla. order filed Feb. 2, 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 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

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

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 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.

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

**[2]** **[3]** **[4]** A court may declare a proposed constitutional amendment invalid only if the record shows that the proposal 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] 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:

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.

> 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 nullity.[15]

15 *See generally Askew,* 421 So.2d at 155 ("[T]he *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))); *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).

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 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]

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

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 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.*

*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

**[5]** 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 amendments only if a party can show conclusively that the Legislature engaged in fraud, deceit, or trickery.[17] We disagree.

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."

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 each house.

Art. XI, § 1, Fla. Const.

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

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.

> 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]

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).

**[6]** **[7]** 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]

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.").

Several modern cases involving legislatively proposed amendments illustrate the applicability of the accuracy requirement in article XI, section 5. The Court in ***15** *Smathers v. Smith,* 338 So.2d 825 (Fla.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] 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 the amendment comported with the requirements of section 101.161 and was not misleading.[22]

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").

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.... ").

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 "[t]he wording of the ballot summary of proposed Amendment 2 is unambiguous and clearly states the amendment's chief purpose."[23]

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

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:

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.

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 *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.
>
> ....
>
> If the legislature feels that the present prohibition against appearing before ***16** 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.*

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

**[8]** 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

**[9]** 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:

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

FULL TEXT OF PROPOSED AMENDMENT:

SECTION 17. Excessive punishments.—Excessive fines, cruel **and** ~~or~~ 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 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).

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 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.

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:

> 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,* 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]

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.").

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 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: "[T]he 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 would consist of a floor (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]

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).

B. "*Hiding The Ball*"

**[10]** To conform to section 101.161(1), a ballot summary must state "the chief purpose" of the proposed amendment.[28] 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" in the Cruel or Unusual Punishment Clause will be changed to "and"[30]—a significant change by itself.)

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).

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.)

VI. POST–ELECTION INVALIDATION

**[11]** 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.

  

**[12]** 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 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:*

31 *See also State ex rel. Landis v. Thompson,* 120 Fla. 860, 874–75, 163 So. 270, 276 (1935) ("[I]n 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.").

> [W]e 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.

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-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 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.

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,* "[t]he 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:

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.").

> We also reject the [Commissioners'] argument that the favorable vote cured any defects in the 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).

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 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] and they contained several factual inaccuracies.[35]

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."

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

*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]

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

  

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 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 specially with an opinion.

WELLS, C.J., and LEWIS and QUINCE, JJ., dissent with opinions.

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] 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.

37 Art. XI, § 5(a), Fla. Const.

38 *Id.* § 5(b).

39 *Id.* § 5(c).

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 "*[w]henever* 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.*" (Emphasis added.) Nothing in subsection 1 limits this requirement to citizen-initiated amendments. In contrast, subsection 2 specifically pertains to "[t]he 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 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:

> [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.... 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 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 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 29 (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 ... show[s] 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 supersede a prior legislative enactment with which it did not comply. *See* dissenting op. at 29 (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 21; *see also* majority op. at 14, 16). I further agree with the majority that in this case, neither 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 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.

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 "[i]n 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) ("[O]ur 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.

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 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,[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 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.

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 (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] 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.

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.

  

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 requirement.

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 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:

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.

> 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 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 by the Legislature for direct submission to the people.*
>
> > 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 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:

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.

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 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 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 when no constitutional provision is violated.
>
> The legislative authority in article XI is not limited in the same 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, "[t]he 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 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:

> [W]e should keep in mind 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 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 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 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.

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.

Furthermore, I disagree with the majority's reliance upon *Wadhams v. Board of County Commissioners,* 567 So.2d 414 (Fla.1990). 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 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, 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, 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 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 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]

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

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 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 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 the Florida judicial system by filing directly with this Court. As reflected in the majority opinion, (majority op. at 9), 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 10). 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 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 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 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 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 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.

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).

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.

**All Citations**

773 So.2d 7, 25 Fla. L. Weekly S656

**End of Document**

## Negative Treatment

### Negative Citing References (3)

*The KeyCited document has been negatively referenced by the following events or decisions in other litigation or proceedings:*

| Treatment | Title | Date | Type | Depth | Headnote(s) |
|---|---|---|---|---|---|
| Distinguished by | 1. Advisory Opinion to Attorney General re Standards For Establishing Legislative Dist. Boundaries<br><br>2 So.3d 175 , Fla.<br>GOVERNMENT - Redistricting. Proposed constitutional amendments establishing standards for redistricting satisfied single-subject rule. | Jan. 29, 2009 | Case | | 9<br>11<br>So.2d |
| Distinguished by | 2. Florida Educ. Ass'n v. Florida Dept. of State<br>MOST NEGATIVE<br><br>48 So.3d 694 , Fla.<br>EDUCATION - Class Size. Ballot language for constitutional amendment regarding class sizes was not misleading. | Oct. 07, 2010 | Case | | 4<br>8<br>9<br>So.2d |
| Distinguished by | 3. Matheson v. Miami-Dade County<br><br>187 So.3d 221 , Fla.App. 3 Dist.<br>GOVERNMENT - Elections. Ballot summary properly provided voters with “chief purpose” of county referendum to approve development of tennis center in public park. | May 27, 2015 | Case | | 8<br>9<br>10<br>So.2d |

421 So.2d 151

Editor's Note: Additions are indicated by | **Text** | and deletions by ~~Text~~ .

Supreme Court of Florida.

Reubin ASKEW, et al., Appellants,

v.

George FIRESTONE, as Secretary of State, Appellee.

No. 62719.

|

Oct. 21, 1982.

**Synopsis**

Suit was instituted to obtain injunctive and declaratory relief against the ballot title and summary to a proposed constitutional amendment. The Trial Court, Leon County, Ben C. Willis, J., entered order upholding validity of proposed ballot title and summary and, following appeal, the District Court of Appeal certified the issue to be of great public importance. The Supreme Court, McDonald, J., held that the ballot title and summary to the proposed constitutional amendment prohibiting former legislators and statewide elected officers from lobbying for two years following vacation of office unless they file a financial disclosure do not set out the chief purpose of the amendment so as to give the electorate fair notice of the actual change wrought therein and, hence, are invalid since they neglect to advise the public that there is presently a complete two-year ban on lobbying before one's agency and also neglect to inform the public that the chief effect of the amendment is to abolish the present two-year total prohibition.

Reversed.

Boyd, J., concurred and filed opinion.

Overton, J., concurred and filed opinion in which McDonald and Ehrlich, JJ., concurred.

Ehrlich, J., concurred and filed opinion in which Alderman, C.J., and McDonald, J., concurred.

Adkins, J., dissented and filed opinion.

West Headnotes (4)

**[1] Constitutional Law** Pre-Election Challenges or Review

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. West's F.S.A. § 101.161.

29 Cases that cite this headnote

**[2] Constitutional Law** Ballot Title

  

The ballot title and summary for a proposed constitutional amendment must state in clear and unambiguous language the chief purpose of the measure. West's F.S.A. § 101.161.

79 Cases that cite this headnote

[3] **Constitutional Law** Legislative Powers and Proceedings

**Constitutional Law** Submission to Popular Vote; Initiative

Lawmakers who are asked to consider constitutional changes, and the people who are asked to approve them, must be able to comprehend sweep of each proposal from a fair notification in the proposition itself that is neither less nor more extensive than it appears to be. West's F.S.A. § 101.161.

22 Cases that cite this headnote

[4] **Constitutional Law** Particular Amendments

The ballot title and summary to the proposed constitutional amendment prohibiting former legislators and statewide elected officers from lobbying for two years following vacation of office unless they file a financial disclosure do not set out the chief purpose of the amendment so as to give the electorate fair notice of the actual change wrought therein and, hence, are invalid since they neglect to advise the public that there is presently a complete two-year ban on lobbying before one's agency and also neglect to inform the public that the chief effect of the amendment is to abolish the present two-year total prohibition. West's F.S.A. § 101.161; West's F.S.A. Const. Art. 2, § 8(e).

75 Cases that cite this headnote

**Attorneys and Law Firms**

***152** 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.

**Opinion**

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 ***153** 8 declares a public office a public trust which should be secure against abuse. To that end, the section requires full, public financial 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).

  

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:

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.

> (e) No member of the legislature or statewide elected officer shall personally represent another person or entity for compensation before **any state** ~~the~~ government body or agency **, unless such person files full and public disclosure of his or her financial interests pursuant to subsection (a),** ~~of which the individual was an officer or member~~ 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.

> 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.*

*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 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 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 (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.

**[1]** **[2]** 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,* 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 proposedconstitutional 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).

**[3]** 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 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 "lawmakers 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).

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.

**[4]** 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 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 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.

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.

Had SJR 1035 not been an amendment to an existing provision, if it had been a totally new provision, its ballot 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.

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

ADKINS, J., dissents with an opinion.

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, 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 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 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, 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 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.

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 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 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 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 dislcosure 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". *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 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.

**All Citations**

421 So.2d 151

**End of Document**

## Negative Treatment

### Negative Citing References (4)

*The KeyCited document has been negatively referenced by the following events or decisions in other litigation or proceedings:*

| Treatment | Title | Date | Type | Depth | Headnote(s) |
|---|---|---|---|---|---|
| Distinguished by | 1. Harris v. Moore<br><br>752 So.2d 1241 , Fla.App. 4 Dist.<br>GOVERNMENT - Elections. Ballot summary of proposed amendment to form of county government was not misleading. | Mar. 03, 2000 | Case |  | 1<br>2<br>4<br>So.2d |
| Distinguished by | 2. Florida Educ. Ass'n v. Florida Dept. of State<br><br>48 So.3d 694 , Fla.<br>EDUCATION - Class Size. Ballot language for constitutional amendment regarding class sizes was not misleading. | Oct. 07, 2010 | Case |  | 2<br>3<br>4<br>So.2d |
| Distinguished by | 3. Matheson v. Miami-Dade County<br><br>187 So.3d 221 , Fla.App. 3 Dist.<br>GOVERNMENT - Elections. Ballot summary properly provided voters with “chief purpose” of county referendum to approve development of tennis center in public park. | May 27, 2015 | Case |  | 2<br>4<br>So.2d |
| Distinguished by | 4. Advisory Opinion to Attorney General re Limiting Government Interference With Abortion<br>MOST NEGATIVE<br><br>384 So.3d 122 , Fla.<br>GOVERNMENT — Elections. Proposed citizen initiative that would amend state constitution did not violate single-subject requirement. | Apr. 01, 2024 | Case |  | 2<br>4<br>So.2d |

830 So.2d 856

Editor's Note: Additions are indicated by [ **Text** ] and deletions by ~~Text~~ .

District Court of Appeal of Florida,
First District.

Ion V. SANCHO, Individually and as Leon County Supervisor of Elections, et al., Appellants,

v.

Jim SMITH, in his official capacity as Florida Secretary of State and head of the Florida Department of State; and Robert A. Butterworth, as Florida Attorney General, Appellees.

No. 1D02–3293.
|
Sept. 18, 2002.

**Synopsis**
Election supervisors brought action against Secretary of State and Attorney General seeking declaratory and injunctive relief, alleging that ballot summary for proposed amendment to State Constitution's prohibition on cruel or unusual punishment submitted by joint resolution of legislature was inaccurate and misleading, and contained unnecessary information. The Circuit Court, Leon County, P. Kevin Davey, J., denied relief and allowed placement of summary on ballot. Supervisors appealed. The District Court of Appeal, Padovano, J., held that: (1) ballot summary gave fair notice of purpose and effect of amendment; (2) summary submitted by joint resolution of legislature was not subject to word limit; (3) summary was not untrue or misleading; and (4) supervisors lacked standing to assert equal protection challenge to statute limiting length of summaries.

Affirmed.

West Headnotes (10)

**[1] Appeal and Error** Granting or refusing

Trial court's decision to deny injunctive relief sought by election supervisors to prohibit placement of ballot summary of a proposed amendment to State Constitution's prohibition on cruel or unusual punishment on ballot presented an issue of law, and thus was reviewed on appeal under the de novo standard. West's F.S.A. Const. Art. 1, § 17.

2 Cases that cite this headnote

**[2] Constitutional Law** Ballots in general

A court may not order the removal of a proposed constitutional amendment from the ballot unless the record shows that the proposal is clearly and conclusively defective.

**[3] Constitutional Law** Resolutions

The accuracy requirement in constitutional provision governing procedures for proposed constitutional amendments applies to amendments proposed by any authorized method, including those that are proposed by joint resolution of the legislature. West's F.S.A. Const. Art. 11, §§ 1, 5.

**[4] Constitutional Law** Particular amendments

Ballot summary for proposed amendment to State Constitution's prohibition against cruel or unusual punishment accurately described proposed amendment, and thus summary for proposed amendment gave fair notice of purpose and effect of proposed amendment, where summary specifically pointed out to voters that proposed amendment reduced the rights of State's citizens to minimum rights afforded under Eighth Amendment of the Federal Constitution, summary no longer introduced proposed amendment as measure to preserve only death penalty, summary made it clear that the proposed change would apply to any punishment alleged to be excessive, and summary included a copy of the full text of the amendment showing exactly how provision would be changed should amendment be

  

approved. U.S.C.A. Const.Amend. 8; West's F.S.A. Const. Art. 1, § 17.

1 Case that cites this headnote

[5] **Constitutional Law** Particular amendments

Neither statute limiting length of ballot summaries to maximum of 75 words nor the State Constitution imposed length requirement on ballot summary for proposed amendment to State Constitution's prohibition against cruel or unusual punishment submitted by joint resolution of legislature, and thus, summary was not too long to be considered a summary; statute was inapplicable to amendments submitted by a joint resolution of legislature, and there was no constitutional brevity requirement for ballot summaries. West's F.S.A. Const. Art. 1, § 17; West's F.S.A. § 101.161(1).

1 Case that cites this headnote

[6] **Constitutional Law** Summaries, Explanatory Statements, and Statements of Purpose

An unnecessary statement that is false or misleading in a ballot summary for a proposed amendment to the State Constitution might render a ballot summary invalid.

[7] **Constitutional Law** Particular amendments

Ballot summary for proposed amendment to State Constitution's prohibition against cruel or unusual punishment, which ballot summary was submitted by joint resolution of legislature, was not untrue or misleading, and thus, summary was not rendered invalid. West's F.S.A. Const. Art. 1, § 17.

[8] **Constitutional Law** Elections

Election supervisors lacked standing to assert equal protection challenge to statute limiting a ballot summary for a proposed constitutional amendment to 75 words on basis that statute exempted summaries submitted by joint resolution of legislature from such a brevity requirement, where whether the 75-word limit imposed an unconstitutional burden on those who would submit a proposed amendment by citizen initiative was not at issue in summary proposed by joint resolution of legislature, supervisors had no real interest in such an exemption as statute did not discriminate against them, and there was no effective remedy available to supervisors on such a challenge. U.S.C.A. Const.Amend. 14; West's F.S.A. § 101.161(1).

3 Cases that cite this headnote

[9] **Action** Persons entitled to sue

A party who is not adversely affected by a statute generally has no standing to argue that the statute is invalid.

1 Case that cites this headnote

[10] **Constitutional Law** Elections

Exception to general rule that a party not adversely affected by statute lacks standing to challenge statute, which exception enables such a party to challenge statute if party is protecting rights of non-parties who are unable to challenge statute on their own, was inapplicable to election directors' equal protection challenge to statute limiting a ballot summary for a proposed constitutional amendment to 75 words on basis that statute exempted joint resolutions of the legislature from such a brevity requirement, where citizens who were adversely affected by such an exemption in statute were capable of making argument themselves. U.S.C.A. Const.Amend. 14; West's F.S.A. § 101.161(1).

3 Cases that cite this headnote

**Attorneys and Law Firms**

***858** Stephen H. Grimes and Susan L. Kelsey of Holland & Knight LLP, Tallahassee, for Appellants.

  

Robert A. Butterworth, Attorney General and Jonathan A. Glogau, Special Counsel, Tallahassee, for Appellees.

Dudley Goodlette, Naples, Thomas R. Tedcastle, Donald J. Rubottom, and David M. Delapaz for the Florida House of Representatives as Amicus Curiae.

**Opinion**

PADOVANO, J.

In this appeal we must decide whether the ballot summary for a proposed constitutional amendment satisfies the fair notice requirements of the Florida Constitution. The proposal at issue would modify the prohibition against cruel or unusual punishment in article I, section 17 of the Florida Constitution. It will be identified as "Amendment 1" on the ballots prepared in all Florida counties for the 2002 general election. For the reasons that follow, we conclude that the ballot summary for Amendment 1 accurately describes the substance of the proposed amendment. Therefore, we affirm the trial court's order allowing the placement of the amendment on the ballot.

The appellants are fifteen supervisors of elections from various parts of the state.[1] They initiated their challenge to Amendment 1 by filing a complaint for declaratory and injunctive relief in Leon County, naming the Secretary of State and Attorney General as defendants. In essence, the complaint alleges that the ballot summary is inaccurate and misleading, and that it contains unnecessary information. The supervisors sought a declaration that the ballot summary for Amendment 1 fails to meet minimum constitutional standards and an order enjoining the placement of the Amendment on the ballot.

1 Appellants are Ion V. Sancho, the Supervisor of Elections for Leon County, Florida; and the Supervisors of Elections of fourteen other counties: Alachua, Bay, Escambia, Holmes, Lee, Marion, Okaloosa, Polk, Putnam, St. Lucie, Santa Rosa, Wakulla, Walton, and Washington.

If the proposal at issue is approved by the voters, it will amend article 1, section 17 of the Florida Constitution as follows:

> SECTION 17. Excessive punishments.—Excessive fines, cruel **and** ~~or~~ 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 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.

***859** This proposal is identical to one that was adopted by an earlier joint resolution of the Florida Legislature and approved by the voters in the 1998 general election. At that time, however, the amendment was described by a different ballot summary.

The Florida Supreme Court declared the 1998 ballot summary invalid in *Armstrong v. Harris,* 773 So.2d 7 (Fla.2000), on the ground that it failed to give the voters fair notice of the effect of the revision. The ballot summary provided to the voters in 1998 was as follows:

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 of execution method, and provides

  

for continued force of sentence. Provides for retroactive applicability.

The court held in *Armstrong* that this ballot summary failed to give fair notice to the voters of the effect of the proposed amendment, because it incorrectly implied that the change in the constitution would apply only to the death penalty. In fact, the change would apply to any kind of punishment that is alleged to be excessive.

The court in *Armstrong* also determined that the language in the ballot summary requiring "construction of the prohibition against cruel and/or unusual punishment to conform to United States Supreme Court interpretation of the Eighth Amendment" was misleading. This language, the court concluded, suggests that the amendment promotes a constitutional right by forcing the Florida courts to adhere to decisions of the United States Supreme Court, when, in fact, it reduces an existing right in the Florida Constitution.

As the challenge to the 1998 ballot summary was working its way through the court system, the Legislature amended section 101.161(1), the statute governing ballot summaries for proposed constitutional amendments. This statute was amended in 2000 as follows:

... **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.

Ch. 00–361, § 1, Laws of Fla. The phrase "joint resolution" refers to a proposed amendment submitted by a joint resolution of the Legislature under article XI, section 1 of the Florida Constitution. The effect of this change in the statute is to exempt the Florida Legislature from the 75–word limit applicable to a ballot summary for an amendment by citizen initiative or by another authorized method of amending the constitution.

Following the 2000 revision of section 101.161(1), Florida Statutes, and the *Armstrong* decision, the Legislature passed a joint resolution adopting the proposed Amendment to article 1, section 17, this time with a more detailed ballot summary. The text of the ballot summary is as follows:

***860** BALLOT TITLE: AMENDING ARTICLE I, SECTION 17 OF THE STATE CONSTITUTION

BALLOT SUMMARY: Proposing an amendment to the State Constitution identical to a proposed amendment to Section 17 of Article I of the State Constitution which was approved by a statewide vote in 1998. The Supreme Court of Florida struck the 1998 amendment in a ruling in which four of the seven justices found that the ballot summary was inaccurate. The proposed amendment expressly authorizes the death penalty for capital crimes and expressly authorizes retroactive changes in the method of execution. The amendment changes the prohibition against "cruel or unusual punishment," currently provided in Section 17 of Article I of the State Constitution, to a prohibition against "cruel and unusual punishment" to conform with the wording of the Eighth Amendment to the United States Constitution. The amendment prohibits reduction of a death sentence based on invalidity of an execution method and provides for continued force of the sentence. The amendment permits any execution method unless prohibited by the United States Constitution. The amendment requires construction of the prohibition against cruel or unusual punishment and the proposed prohibition against cruel and unusual punishment to conform to United States Supreme Court interpretation of the Eighth Amendment to the United States Constitution. The amendment would prevent state courts, including the Florida Supreme Court, from treating the state constitutional prohibition against cruel or unusual punishment as being more expansive than the federal constitutional prohibition against cruel and unusual punishment or United States Supreme Court interpretations thereof. The amendment effectively nullifies rights currently allowed under the state prohibition against cruel or unusual punishment which may afford greater protections for those subject to punishment for crimes than will be provided by the amendment. Under the amendment, the protections afforded those subject to punishment for crimes under the "cruel or unusual punishment" clause, as that clause currently appears in Section 17 of Article I of the State Constitution, will be the same as the minimum protections provided under the "cruel and unusual" punishments clause of the Eighth Amendment to the United States Constitution. The amendment provides for retroactive applicability.

The ballot summary then sets forth the full text of the proposed amendment with an explanation that words deleted from the previous version are shown by strikethrough marks and that added words are shown by underlining. The 2002 ballot summary quoted above is the ballot summary in controversy here.

In the course of the proceeding in the trial court, the supervisors filed a motion for a temporary injunction. In

  

this motion, they sought an order enjoining the placement of Amendment 1 on the ballot. They restated their objections to the ballot summary, and alleged that the controversy would become moot if not resolved before the general election. The trial court held a hearing on the motion on August 12, 2002, and the parties presented arguments for and against the injunction.

On August 16, 2002, the trial court entered an order denying the supervisors' motion. The court concluded that the ballot summary adequately described the proposed amendment and that the Legislature had a constitutional basis for excluding amendments proposed by joint resolution from the word limits that apply to other kinds of proposed amendments.

***861** The supervisors appealed to this court and we granted their motion to certify the trial court's order to the Florida Supreme Court under the pass through provision in article V, section 3(b)(5) of the Florida Constitution. *See* Fla.R.App.P. 9.125. However, the supreme court declined to exercise discretionary jurisdiction to review the order under the pass through provision. The appeal is now back before this court for a decision on the merits.

**[1]** We begin with the standard of review. Although an order denying a motion for temporary injunction is ordinarily subject to review by the abuse of discretion standard, the issue the trial court resolved in denying the motion in this case was an issue of law. The parties did not present evidence on any material point, and the trial court did not have discretion to determine whether the proposed amendment should remain on the ballot. Because the decision of the trial court was a decision on a point of law, the order denying the injunction in this case is subject to review on appeal by the *de novo* standard. *See Armstrong,* 773 So.2d at 11.

**[2]** The legal standard we must follow in determining whether the ballot summary gives fair notice is well established in Florida. A court may not order the removal of a proposed constitutional amendment from the ballot unless the record shows that the proposal is "clearly and conclusively defective." *Askew v. Firestone,* 421 So.2d 151, 154 (Fla.1982); *Armstrong,* 773 So.2d at 11. The arguments in opposition to Amendment 1 do not meet this high standard.

The parties agree that a ballot summary for a proposed amendment to the state constitution must accurately describe the amendment. This requirement is implied in article XI, section 5, which describes the method of submitting a proposed amendment for a vote. The supreme court explained in *Armstrong* that "the proposed amendment [must] be *accurately* represented on the ballot; otherwise, voter approval would be a nullity." 773 So.2d at 12 (emphasis in original). The court relied on precedents to the same effect. For example, in *Firestone,* the court noted that a ballot summary must give "fair notice" of the decision the voter is to make. 421 So.2d at 155. *See also Smathers v. Smith,* 338 So.2d 825, 829 (Fla.1976). The court in *Armstrong* characterized the accuracy requirement as a "truth in packaging" law for the ballot. 773 So.2d at 13.

**[3]** It is now settled that the accuracy requirement applies to amendments proposed by any authorized method, including those that are proposed by joint resolution of the Florida Legislature under article XI, section 1. *See Askew,* 421 So.2d at 154–155. On this point, the court in *Armstrong* made the following remarks:

> 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.

773 So.2d at 21 (emphasis in original). It is clear to us from these statements that the accuracy requirement for ballot summaries is rooted in the Florida Constitution itself and does not depend on legislation.

**[4]** By these principles, we conclude that the ballot summary for Amendment 1 accurately describes the amendment. The 2002 ballot summary corrects all of the ***862** deficiencies identified by the supreme court in the *Armstrong* opinion. Moreover, the 2002 ballot summary includes a copy of the full text of the amendment itself, and it includes underlining and strikethrough marks showing exactly how article 1, section 17 will be changed if the amendment is approved.

One of the problems identified in *Armstrong* was that the statement in the 1998 ballot summary that the amendment would require Florida courts to conform to United States Supreme Court decisions interpreting the Eighth Amendment, incorrectly suggested that the amendment would promote constitutional rights, when, in fact, it would restrict existing rights. The Eighth Amendment to the United States Constitution prohibits "cruel *and* unusual

punishment." (emphasis added). Hence, a punishment alleged to be excessive could only run afoul of the federal constitution if it is both cruel and unusual. In contrast, article 1, section 17 prohibits "cruel *or* unusual punishment." (emphasis added). A punishment alleged to be excessive would violate the Florida Constitution if it is *either* cruel or unusual. It follows that the constitutional right created by article 1, section 17 of the Florida Constitution is greater than the constitutional right created by the Eighth Amendment. The court pointed out in *Armstrong* that the ballot summary failed to inform voters that the existing provision in the state constitution forbids cruel or unusual punishment, and that the effect of the proposed amendment would be to reduce the rights of Floridians to the minimum rights afforded by the Eighth Amendment.

The 2002 ballot summary removes any uncertainty about this point. Voters will now be told that the amendment "would prevent state courts, including the Florida Supreme Court, from treating the state constitutional prohibition against cruel or unusual punishment as being more expansive than the federal constitutional prohibition against cruel and unusual punishment or United States Supreme Court interpretations thereof." This sentence plainly describes the effect of the proposed amendment, but if there could be any doubt, it would be completely removed by the next sentence, which states, "The amendment effectively nullifies rights currently allowed under the state prohibition against cruel or unusual punishment which may afford greater protections for those subject to punishment for crimes than will be provided by the amendment." Whether this is a good idea is not for us to say, but it is clear to us that no voter will be confused about what is at stake.

Another problem identified in *Armstrong* was that the 1998 ballot summary suggested that the proposed change in the prohibition against cruel or unusual punishment would apply only to the death penalty, when in truth it could be applied to all criminal punishment. The 1998 ballot summary contained a statement in the title and in the text that the proposal was an amendment "preserving the death penalty." The court in *Armstrong* reasoned that this statement was misleading because the effect of the amendment would "nullify a long-standing constitutional provision that applies to all criminal punishments, not just the death penalty." *Armstrong,* 773 So.2d at 18.

This problem has also been cured by the language used in the 2002 ballot summary. The proposed amendment is no longer introduced as a measure to preserve the death penalty, and it is clear that the proposed change would apply to any punishment alleged to be excessive. It is true that the death penalty is mentioned a number of times in both the ballot summary and the text of the amendment. However, these references are connected to specific ***863** proposals that apply only to capital punishment, and not to the broader change effected by the amendment.

For example, the 2002 ballot summary states that the proposed amendment "expressly authorizes the death penalty for capital crimes and expressly authorizes retroactive changes in the method of execution." It also states that the amendment "prohibits reduction of a death sentence based on invalidity of an execution method and provides for continued force of the sentence" and that it "permits any execution method unless prohibited by the United States Constitution." These references to the death penalty pertain to separate parts of the proposal.

The ballot summary does not suggest that the proposed change in the existing prohibition against cruel or unusual punishment will apply only to the death penalty. In fact, it plainly states that Amendment 1 would "nullify rights allowed under the state prohibition against cruel or unusual punishment which may afford greater protections for those subject to punishment for crimes." (emphasis added). This statement makes it clear that the proposed change could be applied to any form of criminal punishment.

**[5]** The supervisors also contend that the ballot summary for Amendment 1 is not truly a "summary" of the amendment, because it is too long. However, the Florida Constitution does not impose a brevity requirement for ballot summaries. Section 101.161(1) provides that a ballot summary shall not be more than 75 words, but this provision no longer applies to amendments submitted by a joint resolution of the legislature under article XI, section 1.

**[6]** **[7]** An unnecessary statement that is false or misleading might render a ballot summary invalid. For example, in *Evans v. Firestone,* 457 So.2d 1351 (Fla.1984), the court concluded that a ballot summary was invalid, in part because it contained a superfluous editorial comment. That was the context in which the court stated that a "ballot summary should tell the voter the legal effect of the amendment, and no more." *Id.* at 1355. (emphasis added). The supervisors seize upon this quotation to support their argument that the ballot summary in this case is invalid, but the situation here is different. Nothing in the language of the ballot summary for Amendment 1 is

  

untrue or misleading. Perhaps the summary could have been more concise, but that is not the test of its constitutional validity.

**[8]** Section 101.161(1) does effectively impose a brevity requirement by limiting the ballot summary for a proposed constitutional amendment to 75 words. As we have explained, however, the 2000 revision of the statute excludes ballot summaries for amendments submitted by joint resolution of the Legislature. The supervisors contend that this statute violates the equal protection clause in article 1, section 2 of the Florida Constitution. They argue that the Legislature had no right to "strengthen its own ability to amend the constitution while comparatively weakening the power of citizens to amend the constitution." An amendment proposed in the citizen initiate process is still subject to the word limit.

We decline to address the merits of this argument, because we conclude that the supervisors lack standing to assert an equal protection challenge to the statute. Whether the 75–word limit imposes an unconstitutional burden on those who would submit a proposed amendment by citizen initiative is not at issue here. Although the supervisors have an interest in assuring that elections run smoothly, they have no real interest in the exemption that is the subject of their equal protection challenge. ***864** [2] The statute plainly does not discriminate against them.

2 In an analogous situation, the supreme court held that a hospital lacked standing to assert an equal protection challenge to a statute that made a man liable for medical bills incurred by his wife, but did not also make a woman liable for medical bills incurred by her husband. *See Shands Teaching Hosp. and Clinics, Inc. v. Smith,* 497 So.2d 644 n. 1 (Fla.1986). The hospital had a general interest in collecting its debts, but no real interest in the argument that the statute unfairly discriminates against men. The point is explained in greater detail in an earlier opinion in the same case. *See Shands Teaching Hosp. and Clinics, Inc. v. Smith,* 480 So.2d 1366 (Fla. 1st DCA 1985) (Barfield, J., concurring).

**[9]** **[10]** Constitutional rights are personal. A party who is not adversely affected by a statute generally has no standing to argue that the statute is invalid. *See Sieniarecki v. State,* 756 So.2d 68 (Fla.2000); *Sandstrom v. Leader,* 370 So.2d 3 (Fla.1979). We acknowledge that courts have made an exception to this rule if the party asserting the claim is protecting the rights of non-parties who are unable to challenge the statute on their own. *See State v. North Florida Women's Health and Counseling Servs., Inc.,* 26 Fla. L. Weekly D419, 852 So.2d 254, 2001 WL 111037 (Fla. 1st DCA 2001), *review granted,* 799 So.2d 218 (Fla.2001). However, the exception does not apply here. Citizens who are adversely affected by the exemption in section 101.161(1), Florida Statutes (2000) can make the argument for themselves.

Our conclusion that the supervisors lack standing to challenge the statute is further illustrated by the absence of an effective remedy. If the 75–word limit imposes a First Amendment restriction on those who would submit citizen initiatives, as the supervisors contend, the remedy would be to declare the limit unconstitutional, not to declare that the Legislature must also abide by the same invalid restriction. Yet all we could do in this context if we agreed with the supervisors on the merits of their equal protection claim would be to rewrite the statute to make the 75–word limit applicable to everyone. That we are not at liberty to do.

The supervisors argue that the ballot summary for Amendment 1 will cause a number of practical problems on election day. They have informed us that the ballot summary will require a two-page ballot in counties that use paper ballots, and that it will require multiple computer screens in those counties that use touch screen voting. The supervisors have also expressed their concern that an extremely long ballot summary like the one at issue here will cause inordinate delays in voting. Although we are sympathetic to all of these concerns, our review is narrowly focused on the legal and constitutional issues presented.

We agree that the ballot summary for Amendment 1 is much longer than the typical ballot summary for a proposed constitutional amendment. However, there are special circumstances that required the Legislature to prepare a longer summary in this case and it is doubtful that these circumstances will be repeated often. First, it would be a rare situation in which a ballot summary is successfully challenged after the measure has been approved in an election. In most cases, these issues are sorted out before the election. Apparently, the Legislature wanted to explain to voters why they were voting on this measure again. We cannot say that was unreasonable or unnecessary. Moreover, the proposed amendment would make a number of related but distinct changes in the existing constitutional provision. The amendment would change the wording of the prohibition against cruel or ***865** unusual punishment, restrict judicial interpretation of the state constitution, permit

  

various methods of execution, prohibit the reduction of a death sentence based on the invalidity of an execution method, and provide for retroactive applicability. It would be difficult to describe all of these concepts in a brief statement.

Our decision in this case appears to fall within the class of decisions that would ordinarily be certified to the supreme court under article V, section 3(b)(4). We believe that the issue is one of great public importance. However, the supreme court has declined to accept our earlier certification of great public importance under the pass through provisions of article V, section 3(b)(5). The question is no more important now than it was before. Therefore, we decline to certify this decision on our own initiative. If a party requests certification under rule 9.330, we will consider that request.

For these reasons, we conclude that the ballot summary for Amendment 1 gives fair notice of the purpose and effect of the amendment. It is not necessary to consider any of the other arguments raised in briefs, because our decision on this point is controlling. The ballot summary does not violate section 101.161(1), Florida Statutes (2000) or any of the applicable provisions of the Florida Constitution. Accordingly, we affirm the trial court's decision allowing the placement of Amendment 1 on the ballot for the 2002 general election.

Affirmed.

ALLEN, C.J., and WOLF, J., CONCUR.

**All Citations**

830 So.2d 856, 27 Fla. L. Weekly D2067

End of Document

**Negative Treatment**

There are no Negative Treatment results for this citation.

497 So.2d 1204
Supreme Court of Florida.

John F. CARROLL, et al., Petitioners,

v.

George FIRESTONE, etc., et al., Respondents.

Thomas C. TODD, et al., Appellants,

v.

George FIRESTONE, etc., et al., Appellees.

Nos. 69410, 69426.
|
Nov. 13, 1986.

**Synopsis**
Petition was brought for writ of mandamus to direct removal of proposed constitutional amendment from ballot. In addition, appeal was taken from judgment of Circuit Court, which ruled in favor of proposed amendment, and First District Court of Appeal certified judgment as one of great public importance. The Supreme Court held that: (1) second subsection of proposed constitutional amendment, stating that if any subsections of amendment were held unconstitutional for containing more than one subject, amendment would be limited to first subsection did not impinge on court's constitutional authority to interpret Constitution; (2) subsections of proposed constitutional amendment providing, first, that lotteries could be operated by state, and second, for manner in which amendment would be implemented, contained only one subject and matter directly connected therewith, and thus complied with constitutional section limiting proposed amendments to one subject and matter; and (3) subsection of proposed constitutional amendment was not unconstitutional by providing that schedule of implementation might be amended by general law.

Judgment affirmed; petition for mandamus denied.

Boyd, J., filed concurring opinion.

Ehrlich, J., concurred in result only with an opinion, in which McDonald, C.J., concurred.

West Headnotes (4)

**[1] Constitutional Law** Single or Multiple Subjects

Second subsection of proposed constitutional amendment, stating that, if any subsections of amendment were held unconstitutional for containing more than one subject, amendment would be limited to first subsection, did not impinge on court's constitutional authority to interpret Constitution, as drafter was merely attempting to make intent of constitutional provision clear, while court retained its ultimate responsibility for interpreting the Constitution. West's F.S.A. Const. Art. 11, § 3; West's F.S.A. § 101.161.

1 Case that cites this headnote

**[2] Constitutional Law** Single or Multiple Subjects

Two subsections of proposed constitutional amendment, which provided that lotteries could be operated by state, and for manner in which amendment would be implemented, contained only one subject and matter directly connected therewith, and thus complied with constitutional section limiting proposed amendments to one subject and matter. West's F.S.A. Const. Art. 11, §§ 1, 3; West's F.S.A. § 101.161.

4 Cases that cite this headnote

[3] **Constitutional Law** Particular Amendments

Ballot summary for proposed constitutional amendment allowing state lotteries adequately informed voter of substance of amendment as required by statute. West's F.S.A. § 101.161.

24 Cases that cite this headnote

[4] **Constitutional Law** State Constitutions

Subsection of proposed constitutional amendment on state lotteries was not unconstitutional by providing that schedule of implementation might be amended by general law; clause, if adopted, merely reflected decisions by voters to leave ultimate disposition of proceeds received from lotteries to discretion of legislature, and did not permit legislature to amend portion of Constitution by simple majority vote. West's F.S.A. Const. Art. 11, § 1.

3 Cases that cite this headnote

**Attorneys and Law Firms**

***1205** Joseph W. Little, in pro. per., Gainesville, and Robert T. Mann, in pro. per., Gainesville, for John F. Carroll, Joseph W. Little, and Robert T. Mann, Taxpayers and Citizens of Florida.

Herbert R. Kraft, Tallahassee, for Thomas C. Todd and People Against Legalized Lotteries, Inc.

Jim Smith, Atty. Gen., Mitchell D. Franks, Chief Trial Counsel, and Eric J. Taylor, Asst. Atty. Gen., Tallahassee, for George Firestone.

W. Dexter Douglass and Michael F. Coppins of Douglass, Cooper & Coppins, Tallahassee, for Excellence Campaign: An Education Lottery, Inc. (E.X.C.E.L.)

Thomas W. Young III, Gen. Counsel, Tallahassee, for the Florida Educ. Association/United AFT, AFL-CIO, amicus curiae.

Thomas W. Brooks of Meyer, Brooks and Cooper, P.A., Tallahassee, for Florida Teaching Profession-National Educ. Ass'n, amicus curiae.

**Opinion**

PER CURIAM.

Appellants Todd and People Against Legalized Lotteries, Inc., seek review of a summary judgment that Proposition Five, a proposed initiative amendment to article X of the Florida Constitution, embraces only one subject and matter directly connected therewith and that the ballot summary accompanying the proposed amendment does not contravene section 101.161, Florida Statutes (1985). The First District Court of Appeal certified the judgment as being of great public importance requiring immediate resolution by this Court. We have jurisdiction. Art. V, § 3(b)(5), Fla. Const. Petitioners Carroll, Little and Mann seek

  

a writ of mandamus directing Respondent Firestone, Secretary of the State of Florida, to remove the proposed amendment from the November 1986 ballot. We have jurisdiction. Art. V, § 3(b)(8), Fla. Const.; *Fine v. Firestone,* 448 So.2d 984 (Fla.1984).

The proposed amendment was initiated by appellee/respondent Excellence Campaign: An Education Lottery, Inc. (E.X.C.E.L.). There is no question but that the procedural requirements of Florida law were followed and that the requisite number of elector signatures were obtained pursuant to article XI, section 3. Thus, appellee/respondent Firestone is not the real party in interest. The issues raised are of substance for which E.X.C.E.L. is the real party in interest.

Appellants/petitioners urge four grounds in support of their position that the proposed amendment should be removed from the ballot: that it violates the single subject requirement of article XI, section 3; that the ballot summary violates the requirements of section 101.161 and case law; that there was fraud in inducing voters to sign the petition forms; and that the schedule clause of the purposed amendment violates article XI, section 1 of the Florida Constitution. We find no merit in any of these arguments, affirm the judgment below, and deny the petition for writ of mandamus.

**[1]** The proposed amendment reads as follows:

> (a) Lotteries may be operated by the State.
>
> (b) If any subsections of the Amendment of the Florida Constitution are held unconstitutional for containing more than one subject, this Amendment shall be limited to subsection (a) above.
>
> (c) This Amendment shall be implemented as follows:
>
> (1) On the effective date of this Amendment, the lotteries shall be known as the Florida Education Lotteries. Net proceeds derived from the lotteries shall be deposited to a state trust fund, to be designated The State Education Lotteries Trust Fund, to be ***1206** appropriated by the Legislature. The schedule may be amended by general law.

In pertinent part, article XI, section 3 reads:

> The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment shall embrace but one subject and matter directly connected therewith.

The relationship between the three subsections of the proposed amendment determines whether the amendment contains one subject and matter directly connected therewith. Subsection (b) is directly connected with subsections (a) and (c) in that it states, in effect, if subsection (c) is held to contain a different subject than subsection (a), that (c) will be stricken and (a) will stand alone. Petitioners Carroll, et al., suggest that subsection (b) impinges on this Court's constitutional authority to interpret the Constitution and thus amends article V of the Constitution. We think not. Subsection (b) has no force unless we determine that subsections (a) and (c) contain more than one subject. Moreover, while we are charged with the ultimate responsibility for interpreting the Constitution, the intent of the drafters or adopters of a constitutional provision is a highly relevant factor. We see no constitutional infirmity, but much to commend, in a drafter attempting to make clear the intent of a constitutional provision.

**[2]** **[3]** The controlling question then becomes whether subsections (a) and (c) contain only one subject and matter directly connected therewith. Subsection (a) identifies a potential revenue source and subsection (c) prescribes a tentative recipient of the revenue. We see no essential distinction between the amendment here and the one we approved in *Floridians Against Casino Takeover v. Let's Help Florida,* 363 So.2d 337 (Fla.1978). We recognize that in *Floridians* the taxes on casinos, assuming casinos were authorized and taxed, were committed to a specific purpose while here the revenues if any, are only tentatively committed to a specific fund. We do not consider this distinction significant and hold that subsection (c) contains matter directly connected to the authorization for lotteries, subsection (a).

The ballot summary reads as follows:

> The Amendment authorizes the state to operate lotteries. It provides a severance clause to retain the above provision should any subsections be held unconstitutional because of more than one subject. The schedule provides, unless changed by law,

for the lotteries to be known as the Florida Education Lotteries and for the net proceeds derived to be deposited in a state trust fund, designated State Education Lotteries Trust Fund, for the appropriation by the Legislature.

Appellants/petitioners argue that this summary does not adequately inform the voter of the substance of the amendment as required by section 101.161. We disagree. It is not necessary to explain every ramification of a proposed amendment, only the chief purpose. *Miami Dolphins v. Metropolitan Dade County,* 394 So.2d 981 (Fla.1981). The summary makes clear that the amendment authorizes state lotteries and that the revenues from such lotteries, subject to legislative override, will go to the State Education Lotteries Trust Fund. That is the chief purpose of the amendment and is all that the statute requires. It is true, as appellants/petitioners urge, that the legislature may choose not to authorize lotteries, not appropriate the proceeds to educational uses, and even to divert the proceeds to other uses. However, those questions go to the wisdom of adopting the amendment and it is for the proponents and opponents to make the case for adopting or rejecting the amendment in the public forum.

Appellants Todd, et al., also argue that the sponsors of the amendment committed fraud in inducing voters to sign the initiative petition by promising that a lottery could produce over $300 million annually for Florida. We express no opinion on the accuracy of this promise but note that the ***1207** petition form signed by the electors is prominently identified as a paid political advertisement. We decline to embroil this Court in the accuracy or inaccuracy of political advertisements clearly identified as such.

**[4]** Finally, subsection (c) of the proposed amendment provides that the schedule of implementation may be amended by general law. Petitioners Carroll, et al., argue that this permits the legislature to amend a portion of the Constitution by simple majority vote in violation of article XI, section 1. We see no merit in this argument. The clause, if adopted, reflects a decision by the voters to leave the ultimate disposition of the proceeds received from lotteries, if established, to the discretion of the legislature. Such delegations of authority to the legislative, executive, or judicial branches of government is not unusual or constitutionally infirm. Our Constitution consists in large part of a delegation of discretionary authority to the three branches of government and numerous provisions of the Constitution are contingent on general law. See, for example, article I, sections 15(b) and 22; article II, section 8; article III, section 14; article IV, section 4; article V, section 1; article X, section 13; and others too numerous to list.

We affirm the judgment below and deny the petition for writ of mandamus.

No petition for rehearing will be entertained.

It is so ordered.

ADKINS, OVERTON, SHAW and BARKETT, JJ., concur.

BOYD, J., concurs with an opinion.

EHRLICH, J., concurs in result only with an opinion, in which McDONALD, C.J., concurs.

BOYD, Justice, concurring.

I concur in the Court's conclusion that the proposed amendment embraces only one subject and matter directly connected therewith and therefore meets the constitutional standard set forth in article XI, section 3 of the Florida Constitution. We construed the constitutional requirement in *Floridians Against Casino Takeover v. Let's Help Florida,* 363 So.2d 337 (Fla.1978), and the proposed amendment here fulfills the requirement as interpreted there.

It is argued here-and the issue is one of much public concern-that many people who are not in favor of the state's operation of a lottery will be persuaded to vote in favor of the amendment by the argument that the revenue is needed and will be expended for education. Both the ballot summary and the initiative petition form are assailed as misleading or at least uninformative of the true effect of the amendment.

  

The amendment itself makes clear that revenue realized by operation of the lottery will be placed in a state trust fund but that there is no absolute requirement that the funds be spent only on education. Even if it is all used for education this would not necessarily increase the level of state resources devoted to education since the legislature is free to reduce the funding of education from other sources.

The effect of the amendment and the result that will obtain if it is adopted are made known with sufficient clarity by the language of the amendment itself. I agree with the majority that the arguments about the ballot summary and the initiative petition form are not sufficient to raise any constitutional impediment. The fact that people might not inform themselves about what they are voting for or petitioning for is immaterial so long as they have an opportunity to inform themselves. Our constitution contemplates amendment by initiative petition and referendum and if people are so inclined they have a right to participate in these processes while remaining uninformed, just as they may vote on other matters without any requirement that they be well informed.

As I have consistently maintained through many years of challenges to initiative petitions, courts should only strike proposed ***1208** amendments from the ballot if they clearly violate the constitution. *E.g., Floridians Against Casino Takeover v. Let's Help Florida,* 363 So.2d at 342 (Boyd, J., concurring specially); *Weber v. Smathers,* 338 So.2d 819 (Fla.1976); *Adams v. Gunter,* 238 So.2d 824, 835 (Fla.1970) (Boyd, J., dissenting). The proposed amendment in the present case meets the constitutional standard and should remain on the ballot.

EHRLICH, Justice, concurring in result only.

I concur with the result reached by the majority that the proposed amendment before us passes constitutional muster. I disagree with the majority's reasoning on the crucial issue of whether this proposed amendment contains only one subject and, therefore, write separately.

The majority finds "no essential distinction" between the amendment at issue in *Floridians Against Casino Takeover v. Let's Help Florida,* 363 So.2d 337 (Fla.1978), and the proposed amendment now before us. I disagree. In *Fine v. Firestone,* 448 So.2d 984 (Fla.1984), I stated:

> It would be difficult to imagine a better illustration of logrolling than the initiative proposal approved in *Floridians.* Tying increased funding of education to the casino gambling proposal was unarguably an attempt to enlist the support of those concerned with the quality of education in Florida for a measure inherently unrelated to education.

*Id.* at 996 (Ehrlich, J., concurring in result). In my view the infirmity in *Floridians* was that the revenue generated by casino gambling would be *inextricably linked* to funding education and law enforcement. This link, as I perceived it, violated the single-subject requirement of article XI, section 3. This is the very reason why I find the proposal before us to contain but a single subject: any revenue generated from a state lottery may be expended by the legislature for any purpose. The fact that the schedule to the proposed amendment, section (c), uses the words Educational Lottery Trust Fund is unarguably an attempt to attract those in favor of increased educational funding to the ranks of those in favor of a state lottery. However, it is constitutionally acceptable because both the amendment and the ballot summary clearly tell the voters that any revenue generated by a state lottery will go into a trust fund and may be appropriated by the legislature; both the amendment and the summary inform the electorate that this provision may be changed by the legislature. In other words, the proposed amendment could have simply authorized a state lottery and been silent on the subject of where any revenues derived therefrom would be expended; admittedly, this would have been less politically advantageous to the proponents of a lottery, but the proposal would still contain only a single subject. This is precisely the effect of the proposal before us. Section (c) does nothing more than suggest to the legislature that any revenue from the lottery will go to the Educational Lottery Trust Fund. Contrary to the majority's reasoning, the distinction between a "locked-in" revenue provision such as was involved in *Floridians* and the open-ended provision before us here is not only significant, but is dispositive under what I believe to be the correct single-subject analysis.

  

I lamented in *Fine* that this Court's semblance of continued adherence to both *Floridians* and *Weber v. Smathers,* 338 So.2d 819 (Fla.1976), sent a "garbled message" to the public concerning the proper method for utilizing the citizens initiative to amend our constitution. 448 So.2d at 996. In my opinion, the majority's misplaced reliance on *Floridians* only adds to the obfuscation which has characterized this Court's treatment of article XI, section 3's single-subject requirement.

McDONALD, C.J., concurs.

**All Citations**

497 So.2d 1204, 11 Fla. L. Weekly 538, 11 Fla. L. Weekly 578

**Negative Treatment**

There are no Negative Treatment results for this citation.

87 So.3d 18
District Court of Appeal of Florida, Fourth District.

CITY OF RIVIERA BEACH, a Municipal Corporation of the State of Florida, and Riviera Beach Community Redevelopment Agency, Appellants,

v.

RIVIERA BEACH CITIZENS TASK FORCE, a political committee, Emma Bates, in her capacity as chairperson of the political committee, and Susan Bucher, in her official capacity as Palm Beach County Supervisor of Elections, Appellees.

Nos. 4D10–4770, 4D10–4813
|
April 4, 2012.

**Synopsis**

**Background:** City and community redevelopment agency created by city brought actions for injunctive and declaratory relief against a citizens task force that initiated a referendum petition to amend city charter, arguing that a proposed ballot amendment was ambiguous and unconstitutional. The Circuit Court, Fifteenth Judicial Circuit, Palm Beach County, Edward Fine, J., entered judgment in favor of the task force. City and community redevelopment agency appealed.

**Holdings:** The District Court of Appeal, Warner, J., held that:

[1] the ballot summary language was not ambiguous;

[2] the city council satisfied its procedural requirements for approving the amendment for placement on the ballot;

[3] the amendment did not impermissibly involve a comprehensive plan amendment; and

[4] the ballot amendment, on its face, was not invalid.

Affirmed.

West Headnotes (12)

**[1] Municipal Corporations** Initiative procedure

Purpose of statute requiring clear unambiguous language in any public measure submitted to voters is to advise the voter sufficiently to enable him intelligently to cast his ballot. West's F.S.A. § 101.161(1).

1 Case that cites this headnote

**[2] Municipal Corporations** Initiative procedure

  

While the ballot title and summary must state in clear and unambiguous language the chief purpose of a ballot measure, they need not explain every detail or ramification of the proposed amendment; the ballot language must, however, give the voter fair notice of the decision he or she must make. West's F.S.A. § 101.161(1).

2 Cases that cite this headnote

[3] **Municipal Corporations** Initiative procedure

Two questions must be asked in order to determine if the proposed language of a ballot measure is defective: first, whether the ballot title and summary fairly inform the voter of the chief purpose of the public measure, and second, whether the language of the title and summary, as written, misleads the public. West's F.S.A. § 101.161(1).

4 Cases that cite this headnote

[4] **Municipal Corporations** Initiative procedure

Only where the record shows that the ballot language is clearly and conclusively defective should the court invalidate the ballot question. West's F.S.A. § 101.161(1).

1 Case that cites this headnote

[5] **Municipal Corporations** Initiative procedure

A ballot title and summary cannot either "fly under false colors," or "hide the ball" as to the amendment's true effect. West's F.S.A. § 101.161(1).

1 Case that cites this headnote

[6] **Municipal Corporations** Initiative procedure

A ballot summary must not be affirmatively misleading. West's F.S.A. § 101.161(1).

2 Cases that cite this headnote

[7] **Zoning and Planning** Approval of voters or property owners; referendum and initiative

Ballot summary for amendment to city charter that affected land use on city's marina was not affirmatively misleading, where summary clearly stated its purposes of limiting possible land uses on city's marina, required city ownership and management of certain parcels of land, and clearly prohibited industrial commercial boat repair operations. West's F.S.A. § 101.161(1).

[8] **Municipal Corporations** Amendment of charter or special act

City did not have to pass an enabling resolution for proposed amendment to the city charter to be placed on ballot, where the amendment was initiated by referendum petition, and the city had already acceded to the submission of the amendment with the ballot summary as it was written. West's F.S.A. § 166.031(1).

1 Case that cites this headnote

[9] **Injunction** Elections, Voting, and Political Rights

  

A court of equity as a general rule will not restrain the holding of an election because a free election in a democracy is a political matter to be determined by the electorate and not the courts.

**[10]** **Zoning and Planning** Approval of voters or property owners; referendum and initiative

Ballot amendment initiated by referendum petition banning industrial commercial boat repair on city's marina and calling for the creation of municipal and public uses for the marina was not a map amendment or comprehensive plan amendment for the purposes of a statute barring map or plan amendments by referendum or initiative, where the current zoning for the marina already permitted multiple uses including public and municipal uses, and prohibition of industrial commercial boat repair would not require a plan amendment. F.S.2010, § 163.3167(12).

**[11]** **Zoning and Planning** Approval of voters or property owners; referendum and initiative

A ballot amendment initiated by referendum petition banning industrial commercial boat repair on city's marina, and calling for certain parcels of land to be owned and managed by the city, as a whole, was not invalid, even if it was invalid as applied to certain properties owned by a community redevelopment agency, by requiring that the city condemn land owned by agency, where there was no finding that each and every part of the amendment was invalid.

**[12]** **Municipal Corporations** Initiative procedure

It is not the court's function to decide piecemeal whether certain parts of a public measure are valid or invalid; the court is only supposed to consider the entire public measure as a whole, and the referendum retains its validity unless it is shown to be clearly, convincingly and entirely invalid.

**Attorneys and Law Firms**

***19** Christy L. Goddeau and Glen J. Torcivia of Law Offices of Glen J. Torcivia & Associates, P.A., West Palm Beach, for appellant City of Riviera Beach.

***20** Leonard G. Rubin of Leonard G. Rubin, P.A., West Palm Beach, for appellant Riviera Beach Community Redevelopment Agency.

Kenneth G. Spillias of Lewis, Longman & Walker, P.A., West Palm Beach, for appellee Susan Bucher.

Andrew Degraffenreidt, III, West Palm Beach, for appellees Riviera Beach Citizens Task Force, Inc. and Emma Bates.

**Opinion**

WARNER, J.

The City of Riviera Beach and the Riviera Beach Community Redevelopment Agency appeal from a final judgment of the trial court allowing a charter question to appear on the ballot for the November 2, 2010 general election to ask voters whether the city's charter should be amended. The appellants claim that the ballot language was ambiguous; that the question was placed on the ballot in violation of section 101.161(1), Florida Statutes, which requires the council to pass an enabling resolution, which the council did not vote affirmatively to do; and that the ballot question was unconstitutional because it was in violation of section 163.3167(12), Florida Statutes, which prohibits a referendum process involving a comprehensive land use change affecting five or fewer parcels of land. We affirm on all issues, finding that the ballot language is not ambiguous; that the

  

city's stipulation that the city council approved by motion the placement of the referendum on the ballot satisfied its ministerial duty pursuant to section 101.161(1); and that the ballot did not involve a comprehensive plan amendment, rendering section 163.3165(12) inapplicable.

Riviera Beach Citizens Task Force and Emma Bates organized a petition to amend the City's charter by referendum. They proposed changing Article VII, section 3.5 of the City's charter by adding the following underlined language:

> The city's municipal marina shall not be sold. However, the city council may enter into management, license or lease agreements with marina users and/or outside operators for a term of not more than 50 years in order to facilitate marina activities, use or operations *and to provide that the use of dedicated submerge[d] public lands be limited to municipal park and recreational purposes according to the terms State of Florida Dedication No. 24438–A (2725–50) by the Board of Trustees of the Internal Improvement Fund, to include the Marina and public Municipal Marina properties, Newcomb Hall, Bicentennial Park, and Spanish Court shall be owned, managed, and operated solely by the City of Riviera Beach for municipal and public uses; the use of the marina shall not be changed to industrial commercial, to include an industrial commercial boat repair operation.*

The Task Force obtained a sufficient number of signatures on the petition and sought to have the issue included on the ballot on the November 2, 2010 general election. The ballot summary to be placed on the ballot read:

> AMENDMENT TO CITY MARINA PROPERTY
>
> Shall The City Of Riviera Beach Charter Be Amended To Provide That The Use of Dedicated Submerged Public Lands At The City Marina Remain Limited To Municipal Park And Recreational Purposes According To Florida Dedication No 24438–A; (2725) the Municipal Marina Properties, Newcomb Hall, Bicentennial Park, And Spanish Court Shall Be Owned, Managed, And Operated Solely By the City Of Riviera Beach; The Municipal Marina Properties Shall Not Permit ***21** Industrial Commercial Boat Repair Operations?

The Supervisor of Elections filed a certification with the City asserting that the Task Force's petition was in accordance with section 166.031(1). The City Clerk presented the initiative to the City Council but did not request a resolution, because it was her opinion that none was required pursuant to the statute. Nevertheless, with the approval of the council the City Clerk sent a letter to the Supervisor of Elections which acknowledged that the City Council disagreed with the language in the petition but stated that a majority have agreed to comply with section 166.031 and have the referendum placed on the ballot at the general election. The Clerk's letter contained the proposed ballot summary from the Task Force. The supervisor received the City Clerk's letter and placed the ballot summary and title on the ballot for the November 2, 2010 general election. On September 1, 2010, the City Council agreed by motion but without an enabling resolution to allow the amendment to be put on the ballot. The City Clerk sent a letter to the Supervisor of Elections and the Supervisor placed the Task Force's proposed charter amendment question on the ballot.

The Community Redevelopment Agency ("CRA"), which owns Spanish Courts, filed a complaint in the circuit court seeking declaratory and injunctive relief regarding the proposed charter amendment and ballot question. Subsequently, the City also filed a similar complaint in the circuit court seeking a determination that the amendment and question were unconstitutional and invalid. The City's and CRA's complaints were consolidated and the trial court conducted a trial, ultimately issuing a final judgment, ruling that the proposed charter amendment and question were clear and not misleading, revealed the chief purpose of the proposed charter amendment, and thus, could appear on the ballot. The City and CRA now appeal.

We review de novo the issue of whether the ballot summary was misleading. *Armstrong v. Harris,* 773 So.2d 7, 11 (Fla.2000); *Citizens for Term Limits & Accountability, Inc. v. Lyons,* 995 So.2d 1051, 1054 (Fla. 1st DCA 2008). "[O]ur task is to determine whether the ballot language sets forth the substance of the amendment in a manner that satisfies the requirements of section 101.161, Florida Statutes...." *Fla. Educ. Ass'n v. Florida Dep't of State,* 48 So.3d 694, 700 (Fla.2010).

  

**[1]** **[2]** Section 101.161(1), Florida Statutes (2010), requires that "the substance of ... [any] ... public measure [submitted to the voters] shall be printed in clear and unambiguous language...." The ballot language "shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure." The purpose of this requirement is to

> "advise the voter sufficiently to enable him intelligently to cast his ballot." *Askew* [*v. Firestone*], 421 So.2d [151, 155 (Fla.1982) ] (emphasis omitted) (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. *See Carroll v. Firestone,* 497 So.2d 1204, 1206 (Fla.1986). The ballot language must, however, give "the voter fair notice of the decision he [or she] must make." *Askew,* 421 So.2d at 155.

*Fla. Educ. Ass'n,* 48 So.3d at 700.

**[3]** **[4]** **[5]** **[6]** Two questions must be asked in order to determine if the proposed language is defective: first, whether the ballot title and summary fairly inform the voter of the chief purpose of the public ***22** measure, and second, whether the language of the title and summary, as written, misleads the public. *Fla. Dep't of State v. Slough,* 992 So.2d 142, 147 (Fla.2008). Only where the record shows that the ballot language is "clearly and conclusively defective" should the court invalidate the ballot question. *Armstrong,* 773 So.2d at 11. "A ballot title and summary cannot either 'fly under false colors' or 'hide the ball' as to the amendment's true effect." *Id.* at 16. A ballot summary must not be "affirmatively misleading." *Fla. Educ. Ass'n,* 48 So.3d at 704.

**[7]** Judged by the foregoing standard, the ballot summary does not mislead and cannot be said to be clearly and conclusively defective. The ballot summary informs voters of the amendment's chief purpose. The first portion of the question limits the use of the City Marina to municipal and recreational purposes in accordance with the state dedication. The second portion requires that each of the identified properties (municipal marina properties, Newcomb Hall, Bicentennial Park and Spanish Court) be owned, managed and operated solely by the City. The third portion prohibits "industrial commercial boat repair operations within the Municipal Marina Properties." Although it might have been more artfully phrased, it does not mislead or "hide the ball" as to its intended purpose.

Most of the City's objections involve the wording of the charter amendment itself, not the ballot summary. It too is not a model of clarity; however, it is not so ambiguous that its meaning cannot be understood, and the ballot summary provides an explanation of its purpose. As the trial court said in its final judgment, "It is not necessary to explain every detail since the summary is limited to 75 words and this summary by the Court's cou[n]t is 74 words. It provides the voter fair notice of the proposal's true meaning." We agree.

**[8]** **[9]** As a second ground for contesting the ballot summary, the City argues that because it did not pass a resolution including the ballot summary, the amendment referendum should not have been placed on the ballot at all. It relies on section 101.161(1) as requiring it to pass a resolution before an amendment may be placed on the ballot, because the ballot title and ballot summary shall be contained within an "enabling resolution or ordinance." However, section 166.031 describes the method by which the City and citizens may initiate a charter amendment by referendum (by ordinance or petition) and states:

> 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 general election, *submit to the electors of said municipality a proposed amendment to its charter,* which amendment may be to any part or to all of said charter except that part describing the boundaries of such municipality.

§ 166.031(1), Fla. Stat. (2010) (emphasis added). The trial court found that section 166.031 does not *require* the passage of a resolution. In fact, the City Clerk maintained that she did not request a resolution from the Council, because none was necessary pursuant to section 166.031. The trial court explained:

> The City's role in this regard was ministerial, without discretion, if a resolution had been required.

  

> "The law is well settled that a court of equity as a general rule will not restrain the holding of an election because a free election in a democracy is a political matter to be determined by the electorate and not the courts.... ***23** Limited exceptions to this rule have been recognized but only on the narrowest grounds." *E.g. Rivergate Restaurant Corporation v. Metro. Dade County,* 369 So.2d 679 (Fla. 3d DCA 1979).

The Court would not be proceeding in line with this principle if it were to consider an otherwise proper referendum with proper ballot language and yet restrain the holding of this election on this basis where no enabling City Council resolution was specifically required.

The City cites *Shulmister v. City of Pompano Beach,* 798 So.2d 799 (Fla. 4th DCA 2001), to support its contention that section 101.161 mandates that the governing body pass a resolution before a charter amendment may be placed on the ballot. In *Shulmister,* a petition for charter amendment was presented to the city which passed an enabling resolution containing a ballot summary in excess of 75 words. Because the ballot summary did not comply with section 101.161(1), the supervisor of elections refused to place the amendment on the ballot. The city, however, refused to correct the ballot summary. We held that the city had a ministerial duty to supply a summary in compliance with the statute so that the amendment could be placed on the ballot.

*Shulmister* did not hold that an amendment proposed by citizen's initiative could not appear on the ballot without an enabling resolution. While we said that the City had a duty to place the charter provision on the ballot for the next election, the city in *Shulmister* had passed an enabling resolution but with an improper ballot summary so that it was rejected by the supervisor of elections. We merely required the city to correct the mistake.

Here, the city did not pass a resolution but acceded to the submission of the amendment with the ballot summary prepared by the appellees to the supervisor of elections. Later, the council passed a motion approving the placement on the ballot but disapproving the ballot language. Although the city abdicated its responsibility to draft a ballot summary, it did permit the submission of the ballot summary drafted by the Task Force to the supervisor of elections. Had the city not submitted the provision for placement on the ballot, it would have violated its duty under section 166.031. The city cannot complain that its own failure to perform its duty can prevent the citizens from voting on the charter amendment proposal.

**[10]** Finally, the appellants argue that the proposed charter amendment is invalid because it violates section 163.3167(12), Florida Statutes (2010), which provides:

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

The simple response to this claim is that the amendment on the ballot was not one involving a development order or a local comprehensive plan amendment or map amendment. The appellants claim that adoption of the amendment will require an amendment to the comprehensive plan, because the properties are not properly zoned for municipal or public uses. The properties mentioned in the amendment are within a "Downtown Mixed Use" category or "Working Waterfront" which is a subcategory of "Industrial and Related Uses." Riviera Beach, Fl., Ordinance 3066, Comprehensive Plan, Objective 1.8, Future Land Use (May 19, 2010). Under those categories, multiple uses are allowed, and none preclude municipal or public uses compatible with what is allowed under the current comprehensive plan. For instance, the Working Waterfront designation ***24** permits marinas. The City could operate a marina and associated facilities, which would consist of a municipal or public use and would be fully consistent with the comprehensive plan. Similarly, the Downtown Mixed Use category includes parks, marinas, and "civic" uses. We are certain that the city could figure out uses that it could own or operate to satisfy the amendment's criteria yet comply with the comprehensive plan. Furthermore, while the "Working Waterfront" includes industrial applications of the waterfront, including commercial fishing enterprises and boat repair, it also includes marinas and waterfront restaurants. Thus, a prohibition of one use among many in that category with respect to a particular parcel would not require a plan amendment to accomplish the intent of the charter amendment on property owned by the City itself. Because the proposed amendment does not involve or require a comprehensive plan amendment, section 163.3167 is irrelevant.

  

**[11]** The last argument we address is made by the CRA which owns one of the properties, Spanish Court. It argues that the Charter Amendment and Ballot Summary are misleading, because the City would have to condemn Spanish Court in order to own the property. The CRA was created by the City of Riviera Beach to pursue a community redevelopment plan with respect to blighted areas in the city. In accordance with section 163.357, the city council declared its own members to be the commissioners of the CRA, although the CRA is a separate legal entity. This record does not contain the terms of the CRA and the delegation of powers by the City to the CRA. Therefore, we do not know the extent of its powers. Nevertheless, on this record we cannot conclude that the City must condemn the property owned by the CRA in order to effectuate the purposes of this amendment. Section 163.400 permits cooperation between public bodies for the purposes of carrying out community redevelopment. Those provisions would appear to provide all the authority necessary to effectuate the purpose of the charter amendment.

**[12]** However, we need not decide the issue of the legal status of the property owned by the CRA, because even if this may render a portion of the amendment, as applied to Spanish Court, invalid, the trial court determined that the entire amendment was not invalid:

> It is not the Court's function to decide piece meal whether certain parts of the public measure are valid or invalid. The Court is only supposed to consider the **entire** public measure as a whole and the referendum retains its validity unless it is shown to be **clearly, convincingly** and **entirely** invalid. *Wright v. Frankel,* 965 So.2d 365 (Fla. 4th DCA 2007).

(emphasis in the final judgment). We also held in *Brooks v. Watchtower Bible & Tract Society of Florida, Inc.,* 706 So.2d 85, 90 (Fla. 4th DCA 1998), that a referendum on an ordinance should not be prevented "unless it is demonstrated that the ordinance is unconstitutional in its entirety." Here, the appellants have not demonstrated the invalidity of each and every provision of the amendment. Thus, the trial court was correct in not restraining the electorate's opportunity to vote on it.

For the foregoing reasons, we affirm the final judgment of the trial court.

STEVENSON and CONNER, JJ., concur.

**All Citations**

87 So.3d 18, 37 Fla. L. Weekly D788

**Negative Treatment**

There are no Negative Treatment results for this citation.

457 So.2d 1351
Supreme Court of Florida.

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.

No. 65898
|
Opinions Oct. 3 and 11, 1984.

**Synopsis**

Appeal was brought from declaratory judgment rendered by the Circuit Court, Leon County, Ben C. Willis, J., determining that proposed constitutional amendment and its ballot summary were constitutionally valid. The Supreme Court held that: (1) proposed amendment entitled "Citizen's Rights in Civil Actions" which limits liability for defendants in civil actions and restates summary judgment rule does not delineate a single subject such that all three provisions are directly connected therewith, and thus, proposed amendment violates state constitutional requirement that amendments by initiative embrace but one subject and matter directly connected therewith, and (2) ballot summary for proposed constitutional amendment limiting defendants' liability in civil actions and elevating status of summary judgment rule to that of a constitutional right is fatally misleading under statute dealing with ballot summaries.

Reversed.

Overton, J., filed concurring opinion.

McDonald, J., filed concurring opinion, in which Ehrlich, J., concurred.

Ehrlich and Shaw, J.J., specially concurred and filed opinion.

West Headnotes (10)

[1] **Constitutional Law** Single or Multiple Subjects

Enfolding disparate subjects within the cloak of a broad generality does not satisfy constitutional single-subject requirement for constitutional amendments proposed by initiative. West's F.S.A. Const. Art. 11, § 3.

6 Cases that cite this headnote

[2] **Constitutional Law** Single or Multiple Subjects

In order to determine whether constitutional amendment proposed by initiative satisfies state constitutional single-subject requirement, Supreme Court must look to functional effect of amendment. West's F.S.A. Const. Art. 11, § 3.

  

1 Case that cites this headnote

[3] **Constitutional Law** Single or Multiple Subjects

Where separate provisions of constitutional amendment proposed by initiative are an aggregation of dissimilar provisions designed to attract support of diverse groups to assure its passage, defect is not cured by either application of an overbroad subject title or by virtue of being self-contained. West's F.S.A. Const. Art. 11, § 3.

4 Cases that cite this headnote

[4] **Constitutional Law** Single or Multiple Subjects

Where a proposed constitutional amendment changes more than one government function, it is clearly multisubject in violation of single-subject requirement of State Constitution. West's F.S.A. Const. Art. 11, § 3.

3 Cases that cite this headnote

[5] **Constitutional Law** Applicability to multiple branches of government

Although all power for each branch of government comes from the people and citizens of state retain right to broaden or to restrict such a power by initiative amendment, where such initiative performs function of different branches of government, it clearly fails functional test for single-subject limitation incorporated into State Constitution. West's F.S.A. Const. Art. 11, § 3.

6 Cases that cite this headnote

[6] **Summary Judgment** Subjective Facts

"Summary judgment" is procedural mechanism whereby liability and damages may be adjudicated when material facts are undisputed.

1 Case that cites this headnote

[7] **Constitutional Law** Applicability to multiple branches of government

Proposed amendment entitled "Citizen's Rights in Civil Actions" which limits liability for defendants in civil actions and restates summary judgment rule does not delineate a single subject such that all three provisions are directly connected therewith, since provisions limiting defendants' liability are substantive in nature and therefore perform an essentially legislative function, while summary judgment provision is procedural and embodies a function of judiciary, and since summary judgment provision would reach far beyond civil actions in which liability and damages are at issue; therefore, proposed amendment violates state constitutional requirement that amendments by initiative embrace but one subject and matter directly connected therewith. West's F.S.A. Const. Art. 11, § 3.

10 Cases that cite this headnote

[8] **Constitutional Law** Summaries, Explanatory Statements, and Statements of Purpose

Ballot summary of proposed constitutional amendment is no place for subjective evaluation of special impact of amendment; summary should tell voter the legal effect of the amendment and no more. West's F.S.A. § 101.161.

17 Cases that cite this headnote

  

[9] **Constitutional Law** Summaries, Explanatory Statements, and Statements of Purpose

Just as it is clearly misleading to reveal only one half of a constitutional "trade off" in the ballot summary of a proposed constitutional amendment, so it is fatally misleading to imply a constitutional trade-off where none is, in fact, contemplated. West's F.S.A. § 101.161.

5 Cases that cite this headnote

[10] **Constitutional Law** Particular amendments

Ballot summary for proposed constitutional amendment limiting defendants' liability in civil actions and elevating status of summary judgment rule to that of a constitutional right is fatally misleading under statute dealing with ballot summaries, in that summary states that it "establishes" citizen's rights in civil actions but provision relating to summary judgment merely elevates long established rule to status of constitutional right, and nothing in amendment establishes right to full recovery of all actual expenses, but rather, amendment merely limits defendant's liability for noneconomic damages; no constitutional protection is added to rights of plaintiff. West's F.S.A. § 101.161.

8 Cases that cite this headnote

**Attorneys and Law Firms**

***1352** Barry Richard of Roberts, Baggett, LaFace, 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.

PER CURIAM.

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 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.

**Opinion**

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 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 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.

**[1]** The 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.

**[2]** *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 whether it satisfies the single subject requirement.

**[3]** 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.

**[4]** **[5]** 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 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.

**[6]** **[7]** 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 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 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 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.

**[8]** 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, 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.

**[9]** **[10]** 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 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.

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 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 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 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 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 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 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 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. 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. 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.

* 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.

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 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 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 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,* 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 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 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, 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 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 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).

* 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.

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.

**All Citations**

457 So.2d 1351

**End of Document**

## Negative Treatment

### Negative Citing References (5)

*The KeyCited document has been negatively referenced by the following events or decisions in other litigation or proceedings:*

| Treatment | Title | Date | Type | Depth | Headnote(s) |
|---|---|---|---|---|---|
| Declined to Follow by | 1. Meyer v. Alaskans for Better Elections<br>MOST NEGATIVE<br><br>465 P.3d 477 , Alaska<br>GOVERNMENT — Elections. Ballot initiative embraced single subject of election reform, and, thus, initiative complied with Alaska Constitution's one-subject rule. | June 12, 2020 | Case | | 3<br>5<br>So.2d |
| Distinguished by | 2. In re Advisory Opinion to Atty. Gen., Limitation of Non-Economic Damages in Civil Actions<br><br>520 So.2d 284 , Fla.<br>Attorney General petitioned Supreme Court for an advisory opinion on validity of initiative petition amending State Constitution, and placing cap on noneconomic damages tort... | Feb. 26, 1988 | Case | | 7<br>So.2d |
| Distinguished by | 3. Sancho v. Smith<br><br>830 So.2d 856 , Fla.App. 1 Dist.<br>GOVERNMENT - States. Ballot summary for proposed constitutional amendment gave fair notice of purpose and effect of amendment. | Sep. 18, 2002 | Case | | 8<br>9<br>10<br>So.2d |
| Distinguished by | 4. In re Advisory Opinion to Atty. Gen. re Limits or Prevents Barriers to Local Solar Electricity Supply<br><br>177 So.3d 235 , Fla.<br>GOVERNMENT - Elections. Proposed citizen initiative amendment to state constitution regarding solar electricity complied with constitutional requirements. | Oct. 22, 2015 | Case | | 1<br>2<br>7<br>So.2d |
| Distinguished by | 5. Advisory Opinion to Atty. Gen. re Rights of Electricity Consumers regarding Solar Energy Choice<br><br>188 So.3d 822 , Fla.<br>GOVERNMENT - Elections. Proposed citizen initiative amendment establishing right to own or lease solar equipment on one's property satisfied single-subject rule. | Mar. 31, 2016 | Case | | 8<br>10<br>So.2d |

48 So.3d 694

Editor's Note: Additions are indicated by | Text | and deletions by ~~Text~~ .

Supreme Court of Florida.

FLORIDA EDUCATION ASSOCIATION, et al., Appellants,

v.

FLORIDA DEPARTMENT OF STATE, et al., Appellees.

No. SC10–1784.

|

Oct. 7, 2010.

**Synopsis**

**Background:** Challengers sought to prevent placement, on general election ballot, of legislatively proposed state constitutional amendment concerning class sizes for public schools. The trial court, Leon County, Charles A. Francis, C.J., upheld the ballot title and summary. Challengers appealed, and the District Court of Appeal certified the appeal to the Supreme Court.

**Holdings:** The Supreme Court held that:

[1] ballot title and summary were not misleading in failing to refer to reduction of funding for class size requirements;

[2] ballot summary was not misleading in stating that the Legislature would be required to provide sufficient funds to "maintain the average number of students"; and

[3] ballot title and summary were not misleading in failing to mention that State already was required to provide the funding for class size requirements.

Trial court affirmed.

West Headnotes (18)

**[1] Appeal and Error** Constitutional law

The standard of review of the validity of a proposed state constitutional amendment, which is to be submitted to voters, is de novo. West's F.S.A. Const. Art. 11, § 5.

**[2] Constitutional Law** Ballots in general

Implicit in the state constitutional provision requiring a legislatively proposed state constitutional amendment to be submitted to the electors is the requirement that the proposed amendment be accurately represented on the ballot; otherwise, voter approval would be a nullity. West's F.S.A. Const. Art. 11, §§ 1, 5(a); West's F.S.A. § 101.161(1).

  

[3] **Constitutional Law** Ballots in general

The accuracy requirement for placing, on the election ballot, a proposed state constitutional amendment functions as a kind of "truth in packaging" law for the ballot. West's F.S.A. Const. Art. 11, § 5.

[4] **Constitutional Law** Judicial Proceedings

Although the state Constitution does not expressly authorize judicial review of state constitutional amendments proposed by the Legislature, which are to be submitted to voters, the courts are the proper forum in which to litigate the validity of such amendments. West's F.S.A. Const. Art. 11, §§ 1, 5(a).

[5] **Constitutional Law** Submission to Popular Vote; Initiative

**Constitutional Law** Judicial Proceedings

Courts accord a measure of deference to constitutional amendments proposed by the Legislature, but that deference is not boundless, since the Constitution imposes strict minimum requirements that apply across-the-board to all constitutional amendments, including those arising in the Legislature. West's F.S.A. Const. Art. 11, § 1.

[6] **Constitutional Law** Ballots in general

In reviewing the validity of ballot language submitted to the voters for a proposed constitutional amendment, the court does not consider or review the substantive merits or the wisdom of the amendment; rather, its task is to determine whether the ballot language sets forth the substance of the amendment in a manner that satisfies state constitutional and statutory requirements. West's F.S.A. Const. Art. 11, § 5; West's F.S.A. § 101.161(1).

2 Cases that cite this headnote

[7] **Constitutional Law** Ballot Title

**Constitutional Law** Summaries, Explanatory Statements, and Statements of Purpose

The purpose of a ballot title and summary for a proposed state constitutional amendment 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. West's F.S.A. Const. Art. 11, § 5; West's F.S.A. § 101.161(1).

3 Cases that cite this headnote

[8] **Constitutional Law** Ballots in general

To comply with the requirements of law for ballot language for a proposed state constitutional amendment, the ballot language must state the chief purpose of the proposed amendment. West's F.S.A. Const. Art. 11, § 5; West's F.S.A. § 101.161(1).

5 Cases that cite this headnote

[9] **Constitutional Law** Ballot Title

**Constitutional Law** Summaries, Explanatory Statements, and Statements of Purpose

  

While the ballot title and summary for a proposed state constitutional amendment 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. West's F.S.A. Const. Art. 11, § 5; West's F.S.A. § 101.161(1).

3 Cases that cite this headnote

**[10]** **Constitutional Law** Pre-election challenges or review

A court may declare a proposed state constitutional amendment invalid only if the record shows that the proposal is clearly and conclusively defective.

**[11]** **Constitutional Law** Ballot Title

**Constitutional Law** Summaries, Explanatory Statements, and Statements of Purpose

In assessing the ballot title and summary for a proposed state constitutional amendment, the 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. West's F.S.A. Const. Art. 11, § 5; West's F.S.A. § 101.161(1).

5 Cases that cite this headnote

**[12]** **Constitutional Law** Ballot Title

**Constitutional Law** Summaries, Explanatory Statements, and Statements of Purpose

When reviewing the ballot title and summary for a proposed state constitutional amendment, the court presumes that the average voter has a certain amount of common understanding and knowledge. West's F.S.A. Const. Art. 11, § 5; West's F.S.A. § 101.161(1).

2 Cases that cite this headnote

**[13]** **Constitutional Law** Ballot Title

**Constitutional Law** Summaries, Explanatory Statements, and Statements of Purpose

Evaluation of the ballot title and summary for a proposed state constitutional amendment includes consideration of the amendment's true meaning and ramifications. West's F.S.A. Const. Art. 11, § 5; West's F.S.A. § 101.161(1).

**[14]** **Constitutional Law** Submission to Popular Vote; Initiative

A proposed state constitutional amendment, which is to be submitted to voters, must stand on its own merits and not be disguised as something else. West's F.S.A. Const. Art. 11, § 5.

**[15]** **Constitutional Law** Ballot Title

**Constitutional Law** Summaries, Explanatory Statements, and Statements of Purpose

A ballot title and summary for a proposed state constitutional amendment cannot either "fly under false colors" or "hide the ball" as to the amendment's true effect. West's F.S.A. Const. Art. 11, § 5; West's F.S.A. § 101.161(1).

2 Cases that cite this headnote

  

[16] **Constitutional Law** Particular amendments

**Constitutional Law** Particular amendments

Ballot title and summary for legislatively proposed state constitutional amendment concerning class sizes for public schools, which amendment would raise the constitutionally permitted maximum class sizes, were not misleading, though they did not state that the dollar amount required to fund the constitutional class size requirements would be reduced; such reduction in funding was an effect flowing naturally from the chief purpose of the amendment, which was to revise and relax maximum class size requirements while providing that the Legislature had the attendant funding obligation. West's F.S.A. Const. Art. 9, § 1; Art. 11, § 5(a); West's F.S.A. § 101.161(1).

1 Case that cites this headnote

[17] **Constitutional Law** Particular amendments

Ballot summary for legislatively proposed state constitutional amendment concerning class sizes for public schools, stating that the Legislature would be required to provide sufficient funds to "maintain the average number of students" required by the amendment, was not misleading; the statement did not hide from voters the fact that funding levels for constitutional class size requirements would actually be reduced, and instead it accurately conveyed that the Legislature, not the school districts, would be responsible for continuously providing funding for the class sizes required by the amendment. West's F.S.A. Const. Art. 9, § 1; Art. 11, § 5(a); West's F.S.A. § 101.161(1).

1 Case that cites this headnote

[18] **Constitutional Law** Particular amendments

**Constitutional Law** Particular amendments

Ballot title and summary for legislatively proposed state constitutional amendment concerning class sizes for public schools, which amendment would raise the constitutionally permitted maximum class sizes which would be funded by the State, were not misleading, though they did not mention that under the pre-amendment version of the Constitution, the State, rather than school districts, had the responsibility for providing funding for the class size requirements, which omission allegedly would have led some voters to believe that the amendment, if approved by voters, would lessen the burden on school districts or avoid an increase in local property taxes. West's F.S.A. Const. Art. 9, § 1; Art. 11, § 5(a); West's F.S.A. § 101.161(1).

1 Case that cites this headnote

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**Opinion**

PER CURIAM.

  

This appeal concerns an attack on Amendment 8, a legislatively proposed amendment to the Florida Constitution concerning class size, brought by the Florida Education Association (FEA), Andy Ford, and Lynette Estrada. The trial court upheld Amendment 8 and ordered that it remain on the November 2010 general election ballot. On appeal, the First District Court of Appeal certified to this Court that the trial court's judgment is of great public importance and requires immediate resolution by this Court. We have jurisdiction. *See* art. V, § 3(b)(5), Fla. Const.

We accepted jurisdiction and granted expedited review in light of the pending election of November 2, 2010.[1] As further explained below, we affirm the judgment of the trial court.

1 The Appellees objected to the First District certifying this case because the ballots have already been printed and the Appellants delayed filing their complaint until July 2010. However, we consider that it is preferable for this Court to determine any issues regarding whether the ballot title and summary are defective *before* the election.

## FACTUAL AND PROCEDURAL HISTORY

This case involves a joint resolution of the Florida Legislature that proposes an amendment to the Florida Constitution concerning class size. *See* Fla. S.J. Res. 2 (2010) (joint resolution proposing to amend article IX, section 1, of the Florida Constitution relating to class sizes) (hereinafter Joint Resolution). The proposed amendment, which has been designated as Amendment 8 by the Division of Elections, was passed by the constitutionally required three-fifths vote of the membership of each house during the 2010 Florida legislative session. The Joint Resolution contained the text of the proposed amendment and a ballot title and summary that ***698** the Legislature specified should be placed on the ballot.

The ballot title and summary for proposed Amendment 8 provides:

> REVISION OF THE CLASS SIZE REQUIREMENTS FOR PUBLIC SCHOOLS—The Florida Constitution currently limits the maximum number of students assigned to each teacher in public school classrooms in the following grade groupings: for prekindergarten through grade 3, 18 students; for grades 4 through 8, 22 students; and for grades 9 through 12, 25 students. Under this amendment, the current limits on the maximum number of students assigned to each teacher in public school classrooms would become limits on the average number of students assigned per class to each teacher, by specified grade grouping, in each public school. This amendment also adopts new limits on the maximum number of students assigned to each teacher in an individual classroom as follows: for prekindergarten through grade 3, 21 students; for grades 4 through 8, 27 students; and for grades 9 through 12, 30 students. This amendment specifies that class size limits do not apply to virtual classes, requires the Legislature to provide sufficient funds to maintain the average number of students required by this amendment, and schedules these revisions to take effect upon approval by the electors of this state and to operate retroactively to the beginning of the 2010–2011 school year.

The revised language and changes to article IX, section 1, were also set forth in the Joint Resolution and provided in pertinent part as follows (words stricken are deletions; words underlined are additions):

ARTICLE IX EDUCATION

SECTION 1. Public education.—

(a).... To assure that children attending public schools obtain a high quality education, the legislature shall make adequate provision to ensure that, by the beginning of the **2010–2011** ~~2010~~ school year **and for each school year thereafter**, there are a sufficient number of classrooms so

(1) | **Within each public school,** | the | **average** | ~~maximum~~ number of students ~~who are~~ assigned | **per class** | to each teacher who is teaching ~~in public school classrooms for~~ prekindergarten through grade 3 does not exceed 18 students | **and the maximum number of students assigned to each teacher in an individual classroom does not exceed 21 students** |;

(2) | **Within each public school,** | the | **average** | ~~maximum~~ number of students ~~who are~~ assigned | **per class** | to each teacher who is teaching ~~in public school classrooms for~~ grades 4 through 8 does not exceed 22 students | **and the maximum number of students assigned to each teacher in an individual classroom does not exceed 27 students** |; and

(3) | **Within each public school,** | the | **average** | ~~maximum~~ number of students ~~who are~~ assigned | **per class** | to each teacher who is teaching ~~in public school classrooms for~~ grades 9 through 12 does not exceed 25 students | **and the maximum number of students assigned to each teacher in an individual classroom does not exceed 30 students** |.

The class size requirements of this subsection do not apply to extracurricular | **or virtual** | classes. Payment of the costs associated with | **meeting** | ~~reducing class size to meet~~ these requirements is the responsibility of the state and not of local | **school** | ~~schools~~ districts. ~~Beginning with the 2003–2004 fiscal year,~~ The legislature shall provide sufficient funds to | **maintain** | ~~reduce~~ the average number of ***699** students | **required by** | ~~in each classroom by at least two students per year until the maximum number of students per classroom does not exceed the requirements of~~ this subsection.

FEA, Andy Ford, and Lynette Estrada filed a complaint on July 23, 2010, asking the trial court to determine whether the ballot summary complies with the requirements of section 101.161(1), Florida Statutes (2009). Both sides submitted motions for summary judgment, agreeing that there were no issues of material fact for determination.

The trial court rejected the challenge to Amendment 8:

> [W]hen read together, the ballot title and summary clearly and unambiguously advise the voter that the Legislature is still obligated to provide the funding required to meet the class size approved by the voter if the amendment passes, and it clearly and unambiguously advises the voter of the new class size and attendant funding obligation.

The trial court found that the ballot title and summary met the requirements of law and ordered the amendment to remain on the ballot for the November 2010 general election.

## ANALYSIS

**[1]** The standard of review of the validity of a proposed constitutional amendment is de novo. *Armstrong v. Harris,* 773 So.2d 7, 11 (Fla.2000). In reviewing the validity of Amendment 8, we will first set forth the requirements of law that apply to proposed amendments and explain the scope of our review. We will then explain the history of the Class Size Amendment adopted in 2002. Finally, we will evaluate whether Amendment 8 comports with the requirements of law. For the reasons explained below, we conclude that it does.

### Requirements for Proposed Constitutional Amendments

**[2]** **[3]** The Florida Constitution gives the Legislature authority to propose amendments for submission to the electorate. *See* art. XI, § 1, Fla. Const. Article XI, section 1, provides that the Legislature may propose an amendment to the Florida Constitution by a "joint resolution agreed to by three-fifths of the membership of each house of the legislature." *Id.* Then the proposed constitutional amendment must be "submitted to the electors at the next general election." Art. XI, § 5(a), Fla. Const. "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,* 773 So.2d at 12. "[T]he accuracy requirement in article XI, section 5, functions

  

as a kind of 'truth in packaging' law for the ballot." *Id.* at 13. The accuracy requirement applies to all proposed constitutional amendments, including those proposed by the Legislature. *Id.* at 16.

**[4]** The Court has recognized that "[a]lthough the constitution does not expressly authorize judicial review of amendments proposed by the Legislature, this Court long ago explained that the courts are the proper forum in which to litigate the validity of such amendments." *Id.* at 13–14 (footnote omitted). Specifically, the Court has stated:

> 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, ***700** and such determination is necessarily required to be in a judicial forum where the Constitution provides no other means of authoritatively determining such questions.

*Id.* at 14 (emphasis omitted) (quoting *Crawford v. Gilchrist,* 64 Fla. 41, 59 So. 963, 966 (1912)).

**[5]** This Court has traditionally "accorded a measure of deference to constitutional amendments proposed by the Legislature." *Id.* at 21. However, that 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." *Id.* at 14.

> 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.

*Id.* at 21 (emphasis omitted).

Section 101.161(1), Florida Statutes (2009), 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 & Amend. of Local Gov't Comprehensive Land Use Plans,* 902 So.2d 763, 770 (Fla.2005). Thus, section 101.161(1) provides that the substance of a proposed constitutional amendment must be printed on the ballot in "clear and unambiguous language."

**[6]** In reviewing the validity of ballot language submitted to the voters for a proposed constitutional amendment, this Court does not consider or review the substantive merits or the wisdom of the amendment. *See Fla. Dep't of State v. Slough,* 992 So.2d 142, 147 (Fla.2008); *Askew v. Firestone,* 421 So.2d 151, 155 (Fla.1982). Rather, our task is to determine whether the ballot language sets forth the substance of the amendment in a manner that satisfies the requirements of section 101.161, Florida Statutes, and article XI, section 5, of the Florida Constitution.

**[7]** **[8]** **[9]** The purpose of a ballot title and summary 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 the Att'y Gen. re Right of Citizens to Choose Health Care Providers,* 705 So.2d 563, 566 (Fla.1998) (quoting *Advisory Op. to Att'y Gen.-Fee on Everglades Sugar Prod.,* 681 So.2d 1124, 1127 (Fla.1996)). To comply with the requirements of law, the ballot language "must state the chief purpose of the proposed amendment." *Armstrong,* 773 So.2d at 18. This Court has explained that the ballot must "advise the voter sufficiently to enable him intelligently to cast his ballot." *Askew,* 421 So.2d at 155 (emphasis omitted) (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. *See Carroll v. Firestone,* 497 So.2d 1204, 1206 (Fla.1986). The ballot language must, however, give "the voter fair notice of the decision he [or she] must make." *Askew,* 421 So.2d at 155.

**[10]** **[11]** **[12]** A court may declare a proposed constitutional amendment invalid ***701** only if the record shows that the proposal is clearly and conclusively defective. *Armstrong,* 773 So.2d at 11. In assessing the ballot title and summary, 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."

*Slough,* 992 So.2d at 147 (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 Court presumes that the average voter has a certain amount of common understanding and knowledge. *See Advisory Op. to Att'y Gen. re Protect People from the Health Hazards of Second–Hand Smoke,* 814 So.2d 415, 419 (Fla.2002).

**[13]** **[14]** **[15]** 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). 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 v. Smith,* 338 So.2d 825, 829 (Fla.1976). The 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.

**The 2002 Class Size Amendment**

Because Amendment 8 would amend the 2002 Class Size Amendment passed by the voters, we begin with a review of that amendment. In 2002, an amendment to article IX, section 1, of the Florida Constitution was proposed by citizen initiative. The summary for the proposed amendment provided:

> Proposes an amendment to the State Constitution to require that the Legislature provide funding for sufficient classrooms so that there be a maximum number of students in public school classrooms for various grade levels; requires compliance by the beginning of 2010 school year; requires the Legislature, and not local school districts, to pay for the costs associated with reduced class size; prescribes a schedule for phased-in funding to achieve the required maximum class size.

*Advisory Op. to the Att'y Gen. re Fla.'s Amend. to Reduce Class Size,* 816 So.2d 580, 581 (Fla.2002).

In its evaluation of the initiative, this Court first analyzed whether the proposed amendment met the single subject requirement. A group who opposed the ballot initiative contended that the amendment violated the single subject requirement "because it requires voters who may favor a reduction in class size in Florida to also vote for whatever unspecified and unlimited expenditure of State funds may be necessary to construct or purchase additional classrooms for public schools." *Id.* at 582. This Court rejected that argument: "[T]he ballot initiative deals with a single subject—the reduction of class size. The fact that the ballot initiative requires the Legislature to fund this reduction does not constitute ... impermissible logrolling ..., but rather provides the details of how the ballot initiative will be implemented...." *Id.* at 583.

The Court further concluded that the initiative would not substantially alter or perform multiple functions of state government because it did "not specify a certain percentage of the budget or a specific amount to be spent on reducing class size." ***702** *Id.* at 584. The Court also stated that the amendment would not substantially alter or perform the functions of the local school boards:

> Although, as a result of the amendment, the Legislature may choose to fund the building of new schools to achieve the maximum classroom size set as a goal of the proposed amendment, this is not the only method of ensuring that the number of students meets the numbers set forth in the amendment. Rather than restricting the Legislature, the proposed amendment gives the Legislature latitude in designing ways to reach the class size goal articulated in the ballot initiative, and places the obligation to ensure compliance on the Legislature, not the local school boards.

*Id.* at 584–85.

In addition to whether the amendment met the single subject requirement, this Court evaluated whether the ballot information properly informed the voters in accordance with the requirements of section 101.161(1). The Court concluded that the ballot language informed voters of the amendment's chief purpose and effect:

> The title of this initiative is "Florida's Amendment to Reduce Class Size." The ballot summary makes clear that the Legislature is responsible for providing funding to reduce the number of students in public school classrooms in various grade levels.

  

> Thus, when read together, the ballot title and summary clearly inform voters of the amendment's chief purpose, and provide an accurate description of the amendment.

*Id.* at 585. The Court also stated that "the primary purpose of the amendment—the legislative funding of reduced classroom size—is adequately disclosed in the ballot title and summary." *Id.*

The Florida voters subsequently approved the 2002 Class Size Amendment, adding both a maximum class size requirement and an obligation on the Legislature to fund the class size requirement to article IX, section 1, of the Florida Constitution.

**Whether Amendment 8 Complies with the Requirements of Law**

We begin by noting that the ballot title and summary clearly and unambiguously explain the text of the constitutional amendment. Appellants do not contest this. The ballot title clearly sets forth the substance of the amendment: "REVISION OF THE CLASS SIZE REQUIREMENTS FOR PUBLIC SCHOOLS." The ballot summary unambiguously explains the existing class size requirements as well as how the required class sizes would change. Appellants also agree that the ballot summary discloses a legislative funding obligation upon passage of the proposed amendment. Indeed, the summary states that it shall be the Legislature's responsibility to fund this amendment by stating that the amendment "requires the Legislature to provide sufficient funds to maintain the average number of students required by this amendment."

**[16]** Although the Appellants agree that the ballot summary unambiguously explains the text of the amendment, they contend that it is defective because it fails to state that the amendment's chief purpose and effect is to reduce the amount of state funding for education and, further, that the ballot summary is misleading for its failure to disclose the financial impact. Essentially, Appellants' contention is that the summary is defective for failing to explain that this amendment will substantially reduce the amount of the state's current constitutional obligation to fund the existing class size restrictions.

We disagree that the failure to address the effect on state class size funding renders ***703** the ballot summary defective. Although the dollar amount required to fund the class size requirements will be affected by the change in the formula for class sizes, the constitutional obligation of the state to provide "sufficient funds" for the revised class size requirements is not being altered. Under both the current provision and under Amendment 8, Floridians would have the same right to have the state provide "sufficient funds" for the mandated class sizes. As stated by the trial court:

> Both the 2002 amendment to Article IX, Section 1, and Amendment 8 have as the stated purpose the establishment of a maximum class size, and the obligation of the Legislature to fund whatever maximum class size the voters elect. The voters will decide what the class size will be, and Amendment 8 is not confusing or misleading as to that being the decision the voter makes. Amendment 8, if passed, would not alter the Legislature's duty to fund the required class size, nor does it shift any funding obligation to the school boards. The ballot summary is not misleading in that respect in that it specifically provides and "requires the Legislature to provide sufficient funds to maintain the average number of students required by this amendment."

Further, under both the current provision and under Amendment 8, Floridians would have the same right to have the Legislature "make adequate provision" to ensure that there are a sufficient number of classrooms for the required class sizes. Thus, this case is unlike *Armstrong* and *Askew,* where we struck proposed amendments for failing to disclose that they would diminish an existing constitutional right.

Although the logical effect of increasing the maximum number of students will be to reduce the dollar amount of state class size funding, this effect flows naturally from the chief purpose—to revise and relax class sizes while providing that the Legislature has the attendant funding obligation. Further, we note that a voter would be able to draw a common-sense conclusion from a review of the ballot summary that the amount of funding needed to sufficiently fund the revised class sizes will likely be reduced. Accordingly, we conclude that the ballot language gives "the voter fair notice of the decision he must make," *Armstrong,* 773

So.2d at 15, and is not defective for failing to state that the passage of Amendment 8 may affect the amount of state class size funding.

**[17]** Appellants also argue that the ballot language indicating that the Legislature is required to provide sufficient funds to "maintain the average number of students" required by the amendment is affirmatively misleading because it hides from voters the fact that funding levels will actually be reduced. We conclude that the use of the word "maintain" in the ballot summary is not misleading. Rather, it accurately conveys that the Legislature, not the school district, is the entity responsible for continuously providing funding for the class sizes required by the amendment and does not carry an implication that the amount of funding will not be reduced as a result of the amendment.

**[18]** Finally, Appellants contend that the summary is misleading for failing to mention that the constitution currently mandates the Legislature to provide funding to reduce class sizes. Thus, they assert, the current amendment could mislead a voter into believing that Amendment 8 would shift the funding responsibility for class sizes from the local school districts to the Legislature. Appellants argue that as a result of this omission, some voters are likely to believe that their local school districts are currently forced to fund the ***704** requirements and thus a favorable vote on the amendment is necessary to lessen the burden on local school districts or to avoid an increase in local property taxes.

Our test in determining the validity of the ballot title and summary is not what "some voters" might believe but rather whether the ballot title and summary provide the voter with "fair notice of the decision he [or she] must make." *Askew,* 421 So.2d at 155. 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 827. The Court will presume that the average voter has a certain amount of common understanding and knowledge. *See Second–Hand Smoke,* 814 So.2d at 419.

Although there are cases where this Court has held that a ballot summary was defective for failing to mention an existing constitutional obligation, *see, e.g., Armstrong,* 773 So.2d at 17; *Fla. Dep't of State v. Fla. State Conference of NAACP Branches,* 43 So.3d 662, 668 (Fla.2010), we conclude that, here, the failure to mention the Legislature's existing funding obligation does not render Amendment 8's ballot summary defective. The ballot summary is not affirmatively misleading: there is nothing in the ballot summary that would imply or affirmatively convey that the local school districts currently have the funding obligation.

## CONCLUSION

We conclude that the ballot title and summary accurately represent the chief purpose of the amendment. It further provides fair notice of what the amendment contains and does not mislead the voters as to the amendment's true effect. Accordingly, we hold that the ballot language is not defective and that Amendment 8 complies with the requirements of law. We affirm the trial court's judgment that Amendment 8 shall remain on the ballot for the November 2010 general election.

It is so ordered.

CANADY, C.J., and PARIENTE, LEWIS, QUINCE, POLSTON, LABARGA, and PERRY, JJ., concur.

**All Citations**

48 So.3d 694, 262 Ed. Law Rep. 723, 35 Fla. L. Weekly S565

**End of Document**

**Negative Treatment**

There are no Negative Treatment results for this citation.

300 So.3d 698
District Court of Appeal of Florida, Second District.

GREEN EMERALD HOMES, LLC, Appellant,

v.

21ST MORTGAGE CORPORATION, a Delaware corporation authorized to transact business in Florida, Appellee.

Case No. 2D17-2192
|
Opinion filed June 7, 2019

**Synopsis**

**Background:** Mortgagee brought foreclosure action against purchaser, who took title to the property subject to the mortgage before filing of mortgagee's action. The Circuit Court, 13th Judicial Circuit, Hillsborough County, William P. Levens, entered judgment for mortgagee. Purchaser appealed.

**Holdings:** The District Court of Appeal, Salario, J., held that:

[1] the purchaser was entitled to insist that mortgagee present competent substantial evidence of amount due under the note, and

[2] testimony by mortgagee's legal team leader was insufficient to prove modification resulting in an additional $77,270 more in principal indebtedness than reflected in original mortgage documents.

Reversed and remanded.

Villanti, J., Concurred in part and dissented in part.

West Headnotes (28)

**[1] Appeal and Error** De novo review
**Appeal and Error** Competent or credible evidence

Appellate courts review a trial court's legal conclusions de novo and its factual findings for competent substantial evidence.

**[2] Mortgages and Deeds of Trust** Judicial foreclosure in general

The amount due under the note is an element of the foreclosure cause of action.

1 Case that cites this headnote

**[3] Action** Persons entitled to sue

Standing is usually regarded as an attribute the claimant—not the defendant—must possess before it can open the courthouse doors and have its suit decided.

[4] **Action** Persons entitled to sue

The requirement of standing ensures that a claimant seeking a judgment from a court has a sufficient interest in the outcome of litigation which will warrant the court's entertaining it.

[5] **Mortgages and Deeds of Trust** Persons Entitled to Foreclose; Plaintiffs

As applied to foreclosure cases, standing has been deemed to require that the claimant seeking a foreclosure judgment have the right to enforce the note secured by the mortgage it seeks to foreclose. Fla. Stat. Ann. § 673.3011.

[6] **Mortgages and Deeds of Trust** Necessary or Indispensable Parties

A titleholder is regarded by the law as an indispensable party to a foreclosure action.

[7] **Mortgages and Deeds of Trust** In personam or in rem

A foreclosure action is an action in rem or quasi in rem.

[8] **Constitutional Law** Notice and hearing in general

In the context of civil litigation, due process mandates that in any judicial proceeding, the litigants must be afforded the basic elements of notice and an opportunity to be heard. U.S. Const. Amend. 14.

[9] **Constitutional Law** Notice and Hearing

Under the due process clause, the right to be heard includes more than simply being allowed to be present and to speak; it includes the right to meaningfully introduce evidence, cross-examine witnesses, and be heard on questions of law. U.S. Const. Amend. 14.

[10] **Parties** Persons Who Must Join

**Parties** Persons Who Must Be Joined

An "indispensable party" is one who is so essential to a suit that no final decision can be rendered without their joinder.

1 Case that cites this headnote

[11] **Parties** Persons Who Must Join

**Parties** Persons Who Must Be Joined

An "indispensable party" is one whose interest will be substantially and directly affected by the outcome of the case or whose interest in the subject matter is such that if he is not joined, a complete and efficient determination of the equities and rights between the other parties is not possible.

  

1 Case that cites this headnote

[12] **Constitutional Law** Enforcement; proceedings

**Mortgages and Deeds of Trust** Defenses to Foreclosure

**Mortgages and Deeds of Trust** Necessary or Indispensable Parties

A titleholder named as an indispensable party in a foreclosure suit has a due process right to defend the suit in the same way any other named party to civil litigation has a due process right to defend; it is not as a general proposition required to demonstrate that it has standing to assert a particular issue in the way of defense to a plaintiff's claim for foreclosure. U.S. Const. Amend. 14.

1 Case that cites this headnote

[13] **Mortgages and Deeds of Trust** Right to contest mortgage

**Mortgages and Deeds of Trust** Waiver, estoppel, and consent

An owner who acquired title to a property after a facially valid mortgage on that property has been recorded is estopped from disputing the validity of that mortgage.

1 Case that cites this headnote

[14] **Mortgages and Deeds of Trust** Right to contest mortgage

**Mortgages and Deeds of Trust** Waiver, estoppel, and consent

The reason the law imposes estoppel, on disputing validity of a facially valid mortgage recorded before a purchase, is that a purchaser subsequent to the recorded mortgage has constructive notice of the mortgage and could elect to assume the mortgage as a part of the purchase.

1 Case that cites this headnote

[15] **Mortgages and Deeds of Trust** Defenses to Foreclosure

When a purchaser of property with constructive notice of a facially valid recorded mortgage declines to elect to assume the mortgage as a part of the purchase, the purchaser may not defend foreclosure of the mortgage on grounds which would be unavailable to him had he assumed payment of the mortgage.

[16] **Constitutional Law** Enforcement; proceedings

**Mortgages and Deeds of Trust** Defenses to Foreclosure

**Mortgages and Deeds of Trust** Assignees and Other Transferees

Owner of a mortgaged property who took title before filing of a foreclosure action was entitled to insist that mortgagee present competent substantial evidence of amount due under the note; owner was an indispensable party to the action as title holder to property at issue, with due process right to defend its property interest, mortgagee had computed the amount due to be over $77,270 more than original note, and computation of the amount due bore directly on purchaser's right to redemption. U.S. Const. Amend. 14.

1 Case that cites this headnote

[17] **Mortgages and Deeds of Trust** Rights and Liabilities of Transferee

  

A subsequent purchaser who is not a party to the mortgage contract generally cannot assert rights under the contract that belong to the parties.

3 Cases that cite this headnote

[18] **Contracts** Agreement for Benefit of Third Person

A person who is neither a party to nor an intended third-party beneficiary of a contract has no rights under the contract to enforce.

2 Cases that cite this headnote

[19] **Mortgages and Deeds of Trust** Construction in General

Appellate courts are to interpret and apply the provisions of mortgages the same way the courts interpret and apply the provisions of any other contract.

[20] **Mortgages and Deeds of Trust** Intervention

Purchasers of property with constructive if not actual notice of the fact that the property is subject to a foreclosure suit, have no right to insert themselves into the pending litigation to which they were not previously a party.

[21] **Mortgages and Deeds of Trust** Necessary or Indispensable Parties

In contrast to a purchaser pendente lite, a party who owns the mortgaged property at the time the foreclosure action and lis pendens are filed is an indispensable party to the litigation.

[22] **Parties** Intervention

The questions on a motion to intervene are whether a nonparty has an interest in litigation that entitles it to intervene and whether as a matter of judicial discretion it should be permitted to intervene.

[23] **Parties** Grantees or purchasers

One major consideration applicable to the intervention in a foreclosure action by purchasers pendente lite is that allowing intervention invites the unnecessary protraction of litigation by a nonparty who knew full well at the time it took title that the property was in foreclosure.

[24] **Constitutional Law** Enforcement; proceedings

**Mortgages and Deeds of Trust** Defenses to Foreclosure

A subsequent purchaser of a property subject to a mortgage has an ownership interest in the property and as a matter of due process is entitled to defend in accord with its rights and obligations under applicable substantive law. U.S. Const. Amend. 14.

[25] **Mortgages and Deeds of Trust** Conclusiveness, Operation, and Effect

Each payment default under a note and mortgage is treated as a separate event for res judicata purposes.

  

[26] **Mortgages and Deeds of Trust** Weight and sufficiency

Testimony by mortgagee's legal team leader in mortgagee's foreclosure action was insufficient to prove modification resulting in an additional $77,270 more in principal indebtedness than reflected in original mortgage documents; the team leader only established that a document that was most likely a loan modification was executed at some point to change the terms of the original note, but the actual agreement or details of the agreement were not provided.

[27] **Mortgages and Deeds of Trust** Weight and sufficiency

In a foreclosure case, the amount due under the note must be proved by competent substantial evidence.

4 Cases that cite this headnote

[28] **Mortgages and Deeds of Trust** Weight and sufficiency

A foreclosure plaintiff can prove the amount due under a note through the testimony of a competent witness who can authenticate the mortgagee's business records and confirm that they accurately reflect the amount owed on the mortgage.

5 Cases that cite this headnote

***701** Appeal from the Circuit Court for Hillsborough County; William P. Levens, Senior Judge.

**Attorneys and Law Firms**

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**Opinion**

SALARIO, Judge.

Green Emerald Homes, LLC appeals from a final judgment of foreclosure in favor of 21st Mortgage Corporation. Although Green Emerald was not a party to the mortgage the judgment foreclosed, it was the owner of the property subject to the mortgage at the time the complaint and lis pendens were filed and was a named defendant in the case. 21st Mortgage argues that we must affirm because, as a nonparty to the mortgage who purchased the property after the mortgage was recorded, Green Emerald lacks standing to dispute the legal sufficiency of its proof of the amount due, an element of the foreclosure cause of action. We reject that argument, find 21st Mortgage's proof of the amount due legally insufficient, and reverse and remand for entry of a judgment of involuntary dismissal.

I.

  

In 2007, Rosalie Reid executed a note in favor of American Residential Lending, Inc. evidencing a debt of $ 186,000 and secured by a mortgage on real property. In 2014, 21st Mortgage filed a civil action to foreclose the mortgage based on Ms. Reid's default of her payment obligations on the note. A lis pendens was filed on the same day. In addition to Ms. Reid, the foreclosure complaint and lis pendens named Green Emerald as a defendant and alleged that Green Emerald was the owner and was in possession of the property subject to its mortgage. The complaint requested ***702** a judgment "foreclosing the Defendants' interest in the Property made the subject of the Mortgage." In sum, then, the complaint named Green Emerald as a defendant and sought a judgment foreclosing its ownership interest in the mortgaged property.

Ms. Reid failed to answer the complaint, and she was ultimately the subject of a clerk's default. Green Emerald did file an answer in which it denied the bulk of 21st Mortgage's allegations and asserted several affirmative defenses. It admitted, however, 21st Mortgage's allegation that Green Emerald was the owner of the property and was then in possession of it. From there, the case proceeded in the more-or-less normal course to a nonjury trial on 21st Mortgage's claim for foreclosure.

At the beginning of trial, 21st Mortgage challenged Green Emerald's "standing" to defend the lawsuit on the basis that it was not a party to the note and mortgage. It argued that because Green Emerald was not a party to the note and mortgage, it "should not be able to contest practically anything here" and that although Green Emerald had pleaded defenses, "there's no standing for this particular defendant." It asked the court to strike Green Emerald's defenses, to hold that it was estopped from defending the case, or "otherwise provide extreme light, little weight to any arguments or objections here today."

The trial court asked how Green Emerald came into possession of the property, and Green Emerald replied that it had "obtained title to the property and is the record owner." Green Emerald reminded the court that its status as the owner of the property was established by the pleadings for purposes of the action. See, e.g., Gen. Accident Fire & Life Assurance Corp. v. Means, 362 So. 2d 135, 136 (Fla. 2d DCA 1978) (holding that there was "no issue" as to coverage under an insurance policy where coverage was alleged in the complaint and admitted in the answer). Throughout the case, no one ever disputed that Green Emerald owned the mortgaged property at the time of the filing of the foreclosure complaint and lis pendens.

21st Mortgage's lone witness at trial was Whit Reed, a "legal team leader" for 21st Mortgage who worked with loans in default. Through this witness, 21st Mortgage admitted the original note and mortgage, default letter, and payment history. Mr. Reed also testified about a proposed final judgment 21st Mortgage had tendered to the trial court. That testimony revealed that 21st Mortgage had included in the amount-due finding of the proposed final judgment $ 77,270 more in principal indebtedness than was reflected by the trial evidence. Mr. Reed testified that the principal increase was most likely the result of a modification agreed to by Ms. Reid and a prior loan servicer. He further testified that a change in principal like the one reflected in the proposed final judgment could not be accomplished without a separate written agreement and, therefore, that there had to be a written agreement on that point somewhere, but that he did not have it with him. 21st Mortgage never disputed or clarified Mr. Reed's testimony. Nor did it produce the likely loan modification (or any other document) or offer any other admissible evidence of its terms.

Green Emerald moved for an involuntary dismissal at the close of evidence. It argued, among other things, that 21st Mortgage failed to provide sufficient evidence of the amount due under the note—specifically, that without any evidence of the loan modification Mr. Reed testified to, 21st Mortgage could not prove the amount due. 21st Mortgage responded that Green Emerald lacked standing to challenge the amount due because it was not a party to the note or mortgage. The trial court denied ***703** Green Emerald's motion but—recognizing the lack of evidence of the principal amount contained in the proposed final judgment—removed the additional $ 77,270, and it entered a judgment in favor of 21st Mortgage that foreclosed Green Emerald's interests in the property and directed that the property be sold at a public sale. Green Emerald timely filed a notice of appeal.

II.

**[1]** Green Emerald argues that we should reverse because 21st Mortgage failed to adduce legally sufficient proof of the amount due under the note and mortgage. We review the trial court's legal conclusions de novo and its factual findings for competent substantial evidence. See Corya v. Sanders, 155 So. 3d 1279, 1283 (Fla. 4th DCA 2015) ("After a nonjury trial, review of trial court decisions based on legal questions are reviewed de novo and those based on findings of fact from disputed evidence are reviewed for competent, substantial evidence.").

A.

**[2]** As it did in the trial court, 21st Mortgage maintains on appeal that Green Emerald lacks standing to challenge the sufficiency of the evidence of the amount due under the note because it was not a party to the note and mortgage. The amount due under the note is an element of the foreclosure cause of action. See Ernest v. Carter, 368 So. 2d 428, 429 (Fla. 2d DCA 1979); Liberty Home Equity Sols., Inc. v. Raulston, 206 So. 3d 58, 60 (Fla. 4th DCA 2016); Bank of Am., N.A. v. Delgado, 166 So. 3d 857, 859 (Fla. 3d DCA 2015). The notion that a party named as a defendant in a civil action has no standing to require that the plaintiff prove the elements of its cause of action is a novel one, and we have been unable to find any other area where the law says that a named defendant must have standing to require that the plaintiff prove its case.

**[3]** **[4]** **[5]** Requiring a named defendant to have standing to hold the plaintiff to its proof is quite out of line with the conventional understanding of standing that prevails in civil litigation. Standing is usually regarded as an attribute the claimant—not the defendant—must possess before it can open the courthouse doors and have its suit decided. See, e.g., Rogers & Ford Constr. Corp. v. Carlandia Corp., 626 So. 2d 1350, 1352 (Fla. 1993) ("The determination of standing to sue concerns a court's exercise of jurisdiction to hear and decide the cause pled by a particular party."); Progressive Express Ins. Co. v. McGrath Cmty. Chiropractic, 913 So. 2d 1281, 1284-85 (Fla. 2d DCA 2005) (explaining that standing is an obligation of the claimant in a civil case and stating that "the plaintiff's lack of standing at the inception of the case is not a defect that may be cured by the acquisition of standing after the case is filed"). The requirement of standing ensures that a claimant seeking a judgment from a court has a "sufficient interest in the outcome of litigation which will warrant the court's entertaining it." Gen. Dev. Corp. v. Kirk, 251 So. 2d 284, 286 (Fla. 2d DCA 1971). As applied to foreclosure cases, standing has been deemed to require (loosely stated) that the claimant seeking a foreclosure judgment have the right to enforce the note secured by the mortgage it seeks to foreclose. See § 673.3011, Fla. Stat. (2014); Verizzo v. Bank of N.Y. Mellon, 220 So. 3d 1262, 1264 (Fla. 2d DCA 2017).

**[6]** **[7]** Our court has not previously—in foreclosure cases or otherwise—restricted a named defendant's right to demand that the plaintiff prove its cause of action based on a case-by-case or issue-by-issue analysis ***704** of the defendant's standing to defend.[1] That would raise serious concerns of procedural due process. Consider the circumstances here. It is undisputed in this case that Green Emerald owns the property secured by the mortgage 21st Mortgage seeks to enforce. A titleholder is regarded by the law as an indispensable party to a foreclosure action, and 21st Mortgage doubtless named Green Emerald in the foreclosure complaint in this case for that reason. See Oakland Props. Corp. v. Hogan, 96 Fla. 40, 117 So. 846, 848 (1928) ("One who holds the legal title to mortgaged property is not only necessary, but is an indispensable, party defendant in a suit to foreclose a mortgage."); U.S. Bank Nat'l Ass'n v. Bevans, 138 So. 3d 1185, 1188 (Fla. 3d DCA 2014) (holding that the legal titleholder is an indispensable party to a foreclosure complaint without whom the litigation cannot proceed). Before Green Emerald could be stripped of its ownership of the subject property—the all-but-certain effect of the foreclosure judgment 21st Mortgage sought and obtained—it was unquestionably entitled to procedural due process. See Dep't of Law Enf't v. Real Prop., 588 So. 2d 957, 964 (Fla. 1991) ("Property rights are among the basic substantive rights expressly protected by the Florida Constitution."); Adhin v. First Horizon Home Loans, 44 So. 3d 1245, 1254 n.6 (Fla. 5th DCA 2010) (explaining that due process protects the property interests of a subsequent purchaser of mortgaged property); Metro. Dade Cty. v. Sokolowski, 439 So. 2d 932, 934 (Fla. 3d DCA 1983) ("[A] property interest falls within the protections of procedural due process.").

1 We recognize that a foreclosure action is an action in rem or quasi in rem. See Aluia v. Dyck-O'Neal, Inc., 205 So. 3d 768, 773 (Fla. 2d DCA 2016). We also recognize that in some other proceedings against property, we have required a party who asserts an interest in the property to establish "standing." See, e.g., In re Forfeiture of: $ 7464 + 2002 Cadillac Escalade, Identification No.

3GYEK63N02G222802, 872 So. 2d 1017, 1018 (Fla. 2d DCA 2004) (holding that only persons who have standing can participate in a forfeiture proceeding and that standing must be based on a claim to ownership of the property). Without undertaking to detail all of the ways in which a foreclosure proceeding may be different, we stress here that Green Emerald was a named defendant in the foreclosure suit and a judgment was sought against it, which gives it, as shown in the text, a due process right to defend the action.

**[8]** **[9]** In the context of civil litigation, "[d]ue process mandates that in any judicial proceeding, the litigants must be afforded the basic elements of notice and [an] opportunity to be heard." Shlishey the Best, Inc. v. CitiFinancial Equity Servs., Inc., 14 So. 3d 1271, 1273 (Fla. 2d DCA 2009) (quoting E.I. DuPont De Nemours & Co. v. Lambert, 654 So. 2d 226, 228 (Fla. 2d DCA 1995)). The right to be heard "includes more than simply being allowed to be present and to speak"; it includes the right to meaningfully introduce evidence, cross-examine witnesses, and be heard on questions of law. Vollmer v. Key Dev. Props., Inc., 966 So. 2d 1022, 1027 (Fla. 2d DCA 2007); see also Baron v. Baron, 941 So. 2d 1233, 1236 (Fla. 2d DCA 2006) (holding that a father had a due process right to introduce evidence, cross-examine witnesses, and be heard on questions of law with respect to a mother's emergency motion to place their child in a therapeutic boarding school); Glary v. Israel, 53 So. 3d 1095, 1098-99 (Fla. 1st DCA 2011) (holding that a nonparty who was subject to an order compelling it to turn over funds to a receiver had a due process right to present evidence, cross-examine witnesses, and be heard on questions of law); Brinkley v. County of Flagler, 769 So. 2d 468, 472 (Fla. 5th DCA 2000) (holding that the owner ***705** of animals subject to a forfeiture order had a due process right to present evidence, cross-examine witnesses, and be heard on questions of law). Under the conception of standing asserted by 21st Mortgage, Green Emerald—or anyone else who purchases real property subsequent to the recording of a mortgage encumbering that property, for that matter—would not receive any of these long-recognized elements of procedural due process. It would be forced largely if not entirely to sit silent, regardless of the insufficiency of the plaintiff's proof, while the property to which it holds title is foreclosed and sold at auction.

**[10]** **[11]** That would be a tough pill to swallow with any named defendant in a civil suit, and it is even more so here in light of a titleholder's status as an indispensable party to a foreclosure suit. See Bank of N.Y. Mellon v. Burgiel, 248 So. 3d 237, 238 n.1 (Fla. 5th DCA 2018); Citibank, N.A. v. Villanueva, 174 So. 3d 612, 613 (Fla. 4th DCA 2015). An indispensable party is one who is "so essential to a suit that no final decision can be rendered without their joinder." Hertz Corp. v. Piccolo, 453 So. 2d 12, 14 n.3 (Fla. 1984). As we explained in Department of Revenue ex rel. Preston v. Cummings, 871 So. 2d 1055, 1058 (Fla. 2d DCA 2004), an indispensable party is one "whose interest will be substantially and directly affected by the outcome of the case" or "whose interest in the subject matter is such that if he is not joined[,] a complete and efficient determination of the equities and rights between the other parties is not possible." (first quoting Amerada Hess Corp. v. Morgan, 426 So. 2d 1122, 1125 (Fla. 1st DCA 1983); then quoting Allman v. Wolfe, 592 So. 2d 1261, 1263 (Fla. 2d DCA 1992)).

If the owner of property subject to a mortgage foreclosure action is so important as to be indispensable to a just adjudication, due process surely requires that the owner be permitted to defend the suit. See Ezem v. Fed. Nat'l Mortg. Ass'n, 153 So. 3d 341, 345 (Fla. 1st DCA 2014) (holding that a nonparty to a foreclosure action claiming to be a co-owner of the property subject to that action, although not a party to the mortgage securing it, was entitled to intervene because "[a]t the minimum, he is entitled to a hearing on his claimed interest"); cf. Villanueva, 174 So. 3d at 614 (holding that a foreclosure judgment was void where the subsequent purchasers of the subject property were not joined to the foreclosure litigation). If only the party to the note and mortgage is relevant, and the titleholder is nothing more than a set piece with no right to defend of any substance, there is no point in making the final resolution of a mortgage foreclosure action contingent on the titleholder being joined to the litigation.

**[12]** In sum, then, a titleholder named as an indispensable party in a foreclosure suit has a due process right to defend the suit in the same way any other named party to civil litigation has a due process right to defend. It is not as a general proposition required to demonstrate that it has "standing" to assert a particular issue in the way of defense to the plaintiff's claim for foreclosure.

B.

**[13]** **[14]** **[15]** **[16]** There are, however, two aspects of substantive foreclosure law that are commonly asserted to limit the types of issues and defenses a subsequent purchaser may raise. The first is that that an owner who acquired title to the property

after a facially valid mortgage on that property has been recorded is estopped from disputing the validity of that mortgage. See CCM Pathfinder Palm Harbor Mgmt., LLC v. Unknown Heirs, 198 So. 3d 3, 7 (Fla. 2d DCA 2015) (holding that a ***706** subsequent purchaser "is 'estopped from contesting the validity of the mortgage' " (quoting Eurovest, Ltd. v. Segall, 528 So. 2d 482, 483 (Fla. 3d DCA 1988))). The reason the law imposes this estoppel is that a purchaser subsequent to the recorded mortgage has constructive notice of the mortgage and could elect to assume the mortgage as a part of the purchase. Eurovest, 528 So. 2d at 483. When it declines that election, the purchaser "may not defend ... on grounds which would be unavailable to him had he assumed payment of the mortgage." Id. (holding that a subsequent purchaser was estopped from asserting the affirmative defense of want of consideration); see also Irwin v. Grogan-Cole, 590 So. 2d 1102, 1104 (Fla. 5th DCA 1991).

**[17]** **[18]** **[19]** The second frequently cited rule that limits the kinds of defenses a subsequent purchaser can assert is that a subsequent purchaser who is not a party to the mortgage contract generally cannot assert rights under the contract that belong to the parties. See LaFaille v. Nationstar Mortg., LLC, 197 So. 3d 1246, 1247 (Fla. 3d DCA 2016); Clay Cty. Land Trust No. 08-04-25-0078-014-27, Orange Park Tr. Servs., LLC v. JPMorgan Chase Bank, Nat'l Ass'n, 152 So. 3d 83, 84 (Fla. 1st DCA 2014).[2] This is an extension to the mortgage foreclosure context of the hornbook contract law rule that a person who is neither a party to nor an intended third-party beneficiary of a contract has no rights under the contract to enforce. See Greenacre Props., Inc. v. Rao, 933 So. 2d 19, 23 (Fla. 2d DCA 2006) ("As a general rule, a person who is not a party to a contract cannot sue for a breach ... even if the person receives some incidental benefit from the contract. A third party must establish that the contract either expressly creates rights for them ... or that the provisions of the contract primarily and directly benefit the third party or a class of persons of which the third party is a member."). The application of this general contract principle in the mortgage foreclosure context makes perfect sense because "we are to interpret and apply the provisions of mortgages the same way we interpret and apply the provisions of any other contract." Green Tree Servicing, LLC v. Milam, 177 So. 3d 7, 12-13 (Fla. 2d DCA 2015).

2 These cases involve allegations that a foreclosure plaintiff failed to comply with the default notice requirement of paragraph twenty-two of the standard residential mortgage contract. Because compliance with paragraph twenty-two is a condition precedent to a foreclosure suit, Konsulian v. Busey Bank, N.A., 61 So. 3d 1283, 1284-85 (Fla. 2d DCA 2011), there might be an argument that the failure to comply with paragraph twenty-two may be asserted by a named defendant to the suit that is not a party to the mortgage. By citing these cases, we do not express an opinion on that question.

The cases have sometimes loosely characterized the substantive rules that subsequent purchasers are estopped from contesting the validity of facially valid mortgages and cannot assert contract rights they do not own as related to a foreclosure defendant's "standing" to defend. See, e.g., Rouffe v. CitiMortgage, Inc., 241 So. 3d 870, 872 (Fla. 4th DCA 2018); Clay Cty. Land Tr., 152 So. 3d at 84. But we should recognize these rules for what they are: limitations on the rights of particular parties in the foreclosure process imposed by substantive law. Their scope is confined to the limited subject areas they cover—disputes as to the validity of mortgages and the rights of nonparties to enforce contract provisions. On their face, they do not represent a determination that a subsequent purchaser lacks standing to contest practically anything a plaintiff might assert in a foreclosure case or that a subsequent ***707** purchaser must tie each and every matter it asserts by way of defense to some interest that gives it standing to assert that specific matter.[3] See Wilmington Tr., N.A. v. Alvarez, 239 So. 3d 1265, 1266 n.1 (Fla. 3d DCA 2018) (rejecting the argument that a subsequent purchaser "lack[ed] standing" to assert the statute of limitations as a defense to a foreclosure case); 3709 N. Flagler Drive Prodigy Land Tr. v. Bank of Am., N.A., 226 So. 3d 1040, 1042 (Fla. 4th DCA 2017) (holding that a subsequent purchaser may challenge a foreclosure plaintiff's standing to foreclose because otherwise "a subsequent purchaser would never have the ability to defend against the taking of a bona fide interest in the property through a foreclosure sale").

3 We do not mean to imply that these are the only two respects in which the law might treat any specific purchaser subsequent to the recording of a mortgage differently from the borrower under the note and mortgage or from another type of subsequent purchaser, such as one who acquires title after the filing of a foreclosure action. It is possible, for example, that the law might recognize legally consequential distinctions in the facts and circumstances under which a subsequent purchaser took title that the generic use of the term "subsequent purchaser" might mask. We discuss the two rules identified in the text because they are the rules upon which 21st

Mortgage relies and because they are the ones discussed in the Florida cases addressing the standing of subsequent purchasers. We express no opinion on any other possibility.

Green Emerald's insistence that 21st Mortgage prove the required element of the amount due does not implicate either the validity of the mortgage or an effort to enforce provisions in a mortgage contract to which Green Emerald is not a party. Green Emerald is not saying that 21st Mortgage's mortgage is invalid; it is saying that where the plaintiff's own witness has testified as to the existence of a loan modification as the basis for its computation of the amount due, proof of that agreement's terms is indispensable to proof of the amount due.[4] Nor is Green Emerald trying to assert any right that inured only to Ms. Reid's benefit under the mortgage contract; it is asking the court to determine whether 21st Mortgage's proof of the amount due under the note is legally sufficient to get a judgment that forecloses its interest in the mortgaged property. This is litigation defense 101—requiring the claimant to prove the elements of its case—not the assertion of some right that Green Emerald either does not have or is estopped by law from asserting.

[4] This distinguishes the cases on which 21st Mortgage relies, all of which involved the assertion of some defense that went to the validity of the mortgage or its express terms. See Wells Fargo Bank, N.A. v. Rutledge, 230 So. 3d 550, 552 (Fla. 2d DCA 2017) (holding that a third-party purchaser lacked standing to argue that the borrower's signature had been forged on the note and mortgage); CCM Pathfinder, 198 So. 3d at 7 (holding that a subsequent purchaser was bound by a provision in the mortgage contract waiving the statute of limitations for a foreclosure action); LaFaille, 197 So. 3d at 1247 (stating that subsequent titleholders could not assert a contract right that belonged only to the parties to the mortgage); Eurovest, 528 So. 2d at 483 (holding that a third-party purchaser was estopped from arguing that the mortgage was procured by fraud and without consideration).

**[20]** **[21]** We recognize that we have decided cases addressing a subsequent purchaser's ability to intervene in a pending foreclosure action that hold that there is no right to intervene and that those cases sometimes speak in terms of the purchaser's standing. Those cases have no bearing with regard to a subsequent purchaser who took title prior to the foreclosure litigation and has been named as a defendant in that litigation. First and foremost, those cases involve subsequent purchasers who ***708** acquired the mortgaged property after the foreclosure complaint and lis pendens were filed, not before. See, e.g., Bank of N.Y. Mellon for Certificateholders CWALT, Inc. v. HOA Rescue Fund, LLC, 249 So. 3d 731, 733-34 (Fla. 2d DCA 2018); Ventures Tr. 2013-I-H-R v. Asset Acquisitions & Holdings Tr., 202 So. 3d 939, 942-43 (Fla. 2d DCA 2016); Bonafide Props. v. Wells Fargo Bank, N.A., 198 So. 3d 694, 695 (Fla. 2d DCA 2016); Market Tampa Invs., LLC v. Stobaugh, 177 So. 3d 31, 32 (Fla. 2d DCA 2015). Because they purchase property with constructive if not actual notice of the fact that the property is subject to a foreclosure suit, the law treats purchasers pendente lite—pending litigation—accordingly and holds that they have no right to insert themselves into the pending litigation to which they were not previously a party. See Rutledge, 230 So. 3d at 552 ("Rutledge is a subsequent purchaser who was at least constructively aware of Wells Fargo's recorded lis pendens when he purchased the property."); Bonafide Props., 198 So. 3d at 695 (affirming an order denying a subsequent purchaser's motion to intervene because "it is undisputed that [it] acquired its rights to the property four years after Wells Fargo initiated the foreclosure action and filed its notice of lis pendens"); see also Whitburn, LLC v. Wells Fargo Bank, N.A., 190 So. 3d 1087, 1091 (Fla. 2d DCA 2015) (holding that purchaser subsequent to lis pendens "took the property subject to the outcome of the litigation ..., including the foreclosure sale"). In contrast to a purchaser pendente lite, a party who owns the mortgaged property at the time the foreclosure action and lis pendens are filed is an indispensable party to the litigation. Bevans, 138 So. 3d at 1188. Our court has (rightly) never held that a subsequent purchaser in that situation lacks the right to insist that the plaintiff that has haled the purchaser into court prove the elements of its case.

**[22]** **[23]** Furthermore, the questions on a motion to intervene are whether a nonparty has an interest in litigation that entitles it to intervene and whether as a matter of judicial discretion it should be permitted to intervene. See generally Union Cent. Life Ins. Co. v. Carlisle, 593 So. 2d 505, 507-08 (Fla. 1992). One major consideration applicable to the intervention by purchasers pendente lite is that allowing intervention invites the unnecessary protraction of litigation by a nonparty who knew full well at the time it took title that the property was in foreclosure. See Bymel v. Bank of Am., N.A., 159 So. 3d 345, 347 (Fla. 3d DCA 2015) ("Allowing [a purchaser pendente lite] to intervene would unnecessarily prolong the foreclosure action."). To say that a nonparty to litigation does not have an interest sufficient to justify intervention because of when they acquired their interest or that intervention is not advisable under the facts out of concern for delay says nothing about whether a party named as a defendant by the plaintiff and actually joined in the litigation should be permitted to defend itself fully.

**[24]** We also recognize that other courts have held that a subsequent purchaser has "standing" to contest the amount due because the computation of the amount due bears directly on its right of redemption—i.e., its right to cure the mortgagor's indebtedness by paying everything that is due. See Clay Cty. Land Tr., 152 So. 3d at 85; see also § 45.0315, Fla. Stat. (2014); Beauchamp v. Bank of N.Y., 150 So. 3d 827, 828 (Fla. 4th DCA 2014). But that analysis proceeds from the assumption, which we think unwarranted, that a subsequent purchaser lacks standing to do anything in defense of a foreclosure case unless it can relate it to a right or interest specific to subsequent purchasers. ***709** As we have explained in this opinion, a subsequent purchaser has an ownership interest in property and as a matter of due process is entitled to defend in accord with its rights and obligations under applicable substantive law.

**[25]** Accordingly, we hold that as the owner of the mortgaged property who took title before the filing of the lis pendens, Green Emerald was entitled to insist that 21st Mortgage present competent substantial evidence of the amount due under the note.[5] We now turn to whether it did so.

5 The dissent says that a subsequent purchaser receives all the process it is due when its participation is limited to protecting its statutory right of redemption because (1) a subsequent purchaser takes title subject to the mortgage and (2) some subsequent purchasers take advantage of borrowers in distressed situations. As to the first point, the law already limits the subsequent purchaser's rights on the grounds that it takes title subject to the mortgage; it holds that a subsequent purchaser is estopped from disputing the validity of a facially valid mortgage. As we have shown, that principle does not translate into the rule the dissent wants—namely, that a subsequent purchaser, even though it owns the property and is named as a defendant, can be precluded from saying or doing anything in defense of a foreclosure action unless it can convince a judge that its action is tied to the right of redemption. As to the second point, if bad behavior by some subsequent purchasers is a problem, the extent to which it demands action and what action it demands are policy questions properly addressed to the legislature and not questions that we as law-trained judges have either the technical competence or the information-gathering tools to answer. See Bonafide Props., 198 So. 3d at 698 (Altenbernd, J., concurring) (noting that the practice of some subsequent purchasers buying distressed properties and putting rent-paying tenants in them likely has "a measure of good ... that should be preserved" and "a measure of bad that ought to be regulated or prohibited" and explaining that "[t]his court is not a proper forum to make these determinations or to establish any needed rule of law"). The dissent concludes by saying that our decision "strips 21st Mortgage of its security under the guise of due process." That is not a reasonable characterization; at most, we have required that 21st Mortgage do what virtually any other plaintiff who seeks a judgment against virtually any other defendant must do—prove the elements of its case. And although we cannot preemptively decide the issue, we note that because the law treats each payment default under a note and mortgage as a separate event for res judicata purposes, the smart money says that 21st Mortgage can and will file a new foreclosure action (as soon as tomorrow, if it wants) based on payment defaults subsequent to those involved here. See Provident Funding Assocs., L.P. v. MDTR, 257 So. 3d 1114, 1118 (Fla. 2d DCA 2018) (holding that a judgment in an initial foreclosure action did not bar a subsequent action based on different payment defaults under the same note and mortgage where "[t]he final judgment in the first foreclosure action did not make any determination that would invalidate the note and mortgage or preclude [the plaintiff] from ever suing upon the note and mortgage" and relying on Singleton v. Greymar Associates, Inc., 882 So. 2d 1004 (Fla. 2004), in support of that proposition).

III.

**[26]** **[27]** In a foreclosure case, the amount due under the note must be proved by competent substantial evidence. Wolkoff v. Am. Home Mortg. Servicing, Inc., 153 So. 3d 280, 281 (Fla. 2d DCA 2014); E & Y Assets, LLC v. Sahadeo, 180 So. 3d 1162, 1163 (Fla. 4th DCA 2015). 21st Mortgage's failure to produce a loan modification its own witness testified must have existed left it unable to meet that burden.

**[28]** As we explained in Wolkoff, a foreclosure plaintiff typically proves the amount due "through the testimony of a competent witness who can authenticate the mortgagee's business records and confirm that they accurately reflect the amount owed on the mortgage." 153 So. 3d at 281 (emphasis added). Here, Mr. Reed's testimony established without contradiction ***710** that at some point a document, most likely a loan modification agreement, was executed that changed the terms of the original note. Without the loan modification or other admissible evidence of its contents, it is not possible to determine the basis for

21st Mortgage's computation of the principal, interest, or other charges folded into the total amount due in the final judgment because the record is simply silent on what (after modification) the borrower's obligations in this regard were. Cf. Werb v. Green Tree Servicing, LLC, 231 So. 3d 483, 484 (Fla. 4th DCA 2017) (holding that the bank failed to prove the amount due where its only evidence was a witness's testimony that the figure in a proposed final judgment, which had not been admitted into evidence, comported with the bank's records; but it did not show how interest and additional fees were calculated). The trial court's reduction of the claimed principal amount due did not cure this problem; the fact remains that there was no evidentiary basis to determine what the borrower in fact owed. We note that on appeal, not even 21st Mortgage has argued that its evidence of the amount due was legally sufficient.

IV.

21st Mortgage failed to present legally sufficient evidence of the amount due. We reverse and remand for the trial court to enter an order of involuntary dismissal, which was the remedy Green Emerald properly sought in the trial court.[6] See Tracey v. Wells Fargo Bank, N.A., 264 So. 3d 1152, 1161-65 (Fla. 2d DCA 2019) (holding that a new trial is generally improper upon a reversal based on the insufficiency of the evidence absent exceptional circumstances and harmonizing this court's prior opinions on the scope of remand under this rubric).

6 We note that 21st Mortgage has not argued that there are components of the amount due that were sufficiently proved notwithstanding the absence of evidence with regard to the loan modification to which its witness testified. See, e.g., Boyette v. BAC Home Loans Servicing, LP, 164 So. 3d 9, 10 (Fla. 2d DCA 2015).

Reversed and remanded with instructions.

ROTHSTEIN-YOUAKIM, J., Concurs.

VILLANTI, J., Concurring in part and dissenting in part.

VILLANTI, Judge, Concurring in part and dissenting in part.

I concur with that portion of the majority's opinion that reverses the damages awarded in the final judgment because it is clear that 21st Mortgage failed to carry its burden of proof as to the amount of the judgment to which it was entitled. However, I cannot concur in the remainder of the opinion because, in my view, Green Emerald received all the process it was due.

It is true, as the majority points out, that Green Emerald held legal title to the property on the date that 21st Mortgage filed its foreclosure complaint. However, it is also clear from the record that Green Emerald took its title subject to 21st Mortgage's prior recorded mortgage. Green Emerald had constructive, if not actual, notice of the recorded mortgage when it took title; yet it elected not to assume the mortgage, and it undertook no efforts to satisfy the mortgage debt so as to obtain clear title. Under Florida law, it is presumed that a buyer with notice of the mortgage took the mortgage debt into consideration in its purchase price of the property. See Spinney v. Winter Park Bldg. & Loan Ass'n, 120 Fla. 453, 162 So. 899, 903 (1935) (quoting Ala.-Fla. Co. v. Mays, 111 Fla. 100, 149 So. 61, 64 (1933)). And the titleholder has the right to either ***711** pay the mortgage debt or redeem the property rather than lose it to foreclosure. See § 45.0315, Fla. Stat. (2017) ("At any time before the later of the filing of a certificate of sale by the clerk of the court or the time specified in the judgment, order, or decree of foreclosure, the mortgagor or the holder of any subordinate interest may cure the mortgagor's indebtedness and prevent a foreclosure sale by paying the amount of moneys specified in the judgment, order, or decree of foreclosure, or if no judgment, order, or decree of foreclosure has been rendered, by tendering the performance due under the security agreement, including any amounts due because of the exercise of a right to accelerate, plus the reasonable expenses of proceeding to foreclosure incurred to the time of tender, including reasonable attorney's fees of the creditor."). If Green Emerald wanted to obtain clear title to the property, it simply needed to exercise its right to pay the mortgage debt that it knew existed when it took title to the property. Hence,

contrary to what the majority asserts, it was not "all but certain" that Green Emerald would be stripped of its ownership of the property by any foreclosure judgment 21st Mortgage sought and obtained. That was all but certain only if Green Emerald had no intention of ever paying the mortgage debt that it knew encumbered the property when it took title.

Of course, we know that many companies were formed in the wake of Florida's foreclosure crisis to do just that—take title from distressed homeowners at little to no expense, put rent-paying tenants in those properties, and then collect rents while not paying the mortgages until such time as the bank could foreclose. See, e.g., Mortgages: Most Common Forms of Fraud, Mortgage & Real Estate Executives Rpt. (Feb. 15, 2019). Many of these companies spent portions of their rent collections actively fighting foreclosure proceedings brought by banks that held purchase-money mortgages from the now-absent former homeowners with no intention of ever paying a dime toward the mortgage debt that they knew encumbered the properties. In my view, the broad sweep of the majority's opinion will simply encourage such companies to continue to take advantage of desperate homeowners.

We have previously held that "[t]he extent of procedural due process protection varies with the character of the interest and nature of the proceeding involved." Carmona v. Wal-Mart Stores, E., LP, 81 So. 3d 461, 464 (Fla. 2d DCA 2011) (quoting Carillon Cmty. Residential v. Seminole County, 45 So. 3d 7, 9 (Fla. 5th DCA 2010)). We also noted that due process does not lend itself to a single, unchanging test. Instead, courts must "consider the facts of the particular case to determine whether the parties have been accorded that which the state and federal constitutions demand." Id. The majority recognizes that a third party who takes title after the foreclosure complaint and lis pendens have been filed does not have the right to challenge any aspect of the foreclosure proceeding. I would hold that the same is true for a third party who takes title before a foreclosure complaint is filed, who has notice of the prior-recorded mortgage, and who fails or refuses to assume that mortgage or ensure that it has been satisfied. The title-taker is charged with notice of the mortgage in either situation, and we should not "reward" those who rush in and secure title from distressed homeowners before a foreclosure complaint is filed by providing them with more extensive due process protections. Regardless of the filing of a complaint, the legal interest held is the same—legal title subject to the prior-recorded mortgage and the bank's concomitant right to foreclose if ***712** the mortgage is not paid. Therefore, since the scope of the interest is the same, the scope of the due process protections should be the same.

Further, as I suggested two years ago, I continue to believe that it would behoove the legislature to amend the foreclosure statutes to require that any foreclosure defendant wishing to raise any defense other than payment make the payments due under the existing note and mortgage into the registry of the court. See Shaffer v. Deutsche Bank Nat'l Tr., 235 So. 3d 943, 947 (Fla. 2d DCA 2017) (Villanti, J., concurring specially). Such a procedure would go a long way toward ensuring that the due process rights of both the bank and the holder of legal title to the property are protected during foreclosure litigation.

In sum, I agree with the majority that Green Emerald had the due process right to challenge the amount of the foreclosure judgment because the amount of that judgment directly affected Green Emerald's statutory right of redemption. However, I disagree with the remainder of the decision, which essentially strips 21st Mortgage of its security under the guise of due process. Therefore, I would reverse only the damages awarded in the final judgment and remand for further proceedings on that issue alone.

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72 So.2d 796
Supreme Court of Florida, En Banc.

HILL

v.

MILANDER, Mayor, et al.

May 11, 1954.
|
Rehearing Denied June 10, 1954.

**Synopsis**

Action contesting validity of election on question whether Hialeah Council should appoint a board to prepare a proposed new city charter as provided by designated statute, on ground that entire bill should have been printed on the ballot. The Circuit Court, Dade County, William A. Herin, J., entered judgment upholding the election, and plaintiffs appealed. The Supreme Court, Drew, J., held, inter alia, that the ballot sufficiently apprised voters of question to be determined.

Affirmed.

West Headnotes (7)

**[1] Election Law** Hearing and scope of inquiry or review in general

Where evidence before trial court, in action contesting validity of election on ground that ballot was insufficient in form, was not before Supreme Court, Supreme Court was bound by trial court's implied finding that electors had full knowledge of proposition upon which they were voting. Sp.Acts 1953, c. 29113, § 2; F.S.A.Const. art. 3, § 21.

**[2] Evidence** Elections and Appointments to Office

Supreme Court would take judicial knowledge of limitations inherent in use of voting machines so far as amount of printed material thereon was concerned.

**[3] Election Law** Ballots in general

The entire bill to be submitted to voters need not be set out in full on ballot; all that is required is that voters have notice of that which they must decide. Sp.Acts 1953, c. 29113, § 2; F.S.A.Const. art. 3, § 21.

7 Cases that cite this headnote

**[4] Evidence** Elections and Appointments to Office

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.

**[5] Evidence** Elections and Appointments to Office

  

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.

8 Cases that cite this headnote

[6] **Municipal Corporations** Amendment of charter or special act

Ballot submitting to voters question whether Hialeah Council should appoint a board to prepare a proposed new city charter as provided by designated statute sufficiently advised voters of question to be decided and was not invalid because entire bill was not set forth on ballot. Sp.Acts 1953, c. 29113, § 2; F.S.A.Const. art. 3, § 21.

19 Cases that cite this headnote

[7] **Municipal Corporations** Amendment of charter or special act

Voters' approval of proposition that Hialeah Council should appoint board to prepare proposed new city charter was necessarily an approval of the act of preparing the charter. Sp.Acts 1953, c. 29113, § 2; F.S.A.Const. art. 3, § 21.

1 Case that cites this headnote

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**Opinion**

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 Charter as provided by Chapter 29113, Laws of Florida, 1953'; and that on said proposition 4,331 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 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.

**[1]** 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. We must assume, therefore, that the electors had full knowledge of the proposition upon which they were voting.

**[2]** **[3]** **[4]** **[5]** **[6]** 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 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 comples 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 and 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.

**[7]** It is argued that the only proposition 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 provision '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 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 requring 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 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 Charter 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 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.

ROBERTS, C. J., and TERRELL, THOMAS, and HOBSON, JJ., concur.

SEBRING, J., not participating.

**All Citations**

72 So.2d 796

**End of Document**

**Negative Treatment**

There are no Negative Treatment results for this citation.

120 So.3d 1282

Editor's Note: Additions are indicated by | **Text** | and deletions by ~~Text~~ .

District Court of Appeal of Florida, Third District.

LET MIAMI BEACH DECIDE, a Florida Political Committee, Appellant,

v.

CITY OF MIAMI BEACH, et al., Appellees.

No. 3D13–2243

|

Sept. 20, 2013.

**Synopsis**

**Background:** City brought declaratory judgment action against political committee, as the main proponent and sponsor of initiative petition, seeking a declaration that two questions being put to the voters with regard to a convention center project were in accordance with the provisions of the city charter and general laws of the state, and committee counterclaimed, seeking a declaration that lease approval question had been improperly placed on special election ballot. The Circuit Court, Miami–Dade County, Daryl E. Trawick, J., allowed master developer to intervene, and entered judgment in favor of city and developer, and dismissed committee's counterclaims for declaratory and injunctive relief for lack of standing. Committee appealed.

**Holdings:** The District Court of Appeal, Logue, J., held that:

[1] city waived issue of whether political committee had standing to raise counterclaims;

[2] master developer was precluded from challenging committee's standing;

[3] voters were required to be provided with, and allowed to approve, material terms of lease pursuant to city charter provision;

[4] city charter provision was not intended to control the sequence of steps involved in approving lease agreement;

[5] lease approval question as posed on ballot summary was insufficient to provide the voters with the information needed to intelligently cast their ballots to approve or disapprove the lease of certain property in the vicinity of convention center; and

[6] ballot question violated the statutory requirement of clarity and accuracy, and had to be removed from ballot.

Reversed.

West Headnotes (9)

**[1] Municipal Corporations** Initiative procedure

City waived issue of whether political committee had standing to raise counterclaims with regard to city's declaratory judgment action, when it named the committee as a defendant in action in which city sought a declaration that a statement it had added to a charter amendment question complied with state law, took the position that the disputed language was necessary to dispel voter confusion that might otherwise result from having two questions on the same ballot, and failed to raise the issue of standing as an affirmative defense. West's F.S.A. § 101.161.

[2] **Municipal Corporations** Initiative procedure

Master developer for city convention center project was not an indispensable party to declaratory judgment action brought by city against political committee that sponsored initiative petition, and thus, was precluded from challenging committee's standing to bring counterclaim against city; as an intervening party, developer had to take the case as it found it because the intervention was necessarily in subordination to, and in recognition of, the propriety of the main proceeding. West's F.S.A. RCP Rule 1.230.

2 Cases that cite this headnote

[3] **Municipal Corporations** Grants of rights to use public property in general

Voters who were empowered by city charter to approve the lease of certain property in the vicinity of convention center were entitled to receive the same essential information a commissioner would need to decide whether to approve such a lease, and thus, while charter provision did not require that voters be presented with every single term or provision of lease, they were required to be provided with, and allowed to approve, the material terms of the lease pursuant to the charter provision; the decision whether to approve a lease is made by weighing the competing pros and cons as reflected in the material terms of the lease agreement.

1 Case that cites this headnote

[4] **Municipal Corporations** Grants of rights to use public property in general

City charter provision that empowered voters to approve the lease of certain property in the vicinity of convention center was not intended to control the sequence of the many steps involved in approving such a lease, even if it were a preferred practice to ask voters to approve the lease only after a written lease agreement had been fully negotiated, and thus city had the authority to control the timing of the various steps involved in finalizing the lease of property subject to such referendum requirements, provided the sequence it chose did not compromise the spirit or letter of the charter provision; there was no language in the charter specifically imposing any particular sequence or timing in that regard.

2 Cases that cite this headnote

[5] **Municipal Corporations** Grants of rights to use public property in general

Lease approval question as posed on ballot summary was insufficient to provide the voters with the information needed to intelligently cast their ballots to approve or disapprove the lease of certain property in the vicinity of convention center; lease approval question lacked material terms, including the amount of rent to be paid, square footage and exact location of the property to be conveyed to developer, height of any air rights to be transferred, and a statement of other additional consideration being given by the parties.

[6] **Municipal Corporations** Initiative procedure

The true effect of a lease approval question being put to voters regarding the lease of certain property located near convention center was different from its apparent effect, and thus, because it was confusing to voters, it violated the

  

statutory requirement of ballot clarity and accuracy, and had to be removed from the ballot; the ballot question failed to give to voters the material terms of the lease the were being asked to vote on. West's F.S.A. § 101.161.

1 Case that cites this headnote

[7] **Election Law** Public policy in general

There is a strong public policy against courts interfering in the democratic processes of elections.

1 Case that cites this headnote

[8] **Constitutional Law** Summaries, Explanatory Statements, and Statements of Purpose

**Election Law** Pre-election challenges or review

In evaluating a proposed ballot that addresses a constitutional amendment or other public measure to be submitted to the vote of the people for accuracy and clarity a court looks beyond the subjective criteria espoused by the amendment's sponsor to the objective criteria indicating the ballot proposal's main effect; this evaluation requires consideration of the ballot proposal's true meaning, and ramifications. West's F.S.A. § 101.161.

1 Case that cites this headnote

[9] **Constitutional Law** Summaries, Explanatory Statements, and Statements of Purpose

**Election Law** Pre-election challenges or review

Courts evaluating a proposed ballot that addresses a constitutional amendment or other public measure to be submitted to the vote of the people are required to direct the removal of matters from the ballot where the required summary does not inform the voters of the true effect of the ballot proposal. West's F.S.A. § 101.161.

2 Cases that cite this headnote

**Attorneys and Law Firms**

***1284** Kurkin Brandes, LLP, and Juan–Carlos Planas, Miami, for appellant.

Jose Smith, City Attorney, and Raul Aguila, Chief Deputy City Attorney, and Jean K. Olin, for appellee City of Miami Beach; Bilzin Sumberg Baena Price & Axelrod LLP, and Eileen Ball Mehta, Albert E. Dotson, David M. Gersten and Eric Singer, for appellee SBACE, LLC.

Before ROTHENBERG, FERNANDEZ, and LOGUE, JJ.

**Opinion**

LOGUE, J.

Let Miami Beach Decide, a Florida Political Committee ("the Political Committee"), appeals a declaratory judgment entered in favor of the City of Miami Beach and SBACE, LLC. The dispute concerns two ballot questions relating to section 1.03(b)(2) of the Miami Beach Charter ("the Charter Provision").

The Charter Provision provides that the lease of certain properties in the vicinity of the Miami Beach Convention Center for ten years or longer must be approved by a majority vote of the voters in a City-wide referendum. The first ballot question at issue

  

("the charter amendment question") is the result of a citizen's initiative. It proposes an amendment to the Charter Provision to increase the required voter approval from fifty to sixty percent. The second ballot question at issue ("the lease approval question") is a referendum placed on the ballot by the City. It asks the voters to approve, pursuant to the Charter Provision, a lease of certain properties to SBACE for ninety-nine years. However, the final terms of the SBACE lease have not been negotiated and the lease approval question as written does not allow the voters to learn, much less approve, material terms necessary to form a lease of real estate, such as amount of rent and an adequate description of the property being leased.

The focus of this case is whether the City framed the ballot questions in a manner that accurately communicates their true effect as required by section 101.161, Florida Statutes (2013). The apparent purpose of the lease approval question is to obtain voter approval of the lease as required by the Charter Provision. The lease approval question as written, however, does not fulfill this function. To approve a lease under the Charter Provision, the voters must be given notice of the material terms of the lease they are being asked to approve. Because the lease approval question fails to give voters this necessary information, by including such information or referring voters to records providing such information, it does not qualify as a proper ballot question to obtain voter approval of a lease. Because its true effect is different from its apparent effect, the lease approval question is confusing and violates the requirement of ballot clarity and accuracy established by section 101.161. For this reason, the lease approval question must be removed from the ballot.

## FACTS AND PROCEDURAL BACKGROUND

In March 2011, the City Commission adopted a resolution that endorsed the ***1285** concept of renovating and expanding the Miami Beach Convention Center, including the development of an adjacent hotel ("the convention center project"). The City Commission subsequently authorized the City Administration to issue a request for qualifications from developers. The request for qualifications was structured as a two-phased process, with phase one designated as the evaluation and selection process, and phase two designated as the negotiations process.

In April 2013, the Political Committee was formed. On July 2, 2013, the Miami–Dade County Elections Department issued a certificate finding that the Political Committee had obtained the requisite number of signatures to place the following charter amendment on a City ballot:

Sec. 1.03.—Powers of city.

....

(b) Alienability of property.

....

2. The sale, exchange, conveyance or lease of ten years or longer of the following properties shall also require approval by a majority vote of the voters in a City-wide referendum: (1) Lots West of the North Shore Open Space Park: All City-owned property bounded by 87th Street on the North, Collins Avenue on the East, 79th Street on the South, and Collins Court on the West; (2) Cultural Campus: All City-owned property bounded by 22nd Street on the North, Park Avenue on the West, 21st Street on the South, and Miami Beach Drive on the East; (3) 72nd Street Parking Lot: The City-owned surface parking lot bounded by 73rd Street on the North, Collins Avenue on the East, 72nd Street on the South, and Harding Avenue on the West; ~~(4) Convention Center Parking Lots: All City-owned surface parking lots located in the Civic and Convention Center District, generally bounded by Lincoln Lane on the South, Washington Avenue on the East, Meridian Avenue on the West and Dade Boulevard on the North;~~ and (~~54~~ ) Lincoln Road Parking Lots: All City-owned surface parking lots in the vicinity of Lincoln Road located within the area bounded by 17th Street on the North, Euclid Avenue on the East, 16th Street on the South, and West Avenue on the West.

*3. The sale, exchange, conveyance or lease of ten years or longer of the following properties shall require approval by vote of at least sixty (60) percent of the City's voters voting thereon in a City-wide referendum: (1) Convention Center Parking Lots: All City-owned surface parking lots located in the Civic and Convention Center District, generally bounded by Lincoln Lane on the South, Washington Avenue on the East, Meridian Avenue on the West and Dade Boulevard on the North; (2) Convention Center Campus: All City-owned property, except for the Convention Center and Carl Fisher Club House, located within the Civic and Convention Center District (includes City Hall, 1701 Meridian Street, 555 17th Street, 21st Street Community Center, The Fillmore Miami Beach/Jackie Gleason Theater, and the 17th Street Parking Garage). All local laws, charter provisions and ordinances of the City in conflict with this provision are hereby repealed. This provision shall become effective immediately upon acceptance of the certification of election results by the City Commission.*

In sum, the Political Committee's charter amendment would require the lease for over ten years of certain property in the vicinity of the convention center be approved by sixty percent of the voters—as opposed to fifty percent of the voters. It also increased the properties subject to the ***1286** referendum process. The acknowledged goal of the Political Committee was to have the charter amendment apply to the approval of the convention center project before any long-term lease was signed.

On July 17, 2013, after numerous public hearings and extensive public debate, the City Commission approved the selection of SBACE as the master developer for the convention center project. As part of the same resolution, the Commission directed the City Manager to negotiate a term sheet, development agreement, and ground leases for the project and submit them for approval by the Commission at a future date. The basis for the negotiations was a detailed letter of intent submitted by SBACE, consisting of over one hundred and fifty pages, which incorporated a proposed master plan for the project. By its terms, however, the letter of intent is "not intended to limit, and does not limit, any and all terms and conditions that may be incorporated into the final documents." Among the issues to be negotiated are the amount of rent to be paid, the exact dimension of the property to be leased, the height of the air rights to be conveyed, and the nature of other consideration to be provided by the parties.

Two days later, the City Commission scheduled a November 5, 2013, special election for the purpose of presenting to the City's electorate the two ballot measures. Although the City placed the charter amendment question on the ballot, it added language to the charter amendment question excluding its applicability to the convention center project. The Political Committee objected to the City adding such limiting language to the proposal it had placed on the ballot by citizen initiative.

The first ballot question, the charter amendment question, with the disputed language emphasized, reads as follows:

SHALL CHARTER SECTION 1.03(b) REQUIRING MAJORITY VOTER APPROVAL BEFORE CITY'S SALE, LEASE EXCEEDING TEN YEARS, EXCHANGE OR CONVEYANCE OF CONVENTION CENTER PARKING LOTS BE CHANGED TO:

- REQUIRE 60% VOTER APPROVAL INSTEAD; AND
- INCLUDE "CONVENTION CENTER CAMPUS" (ALL CITY–OWNED PROPERTY WITHIN CIVIC AND CONVENTION CENTER DISTRICT EXCEPT CONVENTION CENTER AND CARL FISHER CLUBHOUSE) WITHIN CATEGORY OF CITY–OWNED PROPERTIES SUBJECT TO 60% VOTER APPROVAL REQUIREMENT?

(THIS CHARTER CHANGE INAPPLICABLE TO "CONVENTION CENTER PROJECT" QUESTION BELOW.)

The second ballot question, the lease approval question, asked voters to determine whether the City should enter into a ninety-nine-year lease agreement with SBACE involving certain City-owned property in the vicinity of the convention center:

SHOULD CITY ENTER INTO 99 YEAR LEASES WITH SOUTH BEACH ARTS CULTURE ENTERTAINMENT ("TISHMAN") REQUIRING PAYMENT TO CITY OF FAIR MARKET RENT ON THESE CITY PROPERTIES:

- CONVENTION CENTER PARKING LOTS;

  

- CONVENTION CENTER DRIVE;
- PORTIONS OF CONVENTION CENTER, CENTER'S AIR RIGHTS AND PARKING SPACES;
- 17TH STREET GARAGE SITE'S GROUND FLOOR ("GARAGE");

***1287** FOR TISHMAN'S DEVELOPMENT THEREON OF:

- 800 ROOM HOTEL;
- 20,000 SQUARE FEET RETAIL/RESTAURANTS NORTH OF 17TH STREET;
- 70,000 SQUARE FEET RETAIL/RESTAURANTS IN THE GARAGE?

The resolutions that placed the questions on the ballot indicated that the questions were being put to the voters "[i]n accordance with provisions of the Charter of the City of Miami Beach, Florida and the general laws of the State of Florida."

The City subsequently filed its complaint for declaratory relief, seeking a declaration that the charter amendment question complied with section 101.161, Florida Statutes, and, in particular, that it was legal for the City to add the reference that "This charter change inapplicable to the 'convention center project' question below." The City asserted that such language was necessary to avoid voter confusion resulting from both questions being present on the same ballot. The City named the Political Committee as the defendant in the action, alleging that the Political Committee, as the main proponent and sponsor of the initiative petition that generated the charter amendment question, "has an actual present, adverse and antagonistic interest in the subject matter of this lawsuit."

The Political Committee filed an answer, affirmative defenses, and a counterclaim. In an amended counterclaim, the Political Committee sought a declaration that the lease approval question had been improperly placed on the special election ballot because, under the Charter Provision, a referendum to approve a lease of the subject property to a developer cannot take place until the City and the developer enter into a lease agreement.

SBACE filed a motion to intervene, which the trial court granted. SBACE independently raised the issue of the Political Committee's lack of standing after it intervened.

Following a hearing, the trial court entered a declaratory judgment in favor of the City and SBACE, and dismissed the Political Committee's counterclaim for declaratory and injunctive relief for lack of standing. This appeal followed.

## ANALYSIS

The Political Committee raises two issues on appeal: (1) the trial court erred in dismissing its counterclaim on the basis that it lacked standing to bring the counterclaim; and (2) the trial court erred by failing to declare that the lease approval question violated section 101.161, Florida Statutes, and the Charter Provision. We agree with the Political Committee on both grounds.

## I. STANDING

**[1]** With regards to the first question, the City waived the issue of standing. First, the City waived the issue by naming the Political Committee as the defendant in its declaratory action. In that action, the City sought a declaration that the statement it had added to the charter amendment question ("This charter change inapplicable to 'convention center project' question below") complied with section 101.161. In fact, the City took the position that its addition of this disputed language was necessary to dispel voter confusion that might otherwise result from having both questions on the same ballot. Thus, it is not possible to view the legality of the first ballot question without reviewing the legality of the second ballot question: the ballot questions as

  

framed are inextricably intertwined. The City's declaratory judgment ***1288** action brought the legality of the lease approval question into play.

Moreover, after the Political Committee filed a counterclaim challenging the lease approval question, the City did not raise the issue of standing as an affirmative defense. *Krivanek v. Take Back Tampa Political Comm.*, 625 So.2d 840, 842 (Fla.1993) ("The issue of standing should have been raised as an affirmative defense before the trial court, and Krivanek's failure to do so constitutes a waiver of that defense, precluding her from raising that issue now."). Taken together, these actions constitute a waiver of standing by the City.

**[2]** The City and SBACE contend that the issue of standing was preserved because SBACE independently raised the issue after it intervened. As an intervening party, however, SBACE had to take the case as it found it because the intervention was necessarily "in subordination to, and in recognition of, the propriety of the main proceeding...." Fla. R. Civ. P. 1.230. Although there is an exception to this rule for intervenors who are indispensable parties, *Al Packer, Inc. v. First Union National Bank of Florida*, 650 So.2d 165, 166 (Fla. 3d DCA 1995) ("We recognize that ordinarily an intervening party in an action takes the case as he or she finds it.... We conclude, however, that the rule is different where, as here, the intervenor is an indispensable party to the action."), SBACE does not qualify for this exception. The issues in this case concern the legality of the ballot provisions under section 101.161. These issues could be adjudicated whether or not SBACE was a party to the action. Accordingly, SBACE was not an indispensable party. *See Fla. Dep't of Revenue v. Cummings*, 930 So.2d 604, 607 (Fla.2006) ("An indispensable party is one whose interest in the controversy makes it impossible to completely adjudicate the matter without affecting either that party's interest or the interests of another party in the action."). The dismissal of the Political Committee's counterclaim was therefore error.

## II. THE LEASE APPROVAL QUESTION

Regardless of where we begin our analysis, we are inexorably drawn to the lease approval question. We are obviously drawn to the lease approval question if we begin with the Political Committee's counterclaim directly challenging the placement of that question on the ballot as a violation of both section 101.161 and the Charter Provision. But we are also drawn to the lease approval question if we begin with the City's complaint. The City asks for a declaration that it is necessary to avoid voter confusion (and therefore legal under section 101.161) for the City to add to the charter amendment question the sentence "This charter change inapplicable to 'convention center project' question below." Just reading this sentence requires us to look at the "question below"—the lease approval question. If the lease approval question is not properly on the ballot, then it is not necessary for the City to add language to the charter amendment question addressing it.

Turning to the lease approval question, the parties dispute whether the Charter's requirement that voters approve of the lease of certain property means that voters must approve (1) the general concept that the property should be leased, without reference to all of its material terms, or (2) the actual lease agreement. The City argues that sound logic should dictate that the Charter Provision requires only voter approval in concept: the language that the voters must approve of the lease of certain property means only that the City Commission must "obtain the pulse of its constituency ***1289** (via referendum) prior to its commitment of municipal resources (including the costly and time-consuming process of complying with the City's laws other than Charter Section 1.03) before undertaking lease of City property." SBACE similarly argues that the Charter allows "the City ... [to seek] voters' authorization to lease property before the exact terms and conditions of the lease document are fully memorialized." The Political Committee, on the other hand, contends that the approval of the voters to a lease must be the last step in the process approving a lease and can occur only after the City Commission itself has approved the lease agreement. We do not fully agree with either position.

### *The Charter Provision*

**[3]** We begin our analysis with the current language of the Charter Provision. Section 1.03(b)(2) of the Charter states that "[t]he sale, exchange, conveyance or lease of ten years or longer of [certain enumerated] properties shall also require approval by a majority vote of the voters in a City-wide referendum." The Charter's use of the term "the lease" must be given due weight.

"When the language of a statute is clear and unambiguous, the statute must be given its plain and ordinary meaning." *Metro. Dade Cnty. v. Milton,* 707 So.2d 913, 915 (Fla. 3d DCA 1998).

The normal dictionary definition of "lease" is lease agreement or lease contract.[1] The City itself uses this definition in its Code.[2] Thus, the plain and ordinary meaning of "lease" supports an interpretation of the Charter Provision that empowers voters to approve more than simply the general proposition that a property should be leased.

1 A "lease" is defined as "[a] contract by which a rightful possessor of real property conveys the right to use and occupy the property in exchange for consideration, usually rent." Black's Law Dictionary 970 (9th ed.2009). Even non-legal dictionary definitions define the term as contractual—e.g., "[a] contract granting use or occupation of land or holdings during a specified period in exchange for rent." The American Heritage Dictionary of the English Language 744–45 (1980).

2 "Lease of city property means any right to lease city property by way of agreement, irrespective of consideration being paid to the city, and irrespective of the city's also utilizing or being allowed to utilize the property for any purpose during the term of the lease." § 82–36, Miami Beach Code (2013).

This conclusion is bolstered by the use of the term "lease" in other sections of the Charter. In two adjacent subsections, for example, the Charter mandates that the "approval" by the City Commission of "the lease" of certain property be subject to super-majority votes.[3] In both of these provisions, the Charter's use of the expression "the lease" clearly means the lease agreement: the City Commission cannot approve the lease of property in concept without knowing and approving the material terms of the lease. The use of the term "lease" to refer to a lease agreement when a lease is required to be approved by the City Commission suggests that the term "lease" similarly refers to a lease agreement when a lease is required to be ***1290** approved by the voters.[4]

3 *See* § 1.03(b)(3), Miami Beach Charter (2013) ("The sale, exchange, conveyance or lease of ten years or longer of all remaining City-owned property ... shall ... require approval by a ... 6/7 vote of the City Commission."); § 1.03(e), Miami Beach Charter (2013) ("The sale, exchange, conveyance, lease, or any other transfer of any City interest in any public street-end bordering on land designated 'Government Use,' 'Golf Course' or Waterfront land, shall require ... the unanimous approval of those members of the City Commission with power to vote....").

4 *Rollins v. Pizzarelli,* 761 So.2d 294, 298 (Fla.2000) ("[T]he same meaning should be given to the same term within subsections of the same statute."); *Anderson Columbia v. Brewer,* 994 So.2d 419, 423 (Fla. 1st DCA 2008) ("[I]n deciphering statutory language, courts must strive to harmonize the various subsections of a statute, such that a term used on one subsection has the same meaning as the same term used in another.").

Moreover, this conclusion comports with the obvious purpose of the Charter provision, which was to allow the voters to approve or disapprove the lease of certain property. Reasonable people do not make such decisions in the abstract. Instead, the decision whether to approve a lease is made by weighing the competing pros and cons as reflected in the material terms of the lease agreement. A lease of a property for one dollar per year in rent may be unattractive, for example, while the lease of the same property for one million dollars per year may be quite attractive. A lease of air rights extending two hundred feet may be acceptable to surrounding neighborhoods, while the lease of air rights extending five hundred feet may not. These are the factors that the members of the City Commission use when deciding whether to approve the lease of property. It stands to reason that, where, as here, voters are empowered to approve the lease of property, they are entitled to receive the same essential information a commissioner would need to decide whether to approve the lease of property.[5]

5 Both the City and SBACE cite to *Miami Dolphins, Ltd. v. Metropolitan Dade County,* 394 So.2d 981 (Fla.1981), to support their interpretation of the Charter Provision. *Miami Dolphins,* however, did not involve a city charter provision, as here, that imposed certain constraints on the manner in which an issue was put to a voter referendum. Moreover, the Florida Supreme Court subsequently cited *Miami Dolphins* for the proposition that the ballot question at issue was not misleading because it gave sufficient notice of the material elements of the proposed tax: "[the] 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." *Wadhams v. Bd. of Cnty. Comm'rs of Sarasota Cnty.,* 567 So.2d 414, 417 (Fla.1990).

  

These are exactly the type of material terms that are missing from the lease approval question at issue in this case, which lacks such core information as the amount of rent to be paid by the developer or even the amount of square feet of the land or the height of the airspace to be leased.

**[4]** At the same time, we cannot agree with the Political Committee that the Charter Provision was intended to control the sequence of the many steps involved in approving a lease. It might well be the preferred practice under the Charter Provision to ask voters to approve the lease only after a written lease agreement has been fully negotiated. Certainly, this practice would foreclose any litigation over whether any material terms were withheld when the voters approved the lease. We do not believe, however, that the Charter requires this practice. There is no language specifically imposing any particular sequence or timing in this regard. It is doubtful the drafters of the Charter provision intended such a result given the practical problems of timing, financing, and other matters that will undoubtedly arise and the fact that the voters' right to receive, review, and approve the essential information can be provided in other ways. We therefore agree with the City and SBACE that the Charter Provision at issue does not require that the voters be provided with every single term or provision of the lease. We also agree that the City has the authority to control the timing of the various steps involved in finalizing ***1291** the lease of property subject to such referendum requirements, provided the sequence it chooses does not compromise the spirit or letter of the Charter Provision.

For these reasons, we hold that the voters must be presented with, and allowed to approve, the material terms of the lease when they are asked to approve the lease pursuant to the Charter Provision. Once the voters approve of the material terms, the City is bound by such approval unless it obtains further approval by the voters.

**[5]** Applying this law to the instant case, we find that the lease approval question does not provide the voter with the material terms of the lease. SBACE argues that the lease approval question asks the voters to authorize the City "to lease to SBACE specific property for specific purposes, terms, and rates." We disagree. The ballot question does not provide voters the most basic material terms for a real estate contract, such as the amount of rent to be paid and the amount and location of the property to be leased. This information constitutes the essential minimum to create a lease under contract law.[6] Without such information, the voters are simply not in a position to intelligently cast their ballots to approve or disapprove the lease.

6 *See David v. Richman,* 528 So.2d 25, 27 (Fla. 3d DCA 1988), *approved, David v. Richman,* 568 So.2d 922 (Fla.1990) (holding that no contract for sale of real estate existed where material terms, including the legal description of the property, were omitted); *Joseph Martin, Jr., Delicatessen, Inc. v. Schumacher,* 52 N.Y.2d 105, 436 N.Y.S.2d 247, 417 N.E.2d 541, 543 (1981) (holding, with respect to an omitted rent term in a lease agreement, that "a mere agreement to agree, in which a material term is left for future negotiations, is unenforceable"); *see also Martin v. Jack Yanks Constr. Co.,* 650 So.2d 120, 121 (Fla. 3d DCA 1995) (holding that a proposal for construction work was not a binding contract where it did not include "a definite price or a means of determining a price not left solely to the contractor's discretion").

Although the ballot summary provides some material terms, such as the term of the lease (ninety-nine years), the general purpose of the lease, the party to the lease, and makes general reference to the properties involved, it lacks the following material provisions: the amount of rent to be paid by the developer to the City; square footage and exact location of the property to be conveyed to the developer; the height of any air rights that are being transferred; statement of other additional consideration being given by the parties, if any; and other major provisions which will constitute material provisions of any final leases of the property negotiated by the City and the developer. This information cannot be gleaned from SBACE's letter of intent because the letter of intent by its terms is only a basis for negotiation: it does not bind the parties and the City Commission did not adopt it as its final position.

### *Section 101.161, Florida Statutes (2013)*

**[6]** We next turn to the issue of whether the lease approval question should be removed from the ballot under section 101.161. We determine that it must.

**[7]** We readily acknowledge that "there is a strong public policy against courts interfering in the democratic processes of elections." *Fla. League of Cities v. Smith,* 607 So.2d 397, 400 (Fla.1992). The convention center project has been the object of

many public meetings and the subject of much public and private discussion. It is a signature project in one of South Florida's signature cities.

**[8]** Nevertheless, section 101.161(1) requires, in part:

> Whenever a constitutional amendment or other public measure is submitted to ***1292** the vote of the people, a ballot summary 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.

And that section also sets forth a procedure under which such ballot summaries can be challenged within the court systems. In evaluating a proposed ballot for accuracy and clarity under section 101.161, a court looks beyond the subjective criteria espoused by the amendment's sponsor to the objective criteria indicating the ballot proposal's main effect. *Armstrong v. Harris,* 773 So.2d 7, 18 (Fla.2000). This evaluation requires consideration of the ballot proposal's "true meaning, and ramifications." *Id.* at 16 (quoting *Askew v. Firestone,* 421 So.2d 151, 156 (Fla.1982)).

**[9]** Under well-established precedent, moreover, courts are required to direct the removal of matters from the ballot where the required summary does not inform the voters of the true effect of the ballot proposal. *See Askew,* 421 So.2d at 156 (striking a caption and summary from the ballot where "[t]he ballot summary ... [did] not adequately reflect" the purpose of the proposed legislation); *see also Fla. Dep't of State v. Fla. State Conference of NAACP Branches,* 43 So.3d 662, 668–69 (Fla.2010) (striking ballot language as misleading); *Fla. Dep't of State v. Slough,* 992 So.2d 142, 148 (Fla.2008) (striking ballot question as "misleading because of its failure to mention ... one of the chief aspects of the amendment"); *Armstrong,* 773 So.2d at 17 (striking a ballot summary as misleading where the question implied the measure would expand constitutional rights, when, in fact, it would have the opposite effect).

The lease approval question seeks voter approval of the lease under the Charter Provision, but it does not fulfill this function. Voters must be given notice of the material terms of the lease they are being asked to approve under the Charter Provision. Because the lease approval question fails to give voters this necessary information, by including such information or referring voters to records providing such information, it does not qualify as a proper ballot question to obtain voter approval of a lease under the Charter Provision. Its true effect is different from its apparent effect. Therefore, the lease approval question is confusing and violates the requirement of ballot clarity and accuracy established by section 101.161. Under the authorities set forth above, the lease approval question must be removed from the ballot.[7]

[7] Even if the City intended the lease approval question as a straw vote on a deal that was in process, the language does not clearly indicate such. This defect would make the ballot confusing. *See City of Miami v. Staats,* 919 So.2d 485, 487 (Fla. 3d DCA 2005) (striking ballot question where "it fails to adequately inform the voting public that their response has no official effect, i.e., that the ballot question is simply a nonbinding opinion poll").

Removal of the lease approval question here eliminates potential voter confusion, which was an articulated concern of the City. The removal of the lease approval question also obviates the need for the language that the City added to the charter amendment question. *Kobrin v. Leahy,* 528 So.2d 392, 393 (Fla. 3d DCA 1988).

## CONCLUSION

For the above stated reasons, we direct that the lease approval question be removed ***1293** from the ballot. In light of the removal of the lease approval question from the ballot, the language added to the charter amendment question by the City —"(This charter change inapplicable to 'convention center project' question below.)"—shall also be removed.[8]

8 The City and SBACE successfully argued to the trial court that the charter amendment could not apply to SBACE's proposed lease because: (1) the amendment was substantive and not procedural; and (2) the request for qualifications gave SBACE a vested right to have its lease reviewed under the existing Charter Provision. The issue of whether, if the charter amendment is adopted, the charter amendment will apply to SBACE's proposed lease is not appropriate for judicial review in this pre-election challenge to ballot language.

Reversed.[9]

9 In view of the time-sensitive nature of this matter, rehearing is dispensed with. *See Miranda v. Ortega,* 117 So.3d 1125 (Fla. 3d DCA 2012); *Patterson v. Dep't of Health & Rehabilitative Servs.,* 548 So.2d 1200, 1201 (Fla. 3d DCA 1989); *Metro. Dade Cnty. v. Lehtinen,* 528 So.2d 394, 395 n. 3 (Fla. 3d DCA 1988); *Kobrin,* 528 So.2d at 393 n. 4 (Fla. 3d DCA 1988).

**All Citations**

120 So.3d 1282, 38 Fla. L. Weekly D2020

**End of Document**

## Negative Treatment

### Negative Citing References (1)

*The KeyCited document has been negatively referenced by the following events or decisions in other litigation or proceedings:*

| Treatment | Title | Date | Type | Depth | Headnote(s) |
|---|---|---|---|---|---|
| Distinguished by | 1. Matheson v. City of Miami MOST NEGATIVE<br><br>306 So.3d 1028 , Fla.App. 3 Dist.<br>GOVERNMENT — Elections. Ballot summary for proposed city charter amendment to facilitate development of soccer stadium was not conclusively defective under statute. | Aug. 05, 2020 | Case | | 3<br>4<br>6<br>So.3d |

 

187 So.3d 221
District Court of Appeal of Florida, Third District.

Bruce C. MATHESON, Appellant,

v.

MIAMI–DADE COUNTY, Florida, a political Subdivision of the State of Florida, and International Players Championship, Inc., Appellees.

No. 3D14–405
|
May 27, 2015.
|
Rehearing Denied April 15, 2016.

**Synopsis**

**Background:** Heirs of grantors of deed to land used as a public park brought action against county challenging lawfulness of county referendum asking voters if they approved construction of new permanent facilities at tennis center in the park. Operators of professional tennis tournament intervened. The Circuit Court, Miami–Dade County, Marc Schumacher, J., entered judgment in favor of county and tournament operators. Heirs appealed.

**[Holding:]** The District Court of Appeal, Fernandez, J., held that ballot summary properly provided voters with "chief purpose" of referendum.

Affirmed.

Emas, J., filed concurring opinion.

Wells, J., filed dissenting opinion.

West Headnotes (5)

**[1] Appeal and Error** De novo review

The standard of review of a trial court's ruling on a summary judgment motion is de novo. (Per Fernandez, J., with one judge concurring separately.)

1 Case that cites this headnote

**[2] Counties** Ordinances and by-laws

The court should invalidate a county referendum ballot question only if the record shows that the ballot language is clearly and conclusively defective. (Per Fernandez, J., with one judge concurring separately.) West's F.S.A. § 101.161(1).

  

1 Case that cites this headnote

[3] **Election Law** Ballots in general

Purpose of requirement that the substance of a public measure be printed in "clear and unambiguous" language on the ballot is to provide the voter with fair notice of the content of the proposed measure so that he or she will not be misled as to its purpose and may intelligently cast his or her vote. (Per Fernandez, J., with one judge concurring separately.) West's F.S.A. § 101.161(1).

[4] **Election Law** Construction of proposals, in general

Ballot question does not have to explain every detail or ramification of the proposed amendment; it only must describe its chief purpose. (Per Fernandez, J., with one judge concurring separately.) West's F.S.A. § 101.161(1).

1 Case that cites this headnote

[5] **Counties** Ordinances and by-laws

Ballot summary properly provided voters with "chief purpose" of county referendum asking voters if they approved construction of new permanent facilities at tennis center in public park; although summary failed to detail all approvals on which improvements hinged, it would have been impossible to present any question listing all the required development approvals within the 75-word limit, question gave voters the material terms of proposed additional permanent structures and material terms of extension and modification of county's agreement with operators of professional tennis tournament, and process for obtaining remaining required approvals stayed the same following passage of referendum. (Per Fernandez, J., with one judge concurring separately.) West's F.S.A. § 101.161.

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Before WELLS, EMAS and FERNANDEZ, JJ.

**Opinion**

FERNANDEZ, J.

Bruce C. Matheson appeals the final judgment entered by the trial court in favor of Miami–Dade County and International Players Championship, Inc. and against Matheson on all counts. We affirm the final judgment on all counts because the trial court's finding that the "chief purpose" of the referendum was properly provided to Miami–Dade County voters by the title and ballot summary is correct.

In 1986, Miami–Dade County and International Players Championship, Inc. (IPC) entered into an agreement for IPC to operate a men's and women's professional tennis tournament from the Crandon Park Tennis Center in Crandon Park, Key Biscayne, Florida. IPC conducts what is today the Miami Open. At the time, it was the Lipton International Players Championship Tennis Tournament. The Agreement was amended in 1988 and 1990 and remains in effect through 2023.

  

In 1988, heirs of Malcom and Julia Matheson sued the County, alleging, among other things, that the IPC Agreement violated a deed restriction that required the County to use Crandon Park "for public park purposes only." *White v. Metro. Dade Cnty.*, 563 So.2d 117, 120 (Fla. 3d DCA 1990). In *White,* this Court held that "construction of the tennis complex did not violate the 'public park purposes only' provision of the deed restriction." *Id.* at 123–24.[1]

1 This Court did hold, however, that the operation of the Lipton tournament violated the deed restriction because it deprived the public "of the use and enjoyment of Crandon Park, including the use and enjoyment of the tennis facilities." *Id.* at 124. This Court reasoned that because the public is deprived of using the facilities for three to four weeks during the tournament period, the operation of the Lipton tournament amounted "to the virtual ouster of the public from the park" during the tournament. *White,* 563 So.2d at 125.

In 1991, the Matheson heirs filed a second lawsuit in *Dade County v. Matheson,* 605 So.2d 469 (Fla. 3d DCA 1992), trying to again prohibit the construction of the tennis stadium at Crandon Park. *Id.* at 470. This Court agreed with the County and held that the issue of whether or not a stadium may be built as part of the tennis complex had already been decided by this Court in *White.* Thus, the Matheson heirs were not permitted to re-litigate the County's ability to build the tennis stadium in the tennis complex. *Id.*

Thereafter, in order to resolve the litigation, the County and the Matheson heirs entered into a Settlement Agreement in 1993. This Settlement Agreement ordered the creation of the Crandon Park Master Plan, "depicting all permitted uses of various areas on the Crandon Park lands, including guidelines and standards for the type, location, size, color, landscaping and other features of all structures, improvements and recreational facilities to be located" on the Crandon Park lands. The Master Plan is contained in the Amended Final Judgment in *Matheson v. Metropolitan Dade County,* No. 88–24491 (Fla. 11th Cir.Ct. Oct. 18, 2000). It was also recorded as a restrictive covenant running with the land, in the public records of Miami–Dade County.

This Master Plan, however, is not fixed but rather is amenable to modification. ***223** The Settlement Agreement entered into by the Matheson heirs and the County provided for ways to amend the Crandon Park Master Plan. The Settlement Agreement stated, in part:

> The Crandon Park Master Plan as implemented by the above mentioned Declaration of Restrictions and Final Judgment, may be amended following adoption only by the following procedure: (1) the County by affirmative vote of the County Board of Commissioners ["BOCC"] shall propose an amendment through action by resolution; (2) the County shall appoint two persons to a Committee on Amendment of the Crandon Park Master Plan, and the National Parks and Conversation Association (or a successor non-profit park preservation organization mutually agreed upon by the Parties) shall likewise appoint two members to such Committee on Amendment of the Crandon Park Master Plan....

In addition, the Amended Final Judgment in case number 88–24491, *Malcom Matheson, Jr. v. Metropolitan Dade County,* reflects that the Master Plan can be changed. The Declaration of Restrictive Covenants also states that amending the Master Plan is possible.[2]

2 There is evidence in the record that the Master Plan has been previously amended. In December 2013, the Director of the Miami–Dade Parks, Recreation and Open Spaces Department at the time, Mr. Jack Kardys, stated in his affidavit that the Master Plan has been amended several times over the years, including with respect to the Crandon Park Tennis Center. The following is a list of the amendments he listed in his affidavit: 1) On October 22, 2002, the BOCC approved an amendment to the Master Plan to allow the temporary seating for the Sony Open Tennis Tournament to be stored on the upper deck of the Tennis Stadium at Crandon Park; This amendment was approved by the Amendment Committee on November 12, 2002; 2) On October 22, 2002, the BOCC approved an amendment to the Master Plan to allow the already existing lighted ball fields to remain at Crandon Park permanently rather than being removed by January 1, 2005, as specified in the Master Plan. On May 4, 2005, the Amendment Committee approved the amendment to allow the lighted ball fields to remain beyond 2005 but for only an additional eight years, or until 2013; 3) On October 22, 2002, the BOCC approved an amendment to the Master Plan to allow existing boat dry storage facility at the Crandon Park Marina for 130 boats to remain instead of being reduced to 20 boats, as required by the Master Plan. On November 12, 2002,

  

the Amendment Committee approved the amendment; 4) On December 16, 2003, the BOCC approved an amendment to the Master Plan to allow the construction of a marina dive shop larger than that permitted by the Master Plan and to allow additional uses for that marina dive shop beyond those permitted by the Master Plan. On December 7, 2004, the Amendment Committee approved the amendments to the Master Plan to allow expanded size and uses of the marina dive shop; 5) On April 5, 2005, the BOCC approved an amendment to the Master Plan to allow the expansion and modifications of utilities infrastructures at Crandon Park to account for increased demand and technological upgrades. On February 15, 2007, the Amendment Committee approved the expansion and modifications of utilities infrastructure sought by Bellsouth; 6) On March 15, 2011, the BOCC approved an amendment to the Master Plan to eliminate restrictions on the exit and traffic circulation at the Crandon Park Marina and to allow a permanent awning to replace the fabric awning at the marina. The Amendment Committee approved this amendment on May 4, 2011.

Section 7.02, "Restrictions and Exceptions," of Article 7 of the Miami–Dade County Home Rule Charter—"PARKS, AQUATIC PRESERVES, AND PRESERVATION LANDS," states in pertinent part:

> In furtherance of this policy parks shall be used for public park purposes only, and subject to the limited exceptions set forth in this Article, there shall be no permanent structures or private commercial advertising erected in a public ***224** park or private commercial use of a public park or renewals, expansions, or extensions of existing leases, licenses, or concessions to private parties of public park property, unless each such structure, lease, license, renewal, expansion, extension, concession or use shall be approved by a majority vote of the voters in a county-wide referendum.

In addition, section 101.161(1), Florida Statutes (2012), states:

> (1) Whenever a constitutional amendment or other 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 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, 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.

Crandon Park is one of the listed parks in Article 7, which requires an affirmative vote of two-thirds of the electorate of Miami–Dade County before any development can occur there.

Consequently, on August 23, 2012, the BOCC adopted Resolution R–660–12, which scheduled for November 6, 2012, a county-wide referendum election, asking voters if they approved construction of new permanent facilities within the Crandon Park Tennis Center. The referendum also asked voters if they approved modification of existing contractual relationships between Miami–Dade County and IPC. Specifically, the title and wording of the ballot were the following:

> **Referendum Regarding Structures and Modification of Existing Agreements for the Tennis Center at Crandon Park**
>
> In accordance with Article 7 of the Home Rule Charter, do you approve as set forth in Resolution R–660–12:
>
> Erection of permanent structures and expansion of existing structures at Crandon Park Tennis Center for public park and tennis tournament use, which shall be funded solely by tennis center and tournament revenues and private funds; and
>
> Modification and extension of agreements with operator of Sony Open Tennis Tournament or its successors?

Resolution R–660–12 included two exhibits—Exhibit A, describing "The Proposed Additional Permanent Structures," and Exhibit B, describing the "Proposed Terms for the Extension and Modification ***225** of the Existing Agreements for Use of the Crandon Park Tennis Center for the Sony Open." Exhibit A described and limited the dimension and scope of the proposed

  

permanent structure in great detail. In addition, Exhibit B provided the material terms for extending and modifying the existing agreements between Miami–Dade County and IPC. Seventy-two percent of the voters approved the referendum.

Bruce C. Matheson then brought suit against Miami–Dade County to declare the referendum unlawful. IPC moved to intervene, and the trial court allowed the intervention. In his complaint, Matheson alleged three counts: 1) that the referendum "flew under false colors" and "hid the ball," in violation of section 101.161(1) because it did not disclose that the expansion was prohibited by the Settlement Agreement, the Master Plan and the Declaration of Restrictive Covenants, and because it could not be implemented without approval of the Amendment Committee and a vote of the BOCC); 2) that the proposal was non-binding and thus violated Article 7 of the Home Rule Charter; and 3) that the ballot title and summary failed to disclose facts and thus violated the "Truth in Government" provision of the County Charter and that Miami–Dade County Mayor Carlos Gimenez violated the same provision by stating that the improvements would be paid for with private funds.

Matheson eventually moved for summary judgment. Following the BOCC's approval of the agreements, the County and IPC also moved for summary judgment. The trial court denied Matheson's motion and granted summary judgment against Matheson on all three counts of his complaint. On appeal, Matheson contends that the ballot language fails the requirements of section 101.161(1) by "hiding the ball" and "flying under false colors."

**[1]** **[2]** The standard of review of a trial court's ruling on a summary judgment motion is de novo. *Volusia Cnty. v. Aberdeen at Ormond Beach, L.P.,* 760 So.2d 126, 130 (Fla.2000). However, with regard to the ballot question at issue in this appeal, this Court should invalidate it "only if the record shows that the [ballot language] is clearly and conclusively defective." *Armstrong v. Harris,* 773 So.2d 7, 11 (Fla.2000).

**[3]** **[4]** Section 101.161(1) requires that the substance of the public measure be printed in "clear and unambiguous" language on the ballot. According to *City of Miami v. Staats,* 919 So.2d 485, 487 (Fla. 3d DCA 2005), "[t]he purpose of this requirement is to provide the voter with fair notice of the content of the proposed measure so that he or she will not be misled as to its purpose and may intelligently cast his or her vote." *See also Askew v. Firestone,* 421 So.2d 151, 155 (Fla.1982) (stating "the ballot must give the voter fair notice of the decision he must make"). Section 101.161(1) requires that the County and IPC explain to voters, in a summary not exceeding seventy-five words, the "chief purpose of the measure." Florida law makes it clear that the ballot question 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 (Fla. 4th DCA 2012) (quoting *Fla. Educ. Ass'n v. Fla. Dep't of State,* 48 So.3d 694, 700 (Fla.2012)). It only must describe its chief purpose. *Id.*; *see also Let Miami Beach Decide v. City of Miami Beach,* 120 So.3d 1282 (Fla. 3d DCA 2013).

**[5]** Matheson contends on appeal that the ballot did not contain sufficient details. However, there is no requirement that all the details of a proposal must be explained to voters. Florida courts have previously held that section 101.161(1) does not require ***226** excessive detail. *See Miami Dolphins, Ltd. v. Metro. Dade Cnty,* 394 So.2d 981, 987 (Fla.1981); *Miami Heat Ltd. P'ship v. Leahy,* 682 So.2d 198, 203 (Fla. 3d DCA 1996).

Matheson further alleges that the County and IPC "hid the ball" regarding the proposal's chief purpose. However, this is inaccurate. As previously discussed, the Crandon Park Tennis Center improvements hinge on several approvals. As the County contends, it would be impossible for it to present any question listing all the required development approvals that were needed within the seventy-five word limit required by section 101.161(1). This is why the ballot questions referenced Resolution R–660–12, which contained all the details.

The referendum advised voters that their approval was being sought, in accordance with Article 7 of Miami–Dade County's Home Rule Charter, to permit IPC to build additional permanent structures at the Tennis Center and to allow extension and modification of the agreement with IPC. The ballot question gave voters the material terms of the proposed additional permanent structures and the material terms of the extension and modification of the IPC Agreement. As such, the County and IPC are correct that the "chief purpose" of the Tennis Center Referendum was communicated. This "chief purpose" was to find out if at

least two-thirds of the electorate in Miami–Dade County supported 1) the "erection of permanent structures and the expansion of existing structures at the Crandon Park Tennis Center for public park and tennis tournament use, which shall be funded sole by tennis center and tournament revenues and private funds," and 2) the "modification and extension of agreements with the operators of the Sony Open Tennis Tournament or its successors." Because the chief purpose of the referendum did not alter or change procedures for amending the Crandon Park Master Plan, the referendum did not violate section 101.161(1). Even after the referendum passed with two-thirds of the electorate voting in its favor, the process for obtaining the remaining required approvals stayed the same.

Three approvals are needed in order to make changes to the Master Plan: 1) voter approval via referendum; 2) the BOCC's approval; and 3) the Committee on Amendment's approval. Nowhere in the record does it specify in which order these approvals need to be obtained, and that is because there is no requirement that these approvals be obtained in any particular order. It just so happens that, in this case, compliance with Article 7 was the first step taken by Miami–Dade County and IPC. This was not merely a "straw ballot," as Matheson suggests because the County and IPC were required under Florida law in Article 7 of the Home Rule Charter to present this issue to the voters. Because Crandon Park is one of the listed parks in Article 7, it requires an affirmative vote of two-thirds of the electorate of Miami–Dade County before any development can occur there. The only way to get this affirmative vote was to put it on a ballot for the voters to vote.

In support of his position, Matheson cites to *Askew v. Firestone,* 421 So.2d 151 (Fla.1982); however this case is inapplicable here. In *Askew,* the trial court entered an order validating the caption and summary of a proposed constitutional amendment scheduled to appear on the November 1982 general election ballot. *Id.* at 152. Previously, in the November 1976 general election, Florida voters approved adding section 8, the "Sunshine Amendment," to Article II of Florida's Constitution. *Id.* Section 8 declared a public office a public trust which should be ***227** secure against abuse. As a result, section 8 required full, public financial disclosure by elected officers and candidates for elected offices, provided for loss of pension or retirement benefits if a public officer or employee is convicted of a felonious breach of the public trust, and prohibited members of the legislature and statewide elected officers from lobbying their former governmental bodies or agencies for two years following vacation of office. *Id.* at 153.

On the next to last day of the 1982 regular session, the legislature passed Senate Joint Resolution 1035. *Id.* The title read: "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." *Id.* The proposed amendment would remove the two-year ban on lobbying by former legislators and elected officers, retaining that ban only if an affected person failed to make financial disclosure. The title and substance proposed was the following:

> **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.

*Id.*

The appellants sued the Secretary of State to prevent inclusion of the proposed title and substance on the November ballot. Appellants claimed the title and substance were misleading under section 101.161 because, among other things, "the instant summary discloses only the proposed 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." *Id.* at 154. The trial court found that the language was clear and unambiguous as to the chief purpose of the measure. The Florida Supreme Court disagreed.

The Florida Supreme Court stated:

  

> 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."

*Id.* at 155 (quoting *Hill v. Milander,* 72 So.2d 796, 798 (Fla.1954)). The Court further stated, "Simply put, the ballot must give the voter fair notice of the decision he must make." *Id.* The Court added:

> 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 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 amendment actually gives incumbent office holders, upon filing a financial disclosure statement, a right to immediately commence lobbying before ***228** their former agencies which is presently precluded. The problem, therefore, lies not with what the summary says, but, rather, with what it does not say.

*Id.* at 155–56 (footnote omitted). The same cannot be said for Matheson's case now before this Court. The purpose in *Askew* was to impose an immediate change. The referendum in that case was misleading because it appeared that it was increasing the prohibition, but in actuality, it was lessening the existing prohibition. In the case before us, the "chief purpose" of the referendum was to find out if at least two-thirds of the voters supported what was being asked in the referendum. However, there was no immediate change to anything after the results of the referendum were tallied. The only result was that the public, by an affirmative vote of more than two-thirds of the electorate, approved the proposed development at Crandon Park and the modification of agreements relating thereto. In addition, the ballot here did not try to accomplish the opposite of what the voters were being asked, which is what happened in *Askew.* As such, *Askew* is distinguishable and does not support Matheson's position.

Matheson also cites to *Armstrong v. Harris,* 773 So.2d 7 (Fla.2000), in support of his position that the ballot language is misleading by "hiding the ball" and "flying under false colors." However, a review of *Armstrong* indicates that it, too, is distinguishable and does not support his position.

In *Armstrong,* a referendum was held wherein voters were asked to vote in favor of amending Florida's Constitution to make it easier to impose the death penalty. *Id.* at 9–10. If the voters approved the amendment, the basis for imposing the death penalty would have changed immediately. *Id.* at 18. Just as in *Askew,* the ballot question in *Armstrong* was misleading because it concealed what the amendment did. The ballot question was trying to accomplish the opposite of what the voters were being asked. The chief purpose of the referendum in *Armstrong* was to change Florida's Constitution. As previously discussed, that is not the case before us, so *Armstrong* is also inapplicable.

Matheson further cites to *Wadhams v. Board of County Commissioners of Sarasota County,* 567 So.2d 414 (Fla.1990). In that case, the Board of County Commissioners of Sarasota County proposed amendments to the county charter concerning meetings of the county's Charter Review Board. *Id.* at 415. The proposed amendments were approved by a majority of the voters. *Id.* Petitioners then filed a complaint challenging the amendment to the county charter, contending that the referendum failed to comply with section 101.161(1) because it did not provide a summary of the proposed changes. *Id.* The trial court did not invalidate the results of the referendum, and the Second District Court of Appeal affirmed, stating that "[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." *Id.* (citations omitted).

The Florida Supreme Court disagreed and stated that the ballot in *Wadhams* had the same problem as the ballot in *Askew*. *Wadhams,* 567 So.2d at 416. The Court stated that the "chief purpose" of the referendum was not communicated to the voters:

  

> 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 years. By failing to contain an *explanatory* ***229** *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) (placement on ballot of proposition to provide that the board of county commissioners shall be 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).

*Id.* at 416–17 (emphasis in original).

Again, the ballot question was misleading because it failed to include the explanatory statement required by section 101.161(1), and thus failed to inform the voters of the "chief purpose" of the measure. It told the voters that the Charter Review Board would only be permitted to meet once every four years, but failed to tell them 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. In the facts of Matheson's appeal, the referendum (which was just a few words shy of the seventy-five word maximum requirement) included a reference to R–660–12, which had all the details of the existing structures expansion, as well as the details of the modification and extension of the existing agreements.

Similarly, Matheson's reliance on this Court's opinion in *Miami–Dade County v. Village of Pinecrest,* 994 So.2d 456 (Fla. 3d DCA 2008), is misplaced, as this case does not support his position. In *Village of Pinecrest,* Miami–Dade County presented a ballot question addressing the system by which fire and rescue services are provided to the citizens of Miami–Dade County. The ballot title and summary were the following:

> COUNTY CHARTER AMENDMENT **CREATING** UNIFORM COUNTYWIDE FIRE AND RESCUE SERVICE AND PRESERVING EXISTING CITY SERVICE
>
> SHALL THE CHARTER BE AMENDED TO REQUIRE THAT THE BOARD OF COUNTY COMMISSIONERS PROVIDE A UNIFORM, COUNTYWIDE SYSTEM OF FIRE PROTECTION AND RESCUE SERVICES FOR ALL INCORPORATED AND UNINCORPORATED AREAS OF THE COUNTY WITH THE EXCEPTION OF THE CITIES OF MIAMI, MIAMI BEACH, HIALEAH, CORAL GABLES, AND KEY BISCAYNE WHICH MAY PROVIDE FOR FIRE AND RESCUE PROTECTION SERVICES WITHIN THOSE CITIES?

***230** *Id.* at 457–58 (emphasis in original). In *Village of Pinecrest,* the appellees claimed that the ballot title was misleading because it implied there previously did not exist a "uniform countywide fire and rescue service." *Id.* at 458. The appellees further argued the ballot summary was misleading because it failed to advise voters that it curtailed their right to establish their own system. *Id.* The provision of the Charter which the appellees claimed the County fatally failed to mention in the ballot summary was the following:

> **SECTION 6.02 MUNICIPAL POWERS**
>
> Each municipality shall have the authority to exercise all powers relating to its local affairs not inconsistent with this charter. Each municipality may provide for higher standards of zoning, service and regulation than those provided by the Board of County Commissioners in order that its individual character and standards may be preserved for citizens.

Miami–Dade County, Fla., Charter art. 6, § 6.02.

  

This Court agreed with the Village of Pinecrest, stating:

> This proposal does both. It "flies under false colors" of a title that promises to be "Creating [a] Uniform Countywide Fire and Rescue Service" when one has existed in Miami–Dade County for nearly thirty years, and "hides the ball" by purporting to create new rights for the citizens while actually curtailing or eliminating existing rights.

*Id.* This is very different from the facts in the case before us. The referendum in the case before us did not fail to mention anything. The referendum here did not allege that it created any new rights for citizens while actually doing the opposite and eliminating existing rights. The referendum at issue before us simply provided voters with detailed information regarding the Crandon Park expansion, consistent with Florida law and Article 7 of Miami–Dade County's Home Rule Charter.

In sum, the referendum did not "hide the ball" or "fly under false colors." Section 101.161, of the Florida Statutes, required that IPC and Miami–Dade County tell the voters, in clear and unambiguous language, the chief purpose of the referendum. And the referendum did just that. The referendum language was clear and unambiguous and not misleading. It informed the voters of its chief purpose, which was to find out whether at least two-thirds of the voters supported 1) the "[e]rection of permanent structures and the expansion of existing structures at Crandon Park Tennis Center for public park and tennis tournament use, which [would] be funded solely by tennis center and tournament revenues and private funds; and 2) the [m]odification and extension of agreements with the operator of the Sony Open Tennis Tournament or its successors". The referendum did not change in any way the procedure for amending the Crandon Park Master Plan. The referendum language complied with Article 7 of Miami–Dade County's Home Rule Charter and section 101.161(1), Florida Statutes (2012). Accordingly, we affirm the trial court's Final Judgment.

Affirmed.

EMAS, J., concurs.

EMAS, J., concurring.

I concur in affirming the final judgment below, and write to further explain my reasons.

Although our standard of review is de novo, such review is tempered by the "strong public policy against courts interfering in the democratic processes of elections." ***231** *Let Miami Beach Decide v. City of Miami Beach,* 120 So.3d 1282 (Fla. 3d DCA 2013) (quoting *Fla. League of Cities v. Smith,* 607 So.2d 397, 400 (Fla.1992)). Therefore, "[a] court may declare a proposed ... amendment invalid only if the record shows that the proposal is clearly and conclusively defective." *O'Connell v. Martin Cnty.,* 84 So.3d 463, 465 (Fla. 4th DCA 2012) (quoting *Armstrong v. Harris,* 773 So.2d 7, 11 (Fla.2000)).

I agree that the language of the ballot summary informed the voters of the "chief purpose" of the referendum without "flying under false colors" or "hiding the ball," thus satisfying section 101.161, which requires 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." *Armstrong,* 773 So.2d at 13 (quoting *Askew,* 421 So.2d 151, 154–55 (Fla.1982)).

Determining the "chief purpose" of the referendum requires us to look to the reason why the ballot question was placed before the voters in the first place. Contrary to Matheson's position, the referendum was not intended to (and in fact could not) modify, alter or amend the previously-created Crandon Park Master Plan, the Declaration of Restrictive Covenants, the Final Judgment or the Settlement Agreement. Rather, the referendum was intended to comply with the requirements of Article 7 of the Charter of Miami–Dade County. Article 7.01 sets forth a policy that states in pertinent part:

> Parks ... and lands acquired by the Count for preservation shall be held in trust for the education, pleasure, and recreation of the public and they shall be used and maintained in a manner which will leave them unimpaired for the enjoyment of future generations as a part of the public's irreplaceable heritage.

  

Article 7.02 provides restrictions for the use of public parks and requires a majority vote of the electorate before certain commercial uses may be made. It provides the following general restriction:

> In furtherance of this policy parks shall be used for public park purposes only, and subject to the limited exceptions set forth in this Article, there shall be no permanent structures or private commercial advertising erected in a public park or private commercial use of a public park or renewals, expansions, or extension of existing leases, licenses, or concessions to private parties of public park property, unless each such structure, lease, license, renewal, expansion, extension, concession or use shall be approved by a majority vote of the voters in a County-wide referendum.

In addition, Article 7.02 creates a special class of public parks (which includes Crandon Park), and imposes the heightened requirement of a two-thirds vote of the electorate before certain commercial uses may be made for this class of parks:

> To ensure aquatic preserves, lands acquired by the County for preservation, and public parks or parts thereof which are nature preserves, beaches, natural forest areas, historic or archeological areas, or otherwise possess unique natural values in their present state, such as ... *Crandon Park,* ... and all other natural or historical resource based parks do not lose their natural or historical values, *any structure, lease, license, renewal, extension, concession or use in any of this class of public parks or in aquatic preserves and preservation lands must be approved by an affirmative vote of two-thirds of the voters* in a County-wide referendum. (Emphasis added.)

Given this backdrop, it is clear that the "chief purpose" of the referendum was to comply with the Charter's requirement ***232** that two-thirds of Miami–Dade voters approve any proposed expansion of the facilities in Crandon Park. The chief purpose of the referendum was decidedly *not* to determine whether Miami–Dade voters wished to amend the Crandon Park Master Plan, the Declaration of Restrictive Covenants, the Final Judgment, or the Settlement Agreement. In point of fact, no vote of Miami–Dade citizens would or could have effectuated any such amendments; under the express terms of the Settlement Agreement, the only manner in which the Crandon Park Master Plan could be amended was by a majority vote of the Miami–Dade County Board of Commissioners, together with a majority vote of the Committee on Amendment of the Crandon Park Master Plan. This amendment process did not require any vote of the electorate. Therefore, under the circumstances presented, the "chief purpose" of the vote was simply a mandated referendum to determine whether two-thirds of the Miami–Dade County electorate wished to permit the proposed expansion of the facilities.

Matheson's reliance on *Askew* and *Armstrong* is misplaced. Each of those cases involved a vote which, in and of itself, effectuated a change to the existing provisions of the state constitution. In *Armstrong,* the ballot summary misled the voters because it created the impression that the proposed amendatory language would provide greater constitutional protection when in reality it accomplished the opposite:

> [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.

*Armstrong,* 773 So.2d at 18.

Similarly, *Askew* involved a proposed amendment which purported to strengthen Florida's constitutional restrictions on lobbying activities. However, the actual effect of the proposed amendment was to weaken the existing constitutional provision:

> As it stands, [the existing constitutional provision] 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 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 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. The problem, therefore, lies not with what the summary says, but, rather, with what it does not say.

*Askew,* 421 So.2d at 155–56 (footnote omitted).

The distinction between *Askew* and the instant case is underscored by the following observation in *Askew:*

> Had [the ballot proposal] not been an amendment to an existing provision, if it had been a totally new provision, its ballot summary and title would probably have been permissible. The change to subsection 8(e) [of Article II of the Constitution] 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 ***233** 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.

*Id.* at 156.

Matheson attempts to portray the referendum in the instant case as an amendment to the Crandon Park Master Plan. But it is not. Unlike the referenda in *Armstrong* and *Askew,* passage of this referendum did not amend, modify or alter anything. It is the legal equivalent of "a totally new provision" as described in *Askew.* And unlike the summaries in *Armstrong* and *Askew,* no material ramifications were left undisclosed in the instant case, nor did the ballot language fail to apprise the voters of the "full sweep" of the proposal. Rather, it adequately informed the voters of the sweep, effect, and ramification of the referendum. The electorate's approval of the referendum did not impact the Crandon Park Master Plan, and did not, on its own, permit the County or any private entity to erect permanent structures, expand existing structures, or extend or modify agreements with the operator of the tennis tournament. It was certainly not necessary to advise voters that no such expansion could take place without an amendment to the Crandon Park Master Plan. The fact that the terms of the Crandon Plan Master Plan currently prohibited such expansion was not material, as the voters were not asked to amend the Crandon Park Master Plan.

In the instant case, because the referendum did not effectuate any change beyond complying with the Charter-mandated procedure for approving "any structure, lease, license, renewal, extension, concession or use" in the class of public parks that included Crandon Park, it satisfied the requirement that it place "the voter on notice of that which he must decide" and "advise the voter sufficiently to enable him intelligently to cast his ballot," *Armstrong,* 773 So.2d at 13.

I therefore concur in affirming the judgment of the trial court.

WELLS, Judge (dissenting).

I respectfully dissent. Because I find that the ballot summary misled the voters and failed to disclose material information necessary for the public to make an informed decision under section 101.161 of the Florida Statutes (2012), I would reverse.

***1. Underlying Facts***

Twice before, this court has considered a dispute between members of the Matheson Family and the County over the erection of structures at the Crandon Park Tennis Center and IPC's operation of a tennis tournament at that center. *See Dade Cnty. v. Matheson,* 605 So.2d 469 (Fla. 3d DCA 1992); *White v. Metro. Dade Cnty.,* 563 So.2d 117 (Fla. 3d DCA 1990). The underlying facts leading to the instant dispute between Bruce Matheson, the County and IPC are largely set forth in our initial decision in *White:*

> In 1940, several members of the Matheson family deeded three tracts of land located on the northern portion of Key Biscayne to Dade County. This land, consisting of 680 acres, came to be known as Crandon Park. In the recorded deeds, the grantors expressly provided:

  

> This conveyance is made upon the express condition that the lands hereby conveyed shall be perpetually used and maintained for public park purposes only; and in case the use of said land for park purposes shall be abandoned, then and in that event the said [grantor], his heirs, grantees or assigns, ***234** shall be entitled upon their request to have the said lands reconveyed to them.
>
> ....
>
> In 1986, the Dade County Board of County Commissioners passed Resolution R–891–86, which authorized the execution of an agreement with Arvida International Championships, Inc., (Arvida), and the International Players Championship, Inc., (IPC), to construct a permanent tennis complex. The construction of the court facilities and infrastructure began in the summer of 1986, and terminated in 1987. Initially, the tennis complex consisted of fifteen tennis courts, service roads, utilities, and landscaping, all located on 28 acres.
>
> The agreement provided that for two weeks each year, subject to a renewal provision, the tennis complex would become the site of the Lipton International Players Championship Tennis Tournament (Lipton tournament). This renowned tournament is only open to world class players who compete for two weeks.
>
> In February 1987, the first Lipton tournament was held before approximately 213,000 people. The county manager considered the Lipton tournament to be such a tremendous success that he recommended, and the County Commission approved in Resolution R–827–87, the construction of "Phase II," a permanent clubhouse/fitness facility. This 15,000–to–33,000–square–foot facility was to house locker rooms, training and exercise equipment, meeting rooms, food and beverage concessions, and a sporting goods store. As a result of "community input," the clubhouse was ultimately reduced to 9,800 square feet. This "community input" consisted of informal meetings with residents and one public hearing.
>
> During the four Lipton tournaments held thus far on Key Biscayne, temporary seating has been provided. Appellants contend that a 12,000–seat permanent stadium is part of the future development plans.
>
> ....
>
> In 1987 and again in 1988, Dade County attempted to obtain the consent of one of the heirs, Hardy Matheson, for the operation of the Lipton tournament. Hardy Matheson refused to give his consent, and informed the County that the tennis complex and the operation of the Lipton tournament was contrary to the deed restriction.

*White,* 563 So.2d at 121–22.

In *White,* we held that while "the construction of the tennis park complex did not violate the 'public park purposes only' provision of the deed restriction," operation of the tournament did violate the restriction because it "deprive[d] the public of the use and enjoyment of Crandon Park, including the use and enjoyment of the tennis facilities." *Id.* at 123–24. The basis for the violation was that operation of the tournament, as it was at that time, amounted to the "virtual ouster of the public from the park for periods of time during the two week tournament." *Id.* at 125. As we explained:

> Our ruling does not prevent Dade County from using the tennis complex for tennis tournaments. It merely seeks to insure that in holding such tournaments, public access to the rest of Crandon Park is not infringed; and use of the tennis complex is not denied to the public for unreasonable periods of time.

*Id.* at 126.

In 1991, Matheson heirs filed a second lawsuit specifically directed at the construction of a permanent 7,500–seat stadium at the tennis complex, claiming that ***235** the stadium construction violated the deed restriction on the subject property. The trial court agreed with the Mathesons and entered a permanent injunction prohibiting the construction. We reversed, finding that our resolution of the first lawsuit in *White* had already addressed whether construction of a stadium as part of the proposed tennis complex violated the terms of the Matheson deed restriction and concluded that it did not. *See Matheson,* 605 So.2d at 470. We also noted that although the second lawsuit did not raise any arguments that the tennis tournament as it was then being run

still amounted to a "virtual ouster" of the public from Crandon Park in violation of the deed restriction, anyone with proper standing to raise that issue "would have the right to go back before the original trial court, [which] has jurisdiction over this matter, to seek the appropriate relief or enforcement, be it of a[n] equitable nature or otherwise." *Id.* at 471. Encouraged by this statement, the Mathesons filed an Emergency Motion for Supplemental and Additional Relief and to Amend Final Judgment in the first (the *White* ) proceeding.

On January 14, 1993, while this motion was pending, the Matheson Family and the County entered into a Settlement Agreement to "amicably resolve once and for all time, the appropriate park uses to which the County may put Tracts 1, 2 and 3 of the Crandon Park lands and the locations of such uses within the Crandon Parks lands." To this end, the Settlement Agreement called for the creation of a Crandon Park Master Plan, drafted by experts, subjected to public scrutiny, and implemented by a "Declaration of Restrictions" recorded in the public records to run with the land:

> (a) **Creation.** The Parties agree that a Crandon Park Master Plan shall be prepared by the professional park planning Olmsted Firm ... depicting all permitted uses of various areas on the Crandon Park lands.... ***It is the Parties' intention that the Crandon Park Master Plan*** created pursuant to this Settlement Agreement, and implemented through the Declaration of Restrictions hereinafter described, ***shall determine for all time (subject to amendment as herein after provided) the uses of, and improvements upon, and their location within, the Crandon Park lands.***
>
> (b) **Consultation With The Parties; Draft Plan; Final Plan; Amendment.** In creating the Crandon Park Master Plan, the Olmsted Firm shall consult with the County and its designated Park professionals, and with the Matheson Family, and their designated representatives. In addition the Olmsted Firm shall consult with the County's professional tennis tournament operators concerning the use of the "Tennis Center" at Crandon Park ... for the operation of the International Players Championship.... The Olmsted Firm shall submit a draft of the Crandon Park Master Plan ... to the Parties, and the County shall hold a public hearing [there]on....

(Emphasis added).

This agreement, among other things, expressly provided that the Crandon Park Master Plan was to "be consistent with all of the terms of this Settlement Agreement," and that no new or additional permanent structures would be erected at the Tennis Center:

> **No New Permanent Structures on the Tennis Center....** Except as provided above with respect to the [then contemplated] permanent tennis stadium, the Tennis Center shall include only such permanent structures as are presently located on the Tennis Center....

***236** The Settlement Agreement also provided that the Master Plan, as implemented by a Declaration of Restrictions that was to be recorded in the public records of Miami–Dade County and made part of the final judgment in *White,* would be subject to change or amendment only upon approval by both the County Commission ***and*** a Committee on Amendment of the Crandon Park Master Plan:

> The Crandon Park Master Plan as implemented by the above mentioned Declaration of Restrictions and Final Judgment, may be amended following adoption only by the following procedure: (1) the County by affirmative vote of the County Board of Commissioners shall propose an amendment through action by resolution; (2) the County shall appoint two persons to a Committee on Amendment of the Crandon Park Master Plan, and the National Parks and Conservation Association (or a successor non-profit park preservation organization mutually agreed upon by the Parties) shall likewise appoint two members to such Committee on Amendment of the Crandon Park Master Plan. The Committee shall consider the proposed amendment to the proposed Crandon Park Master Plan and an affirmative vote of no less than three members of such Committee shall be required to amend the Crandon Park Master Plan, which amendment shall be incorporated by the County in an amendment to the Declaration of Restrictions implementing the Crandon Park Master Plan. Should a proposed amendment to the Crandon Park Master Plan fail to receive an affirmative vote of at least three members of such Committee on the Amendment of the Crandon Park Master Plan, the proposed amendment shall fail and the Crandon Park Master Plan shall be enforced as previously in force.

  

As contemplated by the Settlement Agreement, a Crandon Park Master Plan was drafted and approved by the Matheson Family and the County. That 102–page plan and its 24 appendices delineate detailed objectives for all areas comprising Crandon Park.[3] Among other things, this plan expressly precludes construction of virtually any additional permanent structures within Crandon Park:

3 The areas specifically addressed were Crandon Boulevard, the Crandon Park Marina, the ibis preserve, the Crandon Park Golf Course, the Crandon Park Tennis Center, the West Point Preserve, the Fire Station, the Calusa Mangrove Trail and Archaeological sites, the Crandon Park Service Area, the Crandon Park Zoo and Gardens, the Crandon Park Cabanas, the Parking and Beach Drive, the Crandon Park Beach, the Crandon Park Visitors and Nature Center, and the Bear Cut Preserve.

> Except as expressly provided in this Master Plan, there shall be no new structures, improvements, features, or major modifications to existing structures or improvements (defined as renovations or repairs constituting more than 50% of the value of the existing structure or improvement), whether temporary or permanent, located or constructed on the Crandon Park Lands, provided that resurfacing of any tennis court in excess of 50% of the value of the court shall be permitted.

With regard to the Tennis Center, described in the Master Plan as comprising a tennis stadium, a clubhouse, and 27 tennis courts, no new permanent structures or expansion whatsoever was authorized:

> **No New Permanent Structures on the Tennis Center** ... Except as provided ... with respect to the permanent tennis stadium, the Tennis Center shall include only such permanent structures as are presently located on the Tennis ***237** Center and depicted in the Master Plan Site Plan.

Significantly, the Master Plan provides that any amendments either to it or to the contemplated Declaration of Restrictive Covenants memorializing it "shall be adopted sparingly, in conformity with [the Master Plan's] Statement of Intent and consistent with the provisions of the Settlement Agreement reached on January 14, 1993 by and between the Matheson family and Dade County."[4]

4 The Declaration of Restrictive Covenants similarly provides that any modification or amendment of the Declaration itself must be made in accordance with the provisions of the Master Plan, and that any modification or amendment of the Master Plan may be made "only in accordance with the provisions contained in the Settlement Agreement dated January 14, 1993...."

On August 25, 2000, as required by the Settlement Agreement between the Matheson Family and the County, a Declaration of Restrictive Covenants was recorded in the public records of Miami–Dade County. That Declaration confirmed that consistent with the Settlement Agreement and the Crandon Park Master Plan: (1) it was the intention of the County and the Matheson Family for all time to restrict the use of and improvements to Crandon Park by limiting those uses and improvements to those authorized by the Crandon Park Master Plan; (2) that under the Master Plan no structures or improvements other than those then contemplated or existing and described in the Master Plan were to be made at Crandon Park unless authorized by the Declaration which incorporated the terms of the Master Plan and Settlement Agreement; (3) that the Declaration with its incorporated Settlement Agreement and Master Plan were to run with the land; and (4) the Declaration was not subject to modification except as provided by the Settlement Agreement and Master Plan—that is, with the approval of ***both*** the County Commission and the Committee on Amendment of the Crandon Park Master Plan:

> **WHEREAS,** in order to fulfill the requirements of the Settlement Agreement [between the County and the Matheson Family] and forever to resolve the disputes and litigation between [them], the County [as owner of Crandon Park] has agreed to restrict the uses of and the improvements upon Crandon Park as provided in this Declaration, subject to modification or amendment only in accordance with the provisions contained herein;
>
> ....

  

> **1. CRANDON PARK MASTER PLAN.** Upon the recordation of this Declaration, the [Crandon Park] Property shall be restricted to those uses and improvements set forth in the Crandon Park Master Plan attached hereto ... subject to modification or amendment only in accordance with the provisions contained therein. It is the intention of the County and the Matheson family that the Crandon Park Master Plan, which has been created pursuant to the Settlement Agreement and implemented through this Declaration, shall determine for all time (subject to modification or amendment only as herein provided) the uses of, and improvements upon, and their location within, the [Crandon Park] Property. No structure, improvement or other facility, whether permanent or temporary, shall be located or constructed upon the [Crandon Park] Property unless provided by the terms of this Declaration.
>
> **2. BINDING EFFECT OF DECLARATION.** This Declaration shall ***238** constitute a covenant running with the land, and shall be binding upon the County, upon it successors and assigns, and upon all parties having any right, title or interest in [the Crandon Park] Property. This Declaration shall be recorded in the public records of Miami–Dade County, Florida, and shall remain in full force and effect until such time as the Declaration is modified or amended in accordance with the terms contained herein.
>
> ....
>
> **4. MODIFICATION AND AMENDMENT.** This Declaration may be modified or amended only in accordance with the provisions contained in the Settlement Agreement dated January 14, 1993, which appears as Appendix F to the Crandon Park Master Plan ... and upon compliance with the terms of such Settlement Agreement as to amendment of the Crandon Park Master Plan, by a written instrument duly recorded in the public records of Miami–Dade County.

Finally, on October 18, 2000, pursuant to the terms of the Settlement Agreement, the trial court in *White* entered an Amended Final Judgment approving and incorporating the Crandon Park Master Plan and ordering the parties to comply with the provisions of that plan and the Declaration of Restrictive Covenants.

### *2. The Instant Matter*

On August 23, 2012, the County's Board of County Commissioners passed Resolution R–660–12, authorizing the following question to be placed on the November 2012 ballot:

> **Referendum Regarding Structures and Modifications of Existing Agreements for the Tennis Center at Crandon Park**
>
> In accordance with Article 7 of the Home Rule Charter, do you approve as set forth in Resolution R–660–12:
>
> • Erection of permanent structures and expansion of existing structures at Crandon Park Tennis Center for public park and tennis tournament use, which shall be funded solely by tennis center and tournament revenues and private funds; and
>
> • Modification and extension of agreements with operator of Sony Open Tennis Tournament or its successors.

Attached to the resolution was a detailed proposal for additional permanent structures to be constructed at the tennis complex, including: numerous new permanent additions to the current stadium; three new permanent courts with spectator grandstands; a lake cottage; and open pavilions. Also attached to the resolution were the proposed terms for the extension and modification of existing agreements between the County and IPC, pursuant to which IPC operates an annual tennis tournament at the Tennis Center. Therein, IPC proposed a new operating agreement to replace the existing agreement, to fund the development of the additional permanent structures at the tennis complex, and to be allowed to lease office space within the current stadium for year round use.

  

Although no agreement from the Committee on Amendment of the Crandon Park Master Plan to amend the Master Plan or to modify the Declaration or the Settlement Agreement to allow the proposed additional structures or use of the park was secured, the referendum approved by the County Commission was placed on the November 6, 2012 ballot and approved by the voters of Miami–Dade County.

A month after the election, Bruce Matheson filed the instant action against ***239** the County seeking to invalidate the referendum on three grounds: first, he claimed that the ballot title and summary of the referendum failed to comply with section 101.161 of the Florida Statutes (count I); second, he claimed that the ballot title and summary of the referendum violated article 7 of the County's Home Rule Charter (count II); and third, he claimed that the County's misstatements and concealments with respect to the referendum and Resolution R–660–12 violated paragraph A(2) of the Citizens' Bill of Rights in the County's Home Rule Charter (count III). IPC was allowed to intervene in the action.

While this matter was pending, the County finalized an agreement with IPC which it claims are within the parameters delineated in Resolution R–660–12. The Board of County Commissioners conditionally approved that agreement.

In August 2013, Matheson moved for entry of final summary judgment. As to count I, he argued that the ballot title and summary of the referendum violated the accuracy requirements of section 101.161 of the Florida Statutes by failing to inform the electorate of the existence of the Settlement Agreement and Amended Final Judgment in the *White* litigation, as well as the Crandon Park Master Plan and the Declaration of Restrictive Covenants, all of which operate to restrict future expansion of the tennis complex subject to the Master Plan being amended as set forth in the Settlement Agreement. As to count II, he argued that the ballot title and summary of the referendum violated article 7 of the County's Home Rule Charter by asking the voters to endorse what were then non-binding proposals for the expansion of the tennis complex and to approve agreements between the County and IPC that had yet to be negotiated. Matheson made no arguments in his motion with respect to count III.

The County opposed the motion and also moved for summary judgment on Matheson's claims. As to count I, the County argued that section 101.161 was not violated because the required amendment of the Master Plan by three of four voters on the Committee on Amendment of the Crandon Park Master Plan was "the needle in the proverbial haystack of development approvals required to accomplish the Tennis Center project," therefore, it was not necessary to mention anything specifically with respect thereto either in the ballot question or in the resolution referenced therein. The County also argued that the ballot title and summary were sufficiently specific to put the voters on notice of the chief purpose of the referendum. As to count II, the County argued that the referendum did not violate Article 7 of the Home Rule Charter because it was not required to present the voters with fully negotiated, final deals prior to the issues being put on the ballot. IPC filed its own cross-motion for summary judgment, arguing that summary judgment should be granted on Matheson's claims for many of the same reasons argued by the County.

After holding a hearing on the parties' motions, the trial court entered an order granting final summary judgment in favor of the County and IPC as to counts I and II, finding the " 'chief purpose' of the referendum was properly provided to the voters by the title and ballot summary," and as to count III because Matheson had made no argument as to it. This appeal ensued.

***3. Legal Analysis***

The standard of review of the instant final summary judgment is *de novo*. *See Miami–Dade Cnty. v. Vill. of Pinecrest,* 994 So.2d 456, 457 (Fla. 3d DCA 2008) (applying a *de novo* standard of review in determining whether a local referendum ***240** complied with the accuracy requirements of section 101.161 of the Florida Statutes).

Florida law requires that every ballot initiative placed before the public for a vote must be accompanied by a short title and a summary which clearly and unambiguously state the primary purpose of the ballot initiative:

> Whenever a ... public measure is submitted to the vote of the people, a ballot summary of such ... public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates.... The ballot summary of the ... 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. (2012) (emphasis supplied); *Askew v. Firestone,* 421 So.2d 151, 155–56 (Fla.1982) (confirming that section 101.161 applies to "all ballots"); *see also Wadhams v. Bd. of Cnty. Comm'rs of Sarasota Cnty.,* 567 So.2d 414, 416 (Fla.1990) (applying section 101.161 to a county ballot initiative to amend a county charter).

The purpose of these requirements "is to assure that the electorate is advised of the true meaning, and ramifications, of an amendment" so that the electorate is not misled but is put on "fair notice of the decision [it] must make." *Askew,* 421 So.2d at 155–156; *see also Wadhams,* 567 So.2d at 416. This means not just that a ballot title and summary must faithfully track the text of a proposed initiative, but that they may not "fly under false colors" or "hide the ball" by failing to disclose the initiative's true effect. *Armstrong v. Harris,* 773 So.2d 7, 16 (Fla.2000).

In *Askew,* for example, the Florida Legislature by joint resolution proposed an amendment to Section 8 of Article II of the Florida Constitution relating to lobbying by former legislators and statewide elected officials. That proposal would have removed an absolute two-year ban on lobbying by former legislators and statewide elected officials who filed financial disclosures. *Askew,* 421 So.2d at 155. While the title to the proposed amendment and its summary accurately disclosed that former legislators and statewide elected officials who failed to file financial disclosures would be precluded from lobbying activities for two years, it was struck down for failure to disclose that the proposal would repeal the existing, more stringent post-term prohibition on lobbying:

> 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 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 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 prohibited. ***The problem, therefore, lies not with what the summary says, but, rather, with what it does not say.***
>
> ....
>
> 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 ***241** 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.

*Id.* at 155–56 (some emphasis added) (footnote omitted); *see also Wadhams,* 567 So.2d at 416 (invalidating a vote approving an amendment to a county charter because although the amendment's title and summary accurately tracked the amendment's language which provided that the County's Charter Review Board would only be permitted to meet once every four years, the ballot failed to explain that currently there was no restriction on meetings—thus, making the chief purpose of the amendment to curtail the Board's right to meet).

In *Armstrong,* the Florida Supreme Court struck a ballot initiative because, much like in *Wadhams,* the ballot was defective "for what it d[id] ***not*** say." *Armstrong,* 773 So.2d at 21. There, the Court first found a ballot title and summary "flew under false colors" because the ballot misleadingly implied that by amending article I, section 17 of the Florida Constitution to prohibit imposition of "cruel ***and*** unusual punishment" rather than "cruel ***or*** unusual punishment," the rights of Florida citizens would be enhanced or promoted through the rulings of the United States Supreme Court:

> Use of the word "or" instead of "and" in [article 1, section 17] 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.
>
> 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 freedom from government intrusion into the lives of the citizens than do their federal counterparts.... In short: "[T]he 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 would consist of a floor ... and nothing more....
>
> 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.

*Armstrong,* 773 So.2d at 17–18 (footnote omitted).

The *Armstrong* Court then concluded that the ballot summary also "hid the ball" by failing to accurately state the chief purpose or main effect of the proposed amendment, that is, to nullify the Cruel or Unusual Punishment Clause of Florida's constitution:

> To conform to section 101.106(1), a ballot summary must state "the chief purpose" of the proposed amendment. In evaluating an amendment's chief purpose, a court must look not to subjective criterial espoused by the amendment's sponsor but to objective criteria inherent in the amendment itself, such as the amendment's main effect. In the present ***242** 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.)

*Id.* at 18 (footnotes omitted); *see also Village of Pinecrest,* 994 So.2d at 458 (invalidating a ballot initiative amending Miami–Dade County's Home Rule Charter because its title flew under false colors by promising to create a uniform county wide fire and rescue service when one had long existed and hid the ball by purporting to create new rights while actually curtailing or eliminating them).

Here, as in *Askew* and *Armstrong,* the ballot summary both "fl[ies] under false colors" and "hide[s] the ball." While the ballot summary suggests that the electorate is being asked to "approve" the "[e]rection of permanent structures and expansion of existing structures at Crandon Park Tennis Center for public park and tennis tournament use" and "modifications and extension of agreements" with IPC, in reality it is nothing more than a conditional or non-binding straw ballot with no binding official effect. *Compare City of Miami v. Staats,* 919 So.2d 485, 486–87 (Fla. 3d DCA 2005) (finding a City of Miami ballot question which clearly stated that it was a "Straw Ballot" and asked "Shall the voters of Miami–Dade elect the Tax Assessor instead of the County Manager of Miami–Dade County appointing the Tax Assessor," flew under false colors and hid the ball because the ballot title and summary failed "to adequately inform the voting public that their response ha[d] no official effect, i.e., that the ballot question [was] simply a nonbinding opinion poll"), *with City of Hialeah v. Delgado,* 963 So.2d 754, 757 (Fla. 3d DCA 2007) (finding that a straw ballot which asked "Would you support a voter petition" to resolve the same issue addressed in *Staats* complied with section 101.161(1) because the ballot language adequately informed the voters that the ballot measure had no binding effect).

The ballot summary also "hid[ ] the ball" by failing to mention or disclose that approval of the proposed changes were conditioned on the agreement of a third party, the Committee on Amendment to the Crandon Park Master Plan. That is, the

  

summary failed to inform the voters that the changes proposed by the resolution for which approval was sought could not be made by virtue of a "yes" vote on the referendum. *See Armstrong,* 773 So.2d at 21 (finding a ballot question hid the ball from the voters where the "ballot title and summary give no hint of the radical change in state constitutional law that the text actually foments"); *Askew,* 421 So.2d at 156 (striking a resolution that proposed a constitutional amendment because the ballot summary was "misleading to the public concerning material changes to an existing constitutional provision").

The County takes exception to the view that it hid the ball, suggesting that Resolution R–660–12 which is referred to in the ballot summary adequately addresses these matters. It points to exhibit B to the resolution wherein IPC proposed "that it would undertake to seek the receipt of all required ***development approvals*** to ensure ***243** that all the Additional Permanent Structures comply with all legal obligations." (Emphasis supplied). The County suggests that the amendment of the Master Plan "is just one of many development approvals that [IPC] will need to obtain in order to upgrade the existing, and construct new, facilities at" the tennis complex, comparing it to a laundry list of development approvals it must obtain before the proposed expansion may occur, from the U.S. Army Corps of Engineers to the South Florida Water Management District. Not only is the County's argument misleading, it is also wrong.

The subject Master Plan prohibition on the erection of permanent structures at Crandon Park is a unique condition that only applies to this public park, is the result of a Settlement Agreement reached after years of litigation, and is memorialized in the public record in a Declaration of Restrictive Covenants that runs with the land—none of which are even mentioned in the resolution. The Master Plan amendment process is hardly the equivalent of the routine approvals that must be secured before making an improvement on public land. Moreover, to increase or expand the structures currently located at the Tennis Center would require more than just a modification of the Crandon Park Master Plan. It would also entail invalidating the Settlement Agreement and Declaration of Restrictive Covenants, and modifying a long since final judgment—none of which are simply routine development approvals. In any event, reference to "development approvals" in an exhibit to the subject resolution is not sufficiently clear and unambiguous to inform the voters of the unique circumstances that exist as to expansion of the tennis complex at Crandon Park or to the conditions that must be met before any expansion may occur.

This all could have been avoided simply by advising voters that the approvals being sought were conditioned on approval by a third party, all of which easily could have been accomplished in seventy five words as required by section 101.161:

> In accordance with Home Rule Charter Article 7, and subject to Crandon Park Master Plan Amendment Committee approval, do you approve as Resolution R–660–12 provides:
>
> • Erection of permanent structures and expansion of existing structures at Crandon Park Tennis Center for public park and tennis tournament use, to be funded solely by tennis center and tournament revenues and private funds; and
>
> • Modification and extension of agreements with operator of Sony Open Tennis Tournament or its successors.

In finding that the ballot summary fails to comply with section 101.161(1), I do not disagree with the County's contention that Article 7 of the County's Home Rule Charter requires that voters also approve of the proposed expansion of the tennis complex and modification/extension of agreements with IPC in a County-wide referendum. However, if the voters are being asked to approve the changes that the County wished to make, they must be made aware of the fact that the County's desires and their approval of them are conditional or will not effectuate the proposed changes.

Finally, IPC questions the validity of the Settlement Agreement in the *White* proceeding, suggesting that the Master Plan amendment process was an unlawful delegation of legislative authority by the Board of County Commissioners. However, IPC abandoned this argument at the summary judgment hearing below, agreeing that this question would be resolved in separate litigation pending in the circuit court. A substantial portion of IPC's Answer Brief ***244** on this appeal is dedicated to this very issue, which IPC candidly admits is not now properly before us in this appeal. Indeed, after spending some twenty pages providing the factual background for and discussing the "unlawful delegation" issue, IPC concedes "[t]hat issue can only be

  

solved in [the trial] court, such as in *IPC v. Matheson,* which may later reach this Court." Needless to say, this particular issue need not be addressed in this appeal.

### *4. Conclusion*

Because the ballot summary misled the voters as to the true legal effect of the referendum and failed to disclose material information necessary for the public to make an informed decision under section 101.161, I would find that the ballot is defective and that the post-election results of the subject referendum must be invalidated. I would therefore reverse the order granting final summary judgment in favor of the County and IPC and remand with instructions that final summary judgment be granted in favor of Matheson.

### All Citations

187 So.3d 221, 40 Fla. L. Weekly D1267

**Negative Treatment**

There are no Negative Treatment results for this citation.

365 So.2d 210
District Court of Appeal of Florida, Third District.

METROPOLITAN DADE COUNTY, Florida, a
Political Subdivision of the State of Florida, Appellant,
v.
Otis W. SHIVER, Individually, North Dade Oceanfront Resort Owners Association,
an Unincorporated Association, Marco Polo Hotel, a Florida Corporation, Serita
Elwood, Individually and Shiver Enterprises, Inc., a Florida Corporation, Appellees,
and
Miami Dolphins, Ltd., a Florida Limited Partnership, Intervenor/Appellee.

No. 78-2031.
|
Dec. 12, 1978.

**Synopsis**

Action was brought seeking to restrain holding of referendum election on county ordinance imposing tourist development tax. The Circuit Court, Dade County, Arden M. Siegendorf, J., granted the requested injunction, and appeal was taken. The District Court of Appeal, Hubbart, J., held that use of term "room" on ballot rather than term "development" as used in statute providing ballot language on tourist development tax referendum did not require removal of referendum from ballot.

Reversed.

West Headnotes (3)

[1] **Injunction** Elections, Voting, and Political Rights
**Injunction** Initiative, referendum, and recall

As a general rule, court of equity will not restrain holding of election; limited exceptions include where election is being held in violation of applicable legislative enactment or where ballot question on referendum is misleading and deprives voter of opportunity to know and be on notice as to proposition on which he is to cast vote.

8 Cases that cite this headnote

[2] **Counties** Ordinances and by-laws

Use of term "room" on ballot rather than term "development" as used in statute providing ballot language on tourist development tax referendum did not require removal of referendum from ballot, particularly where there was an explanation on ballot as to purpose of tourist tax, namely, to provide for tourist development. West's F.S.A. § 125.0104(6)(b).

[3] **Counties** Ordinances and by-laws

  

Even though certain of details of proposed ordinance imposing tourist development tax as well as some of its ramifications were either omitted from ballot question on ordinance or could have been better explained therein, where ballot question contained essential description of tourist tax ordinance and its purposes, ordinance referendum could not be removed from ballot on ground that ballot question as framed was grossly misleading to the public. West's F.S.A. § 125.0104.

3 Cases that cite this headnote

**Attorneys and Law Firms**

***211** Stuart L. Simon, County Atty., for appellant.

Frates, Floyd, Pearson, Stewart, Richman & Greer and Gerald F. Richman, Paul & Thomson and Jon W. Zeder, Miami, for appellees.

Before HENDRY and HUBBART, JJ., and CHARLES CARROLL (Ret.), Associate Judge.

**Opinion**

HUBBART, Judge.

This is an action for declaratory and injunctive relief seeking to restrain the holding of a referendum election on a certain county tax ordinance in the Circuit Court for the Eleventh Judicial Circuit of Florida. The trial court granted the injunction from which an appeal was taken to this court. After full briefs and argument, this court entered an order reversing the order under review and placed the said election issue back on the November 7, 1978 ballot. This opinion more fully explains our reasons for taking such action.

The controlling facts in this case are undisputed. The Board of County Commissioners of Dade County, Florida enacted an ordinance subject to voter approval imposing a certain tourist development tax pursuant to Section 125.0104, Florida Statutes (1977) throughout Dade County, Florida except within the municipal limits of Miami Beach, Bal Harbour, and Surfside where municipal resort taxes were already in effect. This ordinance was placed on the ballot for the October 5, 1978 election. An action was thereafter filed by certain residents of Dade County to enjoin the holding of an election on such question before the Circuit Court for the Eleventh Judicial Circuit of Florida. On September 8, 1978, the trial court granted the injunction from which no appeal was taken.

On October 4, 1978, the Board of County Commissioners again met and duly enacted another ordinance similar to the above prior ordinance but calling for a voter referendum thereon to be held on the November 7, 1978 election. A resolution was also passed providing the language for the ballot question ***212** on the referendum.[1] The plaintiffs residents of Dade County Otis W. Shiver, et al., thereafter filed another action for declaratory and injunctive relief seeking to keep the above question off the November 7, 1978 ballot. On October 27, 1978, the trial court granted the injunctive relief requested from which Dade County duly appealed to this court. On November 2, 1978, this court reversed the trial court's final determination with an opinion to follow in due course. The question was thereupon placed on the November 7, 1978 ballot, and we are informed that the ordinance herein was approved by the voters at such election.

1 The ballot language on such referendum reads as follows:
"TOURIST ROOM TAX
The Board of County Commissioners of Dade County, Florida, has adopted Ordinance No. 78-62 levying and imposing a Tourist Room Tax at the rate of two percent (2%) on hotel, motel, and similar accommodations rented for a term of six (6) months or less. Said ordinance further provides the following plan for the expenditure of the tax revenues received:
1. To fund a Tourist and Convention bureau. $437,900 (10 percent).

  

2. To promote and advertise Dade County tourism within domestic and international markets. $2,189,500 (50 percent).
3. To promote Dade County tourism by sponsoring tourist-oriented cultural and special events such as visual and performing arts including theater, concerts, recitals, opera, dance, art exhibitions, festivals and other tourist-related activities. $875,800 (20 percent).
4. To modernize and improve the present Orange Bowl Football Stadium including chairback seats, additional food and beverage concessions, additional and improved parking facilities and additional restrooms and construction. $875,800 (20 percent).
Shall this ordinance levying and imposing such Tourist Room Tax be approved?
FOR THE TOURIST ROOM TAX
AGAINST THE TOURIST ROOM TAX"

**[1]** The law is well-settled that a court of equity as a general rule will not restrain the holding of an election because a free election in a democracy is a political matter to be determined by the electorate and not the courts. City of Deland v. Fearington, 108 Fla. 498, 146 So. 573 (1933); Joughin v. Parks, 107 Fla. 833, 143 So. 145 (1932); Dulaney v. City of Miami Beach, 96 So.2d 550 (Fla. 3d DCA 1957). Limited exceptions to this rule have been recognized but only on the narrowest of grounds. One such exception is where the election is being held in violation of an applicable legislative enactment. City of Miami Beach v. Herman, 346 So.2d 122 (Fla. 3d DCA 1977). Another is where the ballot question on a referendum is misleading and deprives the voter of an opportunity to know and to be on notice as to the proposition on which he is to cast his vote. Hill v. Milander, 72 So.2d 796 (Fla.1954).

In the instant case, the trial court rested its decision to enjoin the holding of the election herein on two basic grounds, to wit: (1) the ballot question as framed violated Section 125.0104(6)(b), Florida Statutes (1977), and (2) the ballot question as framed was grossly misleading to the public. We disagree.

**[2]** Section 125.0104(6)(b), Florida Statutes (1977), provides for the ballot language on the tourist development tax referendum herein in the following terms:

"(b) The governing board of the county levying the tax shall arrange to place a question on the ballot at the next regular or special election to be held within the county, Substantially as follows:

. . . FOR the Tourist Development Tax

. . . AGAINST the Tourist Development Tax" (emphasis added)

The ballot question in the instant case reads in relevant part as follows:

. . . FOR THE TOURIST ROOM TAX

. . . AGAINST THE TOURIST ROOM TAX" (emphasis added)

In our view, this ballot language is in compliance with the above statute because the ballot contains, as the statute provides, "substantially" the same question as stated in the statute. The fact that the term "room" is used on the ballot, rather than the term "development" as used in the statute, does not significantly alter the statutory ballot language. This is particularly ***213** true where, as here, there is some explanation on the ballot as to the purpose of the tourist tax, namely, to provide for tourist development. It seems to us a highly technical and ultimately unconvincing reason to remove this referendum from the ballot based on this slight variation in ballot language. Indeed, the variation herein is de minimus.

**[3]** Nor are we persuaded that the ballot question as framed is misleading and deprives the voter of an opportunity to know and to be on notice as to the proposition on which he is to cast his vote. The ballot question contains an essential, although not exhaustive, description of the tourist tax ordinance and its purposes. Surely, no voter who had done his homework would be misled thereby. It is true, as the trial court found[2], that certain of the details of the ordinance as well as some of its ramifications were either omitted from the ballot question or could have been better explained therein. That, however, is not the test. There is no requirement that the referendum question set forth the ordinance verbatim nor explain its complete terms at great and undue length. Such would hamper instead of aiding the intelligent exercise of the privilege of voting. Under our system of free elections, the voter must acquaint himself with the details of a proposed ordinance on a referendum together with the pros and

  

cons thereon before he enters the voting booth. If he does not, it is no function of the ballot question to provide him with that needed education. What the law very simply requires is that the ballot give the voter fair notice of the question he must decide so that he may intelligently cast his vote. That requirement has been more than adequately met in this case. Hill v. Milander, 72 So.2d 796 (Fla.1954).

2 The trial court order appealed from states in pertinent part as follows:
"The Ballot Question is also grossly misleading to the public in that the phraseology of 'imposing a Tourist Room Tax at the rate of two percent (2%) on hotel, motel, and similar accommodations' is not in accord with the Tourist Development Tax which subjects apartments, condominiums, rooming houses and trailer camps to the tax and such facilities are not similar accommodations to hotels and motels. The Defendant's Ballot Question also does not properly inform the electorate of relevant information in that: (1) no mention whatsoever is made of the fact that once the tax is approved the Defendant may pledge the revenues from the Tourist Development Tax to secure and liquidate revenue bonds; (2) no mention is made that the Plan to expend the revenues can be completely changed without a referendum once the tax is approved; (3) no mention is made of the fact that an estimated $681,000 of the revenue derived is for collection and administrative costs alone; (4) no mention is made of where the tax will be levied or of the fact that Bal Harbour, Miami Beach and Surfside are exempted from the Tourist Development Tax; and (5) no mention is made of the fact that electors in Bal Harbour, Miami Beach and Surfside are not permitted to vote on this question."

We have considered the other contentions raised by the plaintiffs herein and find them insufficient as a basis for enjoining the holding of the tourist tax referendum in this cause. Dulaney v. City of Miami Beach, 96 So.2d 550 (Fla. 3d DCA 1957). The order under review is accordingly reversed.

Reversed.

**All Citations**

365 So.2d 210

**End of Document**

**Negative Treatment**

There are no Negative Treatment results for this citation.

682 So.2d 198
District Court of Appeal of Florida,
Third District.

MIAMI HEAT LIMITED PARTNERSHIP, a Florida limited partnership, Basketball Properties, Ltd., a Florida limited partnership, and Pauline Winick, Appellants,

v.

David C. LEAHY, as Supervisor of Elections of Metropolitan Dade County, Florida, Appellee,

and

Stop New Arena Committee, Intervenor.

Nos. 96–2803, 96–2804.
|
Oct. 24, 1996.

**Synopsis**

Plaintiffs brought action for declaratory judgment and filed emergency motion for permanent injunction to prohibit supervisor of elections from placing ballot question on general election ballot. The Circuit Court, Dade County, Ronald L. Friedman, J., entered order permitting election to proceed with question on ballot while reserving ruling on legality of question. Plaintiffs filed petition for writ of mandamus and appealed. The District Court of Appeal, Nesbitt, J., held that: (1) order was nonfinal appealable order; (2) right of county citizens under home rule charter to propose ordinances by way of petition embracing more than one subject could not be restricted by municipal ordinance; and (3) language of ballot question adequately informed voters of effect of proposed ordinance.

Affirmed with directions; petition for writ dismissed.

Schwartz, C.J., filed a specially concurring opinion.

West Headnotes (8)

**[1] Appeal and Error** Injunction

Order allowing election to proceed with disputed ballot question while reserving ruling on legality of ballot question was appealable nonfinal order, as it effectively denied challenger's motion for permanent injunction to prohibit placing question on ballot, consequences of order were irreparable if ballot question violated county and state law, and order could only be challenged by immediate appeal. West's F.S.A. R.App.P.Rule 9.130(a)(3)(B).

5 Cases that cite this headnote

**[2] Appeal and Error** Granting or refusing

Trial court's order effectively denying injunction is reviewed for abuse of discretion.

1 Case that cites this headnote

  

[3] **Injunction** Elections, Voting, and Political Rights

As general rule, court of equity will not restrain holding of an election, as free election in democracy is political matter to be determined by electorate and not courts.

[4] **Counties** Ordinances and by-laws

Home rule charter provided the only method for initiating referenda on ordinances in county. Dade County, Fla., Home Rule Charter, § 7.01.

[5] **Counties** Ordinances and by-laws

Home rule charter did not impose single subject requirement on initiative petitions. Dade County, Fla., Home Rule Charter, § 7.01.

1 Case that cites this headnote

[6] **Counties** Ordinances and by-laws

Charter provision establishing right to propose by initiative petition the passage or repeal of ordinances without aid of any legislative enactment was a self-executing provision. Dade County, Fla., Home Rule Charter, § 7.01.

1 Case that cites this headnote

[7] **Counties** Ordinances and by-laws

In light of home rule charter providing method for initiating referenda, right of county citizens to propose ordinances by way of petition embracing more than one subject could not be restricted by municipal ordinance requiring that initiative petitions embrace only single subject; ordinance was not necessary to ensure ballot integrity, and such a restriction on initiative process would strengthen authority and power of county commission but weaken power of initiative process. Dade County, Fla., Home Rule Charter, § 7.01; Dade County, Fla., Code § 12–12.

3 Cases that cite this headnote

[8] **Counties** Ordinances and by-laws

Language of ballot question, stating that any construction in certain area that impaired public's view was prohibited unless prior voter approval was obtained, adequately informed voters of effect of proposed ordinance, although ballot question did not contain ordinance verbatim or explain complete terms at great length. West's F.S.A. § 101.161; Dade County, Fla., Home Rule Charter, § 7.01(4).

1 Case that cites this headnote

**Attorneys and Law Firms**

***199** Bruce S. Rogow, Fort Lauderdale; Holland & Knight and Daniel S. Pearson, Miami, for appellants.

Robert A. Ginsburg, County Attorney, and Steven B. Bass and Jess M. McCarty, Assistant County Attorneys, for appellee.

  

Jorden, Burt, Berenson & Johnson and Dan Paul; Baker & McKenzie and Richard J. Ovelmen; Zack, Sparber, Kosnitzky, Spratt & Brooks, Miami, for intervenor.

***200** Before SCHWARTZ, C.J., and NESBITT and SHEVIN, JJ.

**Opinion**

NESBITT, Judge.

On September 25, 1996, Miami Heat Limited Partnership, Basketball Properties, Ltd., and Pauline Winick (hereinafter "appellants") brought an action for declaratory judgment and filed an emergency motion for permanent injunction to prohibit David H. Leahy, as Supervisor of Elections, from placing a ballot question prompted by an Initiative Petition on the upcoming November 5, 1996 general election ballot.[1] The trial court held a hearing on appellants' motion for injunction on October 4, 1996. As a result of that hearing the trial court entered the order now sought to be reviewed. In it, the court decided to allow the election to proceed with the disputed question on the ballot while at the same time reserve ruling on "the legality of the ballot question."

1 The trial court granted Stop New Arena Committee's (hereinafter "intervenor") motion for intervention on October 3, 1996.

I.

Appellants seek alternative remedies in this court. In Case No. 96–2804 appellants have filed a petition for a writ of mandamus in which they seek to force the trial court to rule on their request for injunctive relief prior to the election. In Case No. 96–2803, appellants have filed a notice of appeal under Florida Rule of Appellate Procedure 9.130(a)(3)(B) arguing that the trial court's order is an effective, though not express, denial of their request for injunctive relief. Thus, our first task is to decide the question of our jurisdiction.

**[1]** The order sought to be reviewed provides in pertinent part as follows:

> 1. Without ruling on the legality of the ballot question at this time, the Court will permit the election to proceed with the instant question on the ballot.
>
> 2. The Court will review all of the arguments of the parties and the case law to make an ultimate ruling as to its legality. A ruling will be published subsequent to the election.

Rule 9.130(a)(3)(B) of the Florida Rules of Appellate Procedure provides:

> (a) Applicability.
>
> (3) Review of non-final orders of lower tribunals is limited to those that
>
> (B) grant, continue, modify, deny, or dissolve injunctions, or refuse to modify or dissolve injunctions....

Clearly, the order in question does not by its terms "deny" an injunction. In support of their argument that we may treat the order as an appealable nonfinal order, the appellants have cited to analogous federal authority.

Codified in a federal statute, the relevant provision allowing for appeal of an order denying an injunction provides as follows:

> § 1292. Interlocutory decisions
>
> (a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:

  

> (1) Interlocutory orders of the district courts of the United States, ... or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court.

28 U.S.C.S. § 1292(a)(1) (Law.Co-op.1996). This court has previously held that where, as here, state rules are "closely patterned" on their federal counterparts, decisions and commentaries interpreting the federal rules are persuasive in construing the state rules.[2] ***201** *Dinter v. Brewer,* 420 So.2d 932, 934 n. 2 (Fla. 3d DCA 1982)(citing *Gross v. Franklin,* 387 So.2d 1046, 1048 n. 6 (Fla. 3d DCA 1980)).

2 In discussing this provision, one well known authority made the following particularly pertinent comment:

> [A] district court may not avoid immediate review of its determination simply by failing to characterize or label its decision as one denying or granting injunctive relief. For example, when a court declines to make a formal ruling on a motion for a preliminary injunction, but its action has the effect of denying the requested relief, its refusal to issue a specific order will be treated as equivalent to the denial of a preliminary injunction and will be appealable.

11 Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 2962, at 614 (West 1973)(quoted in *Mitsubishi Int'l Corp. v. Cardinal Textile Sales,* 14 F.3d 1507, 1515 (11th Cir.1994), *cert. denied,* 513 U.S. 1146, 115 S.Ct. 1092, 130 L.Ed.2d 1061 (1995)).

Reviewing the relevant decisions, one jurist has succinctly noted:

> Federal courts have interpreted [28 U.S.C.S. § 1292(a)(1) ] to mean that if an interlocutory order expressly grants or denies a request for injunctive relief, the losing party has a right to direct appeal, but that if the interlocutory order does not do so, the losing party only has the right to direct appeal if the litigant can show that the interlocutory order has the practical effect of granting or denying an injunction; that the interlocutory order might have serious, perhaps irreparable, consequences; and that the order can be effectively challenged only by immediate appeal.

*Georgia Power Co. v. Hunt,* 266 Ga. 331, 466 S.E.2d 846, 849 (1996)(Sears, J., concurring specially)(citing federal appellate decisions so holding).

Applying that test we conclude that the order in question is an appealable nonfinal order.[3] It has the practical effect of denying appellants' request for injunctive relief, as the disputed question will go on the ballot. The consequences of the order are irreparable as, if appellants contentions are taken as true, a misleading ballot question in violation of county and state law will appear on the general election ballot. Finally, the order can only be challenged by immediate appeal given the impending general election.

3 In light of this conclusion, we dismiss as moot appellants' petition for a writ of mandamus.

II.

**[2]** **[3]** Turning to the merits, we review the trial court's order effectively denying an injunction for an abuse of discretion. Moreover, we note that "[t]he law is well-settled that a court of equity as a general rule will not restrain the holding of an election because a free election in a democracy is a political matter to be determined by the electorate and not the courts." *Metropolitan Dade County v. Shiver,* 365 So.2d 210, 212 (Fla. 3d DCA 1978), *affirmed,* 394 So.2d 981 (Fla.1981).

Appellants' first argument is that the initiative petition[4] that prompted the ballot ***202** question violates section 12–12 of the Dade County Code. That section declares: "Initiative petitions proposed pursuant to Sections 7.01 or 8.07 of the Dade County Home Rule Charter shall embrace but one subject and matter directly connected therewith." Intervenor responds that the Home Rule Charter provides the sole procedure and qualifications an initiative petition must meet for submittal to the electorate; thus, section 12–12 is invalid and no single-subject requirement is applicable.

4 The petition provides as follows:

  

Petition For Public's Right to Vote on Arena and Park Construction

ORDINANCE PROHIBITING COMMITTING, PLEDGING, OR USING COUNTY TAX FUNDS, LEASED LANDS, MONEYS OR BONDS FOR THE PURPOSE OF BUILDING IN BICENTENNIAL PARK OR THE FEC TRACT IN THE CITY OF MIAMI, FLORIDA A NEW ARENA AND/OR PARKING GARAGES; OR UNLESS FIRST APPROVED BY THE PUBLIC IN AN ELECTION ANY PERMANENT STRUCTURES WHICH OBSTRUCT OR IMPAIR THE PUBLIC'S ACCESS TO AND VIEW OF BISCAYNE BAY FROM BISCAYNE BOULEVARD OR WHICH ARE TO BE LEASED TO OR USED BY FOR PROFIT BUSINESS ENTITIES; PROVIDING SEVERABILITY; INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

BE IT ORDAINED BY THE PEOPLE OF DADE COUNTY, FLORIDA:

*Section 1.* No County tax funds or county leased lands, moneys or bonds shall be committed, pledged, or used to build in Bicentennial Park or the adjacent parklands known as the FEC Tract in the City of Miami:

(a) a new arena and/or parking garages, or

(b) unless first approved by the public in an election, any permanent structures which obstruct or impair the public's access to and view of Biscayne Bay from Biscayne Boulevard or which are to be leased to or used by for profit business entities.

*Section 2.* If any section, subsection, sentence, clause, phrase, words or provision of this ordinance is held invalid or unconstitutional, the remainder of this ordinance shall not be affected by such holding.

*Section 3.* This ordinance shall be liberally construed to prevent the use of public funds for the purposes set forth herein and to protect the public's unobstructed access to Biscayne Bay and to preserve the public's parklands for compatible outdoor recreational purposes.

*Section 4.* This ordinance shall be made a part of the Code of Metropolitan Dade County, Florida.

*Section 5.* This ordinance shall take effect on the day after the election approving this ordinance.

WE the undersigned electors of Dade County, Florida petition the Board of County Commissioners either to pass the foregoing ordinance or to submit this ordinance to the electors of Dade County, Florida in accordance with Article 7, Section 7.01 of the Charter of Metropolitan Dade County.

**[4]** **[5]** We agree with the intervenor that the Home Rule Charter provides the only method for initiating referenda on ordinances and does not impose a single subject requirement. Article VIII, section 11(1)(i) of the 1885 Florida Constitution, carried forward by Article VIII, section 6(e) of the 1968 Florida Constitution, states that the Home Rule Charter "[s]hall provide a method for ... initiative and referendum, including the initiation of and referendum on ordinances...." Section 7.01 of the Charter carries out the constitutional directive and lays out a "procedure" for Dade County electors to initiate passage of or referenda on ordinances. Nowhere in that procedure is there a requirement that initiative petitions embrace only a single subject.

A near perfect analogy to this case exists in *Citizens Proposition for Tax Relief v. Firestone,* 386 So.2d 561 (Fla.1980). There the appellant citizens group was attempting to place a constitutional amendment on the ballot by initiative under Article XI, section 3 of the Florida Constitution. An existing statute and administrative rule imposed certain requirements on an initiative's sponsor before the proposal would be placed on the ballot. Among these were verification procedures for the signatures found on the petition and a requirement that initiative petitions be filed with the secretary of state 122 days preceding the next general election rather than the ninety days required in Article XI, section 5, Florida Constitution.

In passing on the validity of these executive and legislative enactments, the court noted:

> This is a self-executing constitutional provision. It clearly establishes a right to propose by initiative petition a constitutional amendment which may be implemented without the aid of any legislative enactment. *Gray v. Bryant,* 125 So.2d 846 (Fla.1960).... In considering any legislative act or administrative rule which concerns the initiative amending process, *we must be careful that the legislative statute or implementing rule is necessary for ballot integrity since any restriction on the initiative process would strengthen the authority and power of the legislature and weaken the power of the initiative process.* The delicate symmetric balance of this constitutional scheme must be maintained, and any legislative act regulating the process should be allowed only when *necessary* to ensure ballot integrity. We do, however, recognize that the legislature, in its legislative capacity, and the secretary of state, in his executive capacity, have the duty and obligation to ensure ballot integrity and a valid election process. Ballot integrity is necessary to ensure the effectiveness of the constitutionally provided initiative process.

*Id.* at 566–67 (emphasis added).

**[6]** **[7]** In the instant case, section 7.01 of the Charter is a self-executing provision. It clearly establishes the right to propose by initiative petition the passage or repeal of ordinances *without* the aid of any legislative enactment. We conclude that section 12–12 of the Code is *not* "necessary to ensure ballot integrity" and that such a restriction on the initiative process would strengthen the authority and power of the County Commission but weaken the power of the initiative process. *See id.*

In *Abreau v. Cobb,* 670 So.2d 1010 (Fla. 3d DCA 1996), *cause dismissed,* Case No. 88,081 (Fla. Dec. 11, 1996), a recall petition was challenged on the basis that it did not state grounds for removal in violation of section 100.361(1)(b), Florida Statutes (1995). This court held: "The Charter sets forth the petition form, which does not require a recall petition to state the grounds for removal. ***203** Thus, pursuant to the [Home Rule Constitutional Amendment], the petition is not required to comply with the statute and the Charter is supreme." *Id.* at 1012. This court further held that "requiring compliance with the statute would constitute an unlawful amendment of the Charter." *Id.*

If a recall petition was not required to comply with a state statute in that case, an initiative petition is certainly *not* required to comply with an ordinance in this one. If the Charter was supreme in that instance, it is no less supreme vis-a-vis an ordinance. Additionally, as with the statute in *Abreau,* compliance with this ordinance would unlawfully amend the Charter procedure for initiating referenda on ordinances.[5] If the Board of County Commissioners, or anyone else, wishes to impose a single subject requirement on initiative petitions, they must do so by amendment to the Charter itself. Until such time, the right of Dade County citizens to propose ordinances by way of petition that embrace more than one subject may not be restricted by the Commission's enactment of an ordinance attempting to impose such a requirement.

5 We note that *Abreau* even more directly disposes of any argument that the single subject requirement found in section 125.67, Florida Statutes (1995), is applicable.

**[8]** Appellants' second, and final, argument is that the language of the ballot question[6] approved by the County Commission for placement on the general election ballot is violative of section 7.01 of the Home Rule Charter and section 101.161, Florida Statutes (1995). *See, e.g., Kobrin v. Leahy,* 528 So.2d 392 (Fla. 3d DCA), *rev. denied,* 523 So.2d 577 (Fla.1988); *Metropolitan Dade County v. Lehtinen,* 528 So.2d 394 (Fla. 3d DCA), *rev. denied,* 528 So.2d 1182 (Fla.1988). Section 7.01(4) of the Charter provides that a proposal submitted to the electors must be "in such a manner as provides a clear understanding of the proposal." Likewise, section 101.161 requires "that a ballot question set forth the substance of ... [the] public measure ... in clear and unambiguous language ... [which contains] the chief purpose of the measure...." *Kobrin,* 528 So.2d at 393 (quoting subsection 101.161(1), Florida Statutes (1987)).

6 It reads as follows:

> Shall Dade County be prohibited from using County taxes, leased lands, moneys or bonds to construct a new arena and related facilities in Bicentennial Park or the FEC Tract, and also be prohibited, unless approved by the voters, from any construction in Bicentennial Park or the FEC Tract which obstructs or impairs the view of Biscayne Bay or which is leased or used by for profit business entities?

Appellants' main contention is that the ballot question does not adequately inform the voters of the effect the proposed ordinance would have on the expansion and operation of the Maritime Park Port Project. We disagree. The text of the ballot question clearly states that any construction in Bicentennial Park or the FEC Tract that obstructs or impairs the public's view of Biscayne Bay is prohibited unless prior voter approval is obtained. Judge Hubbart's comments in a different context are particularly apt:

> It is true ... that certain of the details of the ordinance as well as some of its ramifications were either omitted from the ballot question or could have been better explained therein. That, however, is not the test. There is no requirement that the referendum question set forth the ordinance verbatim nor explain its complete terms at great and undue length. Such would hamper instead of aiding the intelligent exercise of the privilege of voting. Under our system of free elections, the voter must acquaint himself with the details of a proposed ordinance on a referendum together with the pros and cons thereon before he enters the voting booth. If he does not, it is no function of the ballot question to provide him with that needed education.

  

> What the law very simply requires is that the ballot give the voter fair notice of the question he must decide so that he may intelligently cast his vote. That requirement has been more than adequately met in this case.

*Shiver,* 365 So.2d at 213 (footnote omitted).

In sum, we affirm the trial court's effective denial of the appellants' motion for permanent injunctive relief and we remand to the ***204** trial court with directions to dismiss the complaint. The general election will proceed with the subject question on the ballot, to be decided by the electorate.

Affirmed with directions.

SHEVIN, J., concurs.

SCHWARTZ, Chief Judge (specially concurring).

I recognize the wisdom of the trial judge's determination to postpone ruling until after the election both because of a rightful reluctance "to interfere with the electoral process by precluding a decision of the voters," *Wilson v. Dade County,* 369 So.2d 1002, 1003 (Fla. 3d DCA 1979), cert. denied, 373 So.2d 457 (Fla.1979); *see City of De Land v. Fearington,* 108 Fla. 498, 146 So. 573 (1933); *Dulaney v. City of Miami Beach,* 96 So.2d 550 (Fla. 3d DCA 1957), and because the interests of judicial economy would be served by pretermitting determination of the legal issues involved if the proposal is defeated at the polls.[7] Nevertheless, I entirely agree with the conclusion that, under the circumstances, the "non-ruling" below amounted to a denial of the plaintiffs' application to enjoin the election so as to permit review of the order under Florida Rule of Appellate Procedure 9.130(a)(3)(B).

7 There was thus ample "justification that the ruling be withheld" so that mandamus does not lie to compel a decision at this time. *See Flagship National Bank v. Testa,* 429 So.2d 69, 70 (Fla. 3d DCA 1983).

On the merits, I wholeheartedly concur in Judge Nesbitt's treatment of the issues of the language of the proposal and ballot question and the invalidity of section 12–12 of the Dade County Code.In my view, affirmance is also appropriate because, even assuming its applicability, the single subject rule is not violated by the proposal before us. To the contrary, it is clear that, fairly and common sensibly viewed, the initiative indeed deals with but a single subject: restricting development on specified public parkland on the Miami waterfront. *See State v. Dade County,* 39 So.2d 807 (Fla.1949); *State v. Dade County,* 39 So.2d 810 (Fla.1949). The appellants' primary argument otherwise, that the fact that the restrictions contained in section (1)(b) may be vitiated by a prior approval of "the public in an election" renders the "subject" of that subparagraph the allegedly different one of electoral power or "governance," strikes me as logic-chopping in its most extreme form. More important, it is contrary to the Florida law that provisions like (1)(b), concerning the manner in which a proposal is to be implemented, are only supplementary to the subject of the proposal and do not constitute an independent or separate subject of their own.[8] *Advisory Opinion to Attorney Gen. re Limited Casinos,* 644 So.2d 71 (Fla.1994); *Floridians Against Casino Takeover v. Let's Help Florida,* 363 So.2d 337, 339 (Fla.1978)(in determining whether a ballot question has a "[u]nity of object and plan ... it is to be looked for in the ultimate end sought, not in the details or steps leading to the end").

8 Technically speaking, reliance on this ground for affirmance would obviate the need for ruling on the validity of the ordinance.

**All Citations**

682 So.2d 198, 21 Fla. L. Weekly D2326

**End of Document**

**Negative Treatment**

There are no Negative Treatment results for this citation.

96 Fla. 40
Supreme Court of Florida.

# OAKLAND PROPERTIES CORPORATION

v.

# HOGAN et al.

June 23, 1928.

**Synopsis**
Suit by the Oakland Properties Corporation against J. J. Hogan and another. Decree granting a severance to defendant named, and dismissing the bill, and complainant appeals.

Affirmed in part, and in part reversed.

See, also, 117 So. 849, 850.

West Headnotes (11)

**[2] Equity** Necessity

Filing general replication does not affect law providing cause shall be deemed at issue on filing of answer, unless asserting set-off or counterclaim.

**[3] Equity** Necessity

Reply is not necessary without special order, in case answer merely sets up new affirmative matter defensive in character.

**[4] Equity** Nature and office of exceptions

Exceptions for insufficiency will not lie to answer to bill that is not essentially one for discovery, and waives answer under oath.

**[5] Equity** Waiver of answer under oath

Defendant answering under oath is entitled in cause set down for hearing on bill and answer to benefits of his answer as evidence, notwithstanding waiver.

**[6] Equity** Hearing on bill and answer

Allegations of bill denied by answer must fall, unless sustained by proof.

  

[7] **Parties** Persons Who Must Join
**Parties** Persons Who Must Be Joined
All persons materially interested in subject-matter of suit must be made parties.

9 Cases that cite this headnote

[8] **Parties** Persons Who Must Be Joined
Court cannot properly adjudicate matters involved, when it appears necessary and indispensable parties have not been served or are not in some way before court.

4 Cases that cite this headnote

[9] **Parties** Persons Who Must Be Joined
Rights and interests of necessary parties cannot be adjudicated when they are not properly before court.

2 Cases that cite this headnote

[10] **Mortgages and Deeds of Trust** Title to subject property
Foreclosure proceeding, resulting in sale of property, without holder of legal title being before court, does not transfer title.

6 Cases that cite this headnote

[11] **Mortgages and Deeds of Trust** Necessary or Indispensable Parties
Owner of legal title of land covered by mortgage is necessary party to foreclosure sale.

8 Cases that cite this headnote

[11] **Equity** Time for taking
Period of time for taking of testimony is wholly within discretion of chancellor.

*Syllabus by the Court*

Period of time for taking of testimony is wholly within discretion of chancellor. Under the rule, as amended, 'the judge, upon application of either party, or of his own motion, shall enter an order fixing the time within which the testimony of the parties shall be taken.' The period of time allowed for the taking of such testimony is wholly within the discretion of the chancellor.

Filing general replication does not affect law providing cause shall be deemed at issue on filing of answer, unless asserting set-off or counterclaim. The filing of a general replication to an answer, which does not set forth a counterclaim or set-off, does not affect the provision of the statute which specifically provides that the cause shall be deemed at issue upon the filing of the answer unless the answer asserts a set-off or counterclaim.

  

Reply is not necessary without special order, in case answer merely sets up new affirmative matter defensive in character. Under the statute, if the answer merely sets up new affirmative matter defensive in character, such as would be appropriate to an ordinary answer in equity, designed to defeat the purpose of the bill without asserting any set-off or counterclaim, no reply thereto shall be required without a special order from the court and the cause will be deemed at issue upon the filing of the answer.

Exceptions for insufficiency will not lie to answer to bill that is not essentially one for discovery, and waives answer under oath. The settled rule is that exceptions for insufficiency will not lie to an answer to a bill that is not essentially one for discovery and that expressly waives an answer under oath.

Defendant answering under oath is entitled in cause set down for hearing on bill and answer to benefits of his answer as evidence, notwithstanding waiver. Where a cause is set down for hearing on bill and answer only, a defendant who answers under oath is entitled to the benefits of his answer as evidence, notwithstanding a waiver of answer under oath in the bill of complaint.

Allegations of bill denied by answer must fail, unless sustained by proof. Where a cause is set down on bill and answer, and the answer is directly responsible to the allegations of the bill, and in denial thereof, the allegations of the bill must fall unless sustained by proof.

All persons materially interested in subject-matter of suit must be made parties plaintiff or defendant. The general rule in equity is that all persons materially interested, either legally or beneficially, in the subject-matter of a suit, must be made parties either as complainants or defendants, so that a complete decree may be made binding upon all parties.

Court cannot properly adjudicate matters involved, when it appears necessary and indispensable parties have not been served or are not in some way before court. The court cannot properly adjudicate the matters involved in the suit, when it appears necessary and indispensable parties to the proceeding have not been served with process or not in some proper way actually or constructively before the court.

Rights and interests of necessary parties cannot be adjudicated when they are not properly before court. The rights and interests of necessary and indispensable parties cannot be adjudicated when they are not properly before the court.

Foreclosure proceeding, resulting in sale of property, without holder of legal title being before court, does not transfer title. A foreclosure proceeding, resulting in a final decree and a sale of the mortaged property, without the holder of the legal title being before the court, will not operate to transfer his title to the purchaser at said sale.

Owner of legal title of land covered by mortgage is necessary party to foreclosure sale. The owner of the legal title of land covered by a mortgage is a necessary party to a suit to foreclose the mortgage, and neither such owner nor the legal title is effected by a decree and sale in a suit to which he is not a party.

****846** ***42** Appeal from Circuit Court, Broward County; Vincent C. Giblin, judge.

**Attorneys and Law Firms**

Huber. Clements & Blackwell, of Miami, for appellant.

Hall, Johnson & English, of Ft. Lauderdale, for appellees.

**Opinion**

LONG, Circuit Judge.

  

One October 27, 1927, appellant, Oakland Properties Corporation, filed its bill against J. J. Hogan and Middle River Development Company, appellees, seeking to reform a deed executed by Middle River Development Company to appellant in such manner and to such extent as would cause to same to convey the legal title to the lands described in paragraph II of the bill as follows:

East half (E. ½) of southwest quarter (S.W. ¼) of southeast quarter (S.E. ¼) of northwest quarter (N.W. ¼), southeast quarter (S.E. ¼) of southeast ***43** quarter (S.E. ¼) of northwest quarter (N.W. ¼), northeast quarter (N.E. ¼) of southwest quarter (S.W. ¼), east half (E. ½) of east half (E. ½) of northwest quarter (N.W. ¼) of southwest quarter (S.W. ¼), and north half (N. ½) of north half (N. ½) southeast quarter (S.E. ¼) of southwest quarter (S.W. ¼), of section 22, township 49, range 42 east, in Broward county, Florida, and containing 75 acres more or less.

The defendant in the lower court, Hogan, on November 7, 1927, filed his answer. No service of process was obtained upon his codefendant, Middle River Development Company. On the 5th day of January, 1928, the chancellor entered a decree upon the bill and answer, granting a severance as to the defendant Hogan, and dismissing the bill; the entry of which decree is the error assigned.

It is apparent from the record that on the 26th day of February, 1925, Hogan was the owner of the lands in controversy; that he sold to Gotham Realty Corporation and executed a deed thereto; that at the same time the purchaser paid a portion of the purchase price and executed its purchase-money mortgage covering the same property to Hogan to secure the sum of $15,000, that being the balance of the purchase price. Subsequently the lands were deeded by Gotham Realty Corporation, grantor, to Middle River Development Company, who on the 22d of April, 1926, executed a deed to Oakland Properties Corporation conveying the south half of southwest quarter of northwest quarter of southwest quarter, west half of southwest quarter of southwest quarter, and southeast quarter of southwest quarter, in section 22, township 49, range 42 east, in Broward county, Fla., which deed conveyed ***44** the title to 10 acres only of the lands included in the deed to Gotham Realty Corporation, and in the deed from Gotham Realty Corporation to Middle River Development Company.

On March 30, 1927, the mortgagee, Hogan, filed a bill to foreclose his mortgage, which resulted in a final decree, and in which suit Gotham Realty Corporation, Middle River Development Company, and Fab Holding Corporation were named as defendants. Hogan was the purchaser at the sale, and the sale confirmed October 8, 1927. Complainant in the suit now before the court, to wit, Oakland Properties Corporation, who then held the legal title to the 10 acres, to wit, north half (N. ½) of north half (N. ½) of southeast quarter (S.E. ¼) of southwest quarter (S.W. ¼), was not named as a defendant.

Subsequent to the filing of the answer of defendant Hogan, and after due notice to appellant, application was made to the court for an order fixing the time for the taking of testimony and for limiting the time in which said testimony should be taken, and on December 12, 1927, the chancellor entered an order directing the parties to the cause to appear before the court and submit their testimony. No testimony was submitted at this hearing, the complainant not being present, and, on December 24, 1927, defendant Hogan served notice that the cause would be presented for final hearing on bill and answer on the 5th day of January, 1928. During this time, and on the 29th day of December, 1927, after the time for taking testimony had expired, the appellant filed its motion to vacate the order limiting the time for taking testimony because at the time of the entry of said order the cause was not at issue.

***45** Under the pleadings in this case, two separate and distinct issues are presented; the prayer of the bill seeking a reformation of the deed from Middle River Development Company, grantor, to the complainant, Oakland Properties Corporation, so as to convey the legal title to the lands described in paragraph II of the bill of complainant and to declare complainant entitled to the possession thereof.

That the decree of foreclosure in the cause in which J. J. Hogan was complainant and Gotham Realty Corporation, Middle River Development Company, and Fab Holding Corporation were defendants, be vacated, canceled, and annulled.

The Middle River Development Company, the codefendant of Hogan, not having been served with the process of the court, the court was without jurisdiction to determine the issue presented as to a reformation of the deed.

  

The only issue then to be determined by the chancellor raised by the pleadings filed was as to the cancellation of the decree of foreclosure. The first contention of appellant is that the court erred in granting the decree dismissing the bill because of the pending motion; that the cause was not at issue, and that the motion was not ruled upon at the time of the entry of the decree.
[1] [2] The only defendant before the court was the defendant Hogan, who had filed his answer. The answer did not set forth a counterclaim or set-off, and therefore, under the provision of the law, the cause was at issue.
'The filing of a general replication to an answer, which does not set forth a counterclaim or set-off, does not affect the provision of the statute which specifically provides that the cause shall be deemed at issue upon *46 the filing **848 of the answer, unless the answer asserts a set-off or counterclaim.' Smith et al. v. Milham et al. (Fla.) 115 So. 532.

'Under the statutes, * * * if the answer merely sets up new affirmative matter, defensive in character, such as would be appropriate to an ordinary answer in equity, designed to defeat the purpose of the bill, without asserting any set-off or counterclaim, no reply thereto shall be required without special order from the court, and the cause will be deemed at issue upon the filing of the answer.' Lovett et al. v. Lovett et al. (Fla.) 112 So. 768.

[4] Rule 62 of the Rules of Practice for the government of the circuit courts of Florida in equity is cited for the purpose of showing that the appellant was entitled until the rule day in December, 1927, to file exceptions to the answer, and contends that the motion to extend the time for taking testimony then pending before the court, and not rule upon, relieved it (the appellant) from the necessity of filing exceptions to appellees' answer. The bill in this cause is not essentially one for discovery, and it expressly waives the answer under oath; therefore exceptions for insufficiency would not lie.
'The settled rule is that exceptions for insufficiency will not lie to an answer to a bill that is not essentially one for discovery, and that expressly waives an answer under oath.' Pinellas Packing Co. v. Clearwater Citrus Growers' Ass'n, 67 Fla. 433, 65 So. 591.

[5] If appellant desired to test the sufficiency of the answer, and in the opinion of his counsel affirmative matter was set up therein, the proper procedure would have been by motion to strike, which motion could have been filed on the *47 rule day in December, 1927, and in ample time to have been heard by the court before the time set for the taking of testimony. The record, however, discloses that appellant was content to stand upon the motion to extend the time for taking testimony, which motion was predicated upon the ground that the cause was not at issue; appellant's contention being that, because the Middle River Development Company was named as a party defendant, although no process had been served upon it, and the court had no jurisdiction of the party, that a hearing upon the issue presented by the bill and answer of the defendant Hogan could not be had. There is no merit in this contention, and the entry of the decree dismissing the bill virtually passed upon this motion. This brings us to a consideration of the final decree of the chancellor on January 5, 1928, dismissing the bill as to the defendant Hogan with prejudice to the complainant. It is apparent from the record that the title to the north half of the north half of southeast quarter of southwest quarter of section 22, township 49, range 42 east, containing 10 acres, and being part of the land described in the mortgage from Gotham Realty Corporation to Hogan, was vested in this appellant, Oakland Properties Corporation, at the time of the institution of the suit by J. J. Hogan to foreclose the mortgage upon the lands described in paragraph II of the bill of complaint. The bill so alleges, together with the assertion that appellant held an open, notorious, and adverse possession, not only of the 10 acres described, but of the whole tract, consisting of 75 acres. The answer admits the title to the 10 acres to have been vested in the Oakland Properties Corporation at the time of the institution of the suit to foreclose the mortgage, but specifically denies the possession of the mortgaged premises. Where a cause is set down for hearing on bill and answer, *48 a defendant who has answered under oath is entitled to the benefit of his answer as evidence, notwithstanding a waiver of answer under oath in the bill. Farrell v. Forest Inv. Co., 73 Fla. 191, 74 So. 216, 1 A. L. R. 25, cited; Johnson v. Summer, 82 Fla. 377, 90 So. 171.

[6] Where a cause is set down on bill and answer and the answer is directly responsive to the allegations of the bill, and in denial thereof, the allegations of the bill must fall unless sustained by proof.

  

Therefore the chancellor was not in error in dismissing the bill as to the defendant Hogan in so far as the same affected the rights of said defendant Hogan in the 65 acres to which the Oakland Properties Corporation held no title.

**[7] [8] [9] [10] [11]** One who holds the legal title to mortgaged property is not only necessary, but is an indispensable, party defendant in a suit to foreclose a mortgage.

'The general rule in equity is that all persons materially interested, either legally or beneficially, in the subject-matter of a suit, must be made parties either as complainants or defendants, so that a complete decree may be made binding upon all parties.

'The court cannot properly adjudicate the matters involved in the suit when it appears necessary and indispensable parties to the proceeding have not been served with process, or are not in some proper way actually or constructively before the court.' Indian River Mfg. Co. v. Wooten, 48 Fla. 271, 37 So. 731.

'The rights and interests of necessary and indispensable parties cannot be adjudicated when they are not properly before the court.' Nelson v. Haisley et al., 39 Fla. 145, 22 So. 265.

'A foreclosure proceeding resulting in a final decree ***49** and a sale of the mortgaged property without the holder of the legal title being before the court, will have no effect to transfer his title to the purchaser at said sale.' Jordan v. Sayre et al., 29 Fla. 100, 10 So. 823.

'The owner of the legal title of land covered by a mortgage is a necessary party to a suit to foreclose the mortgage, and neither such owner nor the legal title is affected by a decree and sale in a suit to which he is not a party.' Berlack v. Halle et ux., 22 Fla. 236, 1 Am. St. Rep. 185.

Appellant, Oakland Properties Corporation, being vested with title to the 10 acres of the ****849** 75-acre tract, was an indispensable party to the foreclosure proceedings, and, not having been made a party, its rights could not have been adjudicated and the decree dismissing the bill, in so far as it affected the title to these lands vested in Oakland Properties Corporation, was erroneous. It, therefore, appears that the decree appealed from should be affirmed in so far as it dismisses the bill as to the defendant Hogan and in so far as it concerns the rights of Hogan in the 65 acres to which the Oakland Properties Corporation held no title; and the decree should be reversed in so far as it affects the title to the 10 acres vested in Oakland Properties Corporation.

It is so ordered, and the cause is remanded for further proceedings consistent with this opinion.

PER CURIAM.

The record in this cause having been considered by this court, and the foregoing opinion prepared under chapter 7837, Acts of 1919, adopted by the court as its opinion, it is considered, ordered, and decreed by the court that the decree of the court below appealed from should be affirmed in so far as it dismisses the bill as to ***50** the defendant Hogan and in so far as it concerns the rights of Hogan in the 65 acres to which the Oakland Properties Corporation held no title, and that said decree should be reversed in so far as it affects the title to the 10 acres vested in Oakland Properties Corporation, and it is so ordered.

ELLIS, C. J., and WHITFIELD, TERRELL, STRUM, BROWN, and BUFORD, JJ., concur.

**All Citations**

96 Fla. 40, 117 So. 846

**Negative Treatment**

There are no Negative Treatment results for this citation.

583 So.2d 1373
Supreme Court of Florida.

PEOPLE AGAINST TAX REVENUE MISMANAGEMENT, INC., et al., Appellants,

v.

COUNTY OF LEON, Florida, Appellee.

No. 77572.
|
May 30, 1991.

**Synopsis**

Proceeding was brought to validate a referendum authorizing sales tax to secure bond issue for construction of county jail and to provide other infrastructure. The Circuit Court, Leon County, N. Sanders Sauls, J., issued order validating referendum and appeal was taken by a private corporation which had as its purpose scrutinization of county government. The Supreme Court, Kogan, J., held that: (1) local government employees did not improperly advocate approval of sales tax increase referendum; (2) wording of ballot did not unfairly bias electorate; and (3) statutory proceeding to validate bond issues was proper forum for validating sales tax referendum which was designed to provide funds to secure bond issue.

Affirmed; petition for rehearing denied; petition for ancillary relief stricken.

West Headnotes (6)

**[1] Municipal Corporations** Proceedings Preliminary to Issue of Bonds

Municipality could name private corporation which had sued to challenge legality of referendum preceding bond issue as defendant in action brought to validate bond issue; validation proceeding was proper vehicle for quieting all legal and factual issues that might cast doubt on legal validity of issue and nothing prohibited county from joining as defendant corporation that had publicly announced its belief that referendum was unlawfully conducted. West's F.S.A. § 75.02.

1 Case that cites this headnote

**[2] Counties** Authority and Powers

Employees of county could mount information campaign regarding referendum to approve optional sales tax, including advocating that tax was needed to remedy problems at county jail and to meet local infrastructure needs such as new or widened roadways, provided such conduct was consistent with state ethics laws.

**[3] Counties** Power and duty to levy

Ballot for sales tax referendum to finance local government infrastructure did not unfairly bias electorate, even though it contained a statement "take charge . . . it's your future," which had been a slogan for advocates of the referendum, and also contained a statement that capital improvements to be constructed with proceeds were "critical"; voters could consider they were taking charge of their futures by voting either for or against referendum, and reference to "critical" improvements did not render ballot conclusively defective. West's F.S.A. § 75.01 et seq.

  

2 Cases that cite this headnote

[4] **Counties** Proceedings Preliminary to Issue of Bonds

Statute specifically providing for public agency to bring proceeding to validate bond issue provided the procedure for challenging approval of county sales tax to finance bond issue for construction of jail and other infrastructure, even though it was claimed that challenge should have been brought under a general statute covering election disputes. West's F.S.A. §§ 75.02, 102.168.

3 Cases that cite this headnote

[5] **Counties** Proceedings Preliminary to Issue of Bonds

Statute providing for bringing of proceeding to validate bond referendum applied to election to approve a special sales tax which would be used to provide funds to secure bond issue. West's F.S.A. § 100.321.

[6] **Res Judicata** Availability of appellate or other review of determination

Public interest corporation challenging sales tax referendum to provide financing for public improvements was precluded from raising, in appeal from court order validating referendum, claims adverse to lower court decisions in suits brought by corporation claiming that local county canvassing group was not party to suit and that certain judges should have been disqualified from hearing case; having chosen not to appeal lower court opinions in proper manner, counsel bound client to full legal effect of those opinions, under doctrine of res judicata.

1 Case that cites this headnote

**Attorneys and Law Firms**

***1374** Kenneth Muszynski, Tallahassee, for appellants.

Herbert W.A. Thiele, County Atty. and Michael L. Rosen and Susan L. Turner of Holland & Knight, Tallahassee, for appellee.

**Opinion**

KOGAN, Justice.

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 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).

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

Subsequently, PATRM amended the petition 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 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).

**[1]** 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.

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.

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.

**[2]** 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 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.

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 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.

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

**[3]** 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 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?
>
> 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 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, 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 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).

**[4]** In its next argument, PATRM contends that the only proper method of resolving the election dispute in this instance was the procedure established 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]

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.

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 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 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.

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.

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. 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 the legality of such referendum or the declaration of the results thereof shall be vested in the court hearing and determining said validation proceedings.... [T]he 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 in the proceeding below or be forever barred from raising them again. *Id.*

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).

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 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.

**[5]** PATRM also argues on rehearing that the referendum was not a "bond referendum" within the meaning of section 100.321, Florida 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 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.

**[6]** ***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 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.

SHAW, C.J., and OVERTON, McDONALD, BARKETT, GRIMES and HARDING, JJ., concur.

  

16 Fla. L. Weekly S579

**All Citations**

583 So.2d 1373, 16 Fla. L. Weekly S579

**End of Document**

**Negative Treatment**

There are no Negative Treatment results for this citation.

837 So.2d 579
District Court of Appeal of Florida,
Fifth District.

SHEOAH HIGHLANDS, INC., et al., Appellants/Cross–Appellees,

v.

Vernon DAUGHERTY, et al., Appellees/Cross–Appellants.

Nos. 5D01–3181, 5D02–277.
|
Feb. 14, 2003.

**Synopsis**

Condominium owner brought action against condominium's governing association and board of directors, seeking to enforce provision of declaration prohibiting screened enclosures. The Circuit Court, Seminole County, Gene R. Stephenson, J., ordered removal of certain enclosures and awarded attorney fees to owner. Parties appealed. The District Court of Appeal, Orfinger, J., held that: (1) five-year limitation period for action on contract applied to owner's action; (2) ordering association to remove enclosures belonging to other condominium owners was error; and (3) owner's general request for attorney fees was sufficient.

Affirmed in part; reversed in part and remanded.

West Headnotes (9)

[1] **Injunction** Breaches in general

An injunction against the breach of a contract is a negative decree of specific performance of the agreement.

1 Case that cites this headnote

[2] **Limitation of Actions** Construction of Limitation Laws in General

Where a statute of limitations shortens the existing period of time the statute is generally construed strictly, and where there is reasonable doubt as to legislative intent, the preference is to allow the longer period of time.

1 Case that cites this headnote

[3] **Common Interest Communities** Limitations and laches

In action to enforce provision of condominium declaration, five-year limitation period for legal or equitable action on a contract applied, rather than one-year limitation period for action for specific performance of a contract. West's F.S.A. §95.11(2)(b), (5)(a).

2 Cases that cite this headnote

[4] **Injunction** Non-parties in general

  

A court is without jurisdiction to issue an injunction which would interfere with the rights of those who are not parties to the action.

10 Cases that cite this headnote

[5] **Injunction** Persons Liable

An injunction can lie only when its scope is limited in effect to the rights of parties before the court.

4 Cases that cite this headnote

[6] **Injunction** Non-parties in general

In condominium owner's action to enforce provision of condominium declaration, trial court erred in ordering condominium association to remove enclosures belonging to other condominium owners; the other owners were not parties to the action, and it could not be said that the trial court's order would not affect or interfere with their rights.

9 Cases that cite this headnote

[7] **Costs, Fees, and Sanctions** Form, Requisites, and Sufficiency of Application

A claim for attorney fees, whether based on statute or contract, must be pled.

2 Cases that cite this headnote

[8] **Costs, Fees, and Sanctions** Form, Requisites, and Sufficiency of Application

The failure to set forth a claim for attorney fees in a complaint, answer, or counterclaim, if filed, constitutes a waiver.

2 Cases that cite this headnote

[9] **Costs, Fees, and Sanctions** Form, Requisites, and Sufficiency of Application

Plaintiff's general request for attorney fees was sufficient, even though plaintiff failed to plead any contractual or statutory basis for such award.

3 Cases that cite this headnote

**Attorneys and Law Firms**

***580** Charles Tyler Cone of Fowler White Boggs Banker, P.A., Tampa, for Appellant/Cross–Appellees.

William H. Morrison of Baldwin & Morrison, P.A., Fern Park, for Appellee/Cross–Appellants.

**Opinion**

ORFINGER, J.

Vernon Daugherty, the owner of a unit at the Sheoah Highlands condominium, brought suit against Sheoah Highlands, Inc., the condominium's governing association (Association), and its board of directors, alleging that the Association failed to enforce the declaration of condominium. Specifically, Daugherty alleged that the Association allowed certain unit owners to erect screened enclosures on the condominium's common property contrary to the provisions of the declaration. Following a bench trial on

  

stipulated facts, the court ordered the Association to remove two of the five encroaching enclosures and to pay Daugherty's attorney's fees. The Association appeals, arguing that (a) Daugherty's claims were barred by the statute of limitations; (b) the judgment was erroneous because it affects parties not before the court; (c) Daugherty's complaint failed to state a cause of action; and (d) Daugherty's claim for attorney's fees was not adequately pled. On cross-appeal, Daugherty contends the trial court erred in finding that his derivative cause of action failed and in not ordering the Association to seek the removal of all five of the encroaching enclosures. We affirm in part and reverse in part.

***FACTS***

Daugherty purchased unit 40–30 in the Sheoah Highlands Condominium in 1981. At the time he purchased his unit, three owners had erected screened enclosures on the condominium's common property adjacent to their units. A fourth enclosure was built adjacent to unit 40–25 in 1996, and a fifth adjacent to unit 40–29 in 1998.[1] The Association's board approved the construction of all five enclosures.

1 The three enclosures built prior to 1981 were adjacent to units 50–33, 50–35, and 70–41. The record is somewhat confused about whether the fourth enclosure built in 1996 was adjacent to unit 40–25 or unit 40–27, but for purposes of this appeal, we assume that it was built adjacent to unit 40–25, as set forth in Sheoah's initial brief.

Daugherty's concern about the enclosures dated back to at least 1991 when he wrote to the Association's president, asking that no enclosure be constructed adjacent to the unit below him. In reply, the president of the Association advised Daugherty that Lee Rhydderch, the owner of the unit below Daugherty's, "has no plans now or in the future to add to her porch." Apparently, Rhydderch's plans changed because in 1998, she constructed a screened enclosure on the common area below Daugherty's unit. After Rhydderch built her enclosure, Daugherty, through ***581** counsel, again wrote to the Association asking the Association to "take immediate action to remove these improper buildings." Daugherty contended that the use of common property by one unit owner, to the exclusion of all others, violated the declaration of condominium. After the board failed to respond to a second demand, Daugherty filed suit seeking "a temporary and permanent injunction mandating that the [Association] take steps to remove the extensions or erections installed on 'common areas.' " The Association answered and asserted various defenses, including the statute of limitations.

After a bench trial, the trial court entered judgment in favor of Daugherty, finding that the enclosures constructed in 1996 and 1998 constituted an improper use of the condominium's common elements, while concluding that Daugherty's claim failed as to the other enclosures based on the statute of limitations. The trial court found that the enclosures constructed adjacent to units 40–25 and 40–29 "were built in areas of common elements and under the terms of the declaration of condominium, the Association is responsible for the maintenance and operation of common elements," and that the "original terms of the declaration of condominium expressly state that no alteration or addition can be made to the common elements." Based on these findings, the trial court found that "the enclosures built adjacent to units 40–25 and 40–29 violate the terms of the declaration of condominium and must be removed by the Association under its duty to maintain the common elements." In addition to ordering the Association to remove two of the enclosures, the court also awarded Daugherty's attorney's fees.

***THE STATUTE OF LIMITATIONS***

Section 95.11, Florida Statutes (1998), provides, in relevant part:

> Actions other than for recovery of real property shall be commenced as follows:

  

* * *

(2) Within five years.—

* * *

(b) A legal or equitable action on a contract....

* * *

(5) Within one year.—

(a) An action for specific performance of a contract.

Relying on *Ferola v. Blue Reef Holding Corp., Inc.,* 719 So.2d 389 (Fla. 4th DCA 1998), the Association argues that Daugherty's claim for injunctive relief was substantively a claim for specific performance of the declaration of condominium, and, as a result, the action was barred by the one-year statute of limitations period for specific performance.[2] *See* § 95.11(5)(a), Fla. Stat. (1999). On cross-appeal, Daugherty argues that no statute of limitations bars ***582** the enforcement of a violation of the declaration of condominium.

[2] In *Woodside Village Condominium Association, Inc. v. Jahren,* 806 So.2d 452, 455–56 (Fla.2002), the supreme court citing *Pepe v. Whispering Sands Condominium Association, Inc.,* 351 So.2d 755, 757–58 (Fla. 2d DCA 1977), explained:

> A declaration of a condominium is more than a mere contract spelling out mutual rights and obligations of the parties thereto-it assumes some of the attributes of a covenant running with the land, circumscribing the extent and limits of the enjoyment and use of real property. Stated otherwise, it spells out the true extent of the purchased, and thus granted, use interest therein. Absent consent, or an amendment of the declaration of condominium as may be provided for in such declaration, or as may be provided by statute in the absence of such a provision, this enjoyment and use cannot be impaired or diminished.

(Footnotes omitted).

**[1]** In *Ferola,* the plaintiffs, owners of a lot in a development, filed suit against the developer, alleging that the developer violated the declaration of covenants and restrictions by constructing townhouses on a designated recreation area, failing to provide amenities for the recreation area, and failing to maintain common areas. The fourth district court, in holding that the Ferolas' claim was barred by the statute of limitations, concluded that their claim for injunctive relief was, in substance, a claim for specific performance of a contract, and, therefore, the one-year limitation period applied. That conclusion was reached because "[a]n injunction against the breach of a contract is a negative decree of specific performance of the agreement...." *Seaboard Oil Co. v. Donovan,* 99 Fla. 1296, 128 So. 821, 825 (1930). *See Fla. Jai Alai, Inc. v. S. Catering Servs., Inc.,* 388 So.2d 1076, 1078 (Fla. 5th DCA 1980). Put another way, an injunction against the breach of a contract is a remedy by way of negative specific performance. *See* 48 Fla. Jur.2d *Specific Performance* § 3 (2000).

Daugherty argues that it can equally be said that enforcement of the rights and duties set forth in the declaration of condominium is "a legal or equitable action on a contract" within the scope of section 95.11(2)(b). "For purposes of a statute of limitations, an action derives from a contract ... when a contract contains an undertaking to do the thing for the nonperformance for which the action is brought...." 54 C.J.S. *Limitations of Actions* § 48 (1987). "[I]f a contract is the source of substantive rights or duties, the contract statute of limitations applies...." *Id.*

**[2]** We believe that reasonable arguments can be made supporting the application of either statute of limitations. "The nature of the cause of action or of the rights sued upon is the test by which to determine which statute of limitation applies...." 51 Am.Jur.2d *Limitation of Actions* § 90 (2000). "Where a statute of limitations shortens the existing period of time the statute is generally construed strictly, and where there is reasonable doubt as to legislative intent, the preference is to allow the longer period of time." *Baskerville–Donovan Eng'rs, Inc. v. Pensacola Executive House Condo. Ass'n, Inc.,* 581 So.2d 1301, 1303 (Fla.1991). If there is doubt as to the applicability of a statute of limitations, the question is generally resolved in favor of the

  

claimant. *J.B. v. Sacred Heart Hosp. of Pensacola,* 635 So.2d 945, 947 (Fla.1994); 51 Am.Jur.2d *Limitation of Actions* § 92 (2000) ( "As a matter of policy, if there is a substantial question or reasonable dispute as to which two or more statutes of limitation ... should be applied, the doubt should be resolved in favor of the application of the statute containing the longest limitation period.")

**[3]** Applying the foregoing analysis to the matter before us, we conclude that because there is a reasonable question as to which statute of limitations should apply to Daugherty's claim, we resolve the doubt in favor of the application of the statute containing the longer limitation period. *See J.B.* We conclude that the trial judge was correct in allowing Daugherty's action to proceed as to the enclosures constructed in 1996 and thereafter, while barring his action regarding the other enclosures.

***INDISPENSABLE PARTIES***

The Association next argues that the trial court erred by entering an injunction, requiring the Association to remove the enclosures built by two unit-owners who were not parties to the litigation. The ***583** Association's argument is premised on the notion that the circuit court lacks jurisdiction to enter a judgment that affects persons not parties to the action. Daugherty contends that his action did not seek relief against individual unit owners; rather, it was an action against the Association demanding that the Association take action against the unit owners.

While Daugherty accurately characterizes the relief sought in his amended complaint, the trial court's judgment required the Association to "remove the enclosures ... from the common areas and restore the common elements to the their original condition prior to the commencement of construction on the enclosures." The court did not order the Association to bring an action against the offending unit owners seeking the removal of the enclosures; it simply ordered the removal of their enclosures.

**[4]** **[5]** A court is without jurisdiction to issue an injunction which would interfere with the rights of those who are not parties to the action. An injunction can lie only when its scope is limited in effect to the rights of parties before the court. *Street v. Sugerman,* 177 So.2d 526 (Fla. 3d DCA 1965); *Fontainebleau Hotel Corp. v. City of Miami Beach,* 172 So.2d 255 (Fla. 3d DCA 1965). "The general rule in equity is that all persons materially interested, either legally or beneficially, in the subject-matter of a suit, must be made parties either as complainants or defendants so that a *complete decree* may be made binding upon all parties." *Oakland Props. Corp. v. Hogan,* 96 Fla. 40, 117 So. 846, 848 (1928) (emphasis added). *See Robinson v. Howe,* 35 Fla. 73, 17 So. 368, 370 (1895); *Brady v. Myers,* 413 So.2d 466, 467 (Fla. 4th DCA 1982).

**[6]** Here, Daugherty sued the Association and the members of the board of the Association in their representative capacities. He did not sue the members of the board in their individual capacities or those who own the enclosures; yet, the relief awarded by the trial court requires the Association to remove the enclosures at units 40–25 and 40–29, the property of persons not parties to the suit. Although the injunctive relief awarded in the trial court's amended final judgment is directed only to the Association, it cannot be said that the removal of the enclosures by Association would not affect and interfere with the rights of the owners of these units. Because the injunction affects the rights of persons not before the court, it was error for the trial court to order the removal of the enclosures in the amended final judgment.[3] On remand, the trial court should direct the Association to enforce the provisions of the declaration of condominium and to take all appropriate action to remove the enclosures adjacent to units 40–25 and 40–29, as Daugherty requested in his amended complaint.

3 *See, e.g., Stomar, Inc. v. Lucky Seven Riverboat Co., L.L.C.,* 821 So.2d 1183, 1187 (Fla. 4th DCA 2002) (finding that because the individual defendants were acting in their representative capacity on behalf of the limited liability company in executing the brokerage agreement, the circuit court did not have personal jurisdiction over them).

***ATTORNEY'S FEES***

  

Daugherty's amended complaint alleged that he "has been required to retain the services of [an attorney] in the prosecution of this matter and is indebted to [the attorney] for the same." The Association contends that the trial court erred in awarding Daugherty attorney's fees because the complaint failed to plead any contractual or statutory basis for an award of fees. Daugherty argues that the award of attorney's fees was properly pled pursuant ***584** to the declaration of condominium, which allows the prevailing party to recover such fees in the event of an enforcement action.

**[7]** **[8]** **[9]** "[A] claim for attorney's fees, whether based on statute or contract, must be pled." *Stockman v. Downs,* 573 So.2d 835, 837 (Fla.1991). "*Stockman* is to be read to hold that the failure to set forth a claim for attorney fees in a complaint, answer, or counterclaim, if filed, constitutes a waiver." *Green v. Sun Harbor Homeowners' Ass'n, Inc.,* 730 So.2d 1261, 1263 (Fla.1998). *See Starkey v. Linn,* 723 So.2d 333, 336 (Fla. 5th DCA 1998). While this court has held that a party seeking an award of fees must specifically plead the correct entitlement, the supreme court recently held that a general request for attorney's fees is sufficient, and that the failure to plead the specific statutory or contractual basis for such a claim does not result in waiver of the claim. *Caufield v. Cantele,* 837 So.2d 371, 373, (2002). Daugherty made a general request for attorney's fees in his complaint. That was sufficient. *Id.* The trial court was therefore correct in awarding Daugherty's attorney's fees.

***CONCLUSION***

We find no merit in the remaining issues raised on appeal or on cross-appeal. We affirm the judgment insofar as it concludes that Daugherty's action was not barred by the statute of limitations with respect to the enclosures built adjacent to units 40–25 and 40–29, that such enclosures violate the declaration of condominium, and were improperly approved by the board of directors. We conclude that the trial court correctly awarded attorney's fees based on the pleading requirement of *Stockman,* as clarified by *Caufield.* We also conclude that the trial court lacked jurisdiction to direct the Association to remove the enclosures because substantial interests of non-parties would be affected.

Accordingly, we affirm the final judgment in part, reverse in part, and remand for further proceedings.

AFFIRMED IN PART, REVERSED IN PART AND REMANDED.

SHARP, W., and GRIFFIN, JJ., concur.

**All Citations**

837 So.2d 579, 28 Fla. L. Weekly D474

## Negative Treatment

### Negative Citing References (3)

*The KeyCited document has been negatively referenced by the following events or decisions in other litigation or proceedings:*

| Treatment | Title | Date | Type | Depth | Headnote(s) |
|---|---|---|---|---|---|
| Distinguished by | 1. Tedeschi v. Surf Side Tower Condominium Ass'n, Inc.<br><br>35 So.3d 915 , Fla.App. 2 Dist.<br>REAL PROPERTY - Condominiums. Condominium unit owners were not required to add all other unit owners as indispensable parties to their lawsuit. | Mar. 24, 2010 | Case | | 4<br>6<br>So.2d |
| Distinguished by | 2. Melbourne Ocean Club Condominium Ass'n, Inc. v. Elledge MOST NEGATIVE<br><br>71 So.3d 144 , Fla.App. 5 Dist.<br>COMMERCIAL LAW - Limitations. Claim to compel rental agent to provide financial statements was subject to one-year specific performance limitations period. | Aug. 26, 2011 | Case | | 1<br>3<br>6<br>So.2d |
| Distinguished by | 3. Iezzi Family Limited Partnership v. Edgewater Beach Owners Association, Inc.<br><br>254 So.3d 584 , Fla.App. 1 Dist.<br>REAL PROPERTY — Condominiums. Condominium owner failed to comply with derivative pre-suit requirements. | Aug. 01, 2018 | Case | | 6<br>So.2d |

887 So.2d 430
District Court of Appeal of Florida,
Fifth District.

VOLUSIA CITIZENS' ALLIANCE, etc., Appellant,

v.

VOLUSIA HOME BUILDERS ASSOCIATION, INC., et al., Appellee.

No. 5D04–3231.
|
Nov. 18, 2004.

**Synopsis**

**Background:** Home builders association challenged proposed amendment to county charter establishing an urban growth area for failure of the ballot summary to comport with statutory requirements. The Circuit Court, Volusia County, J. David Walsh, J., ruled the proposal violated the statutory requirements. Sponsor of amendment appealed.

**[Holding:]** The District Court of Appeal, Torpy, J., held that ballot summary failed to give voters fair notice of contents of proposed amendment.

Affirmed.

West Headnotes (2)

**[1]** **Counties** Creation, Existence, and Incidents in General; Charters

It is neither necessary nor practicable, that a ballot summary for proposed amendment to county charter explain every detail or ramification of the proposed amendment. West's F.S.A. § 101.161(1).

**[2]** **Counties** Creation, Existence, and Incidents in General; Charters

Ballot summary for proposed amendment to county charter to establish an urban growth area failed to provide an unambiguous explanation of the material elements of the proposed amendment, and thus failed to give voters fair notice of the content of the amendment in violation of statute governing referenda and ballot requirements; summary failed to mention that it was function of council to draw boundary and that its implementation of municipalities was to be done through local planning agreements. West's F.S.A. § 101.161(1).

1 Case that cites this headnote

**Attorneys and Law Firms**

***430** Lesley Blackner of Blackner, Stone Assoc., Palm Beach, for Appellant.

  

C. Allen Watts of Cobb Cole, DeLand, for Appellee.

**Opinion**

TORPY, J.

The issue here is whether a proposed amendment to the Volusia County Charter comports with section 101.161(1), Florida Statutes (2004). Among the requirements of that section is that the amendment's proponent provide an unambiguous, explanatory summary of the substance of the proposal for inclusion on the ballot. The lower court ruled that the proposal at issue here violates the statute. We agree and affirm.

The summary and full text of the proposed amendment state:

> *BALLOT TITLE:*
>
> AN AMENDMENT TO ADOPT AN URBAN GROWTH BOUNDARY AND INCORPORATE WITHIN THE COUNTY'S COMPREHENSIVE PLAN.
>
> *BALLOT SUMMARY:*
>
> The establishment, implementation and enforcement of a[sic] Urban Growth Boundary (UGB) benefits Volusia County's natural resources, scenic beauty, orderly development and the welfare of its citizens. The UGB shall be incorporated into a Future Land Use Map and comprehensive plan amendment, which shall include methods of implementation, enforcement, and review in accordance with general law. The UGB shall apply ***431** to all the incorporated and unincorporated areas of Volusia County. Provides definition.
>
> *FULL TEXT OF PROPOSED AMENDMENT:* Article II, *Powers And Duties Of the County of Volusia* shall be amended to add the following as Section 202.5:
>
> SECTION 202.5: Urban Growth Boundaries.
>
> The council, after preparation by its local planning agency, notice and public hearings, shall promptly establish an Urban Growth Boundary (UGB) on the Future Land Use Map as part of the Future Land Use Element of the Volusia County comprehensive plan, which shall be subject to review under 163.3191 Florida Statutes, in accordance with general law. The UGB shall apply to and be enforced in all incorporated and unincorporated areas of the County. The council shall implement the UGB through local planning agreements with all municipalities within Volusia County. The UGB shall be a primary method of accomplishing County goals and policies concerning compact urban growth, the economical and efficient provision of public services, and the protection of environmental resources from destruction, and any other such standards as the council determines to be necessary for the protection of the public health, safety, and welfare of the citizens throughout Volusia County. If any part of this section is declared to be invalid, the remainder of the section shall be considered as separate and severable and shall remain in full force and effect. This amendment shall take effect immediately upon approval by voters, and filing of a copy of the revised Volusia County Charter, incorporating said amendment, with the Florida Department of State. For purposes of this Section, UGB means an area designated for future urban growth and public services, and for possible future municipal incorporation.

**[1]** Section 101.161(1) requires that the ballot summary not exceed 75 words and "state in clear and unambiguous language the chief purpose of the measure." *Askew v. Firestone,* 421 So.2d 151, 154–55 (Fla.1982). The purpose of this requirement is to provide voters with fair notice of the contents of the proposed initiative so that voters will not be misled as to its purpose. *Advisory Op. to Att'y Gen. re Pub. Prot. from Repeated Med. Malpractice,* 880 So.2d 667, 671 (Fla.2004). It is neither necessary nor practicable, however, that the summary explain every detail or ramification of the proposed amendment. *Id.*

  

**[2]** Here, the ballot summary does not comply with the statute. The first sentence of the ballot summary is not descriptive of the contents of the amendment and amounts to mere "political rhetoric," the inclusion of which violates section 101.161(1). *Advisory Op. to Att'y Gen. re Additional Homestead Tax Exemption,* 880 So.2d 646, 653 (Fla.2004); *In re Advisory Op. to Att'y Gen.—Save Our Everglades,* 636 So.2d 1336, 1341–42 (Fla.1994). As stated by our high court:

> [T]he ballot summary is no place for subjective evaluation of special impact. The ballot summary should tell the voter the legal effect of the amendment and no more. The political motivation behind a given change must be propounded outside the voting booth.

*Evans v. Firestone,* 457 So.2d 1351, 1355 (Fla.1984).

As to the remainder of the summary, although descriptive of parts of the amendment, it excludes material elements of the amendment and, thus, does not give fair notice of the content of the amendment. *Advisory Op. to Att'y Gen. re Term Limits* ***432** *Pledge,* 718 So.2d 798, 803 (Fla.1998). For example, the summary makes no mention of the fact that it is the function of the council, after public hearings, to draw the boundary and that its implementation in municipalities shall be done through local planning agreements. Voters should have been informed in the ballot summary that their decision to "establish, implement and enforce" an Urban Growth Boundary would not be self-executing, but instead would be subject to the political processes of local governments.

Having held that the ballot summary does not comport with the dictates of the statute, we find it unnecessary to address the other issues raised by the parties in this expedited appeal.

AFFIRMED.

GRIFFIN and THOMPSON, JJ., concur.

**All Citations**

887 So.2d 430, 29 Fla. L. Weekly D2643

**Negative Treatment**

There are no Negative Treatment results for this citation.

West's F.S.A. § 101.161

# 101.161. Referenda; ballots

Effective: May 18, 2020
Currentness

(1) Whenever a constitutional amendment or other 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 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 constitutional amendment proposed by initiative, the ballot shall include, following the ballot summary, in the following order:

(a) A separate financial impact statement concerning the measure prepared by the Financial Impact Estimating Conference in accordance with s. 100.371(13).

(b) If the financial impact statement projects a net negative impact on the state budget, the following statement in bold print:

> THIS PROPOSED CONSTITUTIONAL AMENDMENT IS ESTIMATED TO HAVE A NET NEGATIVE IMPACT ON THE STATE BUDGET. THIS IMPACT MAY RESULT IN HIGHER TAXES OR A LOSS OF GOVERNMENT SERVICES IN ORDER TO MAINTAIN A BALANCED STATE BUDGET AS REQUIRED BY THE CONSTITUTION.

(c) 1. If the financial impact statement projects a net positive impact on the state budget resulting in whole or in part from additional tax revenue, the following statement in bold print:

> THIS PROPOSED CONSTITUTIONAL AMENDMENT IS ESTIMATED TO HAVE A NET POSITIVE IMPACT ON THE STATE BUDGET. THIS IMPACT MAY RESULT IN GENERATING ADDITIONAL REVENUE OR AN INCREASE IN GOVERNMENT SERVICES.

2. If the financial impact statement projects a net positive impact on the state budget for reasons other than those specified in subparagraph 1., the following statement in bold print:

THIS PROPOSED CONSTITUTIONAL AMENDMENT IS ESTIMATED TO HAVE A NET POSITIVE IMPACT ON THE STATE BUDGET. THIS IMPACT MAY RESULT IN LOWER TAXES OR AN INCREASE IN GOVERNMENT SERVICES.

(d) If the financial impact statement is indeterminate or the members of the Financial Impact Estimating Conference are unable to agree on the financial impact statement, the following statement in bold print:

THE FINANCIAL IMPACT OF THIS AMENDMENT CANNOT BE DETERMINED DUE TO AMBIGUITIES AND UNCERTAINTIES SURROUNDING THE AMENDMENT'S IMPACT.

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 amendments or revisions proposed by joint resolution.

(2) The ballot summary 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. This number designation shall appear on the ballot. Designating numbers shall be assigned in the order of filing or certification and in accordance with rules adopted by the Department of State. The Department of State shall furnish the designating number, the ballot title, and, unless otherwise specified in a joint resolution, the ballot summary of each amendment to the supervisor of elections of each county in which such amendment is to be voted on.

(3)(a) Each joint resolution that proposes a constitutional amendment or revision shall include one or more ballot statements set forth in order of priority. Each ballot statement shall consist of a ballot title, by which the measure is commonly referred to or spoken of, not exceeding 15 words in length, and a ballot summary that describes the chief purpose of the amendment or revision in clear and unambiguous language. If a joint resolution that proposes a constitutional amendment or revision contains only one ballot statement, the ballot summary may not exceed 75 words in length. If a joint resolution that proposes a constitutional amendment or revision contains more than one ballot statement, the first ballot summary, in order of priority, may not exceed 75 words in length.

(b) The Department of State shall furnish a designating number pursuant to subsection (2) and the appropriate ballot statement to the supervisor of elections of each county. The ballot statement shall be printed 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 amendment or revision and a “no” vote will indicate rejection.

(c) 1. Any action for a judicial determination that one or more ballot statements embodied in a joint resolution are defective must be commenced by filing a complaint or petition with the appropriate court within 30 days after the joint resolution is filed with the Secretary of State. The complaint or petition shall assert all grounds for challenge to each ballot statement. Any ground not asserted within 30 days after the joint resolution is filed with the Secretary of State is waived.

2. The court, including any appellate court, shall accord an action described in subparagraph 1. priority over other pending cases and render a decision as expeditiously as possible. If the court finds that all ballot statements embodied in a joint resolution are defective and further appeals are declined, abandoned, or exhausted, unless otherwise provided in the joint resolution, the Attorney General shall, within 10 days, prepare and submit to the Department of State a revised ballot title or ballot summary that corrects the deficiencies identified by the court, and the Department of State shall furnish a designating number and the revised ballot title or ballot summary to the supervisor of elections of each county for placement on the ballot. The revised ballot

  

summary may exceed 75 words in length. The court shall retain jurisdiction over challenges to a revised ballot title or ballot summary prepared by the Attorney General, and any challenge to a revised ballot title or ballot summary must be filed within 10 days after a revised ballot title or ballot summary is submitted to the Department of State.

(4)(a) For any general election in which the Secretary of State, for any circuit, or the supervisor of elections, for any county, has certified the ballot position for an initiative to change the method of selection of judges, the ballot for any circuit must contain the statement in paragraph (b) or paragraph (c) and the ballot for any county must contain the statement in paragraph (d) or paragraph (e).

(b) In any circuit where the initiative is to change the selection of circuit court judges to selection by merit selection and retention, the ballot shall state: "Shall the method of selecting circuit court judges in the (number of the circuit) judicial circuit be changed from election by a vote of the people to selection by the judicial nominating commission and appointment by the Governor with subsequent terms determined by a retention vote of the people?" This statement must be followed by the word "yes" and also by the word "no."

(c) In any circuit where the initiative is to change the selection of circuit court judges to election by the voters, the ballot shall state: "Shall the method of selecting circuit court judges in the (number of the circuit) judicial circuit be changed from selection by the judicial nominating commission and appointment by the Governor with subsequent terms determined by a retention vote of the people to election by a vote of the people?" This statement must be followed by the word "yes" and also by the word "no."

(d) In any county where the initiative is to change the selection of county court judges to merit selection and retention, the ballot shall state: "Shall the method of selecting county court judges in (name of county) be changed from election by a vote of the people to selection by the judicial nominating commission and appointment by the Governor with subsequent terms determined by a retention vote of the people?" This statement must be followed by the word "yes" and also by the word "no."

(e) In any county where the initiative is to change the selection of county court judges to election by the voters, the ballot shall state: "Shall the method of selecting county court judges in (name of the county) be changed from selection by the judicial nominating commission and appointment by the Governor with subsequent terms determined by a retention vote of the people to election by a vote of the people?" This statement must be followed by the word "yes" and also by the word "no."

**Credits**

Added by Laws 1895, c. 4328, § 34; Gen.St.1906, § 218; Rev.Gen.St.1920, § 262; Comp.Gen.Laws 1927, § 318; Laws 1933, c. 16180, §§ 1-11; Laws 1935, c. 16877, § 1; Laws 1937, c. 17898, § 4; Laws 1945, c. 22626, § 1; Fla.St.1949, § 99.16; Laws 1951, c. 26870, § 5; Laws 1969, c. 69-106, §§ 10, 35; Laws 1973, c. 73-7, § 1; Laws 1977, c. 77-175, § 13; Laws 1979, c. 79-365, § 16; Laws 1980, c. 80-305, § 2. Amended by Laws 1984, c. 84-302, § 32, eff. July 1, 1984; Laws 1990, c. 90-203, § 11, eff. July 1, 1990; Laws 1999, c. 99-355, § 10, eff. Jan. 1, 2000; Laws 2000, c. 2000-361, § 1, eff. July 1, 2000; Laws 2001, c. 2001-75, § 4, eff. May 29, 2001; Laws 2002, c. 2002-390, § 5, eff. May 24, 2002; Laws 2004, c. 2004-33, § 5, eff. May 11, 2004; Laws 2005, c. 2005-2, § 11, eff. July 5, 2005; Laws 2005, c. 2005-278, § 33, eff. Jan. 1, 2007; Laws 2011, c. 2011-40, § 29, eff. May 19, 2011; Laws 2013, c. 2013-57, § 6, eff. Jan. 1, 2014; Laws 2020, c. 2020-2, § 16, eff. May 18, 2020; Laws 2020, c. 2020-15, § 4, eff. April 8, 2020.

West's F. S. A. § 101.161, FL ST § 101.161

  

Current with laws, joint and concurrent resolutions and memorials through July, 1 2024, in effect from the 2024 first regular session. Some statute sections may be more current, see credits for details. The statutes are subject to change as determined by the Florida Revisor of Statutes. (These changes will be incorporated later this year.)

**End of Document**

## Validity (2)

### Case Treatment (2)

**Prior Version Held Unconstitutional by**


Smith v. Coalition to Reduce Class Size
827 So.2d 959, 960+ ( Fla. Sep. 13, 2002 ) , ( NO. SC02-1624 )

**Prior Version Recognized as Unconstitutional by**

Browning v. Florida Hometown Democracy, Inc., PAC
29 So.3d 1053, 1057+ ( Fla. Feb. 18, 2010 ) , ( NO. SC08-884 )

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Florida Statutes Annotated
Title IX. Electors and Elections (Chapters 97-109)
Chapter 102. Conducting Elections and Ascertaining the Results (Refs & Annos)

West's F.S.A. § 102.141

# 102.141. County canvassing board; duties

Effective: July 1, 2023
Currentness

(1) The county canvassing board shall be composed of the supervisor of elections; a county court judge, who shall act as chair; and the chair of the board of county commissioners. The names of the canvassing board members must be published on the supervisor's website upon completion of the logic and accuracy test. At least two alternate canvassing board members must be appointed pursuant to paragraph (e). In the event any member of the county canvassing board is unable to serve, is a candidate who has opposition in the election being canvassed, or is an active participant in the campaign or candidacy of any candidate who has opposition in the election being canvassed, such member shall be replaced as follows:

(a) If a county court judge is unable to serve or if all are disqualified, the chief judge of the judicial circuit in which the county is located must appoint as a substitute member a qualified elector of the county who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed. In such event, the members of the county canvassing board shall meet and elect a chair.

(b) If the supervisor of elections is unable to serve or is disqualified, the chair of the board of county commissioners must appoint as a substitute member a member of the board of county commissioners who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed. The supervisor, however, shall act in an advisory capacity to the canvassing board.

(c) If the chair of the board of county commissioners is unable to serve or is disqualified, the board of county commissioners must appoint as a substitute member one of its members who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed.

(d) If a substitute member or alternate member cannot be appointed as provided elsewhere in this subsection, or in the event of a vacancy in such office, the chief judge of the judicial circuit in which the county is located must appoint as a substitute member or alternate member a qualified elector of the county who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed.

(e) 1. The chief judge of the judicial circuit in which the county is located shall appoint a county court judge as an alternate member of the county canvassing board or, if each county court judge is unable to serve or is disqualified, shall appoint an alternate member who is qualified to serve as a substitute member under paragraph (a). Any alternate may serve in any seat.

  

2. The chair of the board of county commissioners shall appoint a member of the board of county commissioners as an alternate member of the county canvassing board or, if each member of the board of county commissioners is unable to serve or is disqualified, shall appoint an alternate member who is qualified to serve as a substitute member under paragraph (d).

3. If a member of the county canvassing board is unable to participate in a meeting of the board, the chair of the county canvassing board or his or her designee must designate which alternate member will serve as a member of the board in the place of the member who is unable to participate at that meeting.

4. If not serving as one of the three members of the county canvassing board, an alternate member may be present, observe, and communicate with the three members constituting the county canvassing board, but may not vote in the board's decisions or determinations.

(2)(a) The county canvassing board shall meet in a building accessible to the public in the county where the election occurred at a time and place to be designated by the supervisor to publicly canvass the absent electors' ballots as provided for in s. 101.68 and provisional ballots as provided by ss. 101.048, 101.049, and 101.6925. During each meeting of the county canvassing board, each political party and each candidate may have one watcher able to view directly or on a display screen ballots being examined for signature matching and other processes. Provisional ballots cast pursuant to s. 101.049 shall be canvassed in a manner that votes for candidates and issues on those ballots can be segregated from other votes. As soon as the absent electors' ballots and the provisional ballots are canvassed, the board shall proceed to publicly canvass the vote given each candidate, nominee, constitutional amendment, or other measure submitted to the electorate of the county, as shown by the returns then on file in the office of the supervisor.

(b) Public notice of the canvassing board members, alternates, time, and place at which the county canvassing board shall meet to canvass the absent electors' ballots and provisional ballots must be given at least 48 hours prior thereto by publication on the county's website as provided in s. 50.0311, on the supervisor's website, or in one or more newspapers of general circulation in the county. If the applicable website becomes unavailable or there is no newspaper of general circulation in the county, the notice must be posted in at least four conspicuous places in the county. The time given in the notice as to the convening of the meeting of the county canvassing board must be specific and may not be a time period during which the board may meet.

(c) If the county canvassing board suspends or recesses a meeting publicly noticed pursuant to paragraph (b) for a period lasting more than 60 minutes, the board must post on the supervisor's website the anticipated time at which the board expects to reconvene. If the county canvassing board does not reconvene at the specified time, the board must provide at least 2 hours' notice, which must be posted on the supervisor's website, before reconvening.

(d) During any meeting of the county canvassing board, a physical notice must be placed in a conspicuous area near the public entrance to the building in which the meeting is taking place. The physical notice must include the names of the individuals officially serving as the county canvassing board, the names of any alternate members, the time of the meeting, and a brief statement as to the anticipated activities of the county canvassing board.

(3) The canvass, except the canvass of absent electors' returns and the canvass of provisional ballots, shall be made from the returns and certificates of the inspectors as signed and filed by them with the supervisor, and the county canvassing board shall not change the number of votes cast for a candidate, nominee, constitutional amendment, or other measure submitted to the electorate of the county, respectively, in any polling place, as shown by the returns. All returns shall be made to the board on

  

or before 2 a.m. of the day following any primary, general, or other election. If the returns from any precinct are missing, if there are any omissions on the returns from any precinct, or if there is an obvious error on any such returns, the canvassing board shall order a retabulation of the returns from such precinct. Before canvassing such returns, the canvassing board shall examine the tabulation of the ballots cast in such precinct and determine whether the returns correctly reflect the votes cast. If there is a discrepancy between the returns and the tabulation of the ballots cast, the tabulation of the ballots cast shall be presumed correct and such votes shall be canvassed accordingly.

(4)(a) The supervisor of elections shall upload into the county's election management system by 7 p.m. on the day before the election the results of all early voting and vote-by-mail ballots that have been canvassed and tabulated by the end of the early voting period. Pursuant to ss. 101.5614(8), 101.657, and 101.68(2), the tabulation of votes cast or the results of such uploads may not be made public before the close of the polls on election day.

(b) The canvassing board shall report all early voting and all tabulated vote-by-mail results to the Department of State within 30 minutes after the polls close. Thereafter, the canvassing board shall report, with the exception of provisional ballot results, updated precinct election results to the department at least every 45 minutes until all results are completely reported. The supervisor of elections shall notify the department immediately of any circumstances that do not permit periodic updates as required. Results shall be submitted in a format prescribed by the department.

(5) The canvassing board shall submit on forms or in formats provided by the division unofficial returns to the Department of State for each federal, statewide, state, or multicounty office or ballot measure no later than noon on the third day after any primary election and no later than noon on the fourth day after any general or other election. Such returns shall include the canvass of all ballots as required by subsection (2).

(6) If the county canvassing board determines that the unofficial returns may contain a counting error in which the vote tabulation system failed to count votes that were properly marked in accordance with the instructions on the ballot, the county canvassing board shall:

(a) Correct the error and retabulate the affected ballots with the vote tabulation system; or

(b) Request that the Department of State verify the tabulation software. When the Department of State verifies such software, the department shall compare the software used to tabulate the votes with the software filed with the department pursuant to s. 101.5607 and check the election parameters.

(7) If the unofficial returns reflect that a candidate for any office was defeated or eliminated by one-half of a percent or less of the votes cast for such office, that a candidate for retention to a judicial office was retained or not retained by one-half of a percent or less of the votes cast on the question of retention, or that a measure appearing on the ballot was approved or rejected by one-half of a percent or less of the votes cast on such measure, a recount shall be ordered of the votes cast with respect to such office or measure. The Secretary of State is responsible for ordering recounts in federal, state, and multicounty races. The county canvassing board or the local board responsible for certifying the election is responsible for ordering recounts in all other races. A recount need not be ordered with respect to the returns for any office, however, if the candidate or candidates defeated or eliminated from contention for such office by one-half of a percent or less of the votes cast for such office request in writing that a recount not be made.

  

(a) Each canvassing board responsible for conducting a recount shall put each marksense ballot through automatic tabulating equipment and determine whether the returns correctly reflect the votes cast. If any marksense ballot is physically damaged so that it cannot be properly counted by the automatic tabulating equipment during the recount, a true duplicate shall be made of the damaged ballot pursuant to the procedures in s. 101.5614(4). Immediately before the start of the recount, a test of the tabulating equipment shall be conducted as provided in s. 101.5612. If the test indicates no error, the recount tabulation of the ballots cast shall be presumed correct and such votes shall be canvassed accordingly. If an error is detected, the cause therefor shall be ascertained and corrected and the recount repeated, as necessary. The canvassing board shall immediately report the error, along with the cause of the error and the corrective measures being taken, to the Department of State. No later than 11 days after the election, the canvassing board shall file a separate incident report with the Department of State, detailing the resolution of the matter and identifying any measures that will avoid a future recurrence of the error. If the automatic tabulating equipment used in a recount is not part of the voting system and the ballots have already been processed through such equipment, the canvassing board is not required to put each ballot through any automatic tabulating equipment again.

(b) Each canvassing board responsible for conducting a recount where touchscreen ballots were used shall examine the counters on the precinct tabulators to ensure that the total of the returns on the precinct tabulators equals the overall election return. If there is a discrepancy between the overall election return and the counters of the precinct tabulators, the counters of the precinct tabulators shall be presumed correct and such votes shall be canvassed accordingly.

(c) The canvassing board shall submit on forms or in formats provided by the division a second set of unofficial returns to the Department of State for each federal, statewide, state, or multicounty office or ballot measure. The returns shall be filed no later than 3 p.m. on the 5th day after any primary election and no later than 3 p.m. on the 9th day after any general election in which a recount was ordered by the Secretary of State. If the canvassing board is unable to complete the recount prescribed in this subsection by the deadline, the second set of unofficial returns submitted by the canvassing board shall be identical to the initial unofficial returns and the submission shall also include a detailed explanation of why it was unable to timely complete the recount. However, the canvassing board shall complete the recount prescribed in this subsection, along with any manual recount prescribed in s. 102.166, and certify election returns in accordance with the requirements of this chapter.

(d) The Department of State shall adopt detailed rules prescribing additional recount procedures for each certified voting system, which shall be uniform to the extent practicable.

(8) The canvassing board may employ such clerical help to assist with the work of the board as it deems necessary, with at least one member of the board present at all times, until the canvass of the returns is completed. The clerical help shall be paid from the same fund as inspectors and other necessary election officials.

(9) Each member, substitute member, and alternate member of the county canvassing board and all clerical help must wear identification badges during any period in which the county canvassing board is canvassing votes or engaging in other official duties. The identification badges should be worn in a conspicuous and unobstructed area, and include the name of the individual and his or her official position.

(10)(a) The supervisor shall file a report with the Division of Elections on the conduct of the election no later than 20 business days after the Elections Canvassing Commission certifies the election. The report must, at a minimum, describe all of the following:

  

1. All equipment or software malfunctions at the precinct level, at a counting location, or within computer and telecommunications networks supporting a county location, and the steps that were taken to address the malfunctions.

2. All election definition errors that were discovered after the logic and accuracy test, and the steps that were taken to address the errors.

3. All ballot printing errors, vote-by-mail ballot mailing errors, or ballot supply problems, and the steps that were taken to address the errors or problems.

4. All staffing shortages or procedural violations by employees or precinct workers which were addressed by the supervisor of elections or the county canvassing board during the conduct of the election, and the steps that were taken to correct such issues.

5. All instances where needs for staffing or equipment were insufficient to meet the needs of the voters.

6. Any additional information regarding material issues or problems associated with the conduct of the election.

(b) If a supervisor discovers new or additional information on any of the items required to be included in the report pursuant to paragraph (a) after the report is filed, the supervisor must notify the division that new information has been discovered no later than the next business day after the discovery, and the supervisor must file an amended report signed by the supervisor of elections on the conduct of the election within 10 days after the discovery.

(c) Such reports must be maintained on file in the Division of Elections and must be available for public inspection.

(d) The division shall review the conduct of election reports to determine what problems may be likely to occur in other elections and disseminate such information, along with possible solutions and training, to the supervisors of elections.

(e) The department shall submit the analysis of these reports for the general election as part of the consolidated reports required under ss. 101.591 and 101.595 to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 15 of each year following a general election.

(11) The supervisor shall file with the department a copy of or an export file from the results database of the county's voting system and other statistical information as may be required by the department, the Legislature, or the Election Assistance Commission. The department shall adopt rules establishing the required content and acceptable formats for the filings and time for filings.

**Credits**

Added by Laws 1913, c. 6469, § 46; Rev.Gen.St.1920, § 350; Comp.Gen.Laws 1927, § 407; Laws 1929, c. 13761, § 11; Fla.St.1949, § 102.45; Laws 1951, c. 26870, § 6; Laws 1957, c. 57-104, § 1; Laws 1965, c. 65-129, § 6; Laws 1973, c. 73-334, § 19; Laws 1977, c. 77-175, § 26; Laws 1979, c. 79-400, § 47. Amended by Laws 1984, c. 84-302, § 18, eff. July 1, 1984; Laws 1986, c. 86-33, § 4, eff. May 23, 1986; Laws 1995, c. 95-147, § 600, eff. July 10, 1995; Laws 2001, c. 2001-40, § 41, eff. Jan. 1, 2002; Laws 2002, c. 2002-17, § 20, eff. April 11, 2002; Laws 2003, c. 2003-415, § 26, eff. Jan. 1, 2004; Laws 2005, c. 2005-277,

§ 58, eff. Jan. 1, 2006; Laws 2007, c. 2007-30, § 33, eff. Jan. 1, 2008; Laws 2010, c. 2010-167, § 14, eff. May 28, 2010; Laws 2011, c. 2011-40, § 43, eff. May 19, 2011; Laws 2013, c. 2013-57, § 19, eff. Jan. 1, 2014; Laws 2016, c. 2016-37, § 34, eff. July 1, 2016; Laws 2018, c. 2018-112, § 10, eff. May 10, 2018; Laws 2019, c. 2019-162, § 36, eff. July 1, 2019; Laws 2020, c. 2020-109, § 4, eff. Jan. 1, 2021; Laws 2021, c. 2021-11, § 31, eff. May 6, 2021; Laws 2023, c. 2023-120, § 36, eff. July 1, 2023.

West's F. S. A. § 102.141, FL ST § 102.141
Current with laws, joint and concurrent resolutions and memorials through July, 1 2024, in effect from the 2024 first regular session. Some statute sections may be more current, see credits for details. The statutes are subject to change as determined by the Florida Revisor of Statutes. (These changes will be incorporated later this year.)

**End of Document**

## Validity (2)

### Proposed Legislation (2)

2024 FL H.B. 1669 (NS)
2024 Florida House Bill No. 1669, Florida One Hundred Twenty-Sixth Regular Session, (Jan. 09, 2024), VERSION: Introduced, PROPOSED ACTION: Amended

2024 FL H.B. 1669 (NS)
2024 Florida House Bill No. 1669, Florida One Hundred Twenty-Sixth Regular Session, (Jan. 09, 2024), VERSION: Filed, PROPOSED ACTION: Amended

West's Florida Statutes Annotated
Title IX. Electors and Elections (Chapters 97-109)
Chapter 102. Conducting Elections and Ascertaining the Results (Refs & Annos)

West's F.S.A. § 102.151

# 102.151. County canvassing board to issue certificates; supervisor to give notice to Department of State

Currentness

The county canvassing board shall make and sign duplicate certificates containing the total number of votes cast for each person nominated or elected, the names of persons for whom such votes were cast, and the number of votes cast for each candidate or nominee. One of such certificates which relates to offices for which the candidates or nominees have been voted for in more than one county shall be immediately transmitted to the Department of State, and the second copy filed in the supervisor's office. The supervisor shall transmit to the Department of State, immediately after the county canvassing board has canvassed the returns of the election, a list containing the names of all county and district officers nominated or elected, the office for which each was nominated or elected, and the mailing address of each.

**Credits**

Added by Laws 1913, c. 6469, § 47; Rev.Gen.St.1920, § 351; Comp.Gen.Laws 1927, § 408; Laws 1929, c. 13761, § 12; Laws 1949, c. 25388, § 5; Fla.St.1949, § 102.46; Laws 1951, c. 26870, § 6; Laws 1969, c. 69-106, §§ 10, 35; Laws 1977, c. 77-175, § 27. Amended by Laws 1989, c. 89-338, § 31, eff. Jan. 1, 1990.

West's F. S. A. § 102.151, FL ST § 102.151

Current with laws, joint and concurrent resolutions and memorials through July, 1 2024, in effect from the 2024 first regular session. Some statute sections may be more current, see credits for details. The statutes are subject to change as determined by the Florida Revisor of Statutes. (These changes will be incorporated later this year.)

**End of Document**

**Validity**

There are no Validity results for this citation.